



SPECIAL CITY COUNCIL AGENDA

April 03, 2024 at 7:00 PM

Wilsonville City Hall

PARTICIPANTS MAY ATTEND THE MEETING AT:

City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon

YouTube: <https://youtube.com/c/cityofwilsonvilleor>

Zoom: <https://us02web.zoom.us/j/81536056468>

TO PARTICIPATE REMOTELY:

Register with the City Recorder:

CityRecorder@ci.wilsonville.or.us or 503-570-1506

City Recorder - Wilsonville City Hall

29799 SW Town Center Loop East, Wilsonville, OR 97070

CITY COUNCIL MISSION STATEMENT

To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

CITY COUNCIL MEETING

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a special session to be held, April 3, 2024 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10:00 a.m. on March 19, 2024. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered there with except where a time limit for filing has been fixed.

CALL TO ORDER [7:00 PM]

1. Roll Call
2. Pledge of Allegiance
3. Motion to approve the following order of the agenda.

MAYOR'S BUSINESS [7:05 PM]

4. None.

COMMUNICATIONS [7:05 PM]

5. None.

CITIZEN INPUT AND COMMUNITY ANNOUNCEMENTS [7:05 PM]

6. None.

COUNCILOR COMMENTS, LIAISON REPORTS AND MEETING ANNOUNCEMENTS [7:05 PM]

7. None.

CONSENT AGENDA [7:05 PM]

8. None.

NEW BUSINESS [7:05 PM]

9. [Appeal of DRB 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.](#)

CONTINUING BUSINESS [7:25 PM]

10. None.

PUBLIC HEARING [7:25 PM]

11. None.

CITY MANAGER'S BUSINESS [7:25 PM]

12. None.

LEGAL BUSINESS [7:25 PM]

13. None.

ADJOURN [7:25 PM]

Time frames for agenda items are not time certain (i.e. agenda items may be considered earlier than indicated). The City will endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting by contacting the City Recorder at 503-570-1506 or CityRecorder@ci.wilsonville.or.us: assistive listening devices (ALD), sign language interpreter, and/or bilingual interpreter. Those who need accessibility assistance can contact the City by phone through the Federal Information Relay Service at 1-800-877-8339 for TTY/Voice communication.

Habr  interpretes disponibles para aqu llas personas que no hablan Ingl s, previo acuerdo. Comun quese al 503-570-1506.



**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: April 3, 2024		Subject: Order on Appeal: DRB Resolution No. 429	
		Staff Member: Miranda Bateschell, Planning Director; Stephanie Davidson, Assistant City Attorney	
		Department: Community Development, Legal	
Action Required		Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comments: Development Review Board Resolution No. 429 issued a decision of non-conformance in Case File No. DB24-0002 (appeal of ADMN23-0029) that the Applicant has appealed to City Council.	
Staff Recommendation: Staff recommends Council affirm the decision of the Development Review Board Resolution No. 429.			
Recommended Language for Motion: I move to adopt an Order on the Appeal of Development Review Board Resolution No. 429 affirming the decision in DRB Resolution No. 429.			
Project / Issue Relates To:			
<input type="checkbox"/> Council Goals/Priorities:	<input checked="" type="checkbox"/> Adopted Master Plan(s): Comprehensive Plan, Town Center Plan	<input type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL:

An appeal of the Development Review Board (DRB) Resolution No. 429 dated March 14, 2024, issuing a decision of non-conformance in Case File No. DB24-0002 affirming the Planning Director's Determination of Non-Conformance (ADMN23-0029).

EXECUTIVE SUMMARY:

The DRB held a special meeting on March 14, 2024, to consider all evidence timely submitted regarding DB24-0002. Following deliberation on the matter, the DRB approved Resolution No. 429 affirming the Planning Director's Determination of Non-Conformance (ADMN23-0029) dated December 28, 2023. The Notice of Decision for Case File No. DB24-0002 was issued on March 15, 2024. On March 27, 2024, the Applicant filed an Appeal with the City Recorder noting the following issues being appealed:

1. Finding that the legally established non-conforming use at the Location is "a 159,400 square-foot electronics-related retail store"; and,
2. Rejection of certain materials and information from the record on March 14, 2024; and,
3. Adoption of the staff report presented to it in preparation for the February 26, 2024 meeting.

Thus, the primary question before City Council is the scope of the recognized legally established non-conforming use at the Location. The DRB recognized this scope to be "a 159,400 square-foot electronics-related retail store." Additionally, the Appellant challenged two actions taken by the DRB as part of their decision, which are discussed in more detail in Attachment 1.

FACTUAL BACKGROUND:

This Staff Report provides a factual summary of the proceedings and summary of the evidence in the record that was considered in reaching the decision under review. It includes a statement of relevant facts, including important procedural background related to the appeal.

Given the nature of the issue under review, this staff report is supplemented by a legal memorandum (Attachment 1). Determination of non-conforming uses is very specific and there is a significant amount of relevant Oregon case law that provides guidance for the City Council in making its determination on this appeal. The attached memo describes the issue before City Council, the issues not appealed, and issues beyond the scope of this appeal; the burden of proof; the law regarding non-conforming uses, including the definition of non-conforming use, scope of non-conforming use, required evidence, and local government discretion; City staff's response to other arguments raised by the Appellant at DRB; and finally, the staff recommendation.

The property that is the subject of this appeal is located at 29400 SW Town Center Loop West (the "Location") within the Wilsonville Town Center. The Location is developed with a 159,400 square-foot electronics-related retail store. As Council is aware, the community engaged in a two-year planning process with City staff to establish a new vision for the Wilsonville Town Center. This culminated in Council's adoption of Ordinance No. 835, the Town Center Plan and new Town Center (TC) zoning designation, which went into effect on June 5, 2019.

At that time, several buildings and sites in Town Center, including the Location, became non-conforming (use, structure, and/or site conditions) to the new TC zoning and development standards. While established legally under a prior zoning designation and therefore allowed to continue as-is, the developed sites are not consistent, and therefore, non-conforming with the new vision, plan, and zoning standards for Town Center. Pages 49-54 of Attachment 3 detail the determination of non-conformance for use, structure, and site conditions. The Appellant does not challenge the fact of non-conformance for use, structure, and site conditions. However, it does challenge the nature and extent of the non-conforming use at the Location.

The City's non-conforming development standards (Sections 4.189 through 4.192 of the Development Code) intentionally encourage future uses and developments that become more in line with the vision and standards of the Town Center Plan and ensure ongoing and future uses of these locations and buildings are no more non-conforming with the TC Zone than the use, structure, or site conditions existing at the time the new regulations went into effect. This is consistent with best practices and supported by the Land Use Board of Appeals, as non-conforming uses inherently detract from the effectiveness of the new comprehensive plan. As further detailed in Attachment 1, local governments do not consider a property's original zoning or the prior land use approvals in establishing the nature and extent of the legally established non-conforming use at the point in time it becomes non-conforming, but rather what use preexisted and has continued after adoption of the new regulations.

As of June 5, 2019, the effective date for the new Town Center development regulations, a Fry's Electronics store existed on the site; thus, the actual use of the Location was an electronics retail store with a total interior square-footage of 159,400 square feet. This became the recognized, legally established non-conforming use at the Location on that date. As shown in Attachment 3, pages 24-25, the Appellant does not dispute this point. The DRB recognized a non-conforming use in its Notice of Decision for Case File No. DB24-0002, which was issued on March 15, 2024; it defined the nature and extent of this non-conforming use to be "a 159,400 square-foot electronics-related retail store." Attachment 2, pp. 3-4 of 20.

Thus, Staff recommends that City Council affirm the DRB decision in Resolution No. 429, affirming the Planning Director's Determination of Non-Conformance (ADMN23-0029) determining that the scope of the legally established non-conforming use at the Location is "a 159,400 square-foot electronics-related retail store."

PROCEDURAL BACKGROUND:

On October 30, 2023, the City received an application for Class I Review (ADMN23-0029) to confirm the status of the existing use and structure at 29400 SW Town Center Loop West (respectively, the "Class I 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 its submittal, the Appellant requested a Class I Review to confirm the status of the existing non-conforming use at the Location, but included information regarding a potential determination of a continuation of use by another party. A determination of a continuation of use is not subject to

a Class I Review.

As a result of the issues with Appellant's initial Class I Review Application, on November 28, 2023, City staff contacted the Appellant by email providing options for processing the application and requesting that they notify staff of its preference by December 8, 2023 (Attachment 3, pp. 438-439 of 660). Appellant did not contact the City to withdraw the Class I Review Application, so the City deemed the application complete on November 29, 2023 and processed the request as a Class I Planning Director Determination per Subsection 4.030 (.01) A. 7. of the Development Code. Since Appellant did not notify staff of its preference, staff's review only covered the portion of the Class I Review Application that qualified under the Class I Review. 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 I Review Application (the "Planning Director's Determination").

The Appellant submitted a notice of appeal of the Planning Director's Determination on January 10, 2024. A public hearing before the Development Review Board regarding this appeal (DB24-0002) was held on February 26, 2024 (see written transcript, Attachment 4). During the public hearing, Appellant requested that the record be kept open for seven days pursuant to ORS 197.797 to allow it to respond to testimony entered into the record. The DRB closed the public hearing and unanimously approved the request to keep the written record open for Resolution No. 429 until March 4, 2024, at 5:00 pm. On March 4, 2024, Appellant filed a first written submittal, and on March 11, 2024, filed its final arguments to the record. The Development Review Board held a special meeting on March 14, 2024, to consider all evidence timely submitted regarding DB24-0002 (see record, Attachment 3). Following deliberation on the matter, the Development Review Board approved Resolution No. 429 affirming the Planning Director's Determination of Non-Conformance (ADMN23-0029) dated December 28, 2023, 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.

The Notice of Decision for Case File No. DB24-0002 was issued on March 15, 2024. For the purpose of applying the applicable 120-day time limit, a final decision on the Class I Application, including any appeals, must be rendered by April 11, 2024.

The City is currently processing a separate but related Class II Review application, which was filed by Appellant on December 15, 2023 (AR23-0031) (the "Class II Review Application"). The central issue in the Class II Review Application proceeding is whether the Appellant's proposed use of the Location constitutes a continuation of the non-conforming use that has been recognized by the DRB. This application has been referred by the Planning Director to the Development Review Board for review as Case File No. DB24-0003. The Development Review Board public hearing is

scheduled for April 8, 2024.

TIMELINE:

The decision made by the City Council shall become effective immediately. There is a 21-day appeal period during which the Appellant could file an appeal with the Land Use Board of Appeals.

EXPECTED RESULTS:

City Council will issue an order on the appeal to affirm, reverse or modify in whole or part the determination of non-conformance by the DRB in Resolution No. 429.

CURRENT YEAR BUDGET IMPACTS:

Cost is covered partially by fees paid by appellant, otherwise Staff time is non billable within existing department budgets.

COMMUNITY INVOLVEMENT PROCESS:

Proper noticing was followed for the Development Review Board public hearing on the appeal of the Class I application. This included mailing the public hearing notice to property owners within 250 feet of the subject property, on-site posting, and publication in the Wilsonville Spokesman. All were provided an opportunity to submit testimony in advance of and at the public hearing. Further, the Town Center Plan, as well as the drafting and review process for the Town Center zoning, included comprehensive community involvement to gather input, which was integral in establishing the vision, goals, guiding principles, and design elements of the Town Center Plan.

POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:

The Town Center Plan and TC Zone regulations are intended to promote development that fulfills the community's vision for a more commercially vibrant, walkable, mixed-use Town Center. To support this vision, the community and policymakers established new standards that would limit new single-user retail uses to a scale (30,000 square feet footprint or less) more appropriate for pedestrians. As a result, several buildings in Town Center became non-conforming (use, structure, and/or site conditions) when the TC Plan and Zone became effective (June 5, 2019). While the uses may continue, the non-conforming provisions both ensure future uses of these locations and buildings become no more non-conforming with the TC Zone and also encourage the future uses to become more in line with the vision and standards of Town Center.

ALTERNATIVES:

The Council shall by order, affirm, reverse or modify in whole or part a determination or requirement of the decision that is under review. When the Council modifies or renders a decision that reverses a decision of the Commission or Board, the Council, in its order, shall set forth its findings and state its reasons for taking the action. When the Council elects to remand the matter back to the lower review body for such further consideration as it deems necessary, it shall include a statement explaining the error to have materially affected the outcome of the original decision and the action necessary to rectify such. It should be noted that there is not sufficient time to remand the decision without the Appellant extending the 120-day period in

which final action needs to occur on this application as required by ORS 227.178.

CITY MANAGER COMMENT:

ATTACHMENTS:

1. Legal Memorandum dated April 2, 2024
2. Development Review Board Panel B Decision – Resolution No. 429
3. Development Review Board Panel B Record – Case File DB24-0002 (ADMN23-0029)
4. Development Review Board Panel B Verbatim Minutes Excerpt dated February 26, 2024
5. Development Review Board Panel B Verbatim Minutes Excerpt dated March 14, 2024



Legal Memorandum

TO: City Council

FROM: Stephanie Davidson, Assistant City Attorney

DATE: April 2, 2024

RE: Appeal of DRB decision in DB24-0002 (ADMN23-0029)

I. OVERVIEW

The City Council should deny Appellant’s appeal of the Development Review Board (“DRB”) decision in DB24-0002. Appellant has failed to meet its burden of proof, and has not supplied any relevant evidence to support its request that the City recognize a relatively broad non-conforming use. Appellant also ignores and misconstrues applicable law regarding the record in this matter in an attempt to undermine the authority of the hearings body (the DRB). On close inspection, Appellant’s appeal has no basis in law or fact. Thus, the City Council’s denial of Appellant’s appeal is appropriate.

II. STATEMENT OF FACTS

A. Description of the Property that Is the Subject of this Appeal

The property that is the subject of this Appeal is located at 29400 SW Town Center Loop West (the “Location”). 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. The Location is developed with a 159,400 square-foot electronics-related retail store in a single story with a partial mezzanine.¹

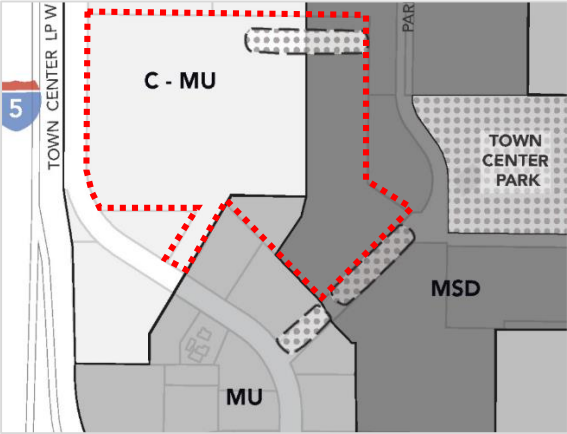
B. Change of Zoning in Town Center in 2019

In 2019 the City adopted the Town Center Plan (Ordinance No. 835), a long-term, community-driven vision to transform Wilsonville’s Town Center into a vibrant, walkable destination that inspires people to come together and socialize, shop, live, and work. As part of this work, a new zoning designation, the Town Center (“TC”) zone, and associated Wilsonville Development Code (“WC”) Section 4.132 were adopted for the entire Town Center Area to implement the Town Center Plan’s recommendations. These standards support the creation of a walkable Town Center and main street, with design standards regulating building placement,

¹ See Attachment 3 to Staff Report, p. 98 of 660 (first page of Planning Department Staff Report dated December 9, 1991).

building height, parking location, and drive through facilities. The plan and associated Zone Map and Development Code amendments went into effect on June 5, 2019.

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 half 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.²

The existing structure at the Location has a total square-footage of 159,400 square feet in a single story with a partial mezzanine, which exceeds the footprint of 30,000 square feet per user and footprint limitation that is allowed in the TC Zone.³

Appellant agrees that use of the Location is non-conforming under the City’s current Code provisions, and that the Location was rendered non-conforming on June 5, 2019.⁴

C. Summary of DRB Decision

The Development Review Board approved Resolution No. 429 affirming the Planning Director’s Determination of Non-Conformance (ADMN23-0029) dated December 28, 2023, (the “*Planning Director’s Determination*”), and determined that:

² See WC 4.132 (.02) F. and (.03) A. 1.
³ See Attachment 3 to Staff Report, p. 98 of 660 (first page of Planning Department Staff Report dated December 9, 1991).
⁴ See Applicant’s Notice of Appeal submitted on March 27, 2024 (hereinafter, the “*Notice of Appeal*”), p. 4. Appellant took the same position before DRB. See Attachment 3 to Staff Report, pp. 24-25 (Appellant stated in its March 11 submission to DRB, providing legal argument, that the Location became non-conforming on June 5, 2019).

1. There is a legally established non-conforming use at the Location; specifically, 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.

The DRB issued its Notice of Decision for Case File No. DB24-0002 on March 15, 2024 (the “*DRB Decision*”).⁵

D. Separate Class II Proceeding

The City is currently processing a separate, but related, Class II Review application, which was filed by Appellant on December 15, 2023 (AR23-0031) (the “*Class II Review Application*”). The central issue in the Class II Review Application proceeding is whether the Appellant’s proposed use of the Location constitutes a continuation of the non-conforming use that has been recognized by the DRB. The Class II Review Application has been referred by the Planning Director to the Development Review Board for review as Case File No. DB24-0003. The Development Review Board public hearing is scheduled for April 8, 2024.

III. ISSUES PRESENTED

A. Issue Before City Council

Appellant challenges the following DRB actions in this appeal:

1. Finding that the legally established non-conforming use at the Location is “a 159,400 square-foot electronics-related retail store;”
2. Rejection of certain materials and information from the record on March 14, 2024; and
3. Adoption of the staff report presented to it in preparation for the February 26, 2024 meeting.⁶

Because City Council has decided to review an unredacted record, which includes all evidence submitted by any party, including Appellant, to the DRB, this memorandum addresses only City Council’s ability to reject certain materials and information from the record in this appeal.

City Council’s decision in this matter must be supported by substantial evidence in the whole record.⁷ The “substantial evidence” standard means the governing body (City Council) decision must be a conclusion a reasonable person could make. This standard disallows LUBA from overturning a local government decision even if a reasonable person could draw a different conclusion from the same evidence so long as another reasonable person could draw the same conclusion as the local government.⁸

⁵ See Attachment 2 to Staff Report, pp. 3-4 of 20 (Resolution no. 429).

⁶ Notice of Appeal, p. 2.

⁷ See ORS 197.835(9)(a)(C).

⁸ See *Adler v. City of Portland*, 25 Or LUBA 546, 1993 WL 1473299 at *6 (1993); *Fraleley*, 32 Or LUBA 27, 31-32 (1996), *aff’d*, 145 Or App 484 (1996).

B. Issues Not Appealed

The following DRB decisions are not being challenged by Appellant (i.e., they are not being appealed and are not referenced in the Notice of Appeal):

1. There is a legally established non-conforming use at the Location
2. There is a legally established non-conforming structure at the Location.
3. There are legally established non-conforming site conditions at the Location.

City Council has decided that these issues are not necessary for a proper resolution of this matter.

C. Issues Beyond the Scope of this Appeal

The issues being addressed in the Class II Review Application are beyond the scope of this proceeding. In particular, City Council should not address the Appellant's proposed use of the Location or whether such proposed use constitutes a continuation of the non-conforming use that has been recognized by the DRB. The City Council should disregard any argument about proposed use(s) of the Location and reject any evidence outside the scope of this Appeal that may be more appropriate in the Class II Review.

ISSUE NO. 1

DRB'S RECOGNITION OF A NON-CONFORMING USE FOR "A 159,400 SQUARE-FOOT ELECTRONICS-RELATED RETAIL STORE"

The DRB recognized a non-conforming use for "a 159,400 square-foot electronics-related retail store."⁹ Appellant requests recognition of a non-conforming use for "a 159,400 square foot ("SF") retail, office, warehouse, manufacturing, and service store (a commercial retail use)."¹⁰

IV. BURDEN OF PROOF

Appellant has the burden to prove the existence of a non-conforming use to the City in these proceedings.¹¹ Appellant's burden to establish the existence of a non-conforming use is not affected by the fact that the inquiry calls for production of evidence of what occurred at the Location almost five years ago. In *Fraley v. Deschutes Cnty.*, the Land Use Board of Appeals ("LUBA") reiterated the applicant's requirement to establish the existing use, even from 20 years prior, stating, "[a]lthough it may be more difficult in most cases to establish the nature and extent

⁹ See Attachment 2 to Staff Report, p. 4 of 20 (Resolution no. 429).

¹⁰ See Notice of Appeal, p. 7; see also Attachment 3 to Staff Report, p. 28 (Appellant's March 11, 2024 submission of evidence to DRB).

¹¹ See Subsection 4.014 of the Development Code ("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. In the case of an appeal, the burden of proof rests with the appellant."); *ODOT v. City of Mosier*, 36 Or LUBA 666, 671 (1999) (explaining that in ODOT, which was arguing for its right to continue a use, had the burden of showing the nature and extent of its use (citing *Lane Cnty. v. Bessett*, 46 Or App 319 (1980))); *Sabin*, 20 Or LUBA at 30 (1990) ("The proponent of a nonconforming use bears the burden of establishing whether a nonconforming use has been lawfully established." (citing *Webber v. Clackamas Cnty.*, 42 Or App 151, *rev den*, 288 Or 81 (1979))).

of a use that existed years ago, the requirement is not reduced in proportion to the difficulty one has in satisfying it.”¹²

In this matter, Appellant has the burden of proof, and City Council’s decision is subject to the “substantial evidence” standard.¹³ *River City Disposal and Recycling v. City of Portland*, also a case regarding non-conforming uses, illustrates how these concepts should be applied together.¹⁴ In *River City Disposal and Recycling*, LUBA found that the City hearings officer’s decision satisfied the “substantial evidence” standard.¹⁵ It was enough that the hearings officer found that evidence presented in an affidavit (aerial photographs) was not persuasive.¹⁶ LUBA also clarified that the City of Portland was not obligated to present contrary evidence to counter the applicant’s evidence, and the “substantial evidence” standard was satisfied because the hearings officer found that the applicant failed to satisfy its burden of proof.¹⁷

City Council must be sure that its decision – whether in favor of or against the Appellant’s position – makes sense in light of all evidence in the record. Because Applicant has the burden of proof, City Council may decide that not enough evidence has been provided by Appellant to satisfy its burden of proof. The City is not obligated to produce evidence to counter Appellant’s evidence in order for City Council to affirm the DRB’s decision, or to otherwise recognize a more narrow scope of use than the Applicant would like. Further, City Council may determine the credibility of evidence in the record; in particular, when conflicting evidence exists, City Council may decide that some evidence is credible and persuasive, and other evidence is not.

V. LEGAL AUTHORITIES

This section outlines the legal authorities relevant to City Council’s determination on this first issue.

A. Non-Conforming Use Defined

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.”¹⁸ Wilsonville’s own City Code defines “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.”¹⁹

¹² 32 Or LUBA at 31-32.

¹³ See [Section III.A](#).

¹⁴ See 35 Or LUBA 360 (1998).

¹⁵ *Id.*

¹⁶ *Id.* at 367-71.

¹⁷ *Id.*

¹⁸ *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)).

¹⁹ See WC 4.001 (196.).

Appellant and the City agree that the use of the Location became non-conforming on June 5, 2019 (we will refer to the use of the Location on this date as the “Current Use”).²⁰ This is the effective date of the Town Center Plan and related adopted zoning regulations. As of this date, the Current Use would not have been permitted under then-current applicable zoning regulations for a multitude of reasons. For purposes of this appeal, the Current Use would not be permitted due to the limitations of either: (1) 30,000 square feet per user for single-story buildings; or (2) for uses in multi-story buildings, a building footprint limitation of 30,000 square feet, as stated in WC 4.132 (.02) F. and (.03) A. 1.

B. City Council Must Examine the Actual Use of the Location as of June 5, 2019 to Define the Scope of that Non-Conforming Use

The DRB has recognized that a non-conforming use exists at the Location, and Appellant agrees. The only controversy of the non-conforming use raised by Appellant regards the scope of that non-conforming use. City Council must determine the nature and extent of this non-conforming use as of June 5, 2019.²¹ City Council’s decision in this matter should be based on a determination of how the Location was actually used as of June 5, 2019.²² Doing so is required under applicable law²³ and critical to establishing a standard for what non-conforming use(s) may continue at the Location. Contrary to Appellant’s argument in its appeal (which finds no support under Oregon law), the City Council must determine the non-conforming use as of June 5, 2019, not what use(s) may have been approved in 1991, over 30 years ago.

C. Evidence Relevant to Establishing Nature and Extent of Non-Conforming Use

Prior Oregon cases that address non-conforming uses provide some examples of the evidence that is considered by local governments in this type of matter: testimony and affidavits regarding what activities occurred on the subject property, contemporaneous records such as advertisements and tax returns, and photographic evidence.²⁴ None of the many cases reviewed by

²⁰ See Section II.B; Notice of Appeal, p. 4. Appellant took the same position before DRB. See Attachment 3 to Staff Report, pp. 24-25 (Appellant stated in its March 11 submission to DRB, providing legal argument, that the Location became non-conforming on June 5, 2019).

²¹ See *Sabin v. Clackamas Cnty.*, 20 Or LUBA 23 (1990) (citing *Polk County v. Martin*, 292 Or 69 (1981)) (“It is the nature and extent of the lawful use in existence at the time the use became nonconforming, which is the reference point for determining the scope of permissible continued use.”); *Spurgin v. Josephine Cnty.*, 28 Or LUBA 383 (1994) (“After it is determined that a nonconforming use exists, the nature and extent of the nonconforming use must be identified. . . . This requirement is important because the protected right to continue a nonconforming use is a right to continue the nature and scope of use that existed at the time the use became nonconforming.”).

²² See *Nehoda v. Coos Cnty.*, 29 Or LUBA 251, 1995 WL 1773153, at *5 (1995) (“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.”). Appellant agrees that June 5, 2019 is the relevant point in time. See Notice of Appeal, p. 4; Attachment 3 to Staff Report, pp. 24-25 (Appellant stated in its March 11 submission to DRB, providing legal argument, that the Location became non-conforming on June 5, 2019).

²³ See, e.g., *Marquam Farms Corp. v. Multnomah Cnty.*, 35 Or LUBA 392, 396 (1999) (explaining that a local government that recognizes a non-conforming use must define the nature and extent of that use).

²⁴ See *Larson v. City of Warrenton*, 29 Or LUBA 86 (1995) (considered evidence included testimony that log trucking began in 1993, the fact that the petitioner advertised for truck drivers in 1993, and the fact that the petitioner obtained a state license in 1992 that allowed the hauling of logs); *Fraley v. Deschutes Cnty.*, 32 Or LUBA 27 (1996), *aff’d*, 145 Or App 484 (1996) (considered evidence included tax records, affidavits and interviews of previous site occupants, and photographic evidence); *Crook v. Curry County*, 38 Or LUBA 677 (2000) (considered

staff in this matter provide even one example of a local government that considered either (1) what would have been allowed under a property's original zoning, or even (2) what was written in the subject property's original land use approvals. Further, LUBA does not consider these factors when reviewing local jurisdictions' decisions regarding non-conforming uses.

Appellant's position is that the City should recognize a non-conforming use based on the Location's original land use approvals, secured by Capital Realty Corporation, the property owner, in 1991 (Appellant refers to this as the "1991 Decision").²⁵ Appellant makes a few related arguments:

1. "The 1991 Decision is the controlling authority for determining the nature and extent of the non-conforming [use] at the [Location] because the 1991 Decision lawfully established the non-conforming use in the first instance."²⁶
2. "[B]oth the Planning Director and DRB have abjectly failed to so much as even *address* the 1991 Decision."²⁷

Based on an extensive review of applicable case law (and without any contradictory case law presented by Appellant), the original land use approvals (and the zoning regulations that applied prior to 2019) are irrelevant to a determination of what use existed at the Location as of June 5, 2019. This is the analysis that the case law cited in this memorandum requires. Appellant has not cited any legal authorities to support its assertion that the original land use approvals are the "controlling authority" in this matter, nor has it provided any relevant evidence that local governments typically review in these types of matters.

Appellant interprets the definition of "non-conforming use" provided in *Morgan and WC 4.001* (196.) to compel the City to recognize its desired scope of non-conforming use. These are mere definitions, and do not address how a local government determines the scope of a non-conforming use, which is the central issue in this matter. Appellant's reading of these definitions focuses on the part that requires a non-conforming use to be legally established – but completely ignores the part that recognizes a use may change over time or may be rendered non-conforming by subsequent zoning regulations. Appellant's focus on these definitions also completely ignores the legal authorities outlined in the next section, Section V.D. These legal authorities are the law in Oregon, and control the discretion a local government has to determine the scope of a non-conforming use.

D. Non-Conforming Uses Are Disfavored and Local Government Has Discretion to Establish Extremely Narrow Scope of Use

If the City recognizes a non-conforming use in this matter, it has significant discretion to define a narrow scope. "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,

evidence included photogrammetric evidence, testimony from site visitors, the age of certain building materials, and the fact that the county's assessor's office had no record of a structure on the subject site).

²⁵ See Attachment 3 to Staff Report, pp. 20-28 of 660 (Appellant's March 11 legal argument to DRB).

²⁶ See Notice of Appeal, p. 3.

²⁷ See source cited *supra* note 26.

conversely, provisions for limiting nonconforming uses are liberally construed to prevent the continuation or expansion of nonconforming uses as much as possible.”²⁸ Further, “the law of nonconforming uses is based on the concept, logical or not, that uses which contravene zoning requirements may be continued only to the extent of the least intensive variations—both in scope and location—that preexisted and have been continued after the adoption of the restrictions.”²⁹

There are many examples in the case law of local governments defining a non-conforming use in extremely narrow terms:

- In *Smith v. Lane County*, a county hearings officer recognized a limited non-conforming use: “The use of horses and cattle to practice equine/bovine eventing is verified as to the participation of up to ten individuals during any one session.”³⁰ On appeal to LUBA, LUBA applied the substantial evidence standard and declined to “disturb the county’s choice” (i.e., LUBA allowed the county’s recognized scope of non-conforming use).³¹ Not only did the hearings officer recognize a specific use (using horses and cattle to practice equine/bovine eventing), the hearings officer also recognized a narrow scope of the specific use – participation of up to only ten individuals during one session.
- In *Larson v. City of Warrenton*, the City of Warrenton determined the following scope of non-conforming use: “. . . storing and repairing marine construction equipment and as a base of operations for his construction company. Equipment typically seen at the site included trucks, cranes and other earth moving equipment used in marine and land construction.”³²
- In *Senkovich v. Lane County*, the county recognized as nonconforming uses “agricultural and forestry uses, counseling, educational uses, seminars, conferences, retreats, religious uses, and residential uses,” but limited the nonconforming use to “150 resident students, 35 staff members and families, and 3,000 annual guests.”³³

As is clear from these examples, local governments may define non-conforming uses in extremely narrow terms. Under Appellant’s theory of non-conforming use, the above-described cases would have uses described as “agricultural use” in *Smith*, “industrial use” in *Larson*, and “recreational, educational, agricultural and forestry uses” in *Senkovich*. Not only is such an interpretation contrary to Oregon law, the purpose of non-conforming uses is to ensure only the particular, current use is continued, rather than allowing a broad category of non-conforming uses to occur on a property.

As of June 5, 2019, it is undisputed that 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.³⁴ Appellant offers no evidence that the use as of June 5, 2019 is anything more than or

²⁸ *Parks v. Bd. of Cnty. Comm’rs of Tillamook Cnty.*, 11 Or App 177, 196–97 (1972) (internal citation omitted).

²⁹ *Clackamas Cnty. v. Gay*, 133 Or App 131, 135 (1995), *rev den*, 321 Or 137 (1995), *aff’d*, 146 Or App 706 (1997).

³⁰ 25 Or LUBA 1, 2 (1993) (emphasis added).

³¹ *Id.*

³² 29 Or LUBA 86, 1995 WL 1773182 at *1 (emphasis added).

³³ LUBA No. 2017-064, 2023 WL 6955255 at *1 (Sept. 18, 2023) (emphasis added).

³⁴ See Attachment 3 to Staff Report, p. 98 of 660 (first page of Planning Department Staff Report dated December 9, 1991, which characterized the use as “a retail business with the anonymous name ‘Project Thunder’ . . . a 159,400 square foot electronics-related retail store”).

different from this use. The DRB Decision recognized a non-conforming use for “a 159,400 square-foot electronics-related retail store.”³⁵ This scope is appropriate and comports with applicable case law such as *Parks and Gay*, which allow local governments to narrowly limit and resist expansion of the scope of non-conforming uses in order to resist the erosion of zoning regulations.

In fact, the term “electronics-related retail store” is broader than what is strictly necessary under applicable case-law – especially when this term is compared to the extremely narrow uses that were approved in *Smith, Larson, and Senkovich*. And, although not relevant to this inquiry, “electronics-related retail store” is language found in the 1991 land use approval that Appellant inaccurately states should be the sole basis for determining the non-conforming use.³⁶

As stated in Section IV, Appellant has the burden of proof to establish the existence of a non-conforming use. In other words, Appellant must prove that uses beyond those described above were occurring at the Location on June 5, 2019. Furthermore, the City is not obligated to present evidence if it desires to define a more narrow non-conforming use than Appellant would like – Appellant must provide sufficient evidence to compel the City to recognize the broader “retail, office, warehouse, manufacturing, and service store” use that it argues for in its briefing.³⁷

If the City elects to recognize this scope of non-conforming use, virtually *any* business could operate at the Location under this non-conforming use; this is an absurd result that totally undermines City’s land use planning. Exceptions to broad regulations, such as regulating non-conforming uses, should not be interpreted to “swallow the rule.”³⁸ Appellant’s unsupported and overly broad classification of non-conforming use would do just that. To reiterate, Appellant has not provided or referred to any relevant evidence to establish the scope of the non-conforming use of the Location as of June 5, 2019.

VI. APPELLANT HAS NO TAKINGS CLAIM

Appellant advances an argument that the DRB Decision represents an unconstitutional regulatory taking that is prohibited under Article I, section 18 of the Oregon Constitution and the Fifth Amendment (made applicable through the Fourteenth Amendment) of the United States Constitution.³⁹ These state and federal “takings” principles provide that private property cannot be taken for a public purpose without just compensation to the property owner. A typical example of this requirement is when a city needs to build a new road and acquire property from a private property owner for the road, the city must pay the property owner “just compensation” for the property being acquired.

³⁵ See Attachment 2 to Staff Report, pp. 3-4 of 20 (Resolution no. 429).

³⁶ See Attachment 3 to Staff Report, p. 98 of 660 (first page of Planning Department Staff Report dated December 9, 1991, which characterized the use as “a retail business with the anonymous name ‘Project Thunder’ . . . a 159,400 square foot electronics-related retail store”).

³⁷ See Notice of Appeal, p. 7; see also Attachment 3 to Staff Report, p. 28 of 660 (Appellant’s March 11, 2024 legal argument to DRB).

³⁸ See, e.g., *1000 Friends of Oregon v. LCDC (Tillamook Co.)*, 303 Or 430, 441 (1987).

³⁹ See Notice of Appeal, p. 5; see also Attachment 3 to Staff Report, pp. 5-6 (Appellant’s March 4, 2024 submission of evidence to DRB), p. 27 (Appellant’s March 11, 2024 legal argument to DRB).

A. Regulatory Taking Defined

The United States Supreme Court and the Oregon Supreme Court have also recognized that regulations can also constitute a taking of private property, generally when the property owner is deprived of all economically feasible use of the property.⁴⁰

Prior to determining whether a regulatory taking has occurred, a precursor to these tests is establishing who is entitled to allege that a regulatory taking has occurred. Only persons or entities that hold a current, not prospective, interest in the real property at the time the alleged taking occurred, and who can allege a loss of economically feasible use of the property, may assert a takings claim. Possessing a current, not prospective, property interest is necessary because the person or entity that is allegedly being deprived their interest in the property without just compensation must actually have been deprived.

B. Appellant Cannot Claim a Regulatory Taking Occurred

Here, Appellant, the party advancing the takings argument, did not own the subject real property when the City adopted the Town Center zone, nor does Appellant now own the subject real property. Appellant may have a prospective, future right to purchase the real property (though such evidence is not in the record), but it is not the current property owner, a tenant, or lender with a security interest in the real property. Appellant has no standing to assert a takings claim nor to allege it is being denied a property right because Appellant does not own the subject real property.

The United States Supreme Court has held that a property owner who purchases property from another may assert a regulatory takings claim after transfer of ownership, but only in the case where the prior owner could not have made such a claim because the claim was not ripe at the time.⁴¹ Again, Appellant does not currently own the subject property, and, as such, does not have standing to make a takings claim against the City.

ISSUE NO. 2 **REJECTION OF CERTAIN MATERIALS AND INFORMATION FROM THE RECORD**

The DRB rejected certain materials and information from the record during its March 14, 2024 meeting.⁴² Appellant objects to this.⁴³ City Council has decided to review an unredacted record, which includes all evidence submitted by any party, including Appellant, to the DRB, this section addresses only City Council's ability to reject certain materials and information from the record in this appeal.

⁴⁰ See *Lucas v. S.C. Coastal Council*, 505 US 1003 (1992); *Fifth Ave. Corp. v. Washington County*, 282 Or 591 (1978); but see *Penn Central Transp. Co. v. New York City*, 438 US 104 (1978) (under federal takings analysis, when not all economically feasible use has been deprived, courts will engage in a three-factor test to determine whether a regulatory taking has occurred).

⁴¹ See *Palazzo v. Rhode Island*, 533 US 606, 626-28 (2001).

⁴² See Attachment 5 to Staff Report, p. 2 of 5 (verbatim transcription of motion made during March 14, 2024 DRB meeting); also see Attachment 3 to Staff Report (the unredacted record).

⁴³ See Notice of Appeal, pp. 5-7.

VII. CITY COUNCIL IS ENTITLED TO REJECT EVIDENCE FROM THE RECORD

City Council is entitled to reject evidence from the record pursuant to OAR 661-010-0025(1)(b).⁴⁴ This administrative rule states that in an appeal to LUBA, LUBA may review, “[a]ll written testimony and all exhibits, maps, documents or other materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker.” It is a well-established rule of statutory interpretation that one must not insert language that has been omitted – or omit language that has been inserted.⁴⁵ This administrative rule expressly states that LUBA reviews evidence “not rejected by” the decision maker, thus indicating a local government may reject evidence from the record. Appellant cites no accurate authority to support its position that the City must accept any evidence submitted by Appellant.

If City Council decides that evidence is not relevant to this appeal proceeding, City Council should reject such evidence from the record in this Appeal, as DRB did.

VIII. ORS 197.797 DOES NOT PROHIBIT A LOCAL GOVERNMENT FROM REJECTING EVIDENCE FROM THE RECORD

Appellant cites portions of ORS 197.797 to argue that a local government may not reject certain materials and evidence from the record.⁴⁶ Appellant misrepresents and misunderstands this statute.

ORS 197.797(4)(a) requires only that documents or evidence that is supplied to the local government by Appellant “be made available to the public.” A local government’s obligation to create a record for its ultimate decision (and possible appeal) is entirely distinct from its obligation to make materials and information available to the public.

With respect to DRB’s proceedings in this matter, all of Appellant’s documents and evidence were included in the packet of materials that was published and made available to the public. Appellant was not restricted from discussing certain topics or issues during oral testimony at the DRB hearing, nor was Appellant denied the ability to provide a PowerPoint presentation during the DRB hearing. Thus, all of Appellant’s documents, evidence, and argument were made available to the public.

However, ORS 197.797(4)(a) is not the relevant part of ORS 197.797 regarding the record created by a local government in a quasi-judicial land use hearing. ORS 197.797(9) provides definitions of the terms “evidence” and “argument” because other parts of this statute differentiate between these categories of information. ORS 197.797(9)(a), defining “Argument,” expressly states that it does not include facts; rather, argument includes assertions and analysis of the applicable legal standards or policy that Appellant believes is relevant to the decision to be made. The only place in ORS 197.797 that explicitly states something must be made part of the record is

⁴⁴ See OAR 661-010-0025(1)(b) (emphasis added).

⁴⁵ See ORS 174.010.

⁴⁶ See source cited *supra* note **Error! Bookmark not defined.**

found in ORS 197.797(6)(e), which allows an applicant to submit final written argument. However, that subsection also states that the applicant cannot submit new evidence in the final argument. In other words, the only document that the local government may not reject is Appellant’s final written argument, which could not contain new evidence.

With respect to DRB’s proceedings in this matter, DRB did not reject Appellant’s argument. DRB only rejected certain evidence that was not relevant to the Class I Review.⁴⁷ No part of ORS 197.797 even addresses – let alone prohibits – a local government from rejecting “written testimony and all exhibits, maps, documents or other materials” from the record.

If City Council decides that evidence is not relevant to this appeal proceeding, City Council should reject such evidence from the record in this Appeal, as DRB did.

IX. THE PROPER FORUM FOR AN OBJECTION TO REJECTION OF EVIDENCE FROM THE RECORD IS LUBA

If Appellant disagrees with the DRB’s (or City Council’s) determination of what should be rejected from the record, that argument is properly addressed through a procedural assignment of error at LUBA.⁴⁸

X. A MOTION TO REJECT EVIDENCE FROM THE RECORD IS NOT REQUIRED TO BE INCLUDED IN THE DRB DECISION

Appellant argues that the DRB’s motion to reject certain materials and evidence from the record was deficient because it was not included in the DRB Decision.⁴⁹ Appellant does not cite any legal authority for this proposition.

ISSUE NO. 3
DRB’S ADOPTION OF THE STAFF REPORT

The DRB adopted the staff report dated February 15, 2024.⁵⁰ Appellant objects to this.⁵¹

XI. THE DRB WAS ENTITLED TO ADOPT THE STAFF REPORT

Appellant does not cite any legal authority for this proposition, and does not provide any substantive argument on this point in the Notice of Appeal.

⁴⁷ In fact, the vast majority of the evidence excluded would be more appropriate in the Class II Review since it largely involved a discussion of the proposed use of the Location, rather than the existing use.

⁴⁸ See *Port of Umatilla v. City of Umatilla*, LUBA No. 2014-062 (2014).

⁴⁹ See Notice of Appeal, p. 6.

⁵⁰ See Attachment 5 to Staff Report, p. 3 of 5 (verbatim transcription of motion made during March 14, 2024 DRB meeting); see also Attachment 2 to Staff Report, pp. 5-20 of 20 (the staff report, as attached to Resolution no. 429).

⁵¹ See Notice of Appeal, p. 2.

CONCLUSION TO ISSUES APPEALED

Appellant has not presented any case law or other legal authority that contradicts City staff's summary of relevant authorities in this memorandum. Further, Appellant has not satisfied its burden of proof: it has presented no relevant evidence to support its position regarding the proper scope of non-conforming use.

City staff recommend that City Council find, pursuant to WC 4.022(.07):

1. DRB followed correct procedures, and in particular, the DRB did not err when it adopted the staff report dated February 15, 2024, and rejected certain materials and evidence from the record; and,
2. Affirm the Development Review Board decision in Resolution No. 429, determining that the scope of the legally established non-conforming use at the Location is “a 159,400 square-foot electronics-related retail store,” and further, that this was the correct and appropriate decision made based on applicable laws, policies, and standards.

Further, City staff recommend that City Council reject any irrelevant evidence from the record pursuant to OAR 661-010-0025(1)(b) because in an appeal of this matter to LUBA, LUBA will review any evidence not rejected by City Council.

OTHER ARGUMENTS PRESENTED IN THE APPEAL

XII. BIFURCATION OF CLASS I AND CLASS II PROCEEDINGS

Appellant mentions in its Notice of Appeal, and in its briefing to DRB, that the City required Applicant to file separate Class I and Class II applications; it implies procedural deficiencies.⁵²

City staff did determine that a Class II application was necessary to address at least one of the questions that were posed in Appellant's Class I application. The City invited Appellant to submit a Class II application and withdraw its Class I application, both in writing on November 28, 2023,⁵³ at the DRB hearing on February 26, 2024,⁵⁴ and in the days following the DRB hearing on February 26, 2024. The City offered to withdraw the Planning Director's Determination if Appellant wanted to withdraw the Class I application. The City's goal in making this offer was to allow the City to address all issues pertinent to both the Class I and Class II proceedings in one combined proceeding. Appellant declined this offer.

Appellant misunderstands the City's reason for requiring a separate Class II application. Appellant's briefing seems to suggest that the City required a Class II process in order to determine the scope of the recognized non-conforming use.⁵⁵ That is not accurate. The City required a Class II application to address Appellant's request for confirmation that the Home Depot may continue to operate at the Location (i.e., a determination of continuation of non-conforming use by a new proposed user); this question requires a Class II process under the City's policies and procedures.⁵⁶ When Appellant failed to respond to the City in November 2023 and rejected the City's offer in February 2024, the City was forced to process the question that is subject to a Class I review (the determination whether the current use is legally non-conforming) since Appellant requested a Class I review. The DRB determined the nature and extent of the recognized non-conforming use because that is what case law requires; a local government may not recognize a non-conforming use but neglect to determine its nature and extent (i.e., scope).⁵⁷ Therefore, the DRB Decision did not "prejudge" the issues subject to the Class II Review as Appellant asserts in its Notice of Appeal.

XIII. APPELLANT'S READING OF CITY ZONING REGULATIONS

Appellant states in its Notice of Appeal that it "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

⁵² See Notice of Appeal, p. 3; Attachment 3 to Staff Report, p. 21 of 660 (portion of Appellant's March 11, 2024 legal argument regarding this point) and p. 463 of 660 (portion of Appellant's Notice of Appeal to DRB regarding this point).

⁵³ See Attachment 3 to Staff Report, p. 469 of 660 (email from Cindy Luxhoj to Appellant stating that Class II application is necessary and offering an option to withdraw the Class I application).

⁵⁴ See Attachment 4 to Staff Report, pp. 14-15 of 24 (discussion before DRB regarding this point).

⁵⁵ See sources cited *supra* note 52.

⁵⁶ See source cited *supra* note 53.

⁵⁷ See, e.g., *Marquam Farms Corp. v. Multnomah Cnty.*, 35 Or LUBA 392, 396 (1999) (explaining that a local government that recognizes a non-conforming use must define the nature and extent of that use).

City pointed to any state law or code provision applicable at the time.”⁵⁸ This statement reflects an incomplete understanding of Wilsonville’s zoning code, as it existed in 1991.

Included within the 1991 Decision record submitted by the Appellant is a memorandum from City staff to the Design Review Board regarding a land use application for the Les Schwab Tire Center. This memorandum provides background on Wilsonville’s zoning code as it applied to the Town Center at that time, noting that “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.”⁵⁹

The Stage I Master Plan implemented the Wilsonville Town Center Plan (Ordinance No. 55) under the Planned Development Commercial zoning designation. The Stage I Master Plan modification in 91PC43 reclassified the overlay designation of the Location to Central Commercial to allow an electronics-related retail store consistent with this overlay designation.⁶⁰ Finding 40 of the 1991 Decision states “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, reclassified uses and reconfigured open space.”⁶¹ Therefore, it is inaccurate to state that the Wilsonville Development Code in effect in 1991 did not further classify uses within the Planned Development Commercial zone.

⁵⁸ See Notice of Appeal, pp. 4.

⁵⁹ See Attachment 3 to Staff Report, pp. 161-162 of 660 (memorandum from Michael E. Kohlhoff, City Attorney to the Design Review Board dated October 9, 1990 explaining background and purpose of Planned Development Commercial Zoning as it applied to Town Center).

⁶⁰ See Attachment 3 to Staff Report, pp. 238-239 of 660 (revised Stage I Master Plan)

⁶¹ See Attachment 3 to Staff Report, p. 113 of 660 (Case File 91PC43 Staff Report explaining process for modifying overlay zones)

ATTACHMENT 2

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

RESOLUTION NO. 429

PAGE 1 OF 2

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
<i>Special Meeting Date:</i>	<i>March 14, 2024</i>
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:	<u>Affirm</u> the Planning Director Determination of Non-Conformance (ADMN23-0029).

Applicable Review Criteria:

DB24-0002 Appeal of Administrative Decision	
<u>Development Code:</u>	
Section 4.022	Appeal and Call-up Procedures
ADMN23-0029 Class 1 Review Request	
<u>Development Code:</u>	
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
<u>Other Planning Documents:</u>	
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.

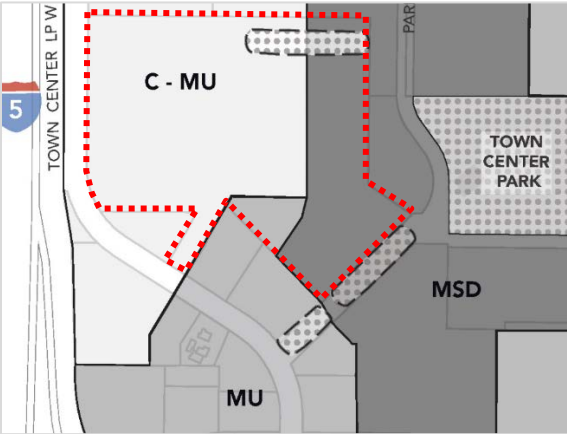
To summarize the legal standard articulated above, the Development Review Board should answer the following questions:

- 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.

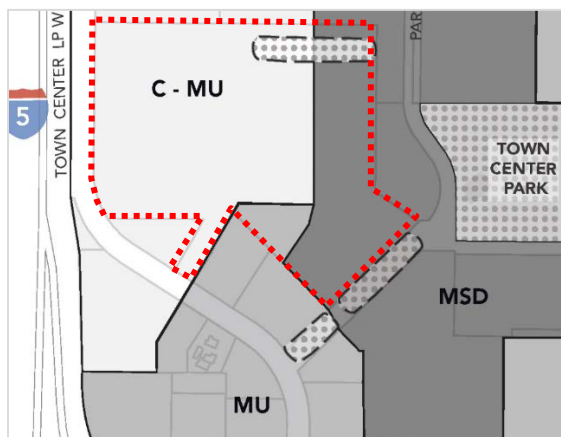
Request: ADMN23-0029 Class 1 Review Request

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.

DEVELOPMENT REVIEW BOARD MEETING

THURSDAY, MARCH 14, 2024

4:30 PM

Continuing Business:

1. **Resolution No. 429. Appeal of Administrative Decision.** The applicant is appealing the Planning Director's determination of non-conformance in Case File ADMN23-0029.

Case File:

DB24-0002 Appeal of Administrative Decision

On February 26, 2024, the Development Review Board closed the public hearing and moved to keep the record open until March 4, 2024. This item will be for deliberation and decision only based on the evidence in the record. No further testimony or written comments will be accepted.

**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

RESOLUTION NO. 429

PAGE 1 OF 2

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 _____. 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



March 4, 2024

Keenan Ordon-Bakalian
Admitted in Oregon and Washington
D: 503-796-2470
kordon-bakalian@schwabe.com

VIA EMAIL

Kenneth Katzaroff
Admitted in Washington and Oregon
D: 206-405-1985
C: 206-755-2011
KKatzaroff@schwabe.com

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: ***In the Matter of an appeal of Planning Director Determination ADMN23-0029 (DB24-0002/APPL24-0001)***

Dear Members of the Development Review Board:

This firm represents The Home Depot, Inc. (“**Home Depot**”) in the above-referenced casefiles (the “**Appeal**”). On February 26, 2024, the Development Review Board (the “**DRB**”) held a public hearing on the Appeal. Home Depot testified orally during the hearing. At the conclusion of the hearing, the DRB closed the record to further oral testimony but allowed the written record to remain open until 5:00 PM on March 4th for any party to submit any evidence or testimony. Home Depot is also entitled to at least seven days after the record is closed to all other parties (March 11, 2024) to submit final written argument, pursuant to ORS 197.797(6)(e).

This letter addressees several themes and questions that were raised during the February 26 public hearing. It is timely submitted prior to the close of the open record period. This letter does not contain significant legal argument, but rather summarizes Home Depot’s responsive evidence and testimony, which is enclosed.

I. Summary of Enclosures and Testimony

A. Home Depot’s Operations at the Subject Property will be Less Significant than Fry’s Electronics Prior Impacts

During the February 27 public hearing, members of the DRB raised questions regarding the scope of Home Depot’s impact on the subject property and surrounding area – in relation to that of Fry’s Electronics. City Staff has also suggested that operating a Home Depot at the subject property may constitute an expansion of a lawfully established nonconforming use. In response,



City of Wilsonville Development Review Board B
March 4, 2024

Home Depot provides analysis from Lars Anderson & Associates that details the potential development impacts of Home Depot, in relation to Fry's Electronics. **Exhibit A.**

This letter also encloses a Trip Generation Memorandum for Home Depot's use of the subject property, prepared by Transportation Engineering Northwest ("TENW"). **Exhibit B.** 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.

B. The Decision Effects a Taking on Home Depot

It is clear from the facts of this Appeal that the City's desire to prevent any development of the subject property that is inconsistent with the City's adopted Town Center Plan¹ led the Planning Director to intentionally make a nonconforming use determination of such limited scope so as to prevent any valid nonconforming use of the subject property.

The Decision has effected a compensable regulatory "taking" under Article I, section 18, of the Oregon Constitution,² and the Fifth and Fourteenth Amendments to the United States Constitution.³ Here, the City's arbitrarily narrow determination that the nonconforming use at the subject property is a "Fry's Electronics" denies Home Depot (or any other party) any economic use of the lawfully established nonconforming use at the property. Looking past the impracticality of the forthcoming hypothetical, we note that Fry's Electronics is no longer in business,⁴ therefore, it would be impossible for Home Depot to operate a Fry's Electronics at the property even if Home Depot had such an interest – which it does not. Moreover, the restriction

¹ Wilsonville Town Center Plan (May 6, 2019). Adopted Ord. No. 835; Amended October 18, 2021 per Ord. No. 850.

² Article I, section 18, of the Oregon Constitution provides, in part: "Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation[.]"

³ The Takings Clause of the Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, *see Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979 (1897), provides that "private property" shall not "be taken for public use, without just compensation."

⁴ *Fry's Electronics suddenly went out of business*, CNN, <https://www.cnn.com/2021/02/24/business/frys-electronics-closure/index.html> (last accessed Oct. 9, 2023); *Fry's Electronics closes, leaving Wilsonville store barren*, Portland Tribune, https://www.portlandtribune.com/news/frys-electronics-closes-leaving-wilsonville-store-barren/article_cde50d46-de09-5ce3-a647-9f54ce7d4bb1.html (last accessed Oct. 9, 2023).

City of Wilsonville Development Review Board B
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essentially precludes use of the structure as the current zoning limits retail uses to less than 30,000 square feet. As such, the City's decision has deprived Home Depot of all economically productive use of the subject property or the existing structure.

As will be discussed further in Home Depot's final written argument, the Appellant respectfully requests that the DRB modify the Decision to find that the lawfully established nonconforming use at the subject property is a commercial retail use, not a "Fry's Electronics" or "single-user electronics retail store." Alternatively, the DRB may reverse the Decision, or remand the Decision back to the Planning Director to make a decision consistent with Oregon's nonconforming use caselaw. Otherwise, the City risks effecting a regulatory taking on Home Depot.

C. *Gould* Citation Correction

Home Depot would like to correct the record regarding the citation to *Gould v. Deschutes County*, 79 Or LUBA 561 (2019) (*Gould VIII*), *aff'd without opinion*, 310 Or App 868, 484 P.3d 1073 (2021) that was contained on slide 7 of the Appellant's PowerPoint presentation. Home Depot cited *Gould VIII* for the proposition that the City is not entitled to deference in interpreting the 1991 Decision, pursuant to ORS 197.829(1). Home Depot intended to cite *Gould v. Deschutes County*, ___ Or LUBA ___, ___ (LUBA No. 2020-095).

As stated on the record during the hearing for this matter, ORS 197.829(1) generally⁵ does not require LUBA to affirm a local government's interpretation of a prior land use decision or conditions of approval attached to a prior land use decision. *Gould v. Deschutes County*, ___ Or LUBA ___, ___ (LUBA No. 2020-095, at 17, Jun. 11, 2021); *see also M & T Partners, Inc. v. City of Salem*, ___ Or LUBA ___, ___ (LUBA No 2018-143, Aug. 14, 2019) (slip op at 14), *aff'd sub nom M & T Partners, Inc. v. Miller*, 302 Or App 159, 170, 460 P3d 117 (2020). In the event this appeal proceeds to LUBA, the City's interpretation of the 1991 Decision will not be entitled to deference. Therefore, the City's interpretation that the 1991 Decision approved a "Fry's Electronics" will be reviewed by LUBA for legal error. ORS 197.835(9)(a)(D); *Gould v. Deschutes County*, ___ Or LUBA ___, ___ (LUBA No. 2020-095, at 17).

⁵ To a "limited extent," LUBA will defer to plausible interpretations of county land use regulations that the governing body made in the course of interpreting a condition of approval. *Kuhn v. Deschutes County*, 74 Or LUBA 190, 194 (2016). It is Home Depot's position that this exception to the general rule that LUBA does not defer to local government interpretations of prior land use decisions is *not relevant* to the subject appeal.

City of Wilsonville Development Review Board B
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Seeing as the words “Fry’s Electronics” are not contained anywhere within the 1991 Decision, the City’s nonconforming use Decision is likely to be reversed or remanded by LUBA. As such, Home Depot requests that the DRB to find that the 1991 Decision approved a commercial retail use, which is consistent with Oregon nonconforming use caselaw. Such a finding will prevent the unnecessary expenditure of time and resources on the part of both Home Depot and the City that will inevitably result from a LUBA appeal.

D. Objection to City’s Attempted Exclusion of Home Depot’s Documents and Testimony

Home Depot formally objects to the City’s attempt to exclude from the record certain documents and testimony submitted by Home Depot as part of its Class I application. *See* Staff Report for APPL24-0001, Exhibit A1, at 13. The documents and testimony submitted by Home Depot as part of its application are within the record before the DRB on appeal. The documents and testimony that the City seeks 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 City cannot exclude certain documents and testimony within Home Depot’s Class I application because the documents and testimony that the City seeks to exclude are “argument” and “evidence” that the Appellant believes to be relevant to the satisfaction of the applicable approval criteria for the subject application, as well as Home Depot’s appeal of the Decision. ORS 197.797(9). In addition, the City’s attempt to omit certain documents and testimony that were submitted by Home Depot 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 City from excluding portions of Home Depot’s Class I application materials from the record.

Furthermore, Home Depot 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 public hearing. Home Depot believes that all of the argument and evidence that

City of Wilsonville Development Review Board B
March 4, 2024

Home Depot 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).

II. Conclusion

As noted above and will be discussed further in Home Depot’s final written argument, Home Depot’s operations at the subject property will not be an expansion of the lawfully established commercial retail nonconforming use at the subject property. Moreover, the Decision’s conclusion that the nonconforming use at the property is a “Fry’s Electronics” effects a regulatory taking on Home Depot.

Thank you for your consideration of this letter. We look forward to providing additional testimony in Home Depot’s final written argument.

Sincerely,



KOB:jmhi
Enclosures

cc: Client
Miranda Bateschell, bateschell@ci.wilsonville.or.us
Amanda Guile-Hinman, guile@ci.wilsonville.or.us
Shelley White, swhite@ci.wilsonville.or.us



LARS ANDERSEN & ASSOCIATES, INC.

CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS
ADA COMPLIANCE • LEED ACCREDITED • STORM WATER QUALITY
4694 W JACQUELYN AVENUE
FRESNO, CA 93722
PH (559) 276-2790 FX (559) 276-0850
TEXAS REGISTERED ENGINEERING FIRM F-18450

SCOTT A. MOMMER, PE, Q
PRESIDENT

Item 9.

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

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

Weekday Time Period	Net New Trips Generated		
	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.

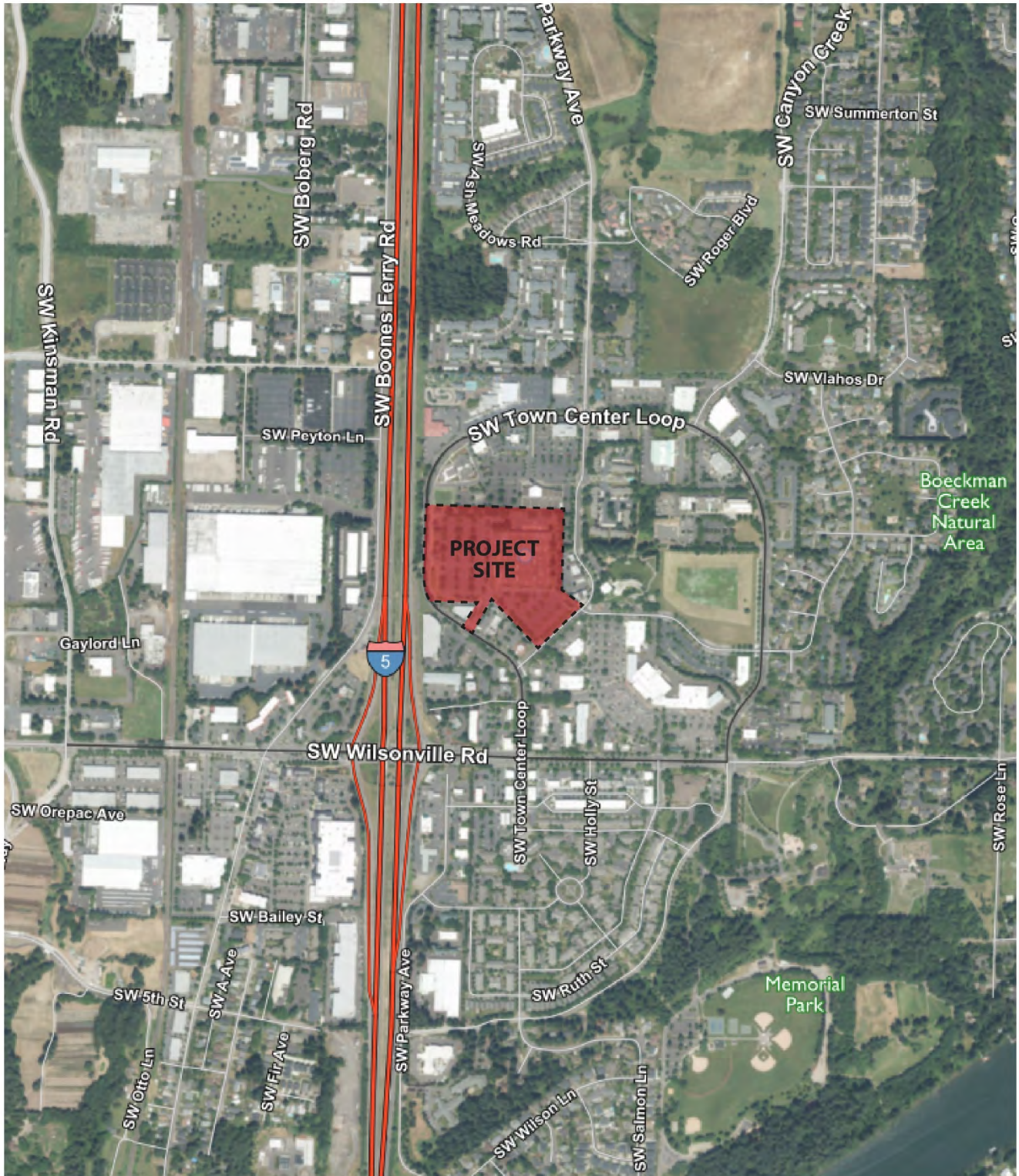
If you have any questions regarding the information presented in this memo, please contact me at (425) 466-7072 or amy@tenw.com.

cc: Dan Zoldak, Lars Andersen & Associates

- Attachments:
- A. Project Site Vicinity
 - B. Preliminary Site Plan
 - C. Trip Generation Calculations

ATTACHMENT A

Project Site Vicinity

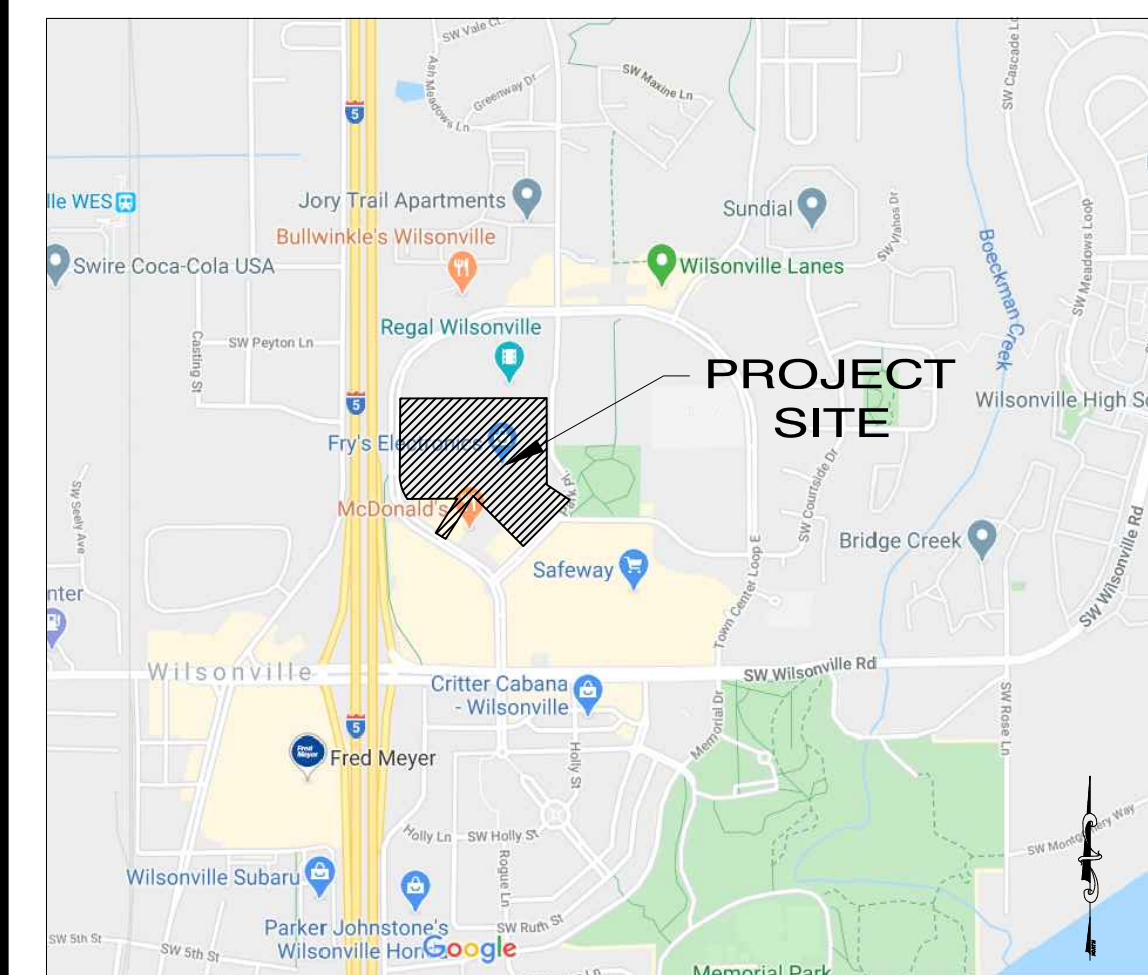


Attachment A: Project Site Vicinity



ATTACHMENT B

Site Plan



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

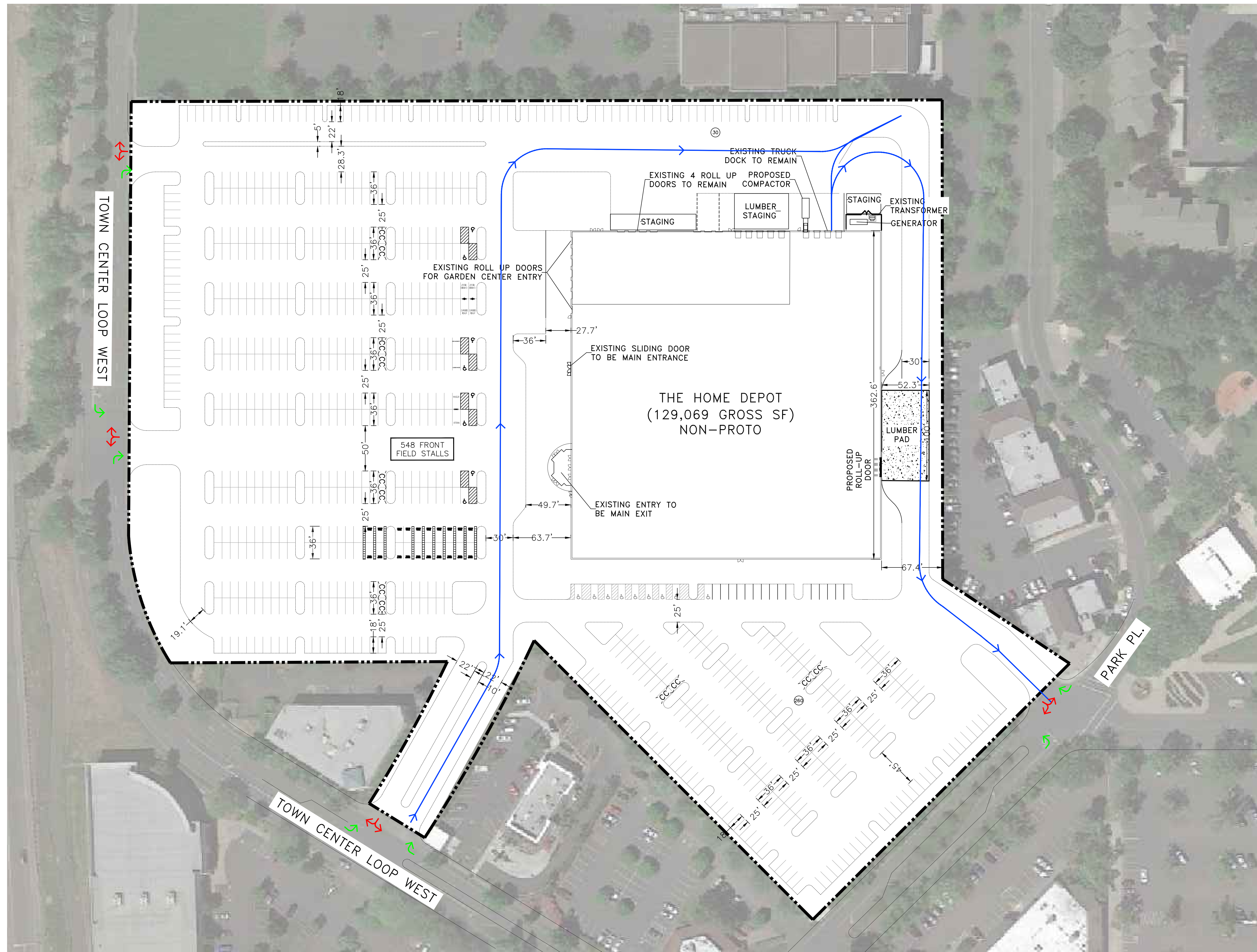
PARKING REQUIRED		
THE HOME DEPOT	4.1 / 1,000 SF	529 STALLS
TOTAL PARKING REQUIRED		529 STALLS

PARKING PROVIDED		
FRONT FIELD		548 STALLS
SIDE FIELD / REAR		290 STALLS
TOTAL PARKING PROVIDED		838 STALLS

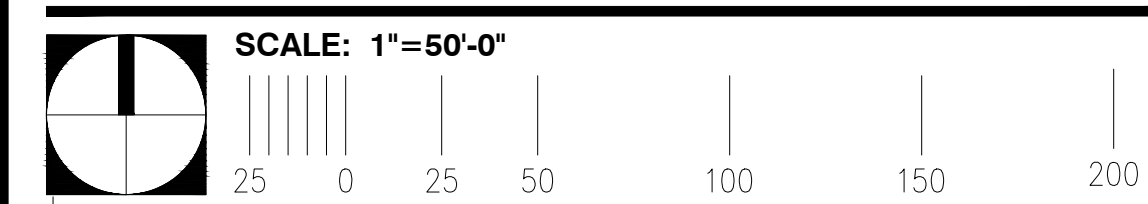
INCLUDED IN PARKING PROVIDED		
ACCESSIBLE STALLS (17 REQ. @ 2%)		17 STALLS

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



NOTES
 1. PLAN BOUNDARY IS BASED OFF AVAILABLE APN MAPS; AN ALTA SHOULD BE COMPLETED FOR ACCURACY.



OR - SITE PLAN 10

THE HOME DEPOT
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

ATTACHMENT C

Trip Generation Calculations

**Home Depot Wilsonville
Weekday Daily Trip Generation Summary**

	Units ¹	ITE LUC ²	Directional Distribution ²		Trip Rate or Equation ²	Trips Generated		
			In	Out		In	Out	Total
WEEKDAY DAILY								
<u>Proposed:</u>								
Home Improvement Superstore	129,100 SF	862	50%	50%	30.74	1,985	1,984	3,969
<i>Passby Trips</i> ³	42%					-834	-833	-1,667
					Subtotal (less passby) =	1,151	1,151	2,302
<u>Less Existing:</u>								
Electronics Superstore	166,495 SF	863	50%	50%	41.05	3,418	3,417	6,835
<i>Passby Trips</i> 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		Trip Rate or Equation ²	Trips Generated		
			In	Out		In	Out	Total
WEEKDAY AM PEAK HOUR								
<u>Proposed:</u>								
Home Improvement Superstore	129,100 SF	862	57%	43%	1.51	111	84	195
<i>Passby Trips</i> ³	42%					-47	-35	-82
					Subtotal (less passby) =	64	49	113
<u>Less Existing:</u>								
Electronics Superstore	166,495 SF	863	73%	27%	0.34	42	15	57
<i>Passby Trips</i> 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		Trip Rate or Equation ²	Trips Generated		
			In	Out		In	Out	Total
WEEKDAY PM PEAK HOUR								
<u>Proposed:</u>								
Home Improvement Superstore	129,100 SF	862	49%	51%	2.29	145	151	296
<i>Passby Trips</i> ³	42%					-61	-63	-124
					Subtotal (less passby) =	84	88	172
<u>Less Existing:</u>								
Electronics Superstore	166,495 SF	863	50%	50%	4.25	354	354	708
<i>Passby Trips</i> 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.



March 11, 2024

Keenan Ordon-Bakalian
Admitted in Oregon and
Washington
D: 503-796-2470
kordon-bakalian@schwabe.com

J. Kenneth Katzaroff
Admitted in Oregon and
Washington
D: 206-405-1985
kkatzaroff@schwabe.com

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 Final Written Argument for ADMN23-0029 (DB24-0002/APPL24-0001)***

Dear Members of the Development Review Board:

This office represents Home Depot, Inc. (“**Home Depot**” or the “**Applicant**”). On February 26, 2024, the Development Review Board (the “**DRB**”) held a public hearing on the Appeal. Home Depot testified orally during the hearing. At the conclusion of the hearing, the DRB closed the record to further oral testimony but allowed the written record to remain open until 5:00 PM on March 4th for any party to submit any evidence or testimony. Home Depot is also entitled to at least seven days after the record is closed to all other parties (March 11, 2024) to submit final written argument, pursuant to ORS 197.797(6)(e).

This letter constitutes Home Depot’s final written argument in this matter, and is respectfully submitted prior to the end of the final written argument period at 5:00 p.m. on Monday, March 11, 2024. The Applicant has also attached as **Exhibit A** a redline version of the Class I Planning Director Determination ADMN20-0029 (the “**Decision**”) that is presently on appeal. The Applicant believes that Exhibit A will assist the DRB in understanding the portions of the Decision that the Home Depot takes issue with, as well as Home Depot’s recommended changes.¹

Home Depot respectfully requests that the DRB modify the Decision to find that the lawfully established nonconforming use at the subject property is a commercial retail use, not a “Fry’s Electronics” or “single-user electronics retail store.” Alternatively, the DRB may reverse the

¹ Within Exhibit A, the Applicant has also included a clean copy of the Decision with Home Depot’s recommended changes incorporated.



Development Review Board Panel B
March 11, 2024

Decision, or remand the Decision back to the Planning Director to make a decision consistent with Oregon’s nonconforming use caselaw.

I. INTRODUCTION AND OVERVIEW

The Applicant proposes to operate a Home Depot within the existing structure at 29400 SW Town Center Loop West (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 a 1991 development approval² (the “**1991 Decision**”) remained a lawfully established non-conforming use at the subject property. The Applicant’s Class I application was submitted on October 30, 2023, and deemed complete by the City of Wilsonville (the “**City**”) on November 29, 2023. *See attached*, DB24-0002 Staff Report, at 4 (**Exhibit B**).

As detailed in Home Depot’s Notice of Appeal, the City requested that the Applicant bifurcate its request to confirm the legality of a nonconforming use at the subject property and Applicant’s request for a determination to establish the scope of use at the property. To this end, the City required the Home Depot 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 extent of use at the subject property. Home Depot’s Class II application was submitted to the City on December 15, 2023 and remains under review. However, based on many of the findings contained within the City’s Decision for the Class I application, the City appears to have prejudged Applicant’s Class II application for a use determination. Moreover, the current Class I decision makes specific findings regarding the scope of use, as described below. This is the reason that the Applicant appealed; to request the DRB to remove these scope-of-use findings that the City itself was purporting to avoid by requesting Applicant to submit its Class II application.

On December 28, 2023, the City issued its Notice of Decision for Home Depot’s Class I application, finding that “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”. *See attached*, **Exhibit C**, at 4. However, the City’s Decision for the Class I contains contradictory findings that “[t]he 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*” but also that “the primary use of the site was considered *commercial retail or retail store*.” Exhibit C, at 3-4 (emphasis added). Furthermore, the Decision contains a finding that “nothing in this Class 1 decision shall be construed to

² Case File Nos. 91PC43 and 91DR29.

Development Review Board Panel B
March 11, 2024

provide a determination one way or another with regard to the interpretation requested in the subsequent Class 2 Review (re: Home Depot, Inc.)” Exhibit C, at 4.

From the outset, it has been extremely difficult for the Applicant to discern *what* lawfully established nonconforming use the Planning Director has determined is present at the subject property, due to the City’s internally inconsistent Decision. Home Depot’s position on the matter has been clear from the beginning – the lawfully established nonconforming use at the subject property is the *commercial retail use* that was originally approved by the 1991 Decision. *See attached, Exhibit D.* The 1991 Decision is rife with findings and references to the commercial retail use that the decision was approving, including the plain language used by the City to describe the request subject to review – “Stage II Phase II Site Development review for a 159,400 square foot *retail commercial building*.” Exhibit D, at 9. The 1991 Decision also contains the following findings demonstrating that the 1991 Decision approved a commercial retail use at the subject property:

- “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*.”
- “application for Stage II Phase II site development of Thunder Project, a 159,400 square foot *retail commercial building*.”
- “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.”
- “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.”

Development Review Board Panel B
March 11, 2024

4. Building Use	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
a. Office	sq. ft.	9,117 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____
b. Warehouse	sq. ft.	39,330 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____
c. Manufacturing/SERVICE	sq. ft.	17,276 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____
d. Other/DETAIL	sq. ft.	63,914 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____

Exhibit D, at 9, 12-13, 18, 24 (emphasis added).

In contrast, the City’s Decision simply refers to a generalized analysis of “the application materials, prior land use approvals, existing site conditions, and the applicable zoning ordinances and regulations” as the basis for the determination that Fry’s Electronics is a legally established nonconforming use. Exhibit C, at 3. The Decision does not address the scope of the 1991 Decision in any detail, lacks specificity and clarity, and is unsupported by the evidence in the record. Similarly, the Staff Report for this appeal merely refers to generalized principles of Oregon nonconforming use caselaw, without applying the principals of the cited cases to the appeal before the DRB. Moreover, the Staff Report’s recommendation that the DRB affirm the Planning Director’s Decision that “[t]here 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’”³ is inconsistent with the Class I Decision itself because the Planning Director found that Fry’s Electronics was the nonconforming use at the subject property.

II. ARGUMENT

A. Standard of review.

The DRB’s decision must be supported by substantial evidence in the whole record. ORS 197.835(9)(a)(C). Substantial evidence is evidence a reasonable person would rely upon to reach a conclusion, notwithstanding that different reasonable people could draw different conclusions from the evidence. *Adler v. City of Portland*, 25 Or LUBA 546 (1993) In making its decision, the

³ Exhibit D, at 11.

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DRB must also take care not to improperly construe applicable law, which includes Oregon’s nonconforming use caselaw. *See* ORS 197.835(9)(a)(D).

B. The nonconforming use at the subject property is the commercial retail use that was approved within 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 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* Wilsonville Development Code (“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”).

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 Home Depot’s application materials and throughout this appeal proceeding, 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 3.⁴ Specifically, the 1991 Decision approved a 159,400 retail commercial building and associated commercial retail activities on the 14.75 acre subject property. Exhibit 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 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.

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. Exhibit D, at 3.

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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 nonconforming, the 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 City’s determination that the nonconforming use allowed to continue at the subject property is a “Fry’s Electronics” or “single-user electronics 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. 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. As such, the Decision must be reversed or modified to reject the limitation of the use approved by the 1991 Decision to either a “Fry’s Electronics” or “single-user electronics retail store.”

C. The identity of Fry’s Electronics is not relevant to the DRB’s determination of the nature and extent of the nonconforming use at the subject property.

The Decision’s determination that the nonconforming use at the subject property is a “Fry’s Electronics” violates a key tenet of Oregon nonconforming use law. 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). City staff recognize this principle within the Staff Report for this appeal (but not within the Class I Decision), stating that “[t]he identity of the party that engaged in the use is irrelevant to this inquiry.” Exhibit B, at 7. Nonetheless, the Decision found that *Fry’s Electronics* is a legally established nonconforming use at the subject property, even though Fry’s Electronics was not the use approved by the 1991 Decision. Exhibit C, at 3-4.

The Class I Decision erroneously focuses on the identity of the entity performing the nonconforming use at the property – Fry’s Electronics – instead of the *nature and extent* of the nonconforming activities themselves. See *City of Mosier*, 36 Or LUBA, at 678. In this case, Fry’s Electronics (operating under the anonymous name “Project Thunder”) achieved land use approval for a commercial retail use at the subject property. Exhibit D. 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.” The 1991 Decision is the controlling substantial evidence for determining the nature and extent of the legally established nonconforming use at

Development Review Board Panel B
March 11, 2024

the subject property, and the 1991 Decision didn't approve "Fry's Electronics" as a use, but rather the commercial retail use mentioned throughout the Decision.⁵ The Decision's arbitrarily narrow nonconforming use determination is inconsistent with *City of Mosier* and must be reversed or modified.

D. The Applicant may continue the commercial retail use approved by the 1991 Decision.

In this case, Home Depot is proposing 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 D, 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

⁵ The Applicant notes that the City's 1991 zoning code does not list "Fry's Electronics" as an allowed use in the PDC zone – the subject property's zoning designation at the time the 1991 Decision was made.

Development Review Board Panel B
March 11, 2024

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. The City’s nonconforming use determination for this matter misapplies the well-established nonconforming use principles in *City of Mosier*, *Vanspeybroeck*, and *Hendgen* and is nothing more than a thinly veiled attempt to prevent any development of the subject property that is inconsistent with the City’s adopted Town Center Plan. The City’s arbitrarily narrow determination that the nonconforming use at the property is a “Fry’s Electronics” or “single-user electronics retail store” must be reversed or modified.

E. The Decision effects a taking on Home Depot.

As explained in the Applicant’s open record submittal, the Decision has effected 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 City’s overly-restrictive “use” determination is unsupported by the City’s own code and Oregon law. If left to stand, the Decision will deny Home Depot (or any other party) any economic use of the lawfully established nonconforming use at the property. This is because the determination that “Fry’s Electronics” is the lawfully established nonconforming “use” for the property essentially precludes use of the structure as the current zoning limits retail uses to less than 30,000 square feet. As such, the City’s decision has deprived Home Depot of all economically productive use of the subject property or the existing structure.

For the foregoing reasons in this section and above, the DRB should reverse or modify the Decision to avoid effecting a regulatory taking on Home Depot.

III. CONCLUSION

Home Depot requests that the DRB impose the relief requested by the Appellant in the above argument. Specifically, the Applicant respectfully requests that the DRB adopt the Decision as modified by Home Depot and submitted within Exhibit A. In the alternative, the Applicant requests that the DRB take all necessary steps to modify Decision to find that the legally established nonconforming use at the subject property is the use approved in the 1991 Decision,

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a 159,400 square foot (“SF”) retail, office, warehouse, manufacturing, and service store (a commercial retail use); not a “Fry’s Electronics” or “single-user electronics 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.

Sincerely,



Keenan Ordon-Bakalian

KOB:



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).

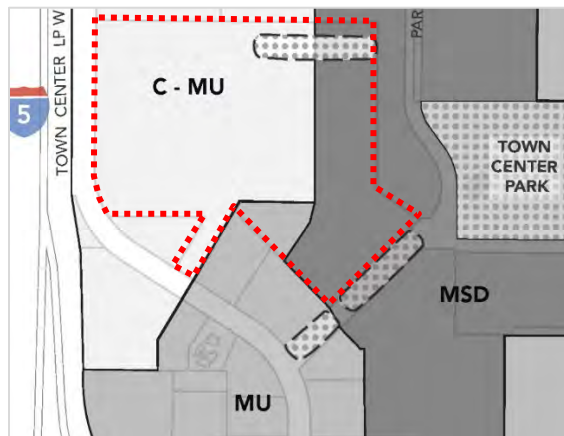
On November 29, 2023, staff conducted a completeness review within the statutorily allowed 30-day review period and found the Class 1 Review application to be complete. In the absence of a withdrawal of the Class 1 Review application, City staff has proceeded with the Class 1 Review of the existing use, 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~~, commercial retail, characterized by 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" "and the application having been submitted for "Stage II Phase II site development of Thunder Project, a 159,400 square foot ~~electronics related~~ retail ~~store~~ commercial building". 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 [electronicscommercial warehouse](#) 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~~[the commercial warehouse retail use approved under Case File Nos. 91PC43 and 91DR29](#), 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 [commercial retail](#) store¹ within the existing structure that was previously occupied by Fry's [Electronics](#). 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~~[was deemed complete](#) on January ~~14~~[12](#), 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.
bateschell@ci.wilsonville.or.us.

Sincerely,

Miranda Bateschell
Planning Director
City of Wilsonville

cc via email: David Fry, Lumberjack LP, ~~dave@rdjdevelopment.com~~dave@rdjdevelopment.com
Enclosure: City Staff Email Correspondence to Applicant, dated November 28, 2023

¹ [The commercial retail use approved by Case File Nos. 91PC43 and 91DR29 includes, but is not limited to, warehouse-style commercial retail stores.](#)
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Summary report: Litera Compare for Word 11.4.0.111 Document comparison done on 3/11/2024 3:47:30 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: ADMN23-0029 Determination Letter - Final (without signature) original.docx	
Modified filename: Exhibit A- Redline ADMN23-0029 Determination Letter Clean.docx	
Changes:	
<u>Add</u>	19
Delete	12
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	31



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)

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Status: Notice of Planning Director Determination

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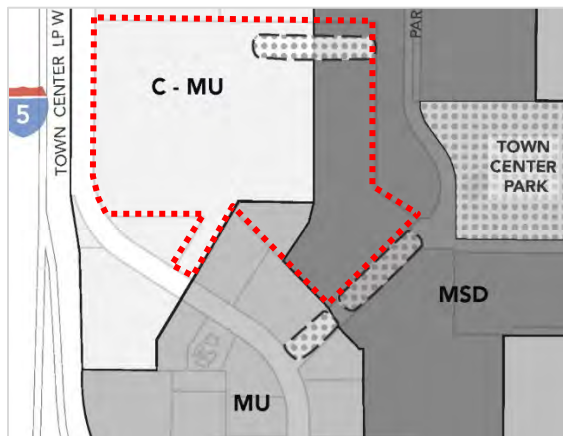
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Here are some additional data points regarding the subject property:

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Record No.:	01507257
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City Limits:	Yes
SROZ (Significant Resource Overlay Zone):	No

UGB (Urban Growth Boundary): Yes

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 - 91DR29 Site Design (Architectural, Landscaping) and Signage
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4. The current use of the property is commercial retail, characterized by a large format (159,400 square feet) retail store, which has been vacant since 2021.
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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:

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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 the

commercial warehouse retail use approved under Case File Nos. 91PC43 and 91DR29, 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.

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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

¹ The commercial retail use approved by Case File Nos. 91PC43 and 91DR29 includes, but is not limited to, warehouse-style commercial retail stores.



DEVELOPMENT REVIEW BOARD PANEL B AGENDA

February 26, 2024 at 6:30 PM

Wilsonville City Hall & Remote Video Conferencing

PARTICIPANTS MAY ATTEND THE MEETING AT:

City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon

Zoom: <https://us02web.zoom.us/j/81495007189>

TO PROVIDE PUBLIC TESTIMONY:

Individuals must submit a testimony card online:

<https://www.ci.wilsonville.or.us/DRB-SpeakerCard>

Email testimony regarding Resolution No. 428 to Georgia McAlister, Associate Planner at gmcalister@ci.wilsonville.or.us by 2:00 PM on February 26, 2024.

Email testimony regarding Resolution No. 429 to Cindy Luxhoj, AICP, Associate Planner at luxhoj@ci.wilsonville.or.us by 2:00 PM on February 26, 2024.

CALL TO ORDER

CHAIR'S REMARKS

ROLL CALL

John Andrews	Rachelle Barrett
Megan Chuinard	Alice Galloway
Kamran Mesbah	

CITIZEN INPUT

This is an opportunity for visitors to address the Development Review Board on items not on the agenda. Staff and the Board will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter.

CONSENT AGENDA

- 1. Approval of minutes of the January 22, 2024 DRB Panel B meeting

PUBLIC HEARINGS

**Development Review Board Panel B
February 26, 2024**

Page 1 of 2

- 2. Resolution No. 428. PGE Memorial Substation.** The applicant is requesting approval of a Conditional Use Permit and Site Design Review for development of the PGE Memorial Substation adjacent to SW Parkway Avenue and the I-5 Freeway.

Case Files:

DB23-0012 PGE Memorial Substation
 -Site Design Review (SDR23-0005)
 -Conditional Use Permit (CUP23-0001)

- 3. Resolution No. 429. Appeal of Administrative Decision.** The applicant is appealing the Planning Director's determination of non-conformance in Case File ADMN23-0029.

Case File:

DB24-0002 Appeal of Administrative Decision

BOARD MEMBER COMMUNICATIONS

- 4.** Results of the February 12, 2024 DRB Panel A meeting
- 5.** Recent City Council Action Minutes

STAFF COMMUNICATIONS

ADJOURN

The City will endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting by contacting Shelley White, Administrative Assistant at 503-682-4960: assistive listening devices (ALD), sign language interpreter, and/or bilingual interpreter. Those who need accessibility assistance can contact the City by phone through the Federal Information Relay Service at 1-800-877-8339 for TTY/Voice communication.

Habr  interpretes disponibles para aqu llas personas que no hablan Ingl s, previo acuerdo. Comun quese al 503-682-4960.

DEVELOPMENT REVIEW BOARD MEETING

MONDAY, FEBRUARY 26, 2024
6:30 PM

Public Hearing:

3. **Resolution No. 429. Appeal of Administrative Decision.** The applicant is appealing the Planning Director's determination of non-conformance in Case File ADMN23-0029.

Case File:

DB24-0002 Appeal of Administrative Decision

**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; and

WHEREAS, the subject of the Class 1 Administrative Review was a Planning Director Determination on non-conformance per Subsection 4.030 (.01) A. 7. of the Wilsonville Development Code; and

WHEREAS, the City issued the Planning Director 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, the Development Review Board considered all evidence and testimony on the record and, thereafter, deliberated.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby affirm the Planning Director 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 26th day of February 2024, and filed with the Planning Administrative Assistant on _____. 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:

Shelley White, 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

Hearing Date:	February 26, 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	
<u>Development Code:</u>	
Section 4.022	Appeal and Call-up Procedures
ADMN23-0029 Class 1 Review Request	
<u>Development Code:</u>	
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
<u>Other Planning Documents:</u>	
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.

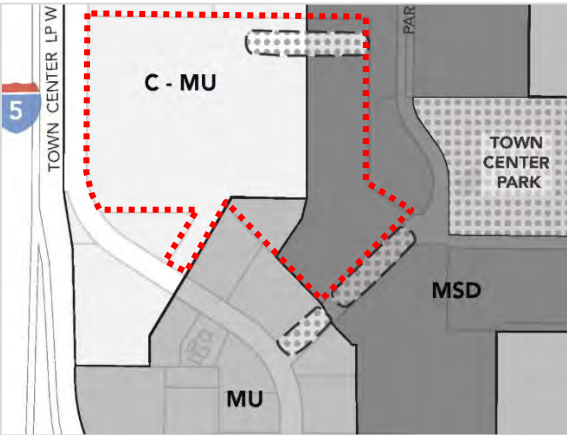
To summarize the legal standard articulated above, the Development Review Board should answer the following questions:

- 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

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

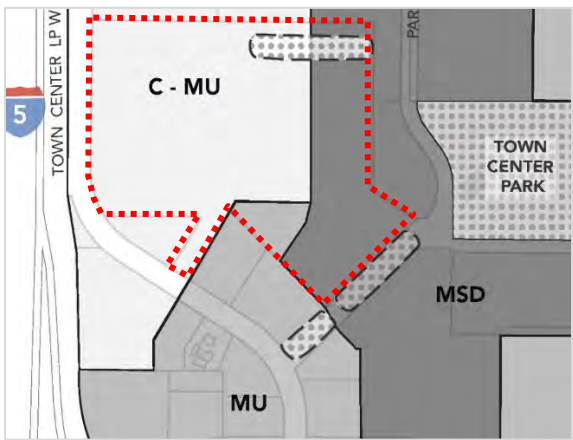
The subject property is located in the Town Center (TC) zone, in three (3) TC sub-districts: Commercial-Mixed Use (C-MU), Main Street District (MSD), and Mixed Use (MU). There are two (2) proposed open space areas within or adjacent to the property. Applicable zoning district and general development 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.

From: [Luxhoj, Cindy](mailto:Luxhoj.Cindy)
To: dzoldak@larsandersen.com
Cc: dave@rdjdevelopment.com; [Bateschell, Miranda](mailto:Bateschell.Miranda); [Rybold, Kim](mailto:Rybold.Kim); [Daniel Pauly \(pauly@ci.wilsonville.or.us\)](mailto:Daniel.Pauly@ci.wilsonville.or.us)
Bcc: [Luxhoj, Cindy](mailto: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](https://www.facebook.com/CityofWilsonville)



29799 SW Town Center Loop East, Wilsonville, OR 97070

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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.

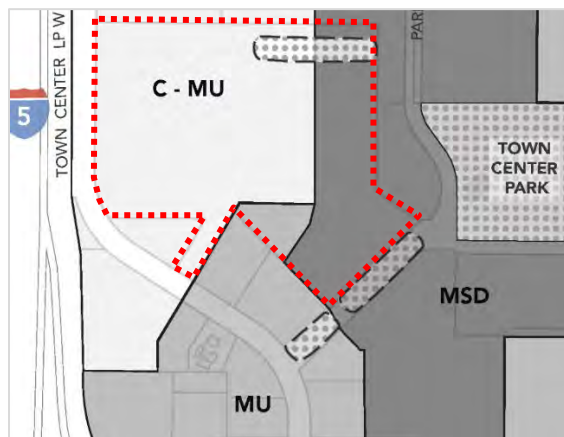
Here are some additional data points regarding the subject property:

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



City of Wilsonville
Exhibit A4 DB24-0002

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 \(pauly@ci.wilsonville.or.us\)](mailto:Daniel.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.

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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.
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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](https://www.facebook.com/CityofWilsonville)



29799 SW Town Center Loop East, Wilsonville, OR 97070

Disclosure Notice: Messages to and from this e-mail address may be subject to the Oregon Public Records Law.

Updated 1/11/2019 all previous version of this form are obsolete



29799 SW Town Center Loop E, Wilsonville, OR 97070
Phone: 503.682.4960 Fax: 503.682.7025
Web: www.ci.wilsonville.or.us

Planning Division Development Permit Application

Final action on development application or zone change is required within 120 days per ORS 227.175 or as otherwise required by state or federal law for specific application types.

A pre application conference may be required.

The City will not accept applications for wireless communication facilities or similar facilities without a completed copy of a Wireless Facility Review Worksheet.

The City will not schedule incomplete applications for public hearing or send administrative public notice until all of the required materials are submitted.

Applicant:

Name: Dan Zoldak
Company: Lars Andersen & Associates, Inc.
Mailing Address: 4694 W Jacquelyn Avenue
City, State, Zip: Fresno, CA 93722
Phone: 559.276.0850 Fax: _____
E-mail: dzoldak@larsandersen.com

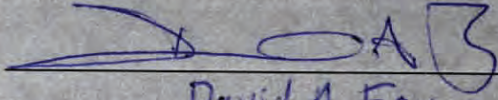
Authorized Representative:

Name: Dan Zoldak
Company: Lars Andersen & Associates, Inc.
Mailing Address: 4694 W Jacquelyn Avenue
City, State, Zip: Fresno, CA 93722
Phone: 559.276.0850 Fax: _____
E-mail: dzoldak@larsandersen.com

Property Owner:

Name: David A. Fry
Company: Lumberjack LP
Mailing Address: 600 E Brokaw RD
City, State, Zip: San Jose, CA 95112
Phone: _____ Fax: _____
E-mail: dave@rdjdevelopment.com

Property Owner's Signature:


Printed Name: David A. Fry Date: 9/8/2023

Applicant's Signature: (if different from Property Owner)

Printed Name: _____ Date: _____

Site Location and Description:

Project Address if Available: 29400 Town Center Loop W Wilsonville, OR 97070 Suite/Unit _____
Project Location: 29400 Town Center Loop W Wilsonville, OR 97070
Tax Map #(s): 01507257 Tax Lot #(s): _____ County: Washington Clackamas

Request:

An APPEAL of Planning Director Determination ADMN20-0029 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

Project Type: Class I Class II Class III

Residential Commercial Industrial Other: _____

Application Type(s):

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Annexation | <input checked="" type="checkbox"/> Appeal | <input type="checkbox"/> Comp Plan Map Amend | <input type="checkbox"/> Parks Plan Review |
| <input type="checkbox"/> Final Plat | <input type="checkbox"/> Major Partition | <input type="checkbox"/> Minor Partition | <input type="checkbox"/> Request to Modify Conditions |
| <input type="checkbox"/> Plan Amendment | <input type="checkbox"/> Planned Development | <input type="checkbox"/> Preliminary Plat | <input type="checkbox"/> Site Design Review |
| <input type="checkbox"/> Request for Special Meeting | <input type="checkbox"/> Request for Time Extension | <input type="checkbox"/> Signs | <input type="checkbox"/> Stage II Final Plan |
| <input type="checkbox"/> SROZ/SRIR Review | <input type="checkbox"/> Staff Interpretation | <input type="checkbox"/> Stage I Master Plan | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Type C Tree Removal Plan | <input type="checkbox"/> Tree Permit (B or C) | <input type="checkbox"/> Temporary Use | <input type="checkbox"/> Other (describe) |
| <input type="checkbox"/> Villebois SAP | <input type="checkbox"/> Villebois PDP | <input type="checkbox"/> Villebois FDP | <small>Non conforming use application (NCU)</small> |
| <input type="checkbox"/> Zone Map Amendment | <input type="checkbox"/> Waiver(s) | <input type="checkbox"/> Conditional Use | |



Item 9.

Daniel J Zoldak

112

VIA E-MAIL

BEFORE THE DEVELOPMENT REVIEW BOARD FOR THE CITY OF WILSONVILLE,
OREGON

An APPEAL of Planning Director
Determination ADMN20-0029 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

APPLICANT’S NOTICE OF APPEAL

This is a notice of appeal of the Class I Planning Director Determination ADMN20-0029 (the “**Decision**”) finding 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 (the “**subject property**”). *See attached, Exhibit A* This appeal is timely submitted, in writing, prior to January 11, 2024, the deadline that *may* be established by Wilsonville Development Code (“**WDC**”) 4.022.01.¹

1. STANDING

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 Decision was issued. “Only the applicant may appeal a Class I decision unless otherwise specified in Section 4.030.” WDC 4.022.01. Therefore, 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

¹ This is Notice of Appeal for a Class I decision. The Notice of Decision for ADMN 23-0029 was issued on December 28, 2023. WDC 4.022.01 does not specify a deadline for appeals of Class I decisions, however, WDC 4.022.01 does state that appeals of Class II decisions must be filed within “14 calendar days of notice of the decision.” Out of an abundance of caution, the Appellant is submitting this Notice of Appeal *early*, prior to the January 11, 2024 deadline that would constitute 14 calendar days from the issuance of the Notice of Decision.

KKatzaroff@SCHWABE.com
Kordon-bakalian@schwabe.com

b. Reference to the Subject Development and Case Number.

The decision being appealed is Planning Director Determination ADMN23-0029 finding that Fry’s Electronics is a legally established Non-Conforming Use in a Non-Conforming Structure with Non-Conforming Site Conditions at the subject property. Exhibit A. On October 30, Appellant submitted an application for a Class I application to confirm the legality of a nonconforming use at the subject property. *See attached, Exhibit B.* The City of Wilsonville (the “City”) issued its Notice of Decision on December 28, 2023. Exhibit A.

c. Statement of the Basis for Appeal.

The Appellant hereby files this appeal to challenge several findings within the Decision related to the status of the existing use and structure at the subject property. Specifically, the Appellant appeals the following findings:

- “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.” Decision, at 2.
- “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.” Decision, at 2.
- “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.” Decision, at 3.
- “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.” Decision, at 3-4.
- “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.).” Decision, at 4.

Exhibit A.

The Appellant intends to operate a Home Depot within the existing structure at the subject property. To this end, the Appellant sought a Class I director’s determination that the warehouse retail use that was established as a result of the 1991 development approval (Case File

Nos. 91PC43 and 91DR29)² remained a lawfully established non-conforming use at the subject property.

Upon receipt of the Appellant’s application, the City attempted to bifurcate Appellant’s request to confirm the legality of a nonconforming use at the subject property from Appellant’s request for a determination to establish the scope of use at the property. Exhibit A, Enclosure.³ To this end, the City has required the Appellant 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 use at the subject property. Appellant’s Class II application was submitted to the City on December 15, 2023 and is currently in the 30-day completeness review period. Exhibit A, at 4. However, based on many of the findings contained within the Decision, the City appears to have prejudged Appellant’s Class II application for a use determination. Specifically, within the Decision subject to this appeal, the City has determined that the lawfully established non-conforming use at the subject property is a “Fry’s Electronics.” Exhibit A, at 3-4.

The City’s nonconforming use determination is contrary to the express language of the 1991 Decision, in addition to well-established principles of Oregon nonconforming use case law. A nonconforming use is one that “ ‘lawfully existed prior to enactment of a zoning ordinance, and which is maintained after the effective date of the ordinance although it does not comply with the use restrictions applicable to the area * * *.’ ” *Clackamas County v. Portland City Temple*, 13 Or.App. 459, 461 n. 1, 511 P.2d 412 (1973) (quoting 1 Anderson, *American Law of Zoning* 306, § 6.01 (1968)). The *use and structure* approved by the 1991 Decision was a “commercial retail store,” specifically a 159,400 square foot (“SF”) retail, office, warehouse, manufacturing, and service store, *not a* “Fry’s Electronics.” Exhibit C, at 12, 14. A “Fry’s Electronics” use is not mentioned or approved *anywhere* in the 1991 Decision, and the 1991 Decision is the controlling authority for determining the scope and nature of the legally established nonconforming use present at the subject property – a commercial retail use without additional restriction. The City’s findings within the Decision abrogate the plain language of the 1991 Decision and impermissibly narrow the scope and nature of the lawfully established nonconforming use at the property. As such, the City’s findings that the legally established non-conforming use and structure at the subject property is a “Fry’s Electronics” must be reversed.

² Attached hereto as **Exhibit C** (the “**1991 Decision**”).

³ “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 A, Enclosure, at 1.

The Decision also finds that “[t]he 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.” Exhibit A, at 3. This finding renders the Decision internally inconsistent because – as stated above – the City also included findings that the legally established nonconforming use is a “Fry’s Electronics,” which is a narrower use than a “single-user electronics retail store.” *Id.* Moreover, the City’s finding that the nonconforming use at the property is a “single-user electronics retail store” is still in contravention with the use approved in the 1991 Decision, which is a “commercial retail store” that includes retail, office, warehouse, manufacturing, and service offerings. Exhibit C, at 12, 14. Again, the Decision disregards the controlling authority of the 1991 Decision and adopts an overly narrow finding regarding the scope and nature of the nonconforming use at the subject property. The Appellant respectfully requests that the Decision’s finding that the nonconforming use at the property is a “single-user electronics retail store” be reversed.

Furthermore, the Appellant 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 Appellant is also not aware of any state law that makes such a distinction. As such, the Decision must be reversed or modified to reject the limitation of the use approved by the 1991 Decision to either a “Fry’s Electronics” or “single-user electronics retail store.”

Finally, the Appellant challenges the Decision’s finding that the retail, office, warehouse, manufacturing, and service uses approved by the 1991 Decision relate only to “minimum parking requirements for the site.” Decision, at 2; *see also* Exhibit C, at 12 (approving retail, office, warehouse, manufacturing, and service uses within the 159,400 commercial retail structure). The City’s finding on this point is unsupported by any authority and again represents an attempt to narrow the scope and nature of the legally established nonconforming use at the property. The Appellant requests that this finding be struck from the Decision.

3. REQUESTED RELIEF

The Appellant requests that the Development Review Board impose the relief requested by the Appellant in the above argument. Specifically, Appellant respectfully requests that the Development Review Board find that the legally established nonconforming 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 “Fry’s Electronics” or “single-user electronics 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.

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:

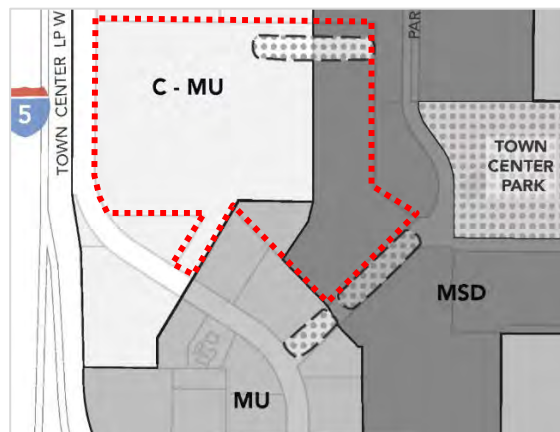
The City received your application on October 30, 2023, for Class 1 Review to confirm the status of the existing use and structure at 29400 SW Town Center Loop West. On November 28, 2023, City staff contacted you by email providing options for proceeding with your application and requesting that you 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 \(pauly@ci.wilsonville.or.us\)](mailto:Daniel.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](https://www.facebook.com/CityofWilsonville)



29799 SW Town Center Loop East, Wilsonville, OR 97070

Disclosure Notice: Messages to and from this e-mail address may be subject to the Oregon Public Records Law.

Updated 1/11/2019 all previous version of this form are obsolete



29799 SW Town Center Loop E, Wilsonville, OR 97070
Phone: 503.682.4960 Fax: 503.682.7025
Web: www.ci.wilsonville.or.us

**Planning Division
Development Permit Application**

Final action on development application or zone change is required within 120 days per ORS 227.175 or as otherwise required by state or federal law for specific application types.

A pre application conference may be required.

The City will not accept applications for wireless communication facilities or similar facilities without a completed copy of a Wireless Facility Review Worksheet.

The City will not schedule incomplete applications for public hearing or send administrative public notice until all of the required materials are submitted.

Applicant:

Name: Dan Zoldak
Company: Lars Andersen & Associates, Inc.
Mailing Address: 4694 W Jacquelyn Avenue
City, State, Zip: Fresno, CA 93722
Phone: 559.276.0850 Fax: _____
E-mail: dzoldak@larsandersen.com

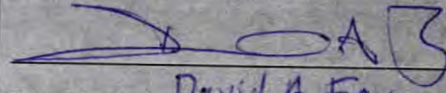
Authorized Representative:

Name: Dan Zoldak
Company: Lars Andersen & Associates, Inc.
Mailing Address: 4694 W Jacquelyn Avenue
City, State, Zip: Fresno, CA 93722
Phone: 559.276.0850 Fax: _____
E-mail: dzoldak@larsandersen.com

Property Owner:

Name: David A. Fry
Company: Lumberjack LP
Mailing Address: 600 E Brokaw RD
City, State, Zip: San Jose, CA 95112
Phone: _____ Fax: _____
E-mail: dave@rdjdevelopment.com

Property Owner's Signature:


Printed Name: David A. Fry Date: 9/8/2023

Applicant's Signature: (If different from Property Owner)

Printed Name: _____ Date: _____

Site Location and Description:

Project Address if Available: 29400 Town Center Loop W Wilsonville, OR 97070 Suite/Unit _____
Project Location: 29400 Town Center Loop W Wilsonville, OR 97070
Tax Map #(s): 01507257 Tax Lot #(s): _____ County: Washington Clackamas

Request:

Applicant proposes a Home Improvement store within the footprint of the existing structure. Need non conforming use confirmation (NCU) for TI Permit

Project Type: Class I Class II Class III

Residential Commercial Industrial Other: _____

Application Type(s):

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Appeal | <input type="checkbox"/> Comp Plan Map Amend | <input type="checkbox"/> Parks Plan Review |
| <input type="checkbox"/> Final Plat | <input type="checkbox"/> Major Partition | <input type="checkbox"/> Minor Partition | <input type="checkbox"/> Request to Modify Conditions |
| <input type="checkbox"/> Plan Amendment | <input type="checkbox"/> Planned Development | <input type="checkbox"/> Preliminary Plat | <input type="checkbox"/> Site Design Review |
| <input type="checkbox"/> Request for Special Meeting | <input type="checkbox"/> Request for Time Extension | <input type="checkbox"/> Signs | <input type="checkbox"/> Stage II Final Plan |
| <input type="checkbox"/> SROZ/SRIR Review | <input type="checkbox"/> Staff Interpretation | <input type="checkbox"/> Stage I Master Plan | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Type C Tree Removal Plan | <input type="checkbox"/> Tree Permit (B or C) | <input type="checkbox"/> Temporary Use | <input checked="" type="checkbox"/> Other (describe) |
| <input type="checkbox"/> Villebois SAP | <input type="checkbox"/> Villebois PDP | <input type="checkbox"/> Villebois FDP | <small>Non conforming use application (NCU)</small> |
| <input type="checkbox"/> Zone Map Amendment | <input type="checkbox"/> Waiver(s) | <input type="checkbox"/> Conditional Use | |



PROPERTY OWNER
ACKNOWLEDGEMENT FORM

By signing below, I certify that I am the property owner for the application in question and that the applicant, Lars Andersen & Associates, Inc., has my permission to submit this application for the property located at:

Site Address: 29400 Town Center Loop W, Wilsonville, OR 97070

Tax Lot(s): 01507257 Section: _____

I understand the application will not be deemed complete without this documentation. I understand that submittal of this application does not entitle the applicant to engage in the work applied for until such an application is approved, the plan approval is issued, and the specified appeal period has passed. I also understand that all work must be performed in compliance with all applicable state, federal, and local laws, ordinances and regulations.

Property Owner's Signature:

Printed Name: David A. Fry Date: 9/18/2023

Property Owner Contact Information:

Company (if applicable): Lumberjack LP

Mailing Address: 600 E. Brokaw Rd.

City, State, Zip: San Jose, CA 95112

Phone: _____ E-mail: dave@rdjdevelopment.com

BEFORE THE PLANNING DIRECTOR FOR THE CITY OF WILSONVILLE

In the Matter of an application to confirm the
legality of a nonconforming use at 29400
Town Center Loop W, Wilsonville, OR
97070

APPLICANT'S NARRATIVE AND
EXHIBITS DEMONSTRATING
COMPLIANCE WITH THE RELEVANT
APPROVAL CRITERIA

SUBJECT PROPERTY: 29400 Town Center Loop W,
Wilsonville, OR 97070
TL ID: 31W14D 00220

APPLICANT: Lars Andersen & Associates, Inc.
4694 W. Jacquelyn Ave.,
Fresno, CA 93722
Attn: Dan Zoldak
Phone: 559-276-0850
E-Mail: dzoldak@larsandersen.com

**APPLICANT
REPRESENTATIVE:** J. Kenneth Katzaroff
Keenan Ordon-Bakalian
Schwabe, Williamson & Wyatt, P.C.
1211 SW 5th Avenue, Suite 1900
Portland, Oregon 97204
Phone: 206-405-1985
E-Mail: KKatzaroff@SCHWABE.com
E-Mail: Kordon-bakalian@schwabe.com

PROPERTY OWNER: Lumberjack LP
600 E Brokaw Rd.
San Jose, CA 95112

REQUEST: A Class I review and determination verifying the status of an
existing non-conforming office, warehouse, manufacturing,
service and retail use.

I. APPLICABLE STANDARDS AND CRITERIA

The applicant has identified the following code provisions that the City of Wilsonville (hereinafter, the "City") may apply to its review of this application:

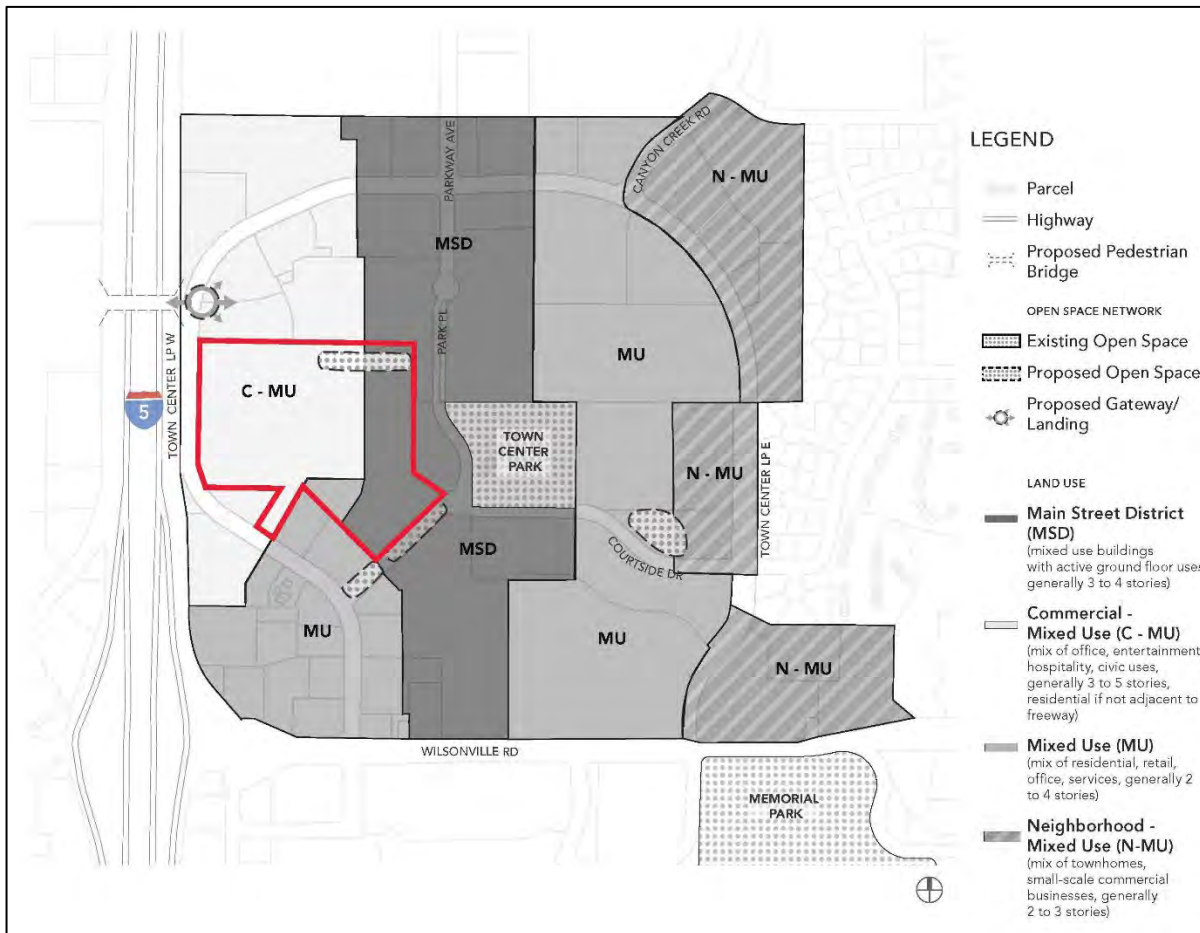
Title 4 – the Wilsonville Development Code ("WDC")

Section 4.000-4.035 – Administration
Section 4.001 – Definitions

Section 4.030 – Jurisdiction and Powers of Planning Director and Community Development Director
 Section 4.132 – Town Center Zone
 Section 4.189-4.192 – Non-Conforming Uses, Structures, Site Conditions, and Lots

II. INTRODUCTION AND BACKGROUND

Lars Andersen & Associates, Inc. (the “**applicant**”) is seeking a Class I review to confirm the status of the existing non-conforming office, warehouse, manufacturing, service and retail use (the “**subject use**”) at 29400 SW Town Center Loop W, Wilsonville, OR 97070¹ (the “**property**”). The 15.01-acre property is located within the City of Wilsonville (the “**City**”) and is zoned Planned Development Commercial – Town Center (“**TC**”). The property is designated with three Town Center Sub-Districts – Commercial-Mixed Use (“**C-MU**”), Mixed Use (“**MU**”), and Main Street District (“**MSD**”).



¹ TL 31W14D 00220.

As pictured below, the property is located in a relatively flat, developed commercial area within the City's Town Center District. There is an existing structure at the property that was operated as a Fry's Electronics ("Fry's") from 1991 to 2021.



In 1991 the City approved a Modification to the Stage I Wilsonville Town Center Master Plan and Stage II Phase II Site Development Plan (the "**1991 Decision**") to allow the development of a 159,400 square foot ("**SF**") retail, office, warehouse, manufacturing, and service store at the property. *See attached, Exhibit A.* The property was zoned Planned Development Commercial ("**PDC**") and designated commercial in the City's Comprehensive Plan when the City approved the subject use of the property. *Id.*, at 14. Subsequent to the City's land use approval, Fry's began operating a retail, office, warehouse, manufacturing, and service store at the property.

Fry's was a large electronics warehouse store that retailed software, consumer electronics, household appliances, cosmetics, tools, toys, accessories, magazines, technical books, snack foods, electronic components, and computer hardware. Fry's also had in-store computer repair and custom computer building services, and offered technical support to customers. The Fry's model was unique for electronics retail outlets of the time, in that Fry's was an electronics warehouse that offered customers a variety of retail, manufacturing and service offerings that exceeded the offerings of Fry's competitors. Because Fry's stocked a wide range of electronics products, they were popular with electronics and computer hobbyists, as well as professionals.



Image Credit: Alamy, <https://www.alamy.com/las-vegas-sep-7-2020-interior-view-of-the-frys-electronics-image375519870.html?imageid=595679EA-E5D6-4FAA-8BDE-4437A0B5DF19&p=283543&pn=1&searchId=9fd62e6ba47e6193d28e3b42e316bc4e&searchtype=0> (last accessed Oct. 20, 2023).



Image Credit: PC Magazine, <https://www.pcmag.com/opinions/to-all-the-frys-i-loved-before-an-elegy-for-the-best-electronics-chain> (last accessed Oct. 20, 2023).

In February 2021, Fry's suddenly went out of business, closing all 31 stores across the United States including the Wilsonville Fry's that was operating at the property.² Since the closure of the Fry's in 2021, the owner of the property has been actively marketing the site and making other plans for its use. The owner has also continued to make utility payments for city services. *See attached, Exhibit B.*

The Home Depot, Inc. ("HD") 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. *See attached, Exhibit C.* HD operates home improvement warehouse stores that retail tools, construction products, appliances, and services, including transportation and equipment rentals. HD's Home Services division also offers technical expertise for home improvement projects, and both onsite and offsite install, repair, and

² *Fry's Electronics suddenly went out of business*, CNN, <https://www.cnn.com/2021/02/24/business/frys-electronics-closure/index.html> (last accessed Oct. 9, 2023); *Fry's Electronics closes, leaving Wilsonville store barren*, Portland Tribune, https://www.portlandtribune.com/news/frys-electronics-closes-leaving-wilsonville-store-barren/article_cde50d46-de09-5ce3-a647-9f54ce7d4bb1.html (last accessed Oct. 9, 2023).

remodel services. Although the vast majority of HD customers are private individuals, contractors and other professionals account for close to half of HD's annual sales.³

Fry's and HD stores are retail, office, warehouse, manufacturing, and service uses allowed at the subject property pursuant to the 1991 Decision and the property's historic PDC zoning. Both Fry's and HD stores are [were] organized warehouse-style, stock a large range of supplies available for retail, cater to retail consumers and professionals, and offer onsite services and technical support. As both Fry's and HD are warehouse retailers that fall within the subject use approved in the 1991 Decision, the applicant is seeking a non-conforming use determination to verify the status of the property's existing non-conforming use rights.

The applicant requests that the Planning Director process this application through the City's Class I review procedures because there no uncertainty as to the history of the property due to the existence of the 1991 Decision. WDC 4.030.01(A)(7); *see also* Exhibit A.

III. APPROVAL CRITERIA

WDC 4.189.01 – Continuation of Use

A. A non-conforming use may be continued subject to the requirements of this Section.

RESPONSE: In compliance with WDC 4.189.03, the lawfully established non-conforming subject use at the property has not been discontinued or abandoned. The ongoing non-conforming use complies with the criteria of WDC 4.189 and is therefore permitted to continue.

WDC 4.189.02 – Change of Use

A. A non-conforming use may not be changed unless the change or replacement is to a use that is determined by the Planning Director to be no less conforming to the regulations for the zone district in which the use is located than the existing use.

RESPONSE: The purpose of this provision is to consider the impacts of potential changes in use for lawfully established non-conforming uses. In this case, the applicant is not proposing to change the established non-conforming use of the property. Rather, the applicant is seeking a non-conforming use determination to confirm the status of the existing non-conforming use of the property. Therefore, this criterion is not applicable.

WDC 4.189.03 – Abandoned Use.

If a non-conforming use is abandoned for a period of 18 consecutive months, the use shall not be re-established without fully complying with the use requirements of the zone. Mere vacancy of a site or building while it is being marketed or other plans for its use are being

³ *Home Depot CEO Says Contractor Spend Remains Strongest Business Line*, PYMNTS, <https://www.pymnts.com/earnings/2023/home-depot-ceo-says-contractor-spend-remains-strongest-business-line/> (last accessed Oct. 25, 2023).

readied, does not constitute abandonment. In order to be considered abandoned, a site must not be receiving City utilities and must not actively be marketed for rent, lease, or sale. These standards concerning abandonment do not in any way affect the City's processes for the abatement of nuisances as delineated in Chapter 6 of the Wilsonville Code.

RESPONSE: The existing non-conforming subject use at the property has not been abandoned. For a non-conforming use to be abandoned, “a site must not be receiving City utilities and must not actively be marketed for rent, lease, or sale.” WDC 4.189.03. Here, the subject property is actively being marketed for rent, lease, or sale, and is currently receiving, and paying for, City utilities. See **Exhibit B**. Therefore, the non-conforming use of the property has not been abandoned. This criterion is met.

WDC 4.190.02 – Non-Conforming Structures

If a non-conforming structure is abandoned, as defined herein, for a period of 18 months, it may not again be used unless brought into conformity with the requirements of this ordinance. Except, however, that an abandoned non-conforming structure may be re-occupied if a Variance is approved per the requirements of Section 4.196.

RESPONSE: The existing structure at the property is not non-conforming per the definition set forth in WDC 4.001.195 because it conforms to the standards for structures within the TC zone. Therefore this criterion is not applicable.

WDC 4.190.05 – Non-Conforming Structures

A non-conforming structure may be expanded or enlarged, provided that the portion of the structure being enlarged meets zoning requirements in terms of setbacks, height, and lot coverage.

RESPONSE: The existing structure at the property is not non-conforming because it meets the setback, height, and lot coverage requirements for the TC zone. The applicant’s plans involve alterations to the Fry’s building and the subsequent operation of a Home Depot at the property. See attached, **Exhibit C**. The proposed project would consist of up to 124,215 SF of building area, previously occupied by Fry’s. The reduction in square footage will result from interior renovations, specifically the removal of the existing mezzanine within the structure. **Exhibit C**. Exterior alterations include changes to the parking lot, including curbs and the approach to the building. The concept plan demonstrates that the applicant’s proposed alterations are not an expansion. Therefore, this criterion is not applicable.

IV. CONCLUSION

For the reasons stated above, the Planning Director can find that all applicable criteria are met and approve the subject application.

Enclosed with this application are the following exhibits:

- A. 1991 Decision
- B. Proof of Utility Payments
- C. Concept Plan

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 of Approval #8 of 90PC15

Action: Approved with conditions

Project Expiration Date:

<u>Property Description:</u> 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:

MAPC

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 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 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.

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
Exhibit B

**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.

Attest:


Judge Emison, Planning Secretary



Chairman, Planning Commission

91PC43

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 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 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 Condition 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, redesignate 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"

NA = NOT APPLICABLE
DRB = DESIGN REVIEW BOARD

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

	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
4. Building Use					
a. Office	sq. ft.	9,117 SF	<input checked="" type="radio"/>	<input type="radio"/>	
b. Warehouse	sq. ft.	39,330 SF	<input checked="" type="radio"/>	<input type="radio"/>	
c. Manufacturing/SERVICE	sq. ft.	17,276 SF	<input checked="" type="radio"/>	<input type="radio"/>	
d. Other/DETAIL	sq. ft.	63,914 SF	<input checked="" type="radio"/>	<input type="radio"/>	
5. Building Specifications					
a. Building Height	35'	-	<input checked="" type="radio"/>	<input type="radio"/>	44
b. (Sun Exposure Plane)	NA		<input type="radio"/>	<input type="radio"/>	NA.
c. Gross Floor area of Building	NO LIMIT	150,400 SF	<input checked="" type="radio"/>	<input type="radio"/>	
6. Number of Off-Street Parking					
a. Standard 9' X 18'	472	850	<input checked="" type="radio"/>	<input type="radio"/>	48
b. Compact 8 1/2' X 17' (30% 10 allowed)	OPTIONAL	NOT SHOWN	<input checked="" type="radio"/>	<input type="radio"/>	
c. Handicapped 12' X 18' (1 to 50 required)	11	16	<input checked="" type="radio"/>	<input type="radio"/>	UBC TABLE 31-A
Total	483	872	<input checked="" type="radio"/>	<input type="radio"/>	46 to 48
d. Truck load berths	2	26	<input checked="" type="radio"/>	<input type="radio"/>	
7. Access/Egress					
a. Direct access to street	-	3	<input type="radio"/>	<input checked="" type="radio"/>	17, 18
b. Access provided by easement	NA		<input type="radio"/>	<input type="radio"/>	NA
c. Rail Access	NA		<input type="radio"/>	<input type="radio"/>	NA.
8. Open Space Slope Protection					
a. Existing vegetation protected	NA		<input type="radio"/>	<input type="radio"/>	NA
b. Slopes over 20% to 30% impervious coverage	NA		<input type="radio"/>	<input type="radio"/>	NA
c. River and stream corridors protected	NA		<input type="radio"/>	<input type="radio"/>	NA
d. Adequate erosion control provided			<input checked="" type="radio"/>	<input type="radio"/>	EXHIBIT G4
e. Within greenway	NA		<input type="radio"/>	<input type="radio"/>	NA

	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
C. <u>Other Planning Considerations</u>					
1. Outside storage area provided/ screening	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
2. Adequate screenage of mechanical equipment	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
3. Safety/crime prevention					
a. Location of addressing	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
b. Natural surveillance	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	
c. Type of exterior lighting	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	

D. <u>Bike Paths, Pedestrian Trails, & Equestrian Trails</u>					
1. Pathway Standards					
a. Pathways are provided consistent with pathway master plan and design standards (Section 4.168 W.C.)	<u>REQ'D</u>	<u>HOT SHOW</u>	<input type="radio"/>	<input checked="" type="radio"/>	<u>281031</u>

E. <u>Previous Approval actions and applicable conditions or approvals</u>					
1. City Council	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>DRB 55</u>
2. DRB	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>40215 89R 50</u>
3. P.C.	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>_____</u>
4. Other	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>_____</u>
Inter-agency review comments					
Yes	<u>No</u>		See Exhibit No.		<u>_____</u>
Inter-agency review comments (Written Only)					
City Engineer	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>D</u>
Parks & Recreat.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>
Traffic Safety	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>
Building Dept.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>E</u>
Tualatin Fire Dept.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>
Sheriff	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>

91PC43

**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	<u>22.79 acres</u>	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 separately 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 development.

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 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, reclassified 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 orients 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 rooms, 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

Minimum 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.

91PC43

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 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 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



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:

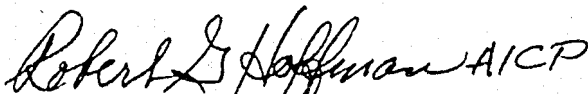
1. Zoning Classification Code:
Planned Development Commercial (PDC) (Town Center)
2. Property Owner's Name and Lender's Name
Lumberjack, L.P. (owner)
PO Box 7458
Menlo Park, CA 94026

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



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
Manager of Current Planning

Attachment: Decision and Conditions of Approval
98PC43
9IDR29

RGH:sh

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

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 Portland. Many who watch insurance activities nationally agree. The change reflects nilar strategies by nationwide carriers. tna wants to consolidate offices, re ce overhead and gain efficiencies in : increasingly competitive health insurance 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 icago Corp., a Chicago-based invest- ent bank that tracks insurance compa- nies. "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.

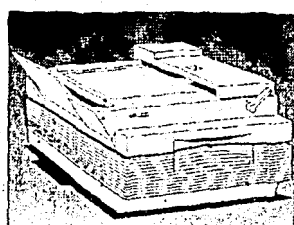
Tandy sold the 166,495-square-foot retail property to Pier Set Inc., a Delaware corporation, for \$13.5 million, according to a Clackamas County sale deed.

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

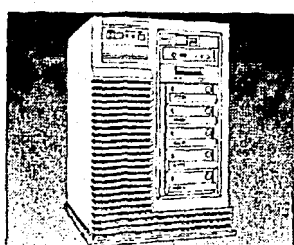
Tandy also sold three other Incredible Universe buildings to the bank. The four properties sold for about \$60 million, Bousquette said.

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.

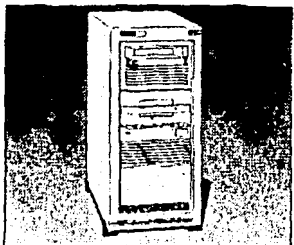
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File
9.1pc 43

Item 9.

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 Kisheloff / Wayne Lorenson

SUBJECT: Project Thunder

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

COMMENTS: _____



City of
WILSONVILLE
in OREGON

September 29, 1993

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

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

91PC 43

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



City of
WILSONVILLE
in OREGON

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

Info —
Pam ✓
Blaise ✓
Sally ✓
file ✓ 910643

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:

Mr. Wayne Kittelson
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 2

"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

Mr. Wayne Kittelson
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 3

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

Mr. Wayne Kittelso...
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 4

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

Mr. Wayne Kittelson
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 5

- 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.

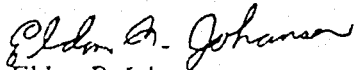
"If you believe it would be appropriate, we would be happy to meet with you personally at a time and location convenient to you in order to further discuss this matter."

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

Mr. Wayne Kittels
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 6

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 ✓
Blaise ✓
Sally ✓

Project file
9/1/92

OCT 29 1992

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.

Mr. Wayne Sorensen
October 27, 1992
Page 2

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 hour 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.

Mr. Wayne Sorensen
October 27, 1992
Page 3

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

Mr. Wayne Sorensen
October 27, 1992
Page 4

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

Mr. Wayne Sorensen
October 27, 1992
Page 5

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, 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

LETTER OF TRANSMISSION

EXHIBIT C
 Page 10 of 16

Item 9.

(503) 682-1011

TO _____

DATE 10/3/92	JOB NO.
ATTENTION Arline Lohle	
RE Honorable University	
Copy of Notice of Decision, and attachment	
The 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 Cooper Exhibit B

182

City of
WILSONVILLE
in OREGON



3000 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.

Mr. Rich Hollander & Ms. Kim Beach
May 28, 1992

Page 2

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.

Mr. Rich Hollander & Ms. Kim Beach
May 28, 1992

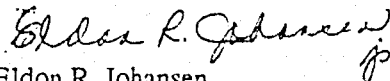
Page 3

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.

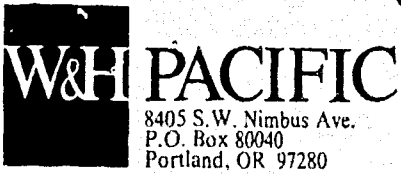
Sincerely,



Eldon R. Johansen
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



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

Creative Solutions ... Superior Service

EXHIBIT C
Page 54 of 161

Item 9.

(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
- X 682-7025

These Are Transmitted:

- For Your Info/File
- As Requested
- For Review And Comment

Copied To:

KUM BEACH w/o ENCL
FAK 223-0200

Copies	Description
<u>1</u>	<u>ADD'L Storm CACCS.</u>

margo 5/19
Orig to Elson
Thunder file
Copy to Wagne
myself
Eden

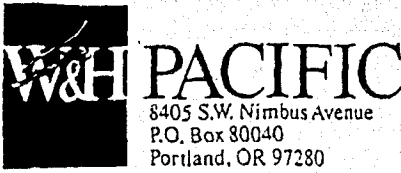
Comments

ELSON,
Jimi LEHMAN HAS PREPARED ADD'L STORM RUNOFF
CACCS 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

Jack Martin

186



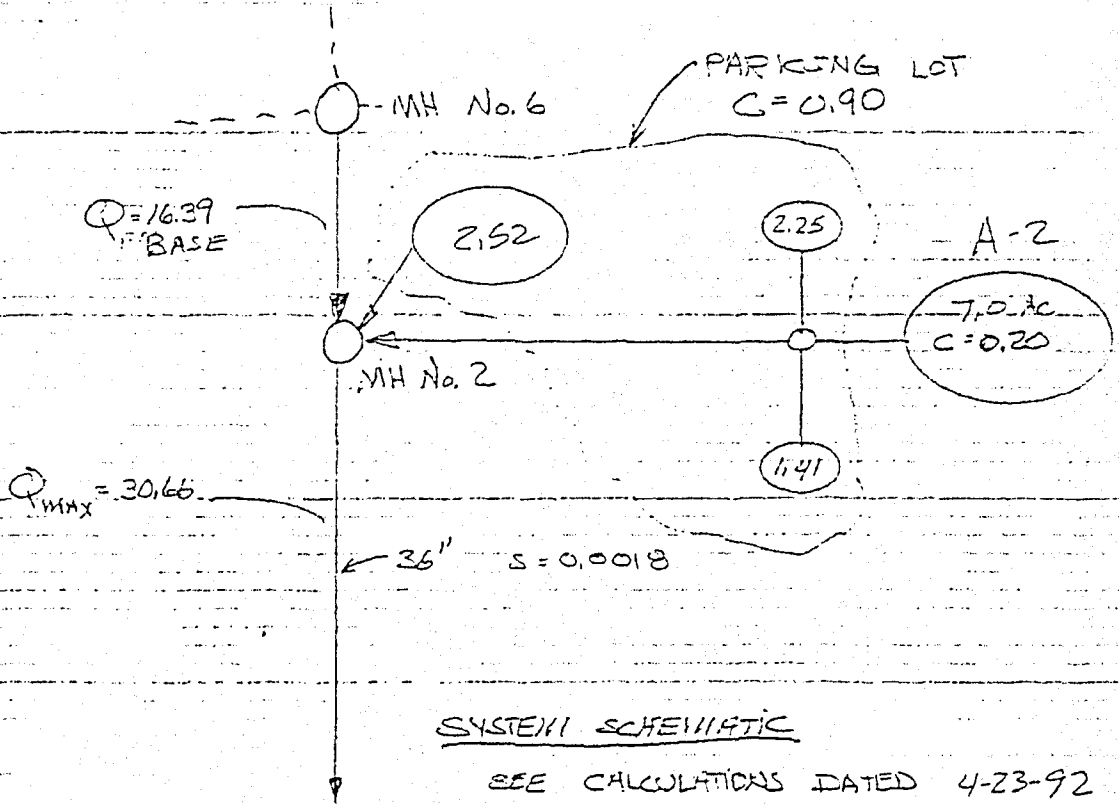
(503) 626-0455
Fax (503) 526-0775

• Planning
• Engineering

• Surveying
• Landscape Architecture

• Environmental
Services

DETENTION REQUIREMENTS FOR A-2 IN MN UNDEVELOPED CONDITION.



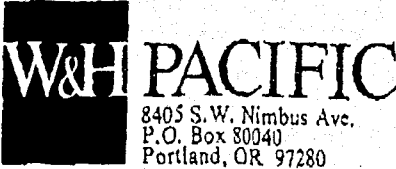
ASSUME WORST CASE SCENARIO

- 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 500 FEET OVERLAND TRAVEL FROM A-2

1st 200 FEET = 20 MINUTES
REMAINING 300' = 4 MINUTES. (SLOPE = 1%)
(IN CHANNEL)

$t_c = 24$ MINUTES

Creative Solutions ... Superior Service



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- Environmental Services

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

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- As Requested
- For Review And Comment
-

Copied To:

KIM BEACH W/O ENCL
FAX 223-0200

Copies	Description
1	ADD'L Storm Cages.

Comments

ELDON,

Jim LEMKERT HAS PREPARED ADD'L STORM RUNOFF
CAVES 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 PH III OR EITHER PROPERTY NORTH
OF TANDY.

(Signature)
 Eric Henthorn

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

• Planning
 • Engineering

• Surveying
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• Environmental
 Services

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

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

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

13.57 CFS.

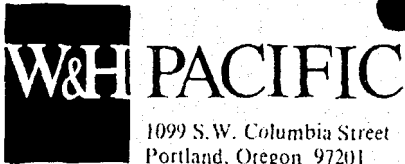
$$Q_{ALLOWABLE \text{ IN PIPE}} = Q_{MAX} - Q_{BASE} = 30,66 - 16,39$$

$$Q_{ALLOWABLE} = \underline{14,27 \text{ CFS.}}$$

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

NO DETENTION IS REQUIRED

NOTE! THIS CALCULATION IS FOR UNDEVELOPED CONDITIONS ONLY.



1099 S.W. Columbia Street
Portland, Oregon 97201

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

- Planning
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- Environmental Services
- Engineering
- Landscape Architecture

To: William L. Parks
DIVISION OF STATE LANDS
1100 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
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Copied To:

Copies	Description
1	VICINITY MAP 8 1/2 x 11
1	SITE MAP 11 x 17

X NO Jurisdiction 10 YR 3/4
A/C Hydrology - Ann Detail
My Flowing

Comments

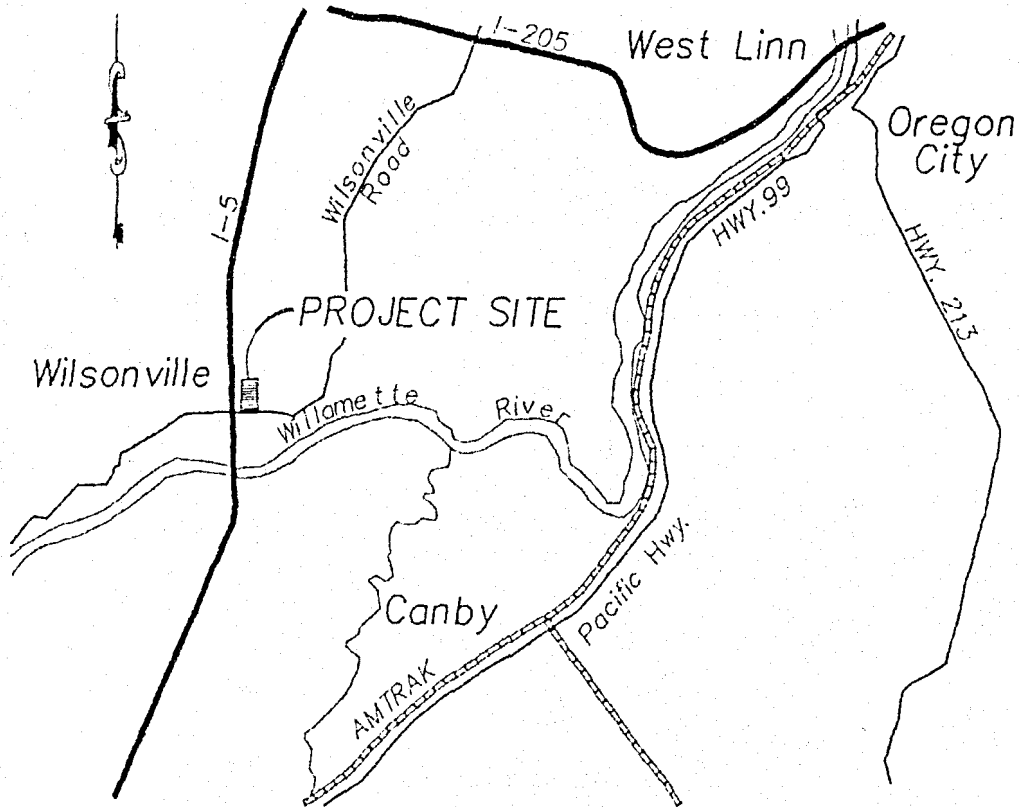
Bill,

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.



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 building 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.

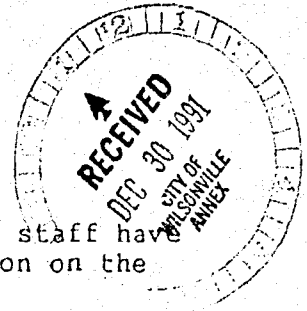
Very truly yours,

A handwritten signature in cursive script that reads "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



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 @ W. Wilsonville TR left @ Centerloop R west 1/4 mile
T 35 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 of Site Plan Map
 City of Wilsonville Planning Department
 _____, Corps of Engineers
 DSL file copy
 Reading file copy - TO LORNA no Turs.

City of
WILSONVILLE
in OREGON

30000 SW Town Center Loop E • ~~PO Box 226~~
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.

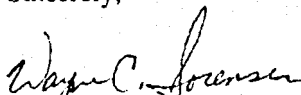
Enclosed is a copy of my notes which generally outline the basic issues we discussed at the December 23rd meeting. I am also enclosing material to provide additional insight into our planning process for the Town Center:

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
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

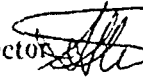
good example of something coming to Council's attention so late in the planning process that you have not had any meaningful input and yet now the City will be asked to make a substantial financial commitment. If the land is to be dedicated the developers justifiably want to know that the property will 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 onsite 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.

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 Wilsonville'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 visibility 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 Park

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.

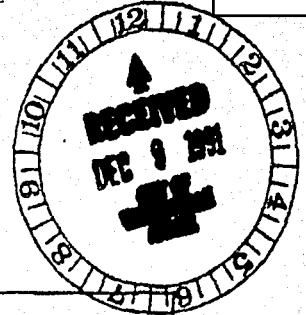
I hope this information is helpful.

ss:jme

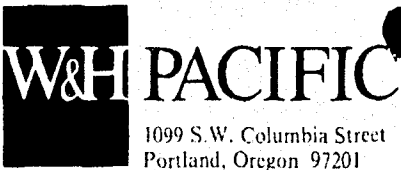
PROJECT THUNDER

PEOPLE IN ATTENDANCE

MEETING: PLANNING COMMISSION
DATE: 9 DEC 91



NAME	ADDRESS
Tom Lertz	233 SE Washington St Hillsboro OR 97123
LOGAN CRAVENS	JKS ARCHITECTS 1676 SW TAYLOR PORTLAND 97222
JIM FAULKNER	3484 FAR HILLS AV DESIGN FLOOR DAYTON, OH 45429 ARCHITECTS
Chris Tope	29025 S.W. towncenter Wilsonville OR LOOP
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 Allen	8755 SW Citizens Drive Wilsonville
Marie Vandehy	610 SW Alder Suite 700 PDX 97205
Bob Lamb	13890 SW Bull Mt Road TIGARD OR 97224



Item 9.

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
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:

Attached

For Your Info/File

KIM BEACH

Facsimile

As Requested

LOGAN CRAVEN

Number Of Pages Including Cover

For Review And Comment

Copies	Description
10	FOLDED FULL SIZE REVERSED MASTER PLAN (SHT. #1)
1	PMT (8 1/2" x 11") OF ABOVE
1	ORIGINAL (8 1/2" x 11"): ALTERNATIVE OPEN SPACE CONCEPT.

Comments

Blaise:

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

s. again for all your help !!!

1 Jones

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:

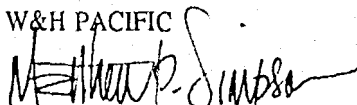
Thank you again for taking time this morning to discuss Project Thunder. As per our discussion, the following items were discussed and agreed upon:

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

<u>STORAGE</u>	<u>SERVICE</u>	<u>RETAIL</u>	<u>REST</u>
6208	4700	47,874	572
9600	900	2,240	1024
22,892	1020	5,885	4500
420	640	7,920	<u>5096</u>
210	1932	<u>63,914</u>	
<u>39,330</u>	5016		
	2040		
	<u>1008</u>		
	<u>17,276</u>		
<u>OFFICE</u>			
1856			
200			
50			
5,294			
288			
912			
240			
149			
128			
<u>9,117</u>			

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:

Memorandum: Design Review Board
Re: Les Schwab Tires
Page 2 of 5

"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 (1) (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

Memorandum: Design Review Board
Re: Les Schwab Tires
Page 3 of 5

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 maxims, *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 maxims 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

Memorandum: Design Review Board
Re: Les Schwab Tires
Page 5 of 5

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 Citv v. Hartke, 240 Or 35, 400 Ord. 255.(1965); Naegele Outdoor Advertising v. City of Wavnesville, 833 F.2d 43 (CA4 1987); Don's Porta Signs Inc. v. City of Clearwater, 829 F2d 1051 (CA11 1987).

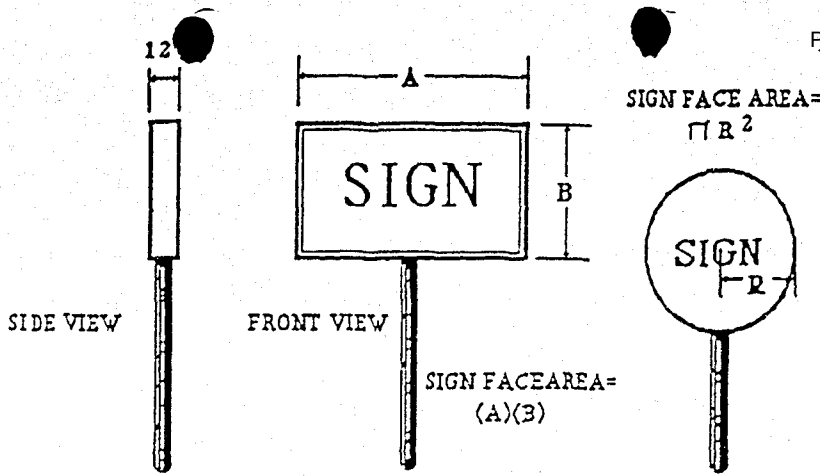
The dynamic nature of police power is clearly seen in the contemporary, community trends to view aesthetic considerations as valid subjects for the exercise of police power. The very exercise of police power is based upon need. Modern, contemporary society has recognized that advertising in the commercial 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 (1)(a), bulletin boards, 4.151 (1)(b); real estate signs advertising individual lots, 4.151 (1)(c); subdivision signage, 4.151 (1)(d) and home occupation signage, 4.151 (1)(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.

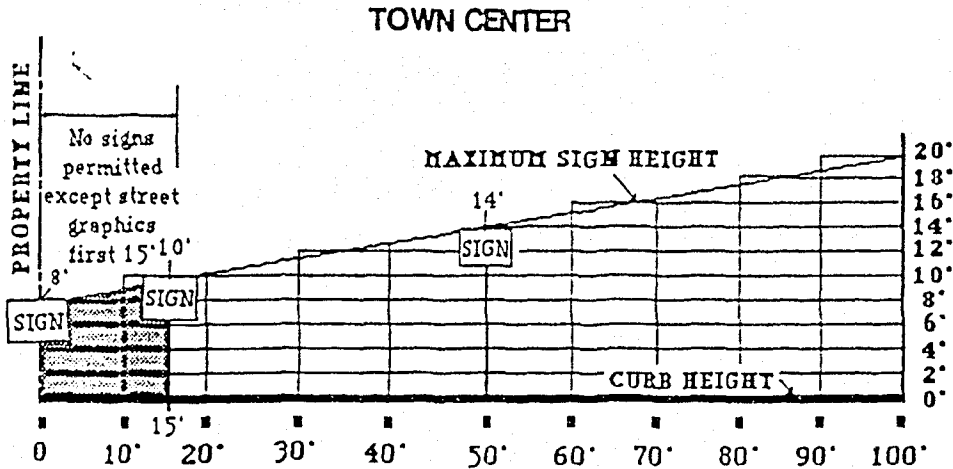
Therefore, I am of the opinion that the recommended revisions submitted by staff are reasonable time, place and manner restrictions, to prevent the use of a building as a grossly, large sign offensive to aesthetic sensibilities, coupled with the use of materials which are not harmonious with existing 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

Item 9.



SIGN FACE MEASUREMENT



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, whichever 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: *MB* 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/

EXHIBIT E

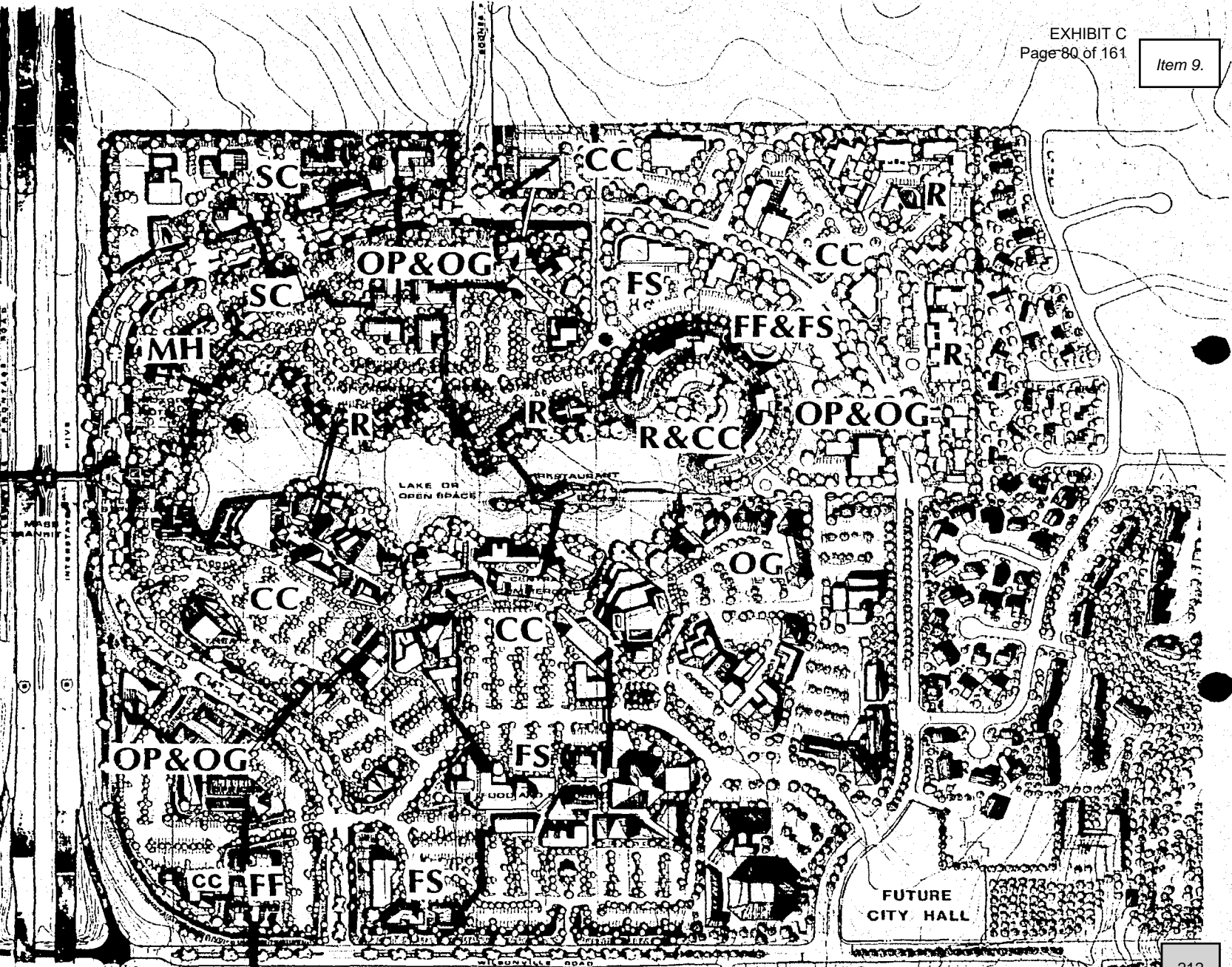
DEFECTS IN
ORIGINAL
DOCUMENT

Item 9.

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



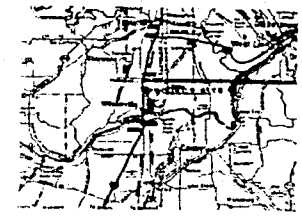
Item 9.

JKS
JKS Architects PC
1001 N. East Street - Suite 100 • Portland, Oregon 97206
503.251.1700

WILSONVILLE MARKETPLACE

1

213

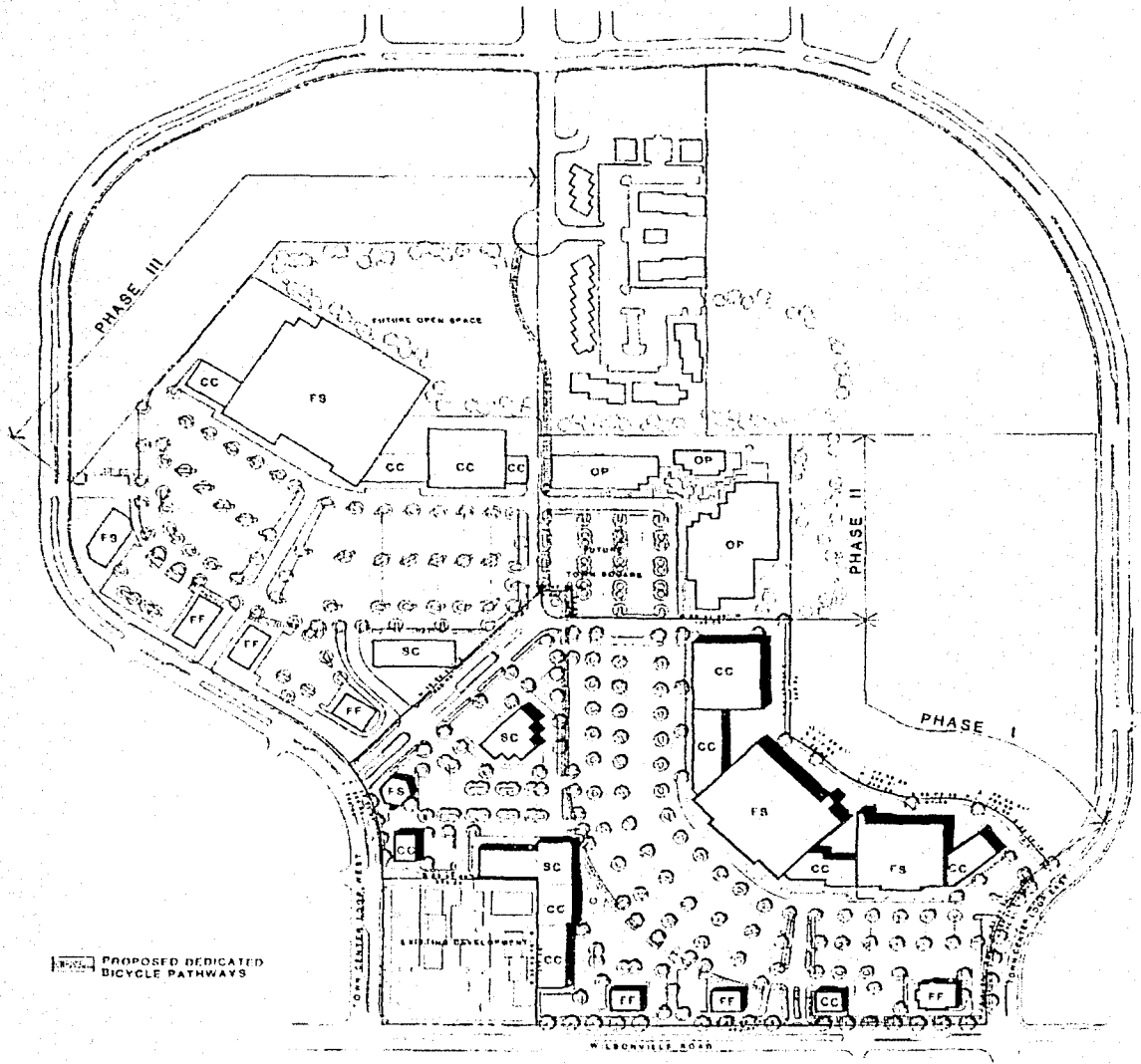


VICINITY MAP

ACREAGE	
PHASE I	22.17 ACRES
PHASE II	5.41 ACRES
PHASE III	22.02 ACRES
TOTAL	49.60 ACRES

PHASE ONE ZONING DESCRIPTION

A parcel of land situated in the southeast corner of Section 13, Township 36 North, Range 12 East, County of Clatsop, Oregon, hereinafter referred to as the "Site", is shown on the attached map. The Site is approximately 100 feet wide and 1,000 feet long. The Site is currently zoned R-10 Single-Family Residential. The proposed development is a multi-phase project consisting of three phases: Phase I, Phase II, and Phase III. Phase I is a 22.17-acre residential development consisting of single-family detached homes. Phase II is a 5.41-acre residential development consisting of single-family detached homes. Phase III is a 22.02-acre residential development consisting of single-family detached homes. The proposed development is consistent with the Comprehensive Zoning Ordinance of the City of Wilsonville, Oregon.



PROPOSED DEDICATED BICYCLE PATHWAYS

MASTER PLAN: PHASE I, II, & III



EXHIBIT H



KITTELSON & ASSOCIATES, INC.
TRANSPORTATION PLANNING/TRAFFIC ENGINEERING

610 SW 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 EXHIBIT B

Ms. Kim Beach
October 16, 1991
Page 2

- 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.

Ms. Kim Beach
October 16, 1991
Page 3

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

Ms. Kim Beach
October 16, 1991
Page 4

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.

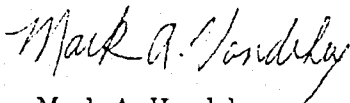
Based on these results, and given that background traffic volumes on Wilsonville Road are likely to continue to increase somewhat, it is recommended that a traffic signal be installed at the Wilsonville Road/Town Center Loop West intersection coinciding with the completion of the current Phase II development 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.

Ms. Kim Beach
October 16, 1991
Page 5

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

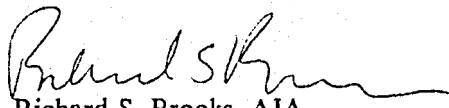
On behalf of the Owner, Capital Realty Corp., we request a reconsideration of Condition No. 8 of Planning Commission Resolution No. 90PC15 to provide the opportunity for Capital Realty to work with the City to accomplish the following:

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:\BCRSB\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.

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

Page 2

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.

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

Page 3

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.

C:\BCRSB\WTC-1017.PM

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

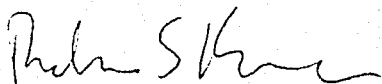
EXHIBIT
6-90

Wilsonville Town Center
Stage I Re-submittal
October 18, 1991

Page 2

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

Alternative Open Space Concept

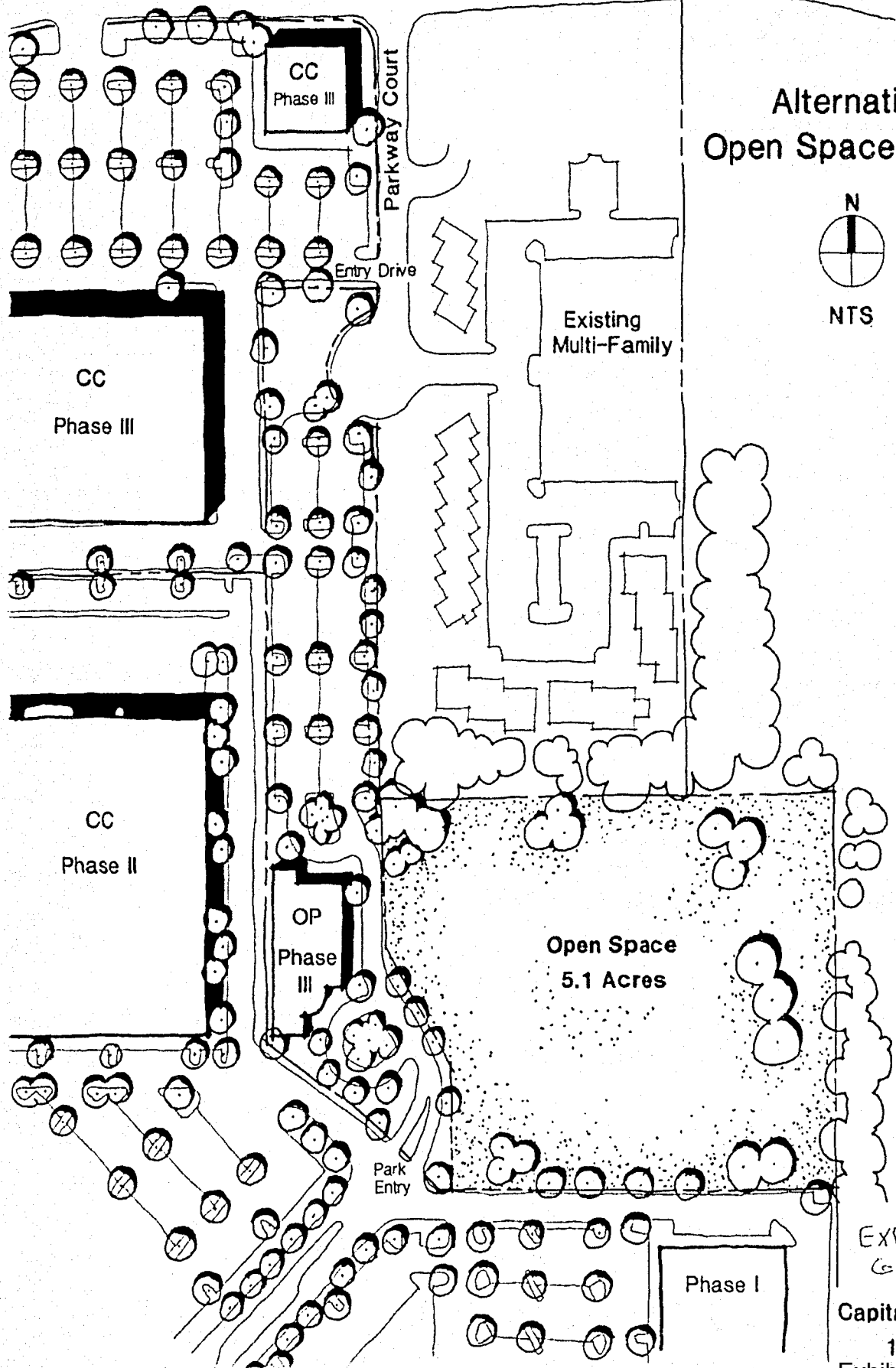
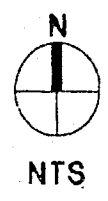


EXHIBIT
C-11

Capital Realty Corp.

11/26/9

Exhibit B

225

Item 9.

AS REVISED
1/7/92

DesignForum
ARCHITECTS

226

DesignForum

ARCHITECTS

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 accessory 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.

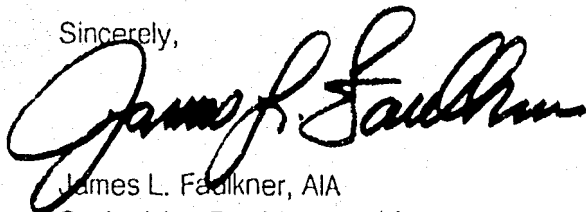
As per phone conversations with Blaise Edmonds, Associate Planner, the materials and colors sample board will be presented at the evening of the actual meeting. It will not be forgotten. We will provide a sample board of wall elements, as requested, as soon as we receive material samples from the manufacturers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

DesignForum

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.

DesignForum

ARCHITECTS

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.

DesignForum

ARCHITECTS

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

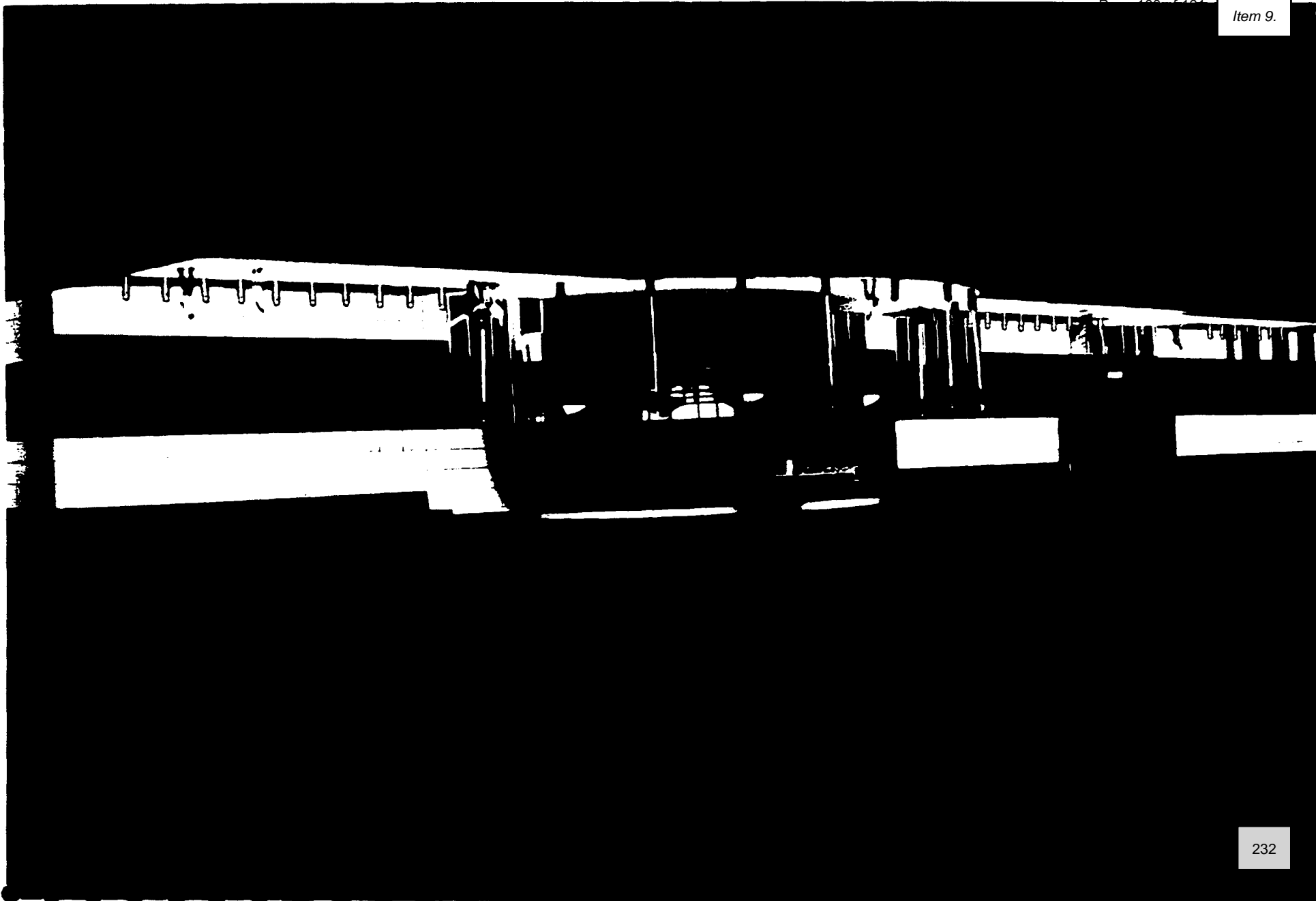
We request this deviation from the approved program for the purpose of changing the method of construction for the 3 fascia signs (aggregate area approximate 81 SF) to be consistent with our design idiom. We feel our approach of a fascia panel type sign, back lit, cutout individual letters, appearing 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

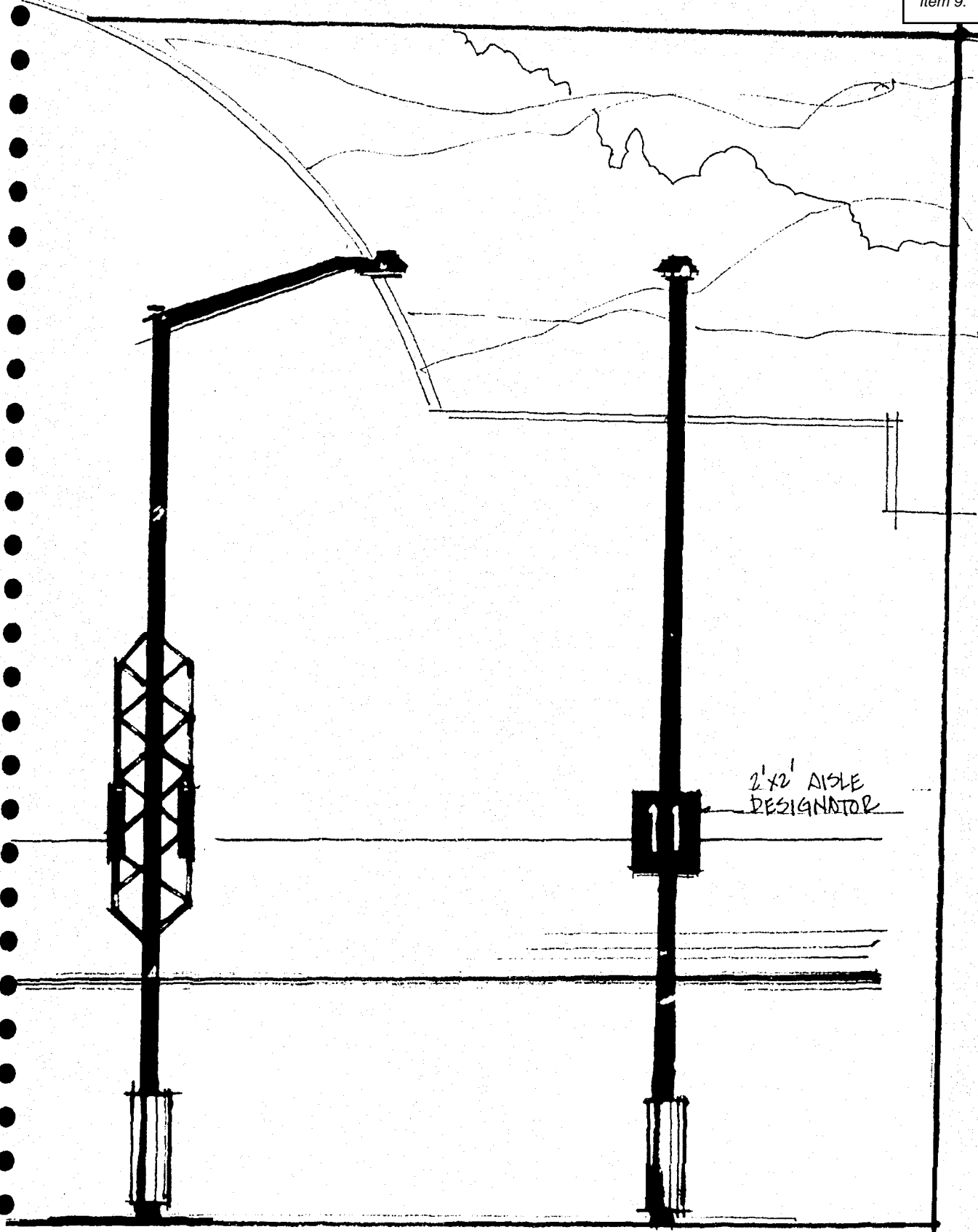
ORIGINAL

DOCUMENT

Item 9.







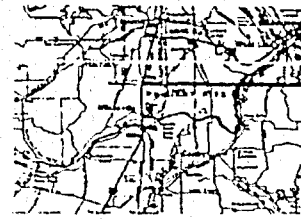
PROJECT THUNDER
Wilsonville, Oregon
Design Review Board
January 27, 1992 Meeting

DesignForum
ARCHITECTS

2401 Fox Hills Avenue, Dayton, Ohio 45424 Telephone (612) 258-4488

Exhibit B

Item 9.



VICINITY MAP

THE CITY OF WILSONVILLE, OREGON
PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
GENERAL PLAN
CHAPTER 15
LAND USE DESIGNATION MAP
SECTION 15.030
GENERAL PLAN MAP
GENERAL PLAN MAP NO. 15.030
GENERAL PLAN MAP NO. 15.030
GENERAL PLAN MAP NO. 15.030

GENERAL PLAN MAP NO. 15.030
GENERAL PLAN MAP NO. 15.030
GENERAL PLAN MAP NO. 15.030
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GENERAL PLAN MAP NO. 15.030
GENERAL PLAN MAP NO. 15.030
GENERAL PLAN MAP NO. 15.030
GENERAL PLAN MAP NO. 15.030
GENERAL PLAN MAP NO. 15.030

JKS Architects PC
225 SW 3rd Street, Suite 202 • Portland, Oregon 97204
Tel: 503.224.1100 • Fax: 503.224.1101

WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON

15.030
15.030
15.030
15.030

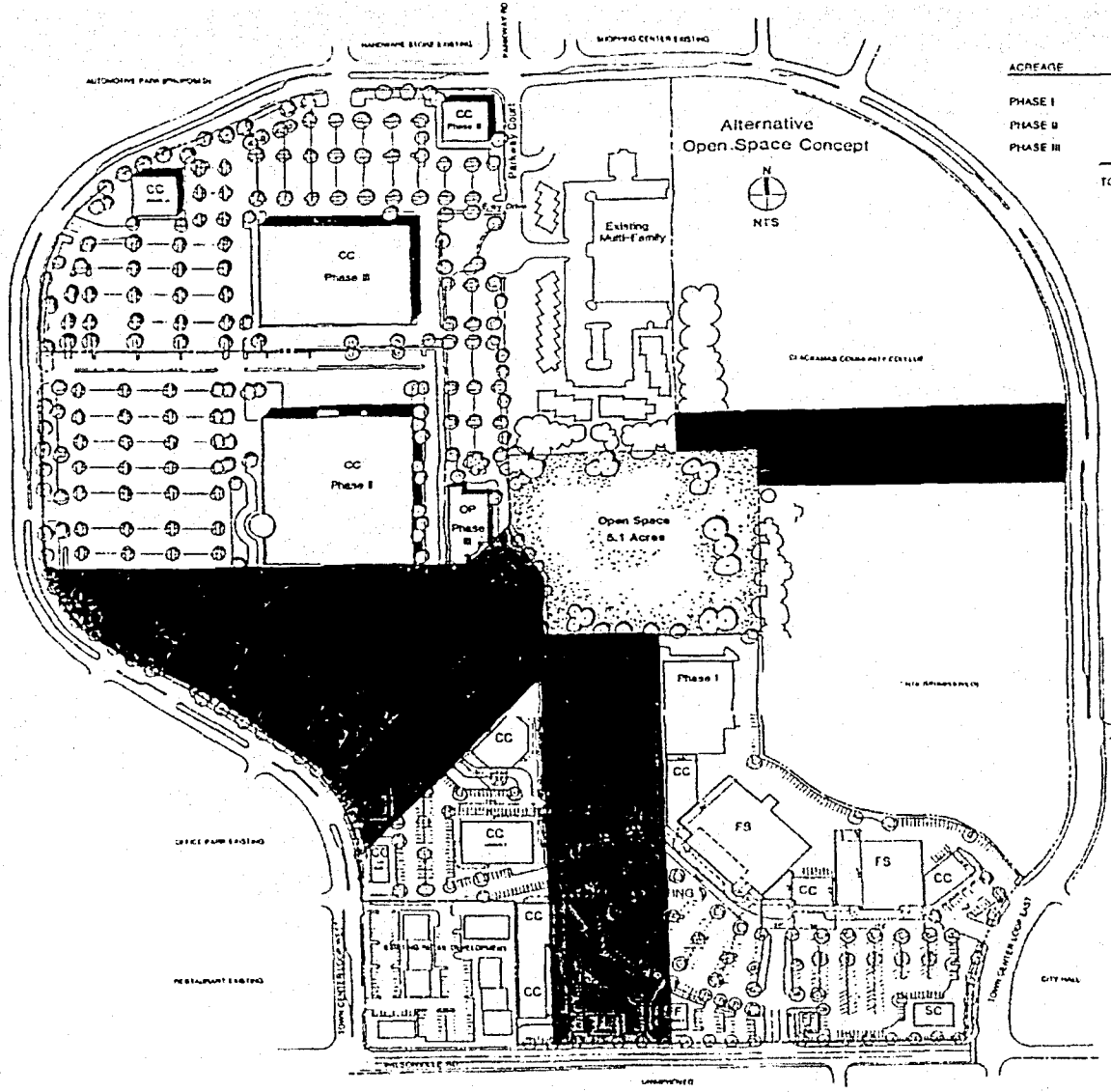
15.030
15.030
15.030
15.030

1

235

ACREAGE	
PHASE I	22.98 ACRES
PHASE II	14.75 ACRES
PHASE III	22.06 ACRES
TOTAL	59.79 ACRES

Alternative Open Space Concept



SITE MASTER PLAN: PHASE I, II, & III
VIEW CORRIDOR CONCEPT

1-6-92

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:
- | | | | | |
|---------------------------------|--|---|---|-----------------------------------|
| <input type="checkbox"/> Prints | <input type="checkbox"/> Estimates | <input type="checkbox"/> Copy of letter | <input type="checkbox"/> Photography | <input type="checkbox"/> Keylines |
| <input type="checkbox"/> Plans | <input type="checkbox"/> Shop Drawings | <input type="checkbox"/> Samples | <input type="checkbox"/> Specifications | <input type="checkbox"/> Layouts |
| | | <input type="checkbox"/> Comps Prototypes | | |

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

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> For your use | <input type="checkbox"/> Approved & noted | <input type="checkbox"/> Return _____ corrected prints |
| <input type="checkbox"/> For approval | <input type="checkbox"/> Construction approval | <input type="checkbox"/> Submit _____ copies for _____ |
| <input checked="" type="checkbox"/> As requested | <input type="checkbox"/> Returned for corrections | <input type="checkbox"/> Resubmit _____ copies for _____ |
| <input type="checkbox"/> For review & comment | <input type="checkbox"/> Returned after loaned to us | <input type="checkbox"/> For bids due _____ |
| <input type="checkbox"/> _____ | | |

Remarks: _____

Signed: William F. Bergman Date: 10/28/91
William F. Bergman, AIA
Project Architect

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.

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.

Blair -
I understand
W & H says 150 cfs
for Town Center to go into
48" culvert - is there
more from other properties -
if so how does that affect
park drainage - if you
know & if not I'd be probably
need to make sure all
info is available - before
abandoning on site retention -
could be a plus as a water
feature for town center
Mike,
cc. Steve Stamer

PLEASE MAIL
TO
LESLIE
DON'T
WAYNE
SAID THAT
YOU HAVE
HLS
ADVISORY
B

MEMORANDUM

TO: Development Review Team

DATE:

FROM: Blaise Edmonds, Associate Planner, City

ADVISORY

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.~~

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City of Wilsonville

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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
• Engineering • Landscape Architecture

• Environmental Services

To: Blaise Edmunds Date: 10/16/91
Pam Edmunds Project Number: 407-0301
City of Wilsonville, Annex Project Name: PROJECT THUNDER
30000 SW TOWN CENTRAL LOOP EAST Regarding:
Wilsonville, OR, 97070

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	Minutes of 10/14/91 Meeting

Comments

Blaise & Pam

We'll see you 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 Edmunds

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.



October 15, 1991
Page 2

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 submittal 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.



1099 S.W. Columbia Street
Portland, Oregon 97201

Creative Solutions ... Superior Service

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

- Planning
- Engineering

- Surveying
- Landscape Architecture

- Environmental Services

EXHIBIT C
Page 112 of 161
FAKED
10/17/91

Item 9.

To: Blaise Edmunds Date: 10/16/91
Pam Eumons Project Number: 467-0301
City of Wilsonville, Annex Project Name: PROJECT THUNDER
30000 SW TOWN CENTER LOOP EXT. Regarding:
WILSONVILLE, OR. 97070

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

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

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

Copied To: _____

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

Comments

Blaise & Pam

We'll see you 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 Tan Jones

DesignForum

A R C H I T E C T S

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.

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 excavation, 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.

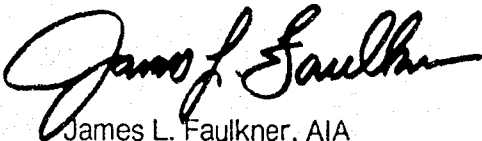
DesignForum

ARCHITECTS

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

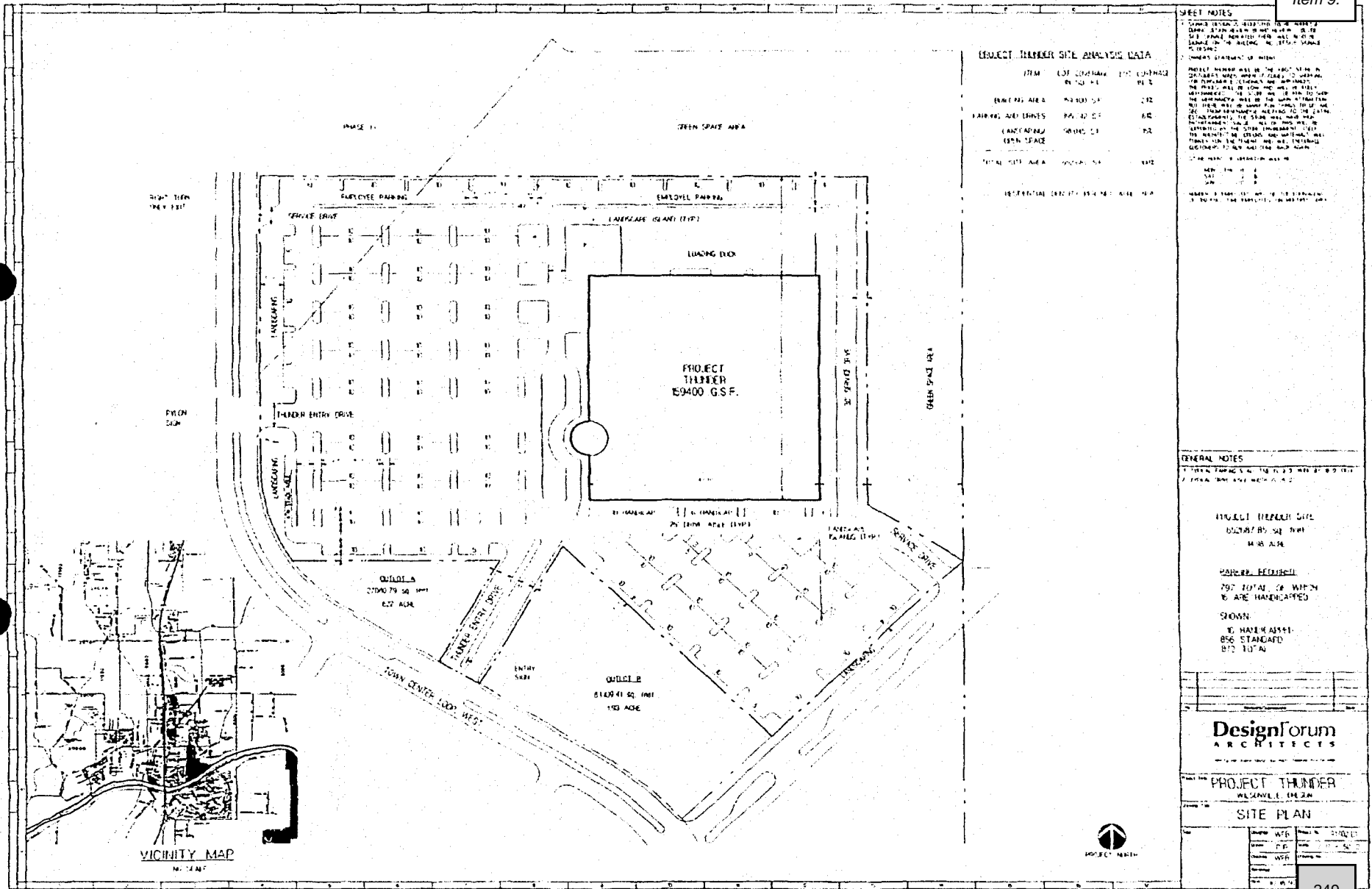
The meeting notes represent comments that have been paraphrased as accurately as possible. The notes will be held as an accurate and true account as to intent unless notice to the contrary is set forth within 10 days of the date above.

Respectfully submitted,

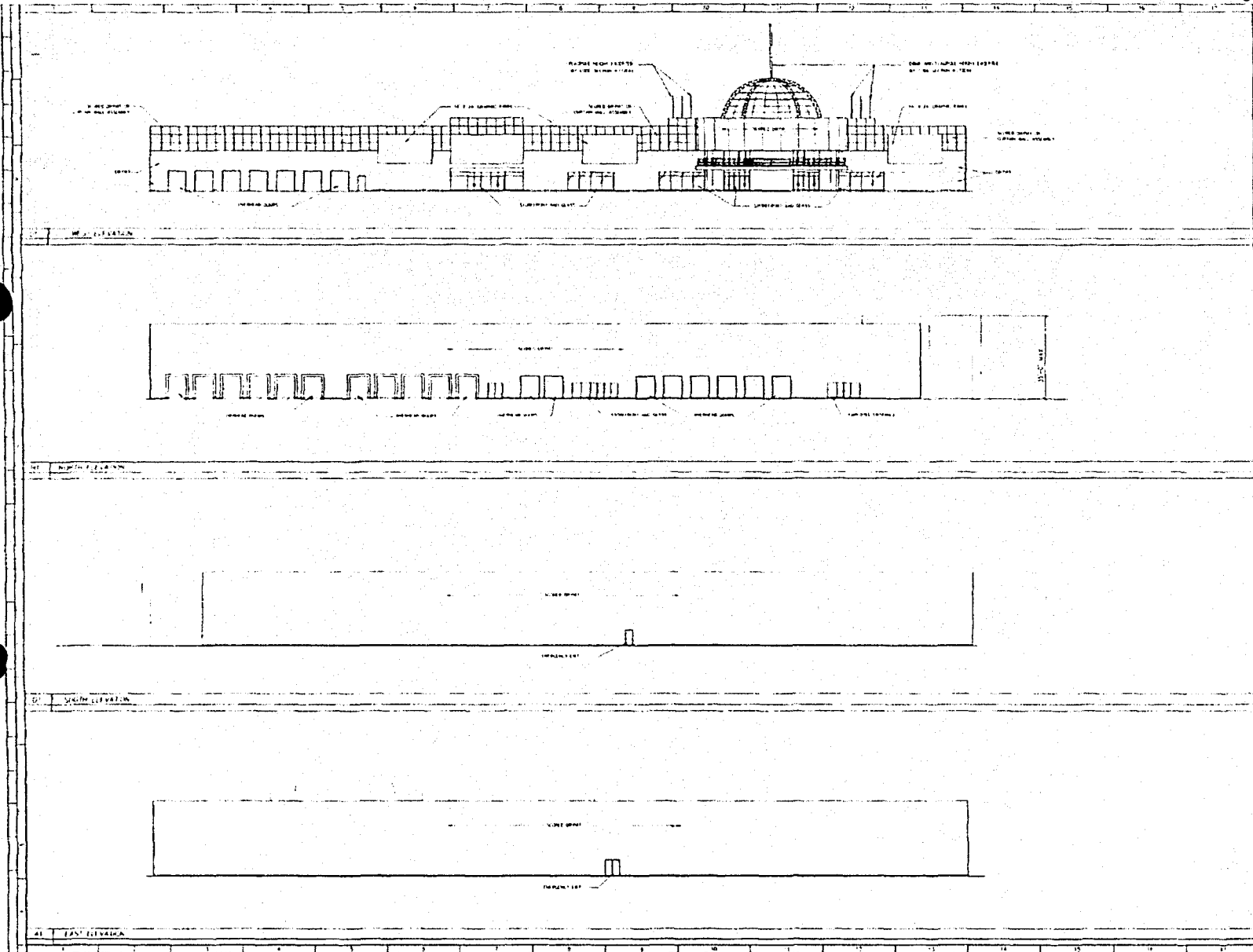


James L. Faulkner, AIA
Vice President, Architecture

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



Item 9.



EXTERIOR ELEVATIONS

Scale: 1/8" = 1'-0"

DesignForum ARCHITECTS

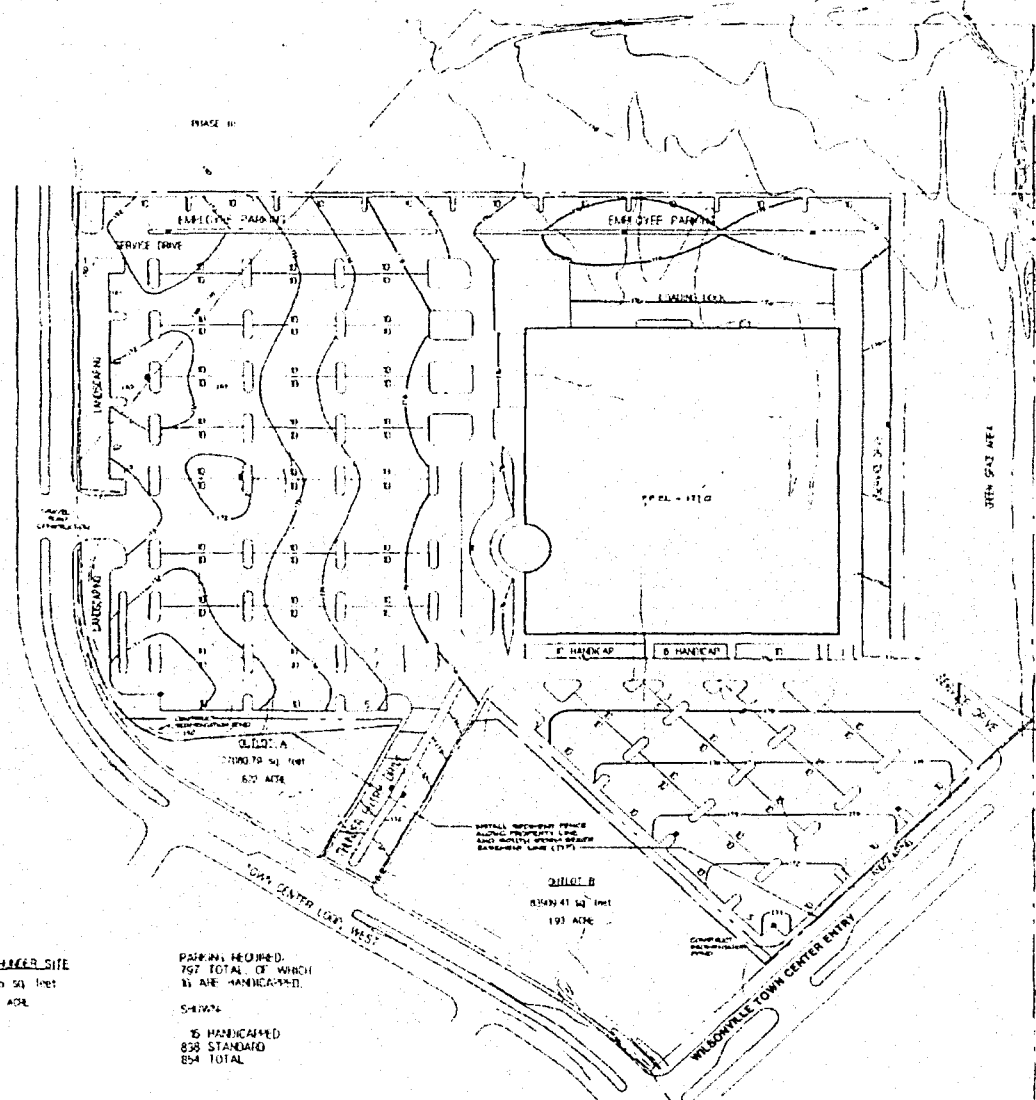
PROJECT THUNDER
WESMAYLE THEATRE

EXTERIOR ELEVATIONS

Author: WFB	Project No: 11-022-14
Drawn: WFB	Date: 1/10/11
Checked: WFB	Sheet No: 2
Scale: 1/8" = 1'-0"	

250

SHEET TITLES



PROJECT THUNDER SITE
82641 sq feet
14.38 ACRES

PARKING REQUIRED:
767 TOTAL OF WHICH
15 ARE HANDICAPPED.

5-HANDICAPPED
838 STANDARD
854 TOTAL

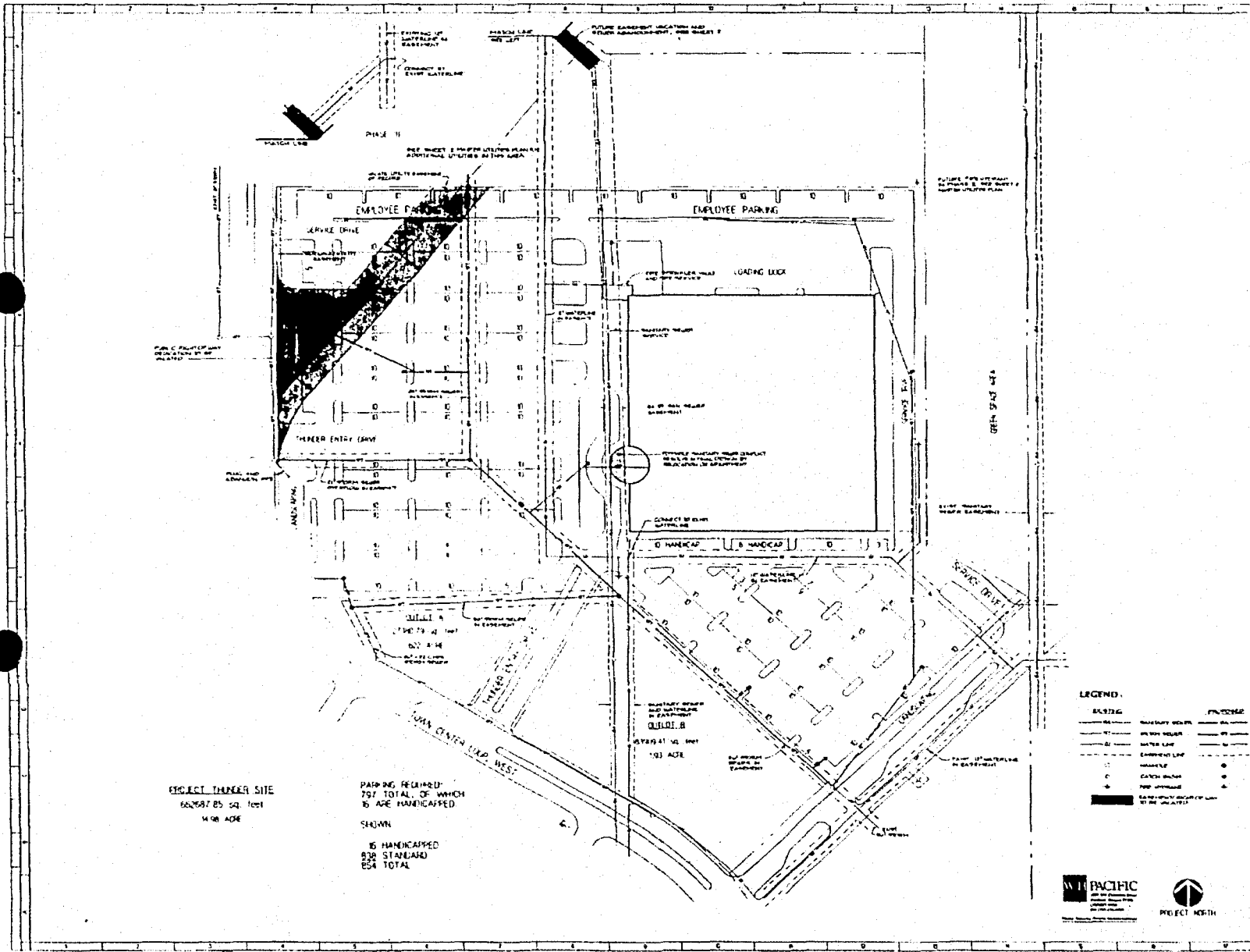
- NOTES
- 1) RECALCULATION OF ALL SQUARE FEETAGES, LENGTHS, WIDTHS, AND PERIMETERS, THEREBY ESTABLISHING THE PERMANENT CONTOUR OF THE PROJECT SITE, SHALL BE THE RESPONSIBILITY OF THE CLIENT. THE CONSULTANT SHALL VERIFY THE ACCURACY OF THE CLIENT'S INFORMATION.
 - 2) WHEREAS THE ACCESS DRIVE SHALL BE FINISHED AND SHALL BE THE CLIENT'S RESPONSIBILITY, THE CONSULTANT SHALL VERIFY THE ACCURACY OF THE CLIENT'S INFORMATION.

- LEGEND
- EXISTING CONTOURS
 - PROPOSED CONTOURS
 - HATCHED CONTOUR SURFACE
 - PERIMETER OF LOT
 - METALL MESH FENCE

DesignForum ARCHITECTS
1000 NE Oregon Street, Suite 200, Portland, OR 97232
TEL: 503.255.1111 FAX: 503.255.1112

PROJECT THUNDER
WILSONVILLE, OREGON
PHASE II GRADING-EROSION CONTROL PLAN

DATE	NOV 14, 2007
SCALE	1" = 50'-0"
DRAWN BY	M.A.P.
CHECKED BY	M.A.P.
DATE	NOV 14, 2007



PROJECT THUNDER SITE
66,268.785 sq. feet
1/8 ACRE

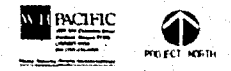
PARKING REQUIRED:
797 TOTAL, OF WHICH
16 ARE HANDICAPPED

SHOWN

16 HANDICAPPED
830 STANDARD
854 TOTAL

LEGEND

SYMBOL	DESCRIPTION
—	EXISTING
—	PROPOSED
—	WATER LINE
—	SEWER LINE
—	EMERGENCY LINE
—	HANDICAP
—	STREET LIGHT
—	POLE UTILITY
—	SAFETY ISOLATION OF LINE TO BE MAINTAINED



SHEET NOTES

GENERAL NOTES

Key Plan

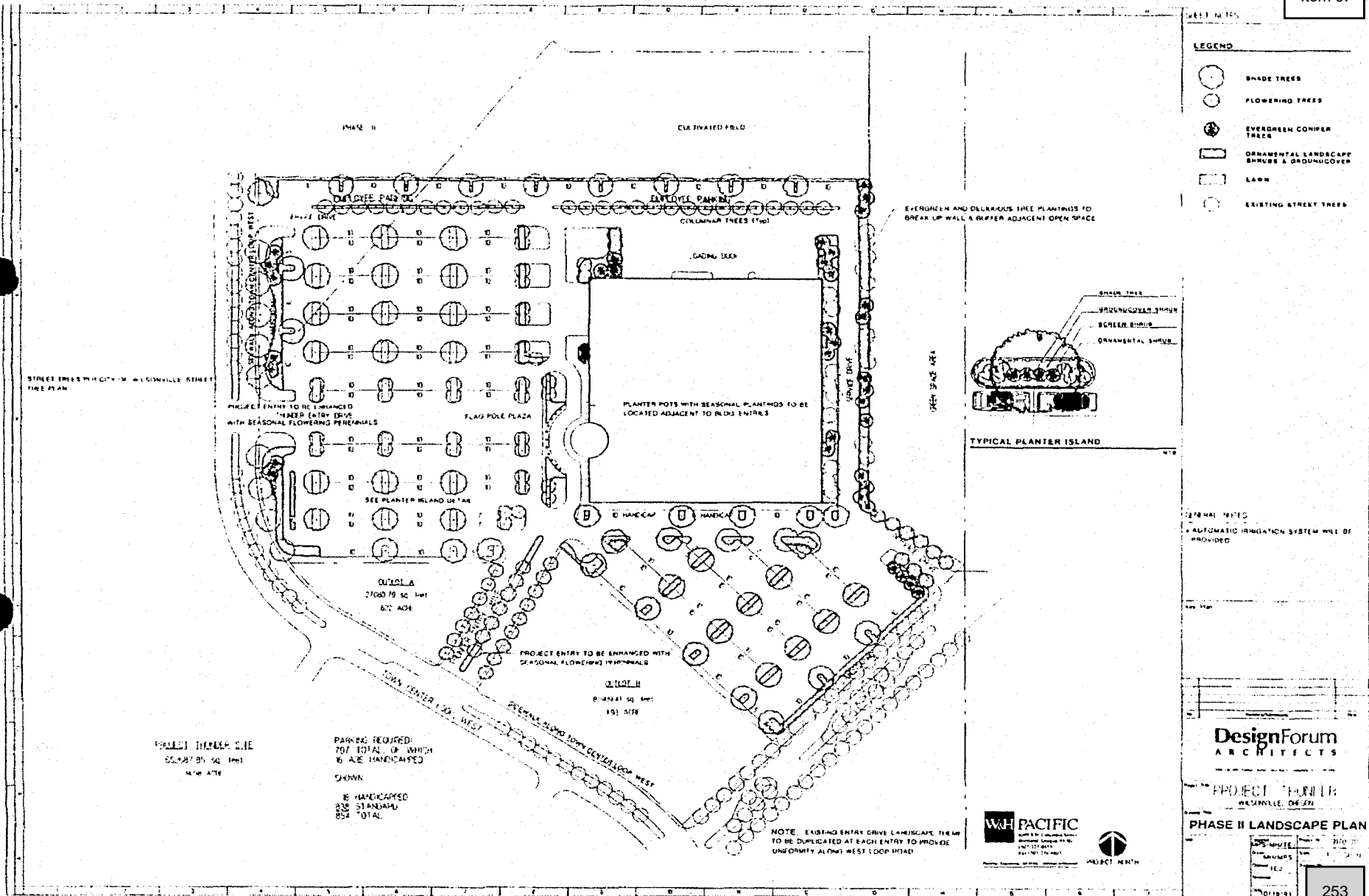
DesignForum ARCHITECTS

PROJECT THUNDER
WILSONVILLE, OREGON

PHASE II UTILITIES PLAN

DATE: 10/11/11
SCALE: 1" = 50'

252



PROJECT NUMBER: 05-287 05 54 1001
DATE: 1/18/01

PARKING REQUIRED:
707 TOTAL OF WHICH
76 ARE HANDICAPPED
SHOWN
530 STANDARD
854 TOTAL

NOTE: EXISTING ENTRY DRIVE LANDSCAPE THEM TO BE DUPLICATED AT EACH ENTRY TO PROVIDE UNIFORMITY ALONG WEST LOOP ROAD

DesignForum ARCHITECTS

PROJECT: THUNDER
WASVILLE, GA 30787

PHASE II LANDSCAPE PLAN

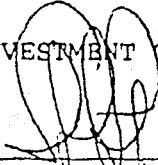
DATE: 1/18/01

SCALE: 1" = 10'-0"

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.

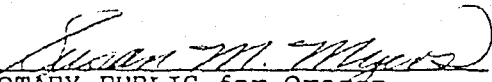
February 1, 1990,

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

Parcel III

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-13D, 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 500, MAP 3-1W-13D 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 6391 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.

~~tion.~~ The Option to purchase Phase 2 in its entire 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 before November 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 [Signature]
SFS President
Steven F. Styles

David S. Young
DAVID S. YOUNG
Marlene A. Young
by [Signature], attorney in fact
MARLENE A. YOUNG

SFS INVESTMENT CORP.
By [Signature]
SFS OFFICER

ESTATE OF HAROLD J. LASWELL
DECEASED

GRANTEES

By Emma D. Laswell
Emma D. Laswell
Personal Representative

BY [Signature]
Eugene L. Doffler
Personal Representative

Fred A. Anderson
FRED A. ANDERSON

GRANTORS

ST IES PROPERTIES LTD.
by [Signature]

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, together 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 & 405, Clackamas County MAP 3-1W-14D and a triangle of land approximately 6,391 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, 1969 and August 23, 1969, 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 per 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, 1990 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 14 day of November, 1989.

Jack L. Lozo
JACK L. LOZO

SFS INVESTMENT CORP.

ANN S. LOZO, Trustee for
CLAUDE F. SMITH TRUST *Q.T.T.*
SF

By *[Signature]*
SFS President
Steven F. Stiles

GRANTORS

SFS INVESTMENT CORP.

By *[Signature]*
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

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Pat Marquis

OREGON
JANUARY 20, 1989
PAT MARQUIS
2382

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

Lindy - Transfer 170⁺ ^{thou} footprint
Electronics +

Driveway / TC (E) + (W)

Driveway → Open Space

Submit Stage I + II Simultaneously

Blaise
What else?

* Gave Stage I + II + application x 2
250' radius map owners

Topo - 1' intervals - (map has readings)

~~Blaise 52' top down~~
Phase

100-1-

CITY

100-120 DWELING UNITS.

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

- CONTOUR SURVEY - 720' / 0

[TREE SURVEY
 > 6" CALIBER]

MAJOR DRAINAGEWAY.

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

CALL MINE ~~120-124~~

**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 by 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.

<u>Item</u>	<u>Lot Coverage in sq. ft.</u>	<u>Lot Coverage in %</u>
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 !

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.

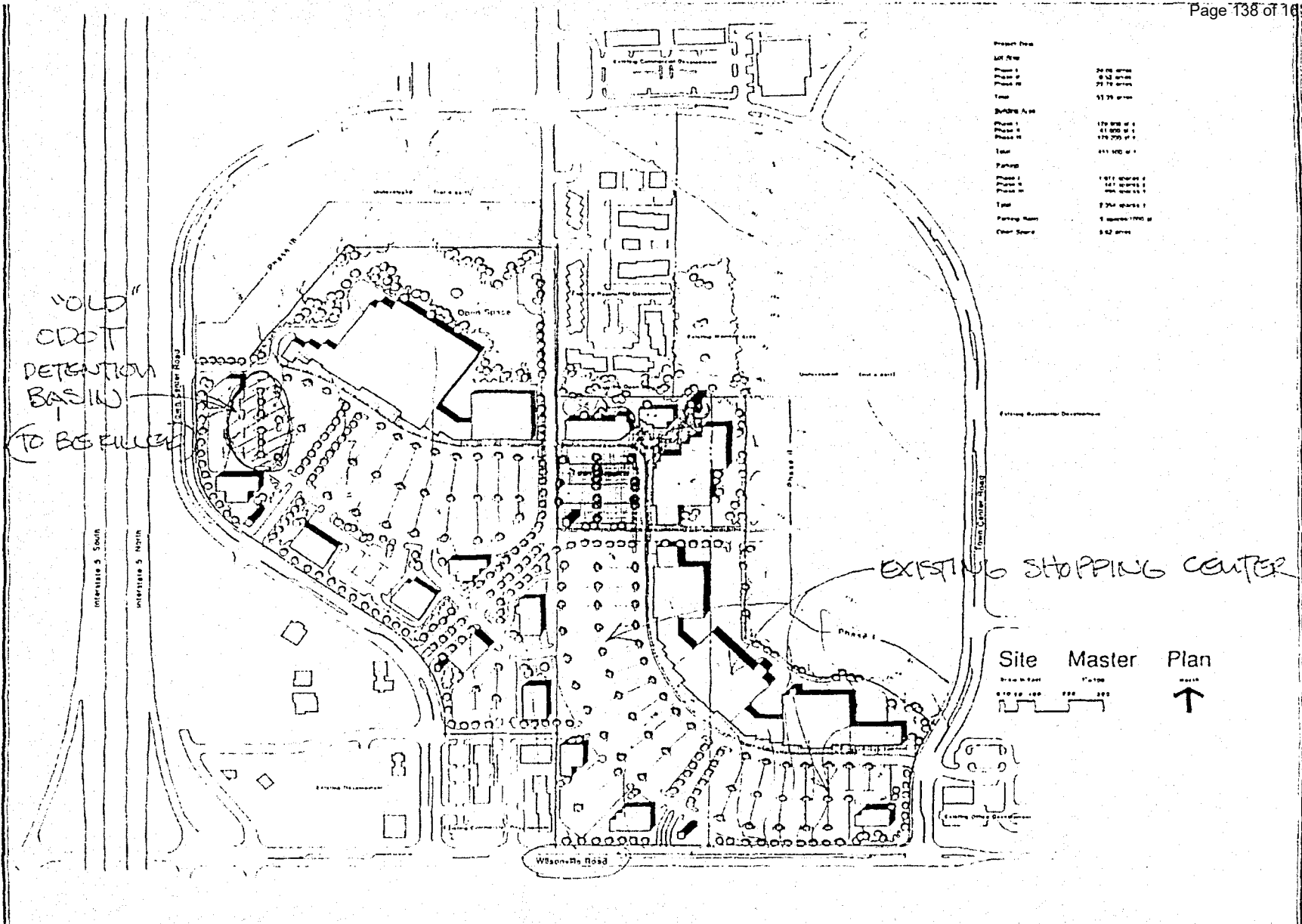
"At a minimum, we need to be broadening the assumptions on which decisions are made," Loble said. "We've recognized that the traffic situation is beyond anything anticipated in the rational decision-making model."

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.

Item 9.

cc: Bill, JAVLS



Project Area	170,000 sq. ft.
Lot Area	24,000 sq. ft.
Phase I	11,700 sq. ft.
Phase II	158,300 sq. ft.
Total	170,000 sq. ft.
Phase I	11,700 sq. ft.
Phase II	158,300 sq. ft.
Total	170,000 sq. ft.
Parking Area	1,000,000 sq. ft.
Other Area	500,000 sq. ft.

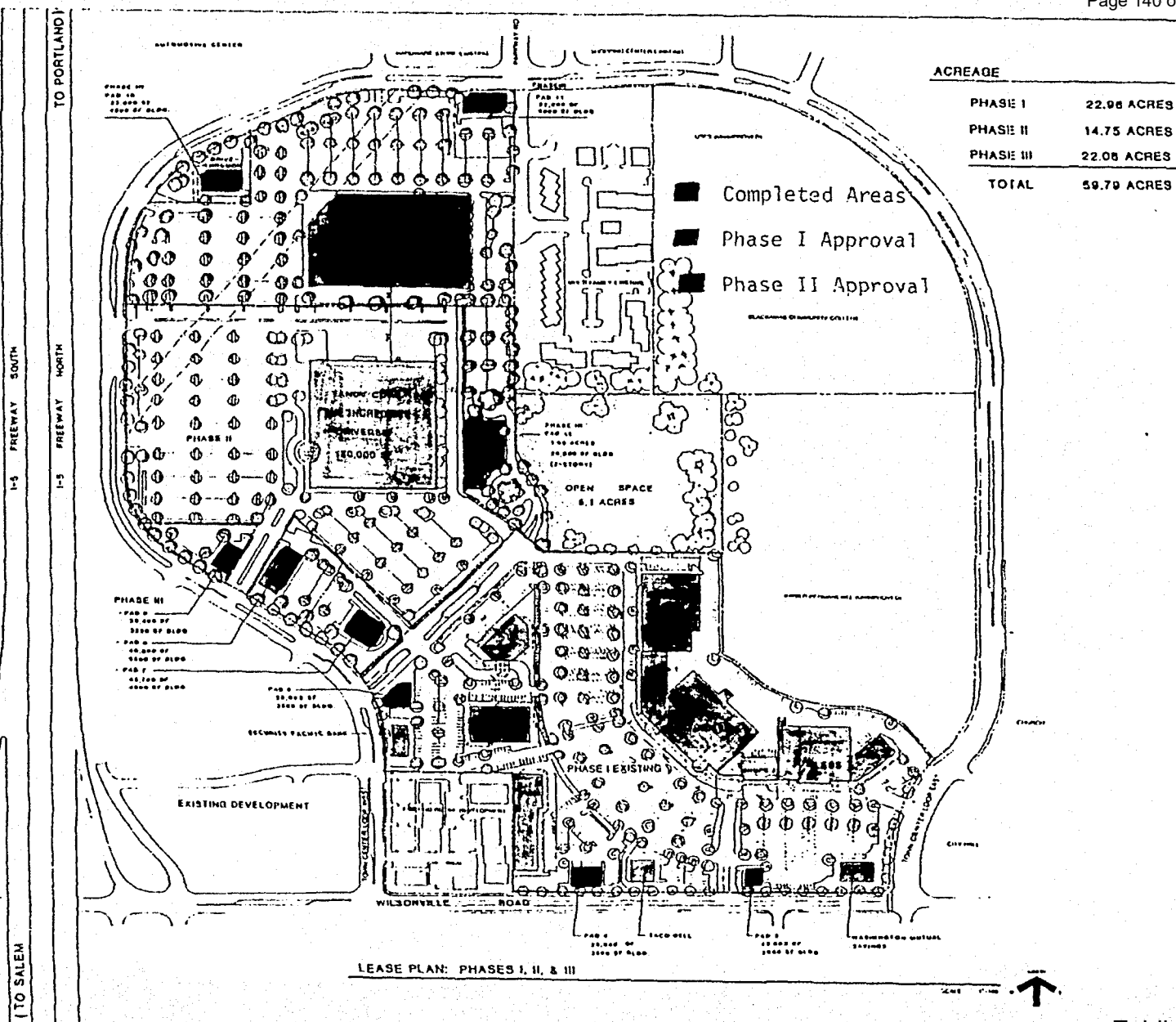
JKS Architects PC
www.jksarchitects.com

Wilsonville Town Centre

P1

270

Item 9.

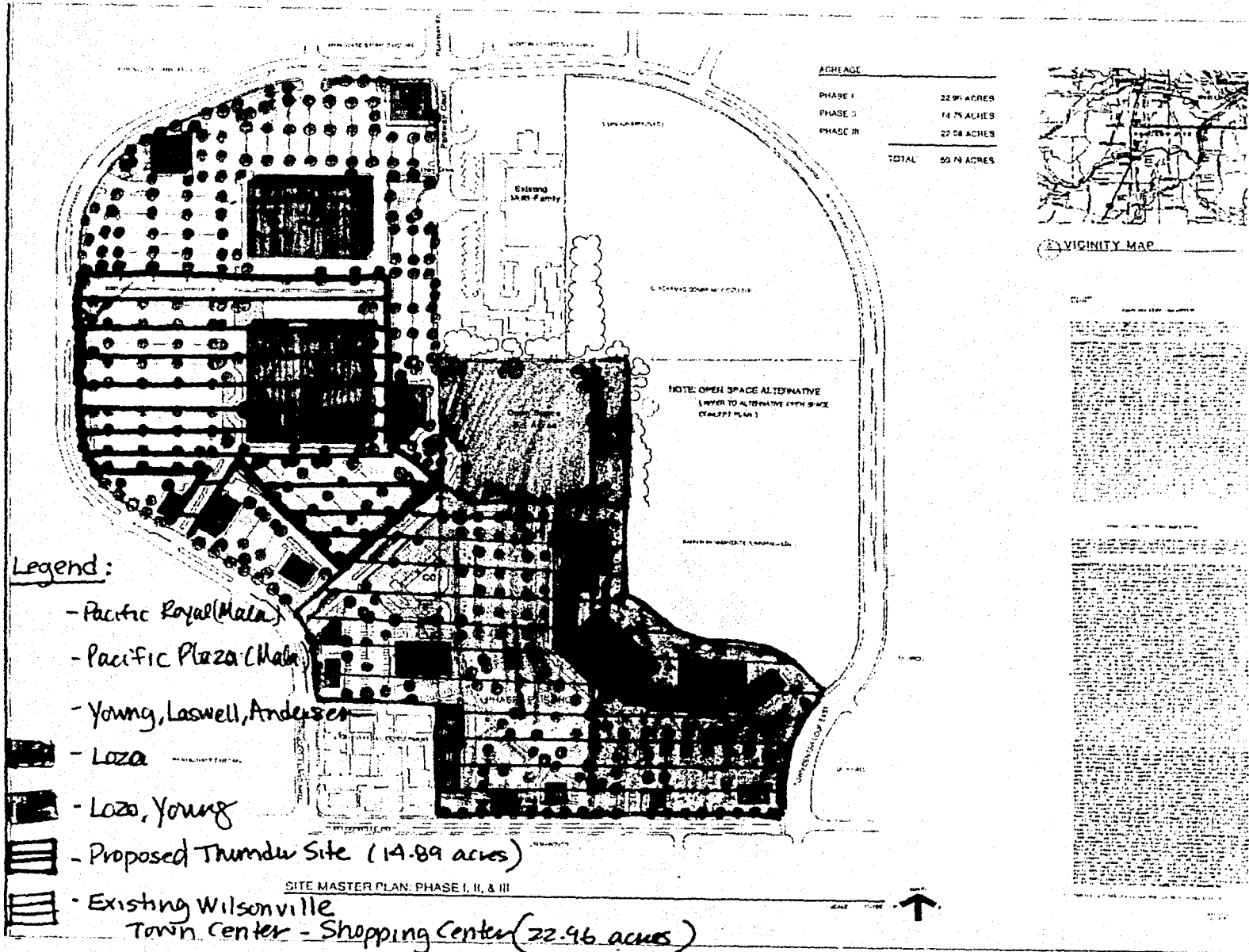


JKS Architects PC
1431 W. Taylor Street, Suite 200 • Wilsonville, Oregon 97157
503.261.1411 • Fax: 503.261.1412

WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON

LEASE PLAN: PHASES I, II, & III





JKS Architects PC
22 SW 3RD AVE, SUITE 200, WILSONVILLE, OREGON 97150
503.261.1111

WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON

DEFECTS IN

ORIGINAL

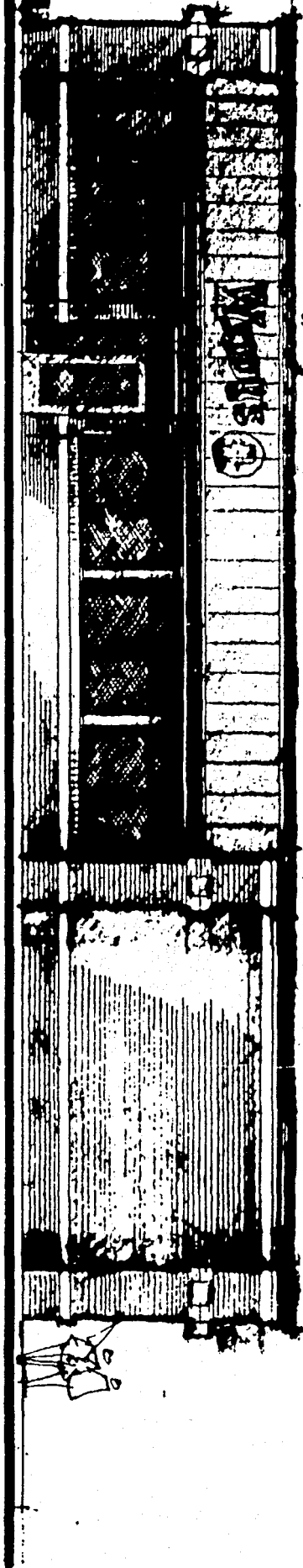
DOCUMENT

Item 9.

275

EXHIBIT F

NORTH ELEVATION
1/8" = 1'-0"



SOUTH ELEVATION
1/8" = 1'-0"

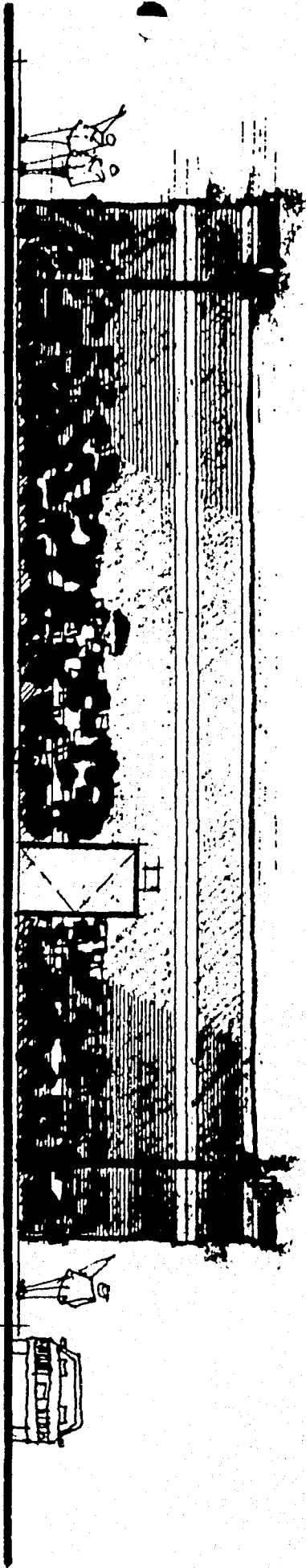


DRAWING NO: 1	PROJECT NAME: Wendy's Restaurant	DATE: 2/5/93
	DRAWING TITLE: Elevations	REVISION:



1/8" = 1'-0"

WEST ELEVATION



1/8" = 1'-0"

EAST ELEVATION



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



CITY OF WILSONVILLE

PLANNING DEPARTMENT SITE DEVELOPMENT APPLICATION AND

Item 9.

3445 S.W. Elbow Road
P.O. Box 220 Wilsonville, OR 97150-0220
503-662-3445

File No. 91 PC 43 1/4 Sec.
Final action on application or other change is required within 120 days in accordance with provisions of ORS 227.175
A pre-application conference normally is required prior to submission of an application. Please contact the Planning Department at (503) 662-3445 for an appointment.

Pie-App. No. Day Yr

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 Kimberly Beach, Vice President Capital Realty Corp

Property Description: 101 S.W. Main Suite 1500, Portland, OR Map 13 & 14-D Tax (city) 200,201, 101
102, 300

Request: STAGE I MASTER PLAN REVISION
STAGE II PHASE II WILSONVILLE Town Center
SITE PLAN - MOBILE CONDITION #8 OF 90PC15

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 12/19/91

Staff Signature Brian Edwards

Class I Class II Class III

- | | | |
|---|---|---|
| <input type="checkbox"/> PLAN AMENDMENT | <input type="checkbox"/> MAJOR PARTITION | <input type="checkbox"/> DESIGN REVIEW |
| <input type="checkbox"/> ZONE CHANGE | <input type="checkbox"/> MINOR PARTITION | <input type="checkbox"/> TEXT AMENDMENT |
| <input type="checkbox"/> PRELIMINARY PLAT | <input type="checkbox"/> CONDITIONAL USE | <input type="checkbox"/> SIGN REVIEW |
| <input type="checkbox"/> FINAL PLAT | <input type="checkbox"/> VARIANCE | <input type="checkbox"/> TEMPORARY USE |
| <input checked="" type="checkbox"/> PLANNED DEVELOPMENT | <input checked="" type="checkbox"/> OTHER RECONSIDERED CONDITION #8 OF 90PC15 | |

SITE FINDINGS

- Zoning: PC & TOWN CENTERS, Building Area _____
- Area of lot: SEE FILE
- Building or Sign Height: TOWN CENTERS LOOK WEST
(Max) _____
- Zoning Code Minimum Set-backs:
Front _____
Side _____
Rear _____
- Access to Property _____
- Other: _____

Approved Denied Approved with Conditions (See attached)

Conditions of Development:

Approval of this Development Permit is submitted on the basis of information submitted by the applicant or called for above. Any change of plans or incorrect information which may result in revocation of permit. This decision may be appealed in accordance with the provisions of the Wilsonville Code and ORS 227.180.

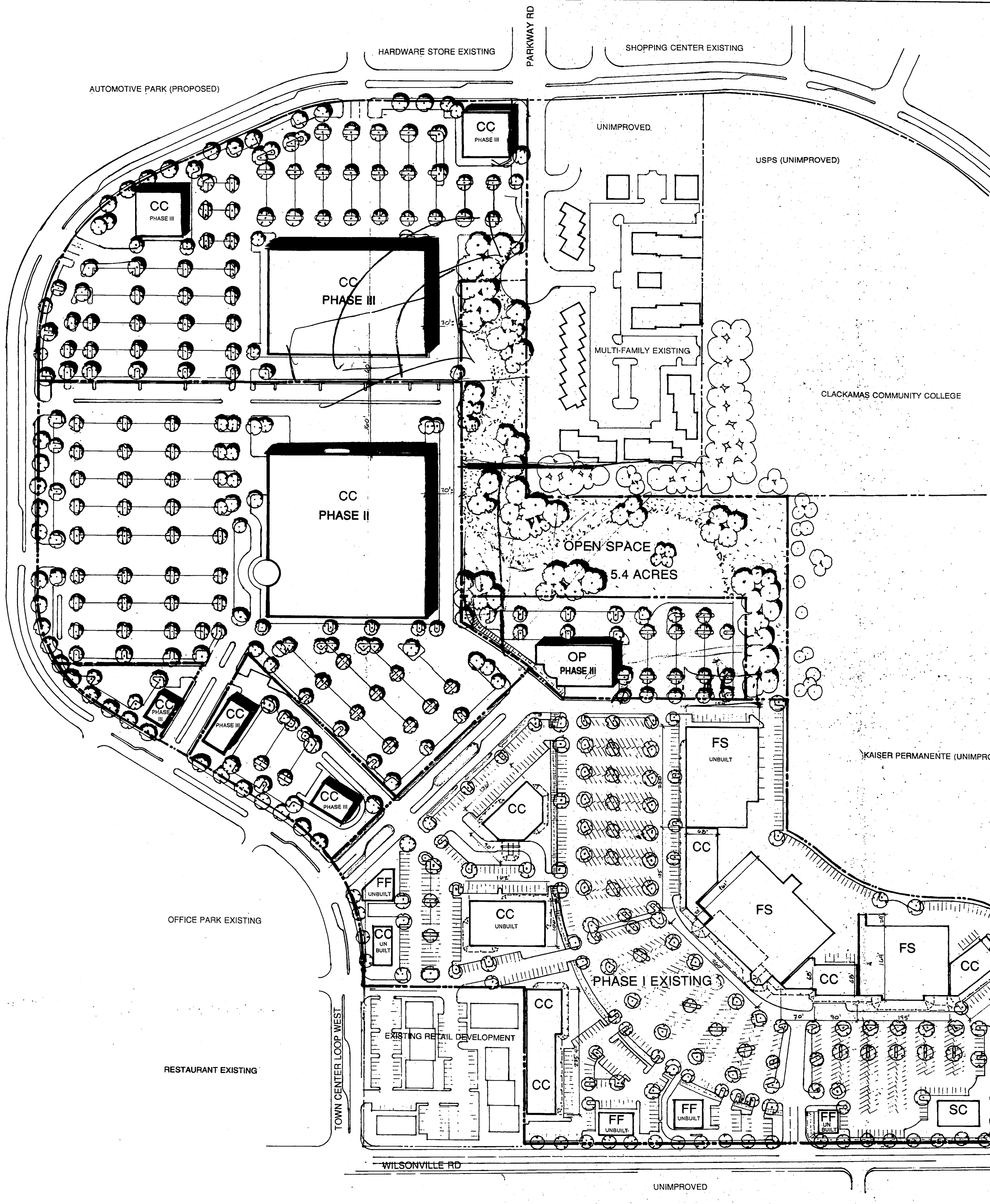
Fee Amount Paid \$1315.00 Check No. SEE FILE Cash 1205 Fee \$500.00 Fee - I
1206 Fee \$825.00
1207 Fee \$250.00 - cash

Permit Approval: Planner's Signature _____

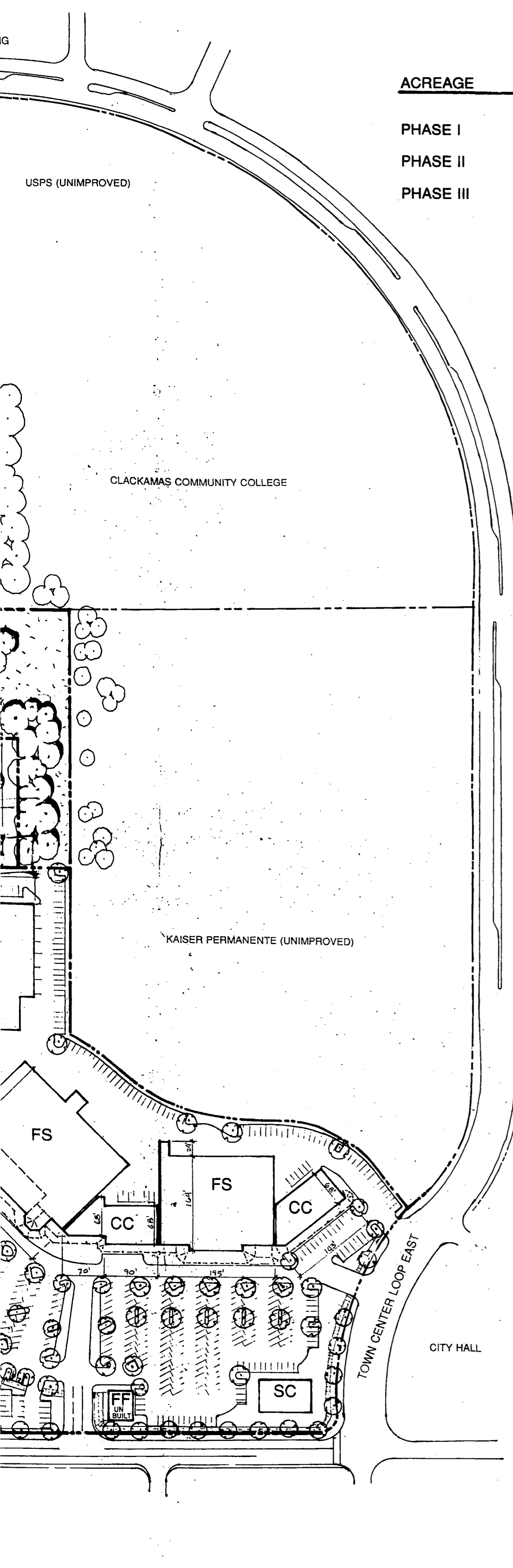
City Council or Planning Commission Approval Yes No

Order: Resolution _____

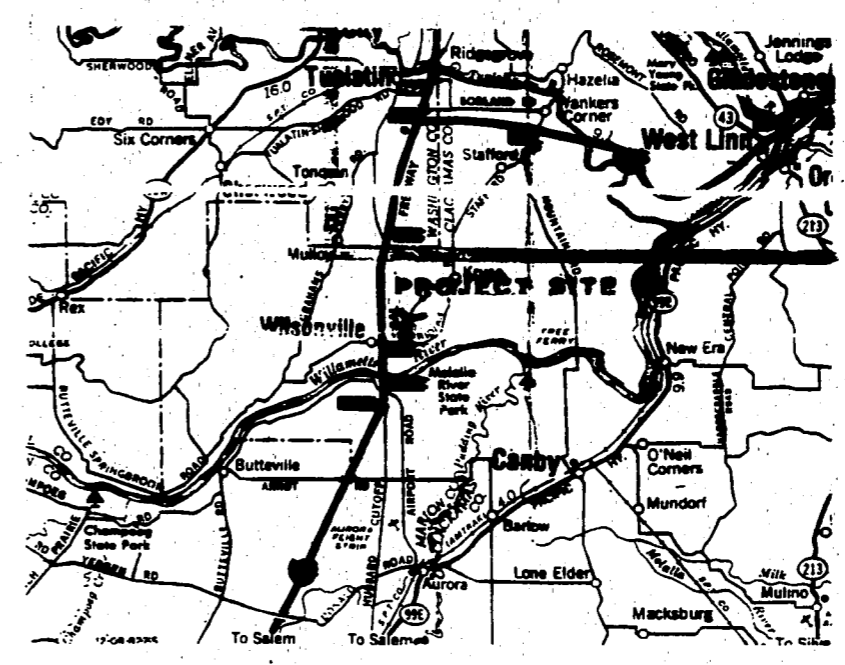
279



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
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°03'21" East along the section line between Sections 13 and 14 a distance of 44.00 feet to the **POINT OF BEGINNING**; thence continuing North 02°03'00" East along said section line a distance of 339.50 feet; thence South 89°55'30" 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 46.55 feet to a point of curvature; thence 247.91 feet along the arc of a 250.34 foot radius curve to the left through a central angle of 37°15'11" and whose chord bears North 15°39'27" West a distance of 243.55 feet to a point on a curve; thence North 45°03'00" East a distance of 554.11 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 285.58 feet to the intersection with a non-tangent curve; thence 33.82 feet along the arc of a 317.35 foot radius curve to the right through a central angle of 16°59'21" and whose chord bears South 55°30'50" East a distance of 93.45 feet to a point of reverse curvature; thence 348.26 feet along the arc of a 338.67 foot radius curve to the left through a central angle of 42°03'30" and whose chord bears South 89°02'49" East a distance of 51.65 feet to a point of curvature; thence 74.68 feet along the arc of a 200.00 foot radius curve to the right through a central angle of 5°27'10" and whose chord bears South 89°01'32" East a distance of 69.15 feet to a point of tangency; thence South 29°00'13" East a distance of 97.50 feet to a point on a non-tangent curve; thence 325.11 feet along the arc of a 325.11 foot radius curve to the left through a central angle of 18°14'18" and whose chord bears South 29°40'08" West a distance of 331.74 feet to a point of tangency; thence South 00°03'00" West a distance of 88.17 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 89°16'20" and whose chord bears South 89°42'00" West a distance of 48.17 feet to a point of tangency; thence South 22°22'22" West a distance of 375.41 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 4,077.07 feet to the most westerly northwest corner of Parcel 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 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 350.84 foot radius curve to the left the radial center of which bears South 52°40'44" West) through a central angle of 20°25'22" an arc distance of 135.64 feet (the long chord bears North 47°11'56" West 134.32 feet) to a point of tangency; thence North 57°44'38" West 463.50 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°27'16" 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 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 as deeded to the City of Wilsonville in deed recorded November 12, 1986 in recorder's fee 86-44959 North 38°37'13" East 215.39 feet to the northerly line of said tract per fee 86-44957; 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°58'19" 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 arc curvilinearly and curvilinearly along the right-of-way line of said Parkway Avenue the following courses and distances: North 00°02'22" West 230.00 feet to a point of curvature; thence tracing the arc of a 230.00 foot radius curve to the right through a central angle of 84°13'44" an arc distance of 458.91 feet (the long chord bears North 32°24'30" East 444.25 feet) to a point of tangency; thence North 89°57'00" East 285.00 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 150.41 feet (the long chord bears North 70°22'24" East 178.36 feet) to a point of tangency; thence North 89°43'22" 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 15.46 feet (the long chord bears South 23°27'42" West 15.90 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 1 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°28'52" East 849.20 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.

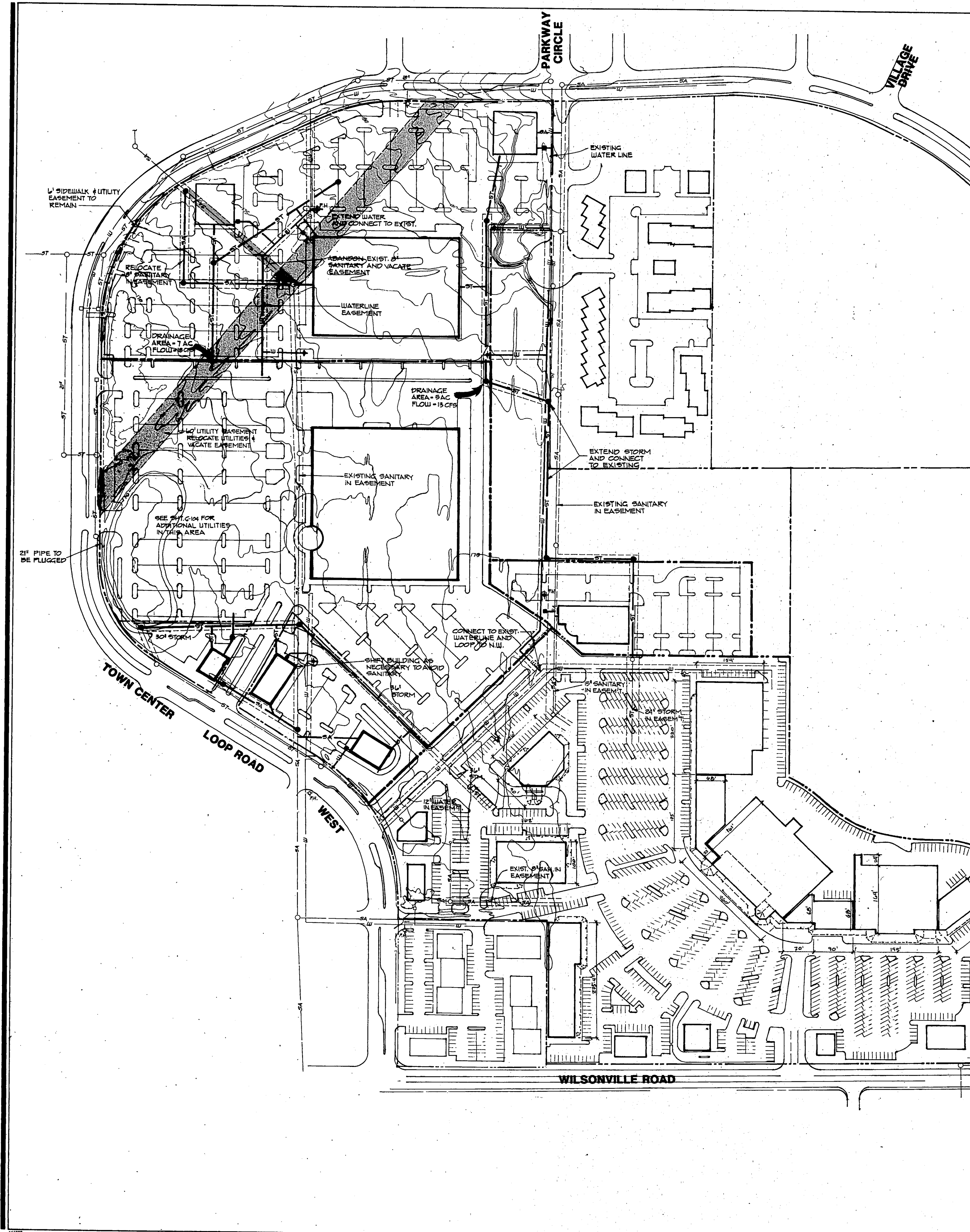
467-0301
10/16/91

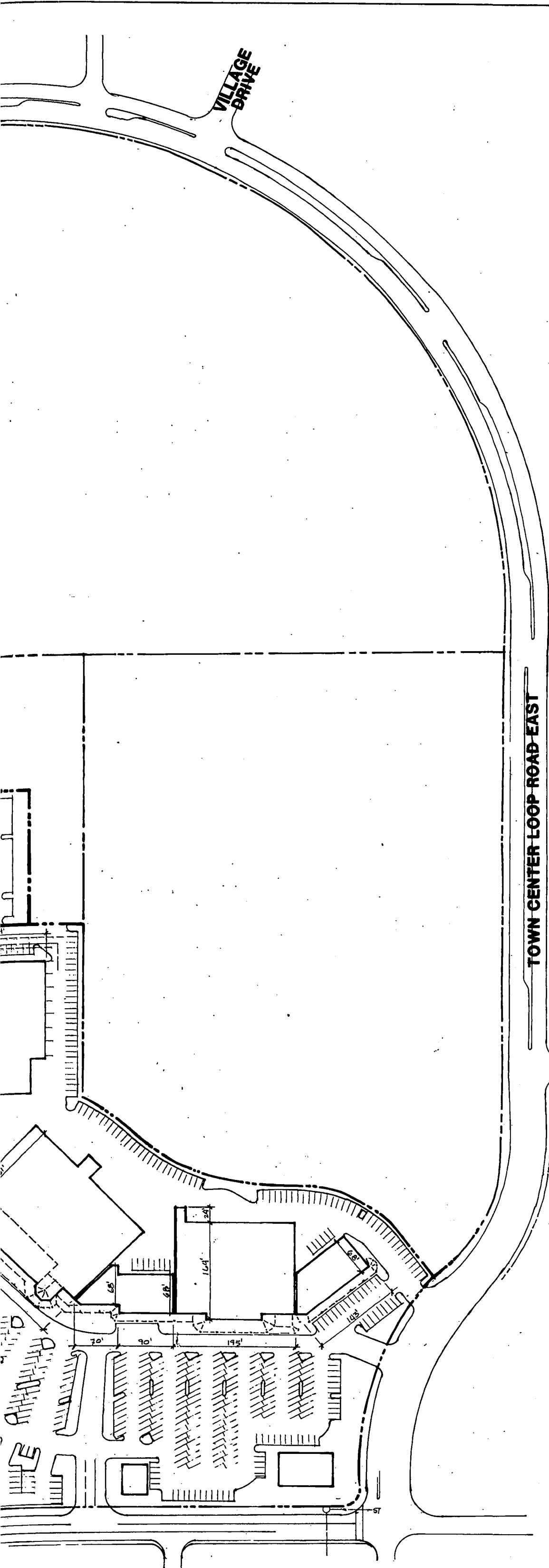
JKS Architects PC
1620 S.W. Taylor Street • Suite 200 • Portland, Oregon 97205
503-227-5616 • FAX 503-227-3590

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



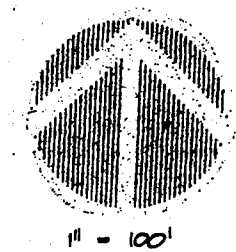


COURTSIDE DRIVE

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

LEGEND

EXISTING		PROPOSED	
— SA —	SANITARY SEWER	— SA —	SANITARY SEWER
— ST —	STORM SEWER	— ST —	STORM SEWER
— W —	WATER LINE	— W —	WATER LINE
- - - -	EASEMENT LINE	- - - -	EASEMENT LINE
○	MANHOLE	●	MANHOLE
□	CATCH BASIN	●	CATCH BASIN
⊙	FIRE HYDRANT	⊙	FIRE HYDRANT
▨	EASEMENT TO BE VACATED		



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503-227-5616 • FAX 503-227-3590

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Portland, Oregon 97201
PAC (503) 224-4407
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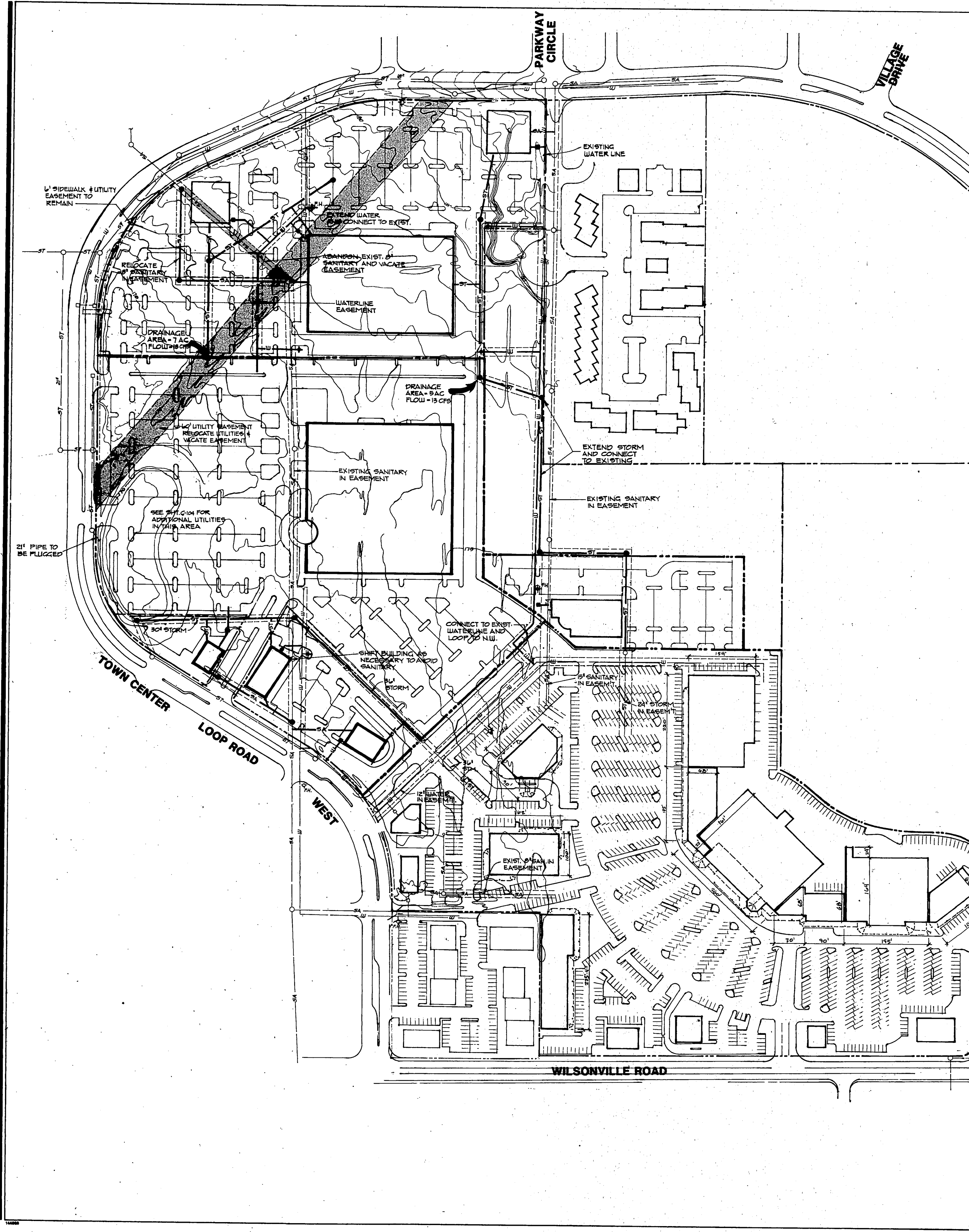
WILSONVILLE TOWN CENTER
Wilsonville, Oregon

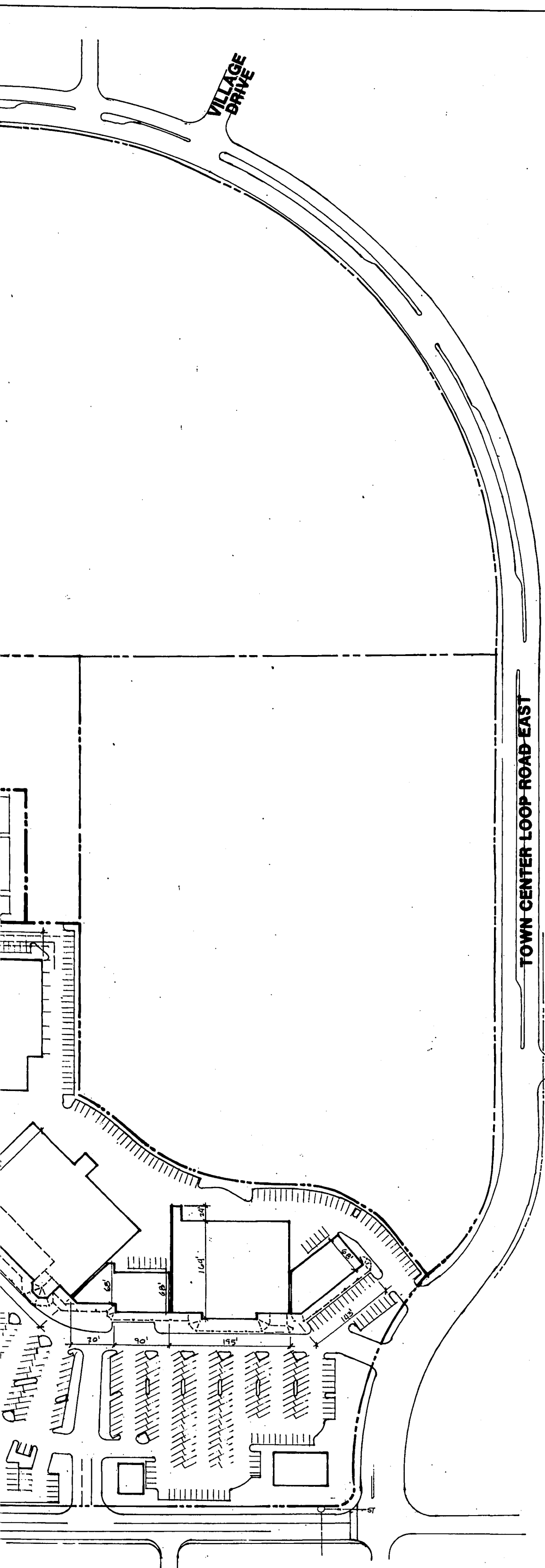
Revisions

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Drawn By _____ Checked By _____
Job No. 4-467-0301 Date 10-18-11
MASTER UTILITIES PLAN
Sheet Title

Sheet No.
2
of





COURTSIDE DRIVE

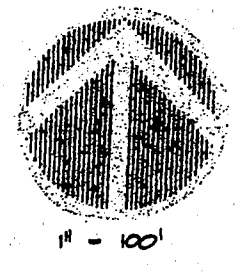
TOWN CENTER LOOP ROAD EAST

VILLAGE DRIVE

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 *[Signature]*
[Signature]

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WILSONVILLE TOWN CENTER
Wilsonville, Oregon

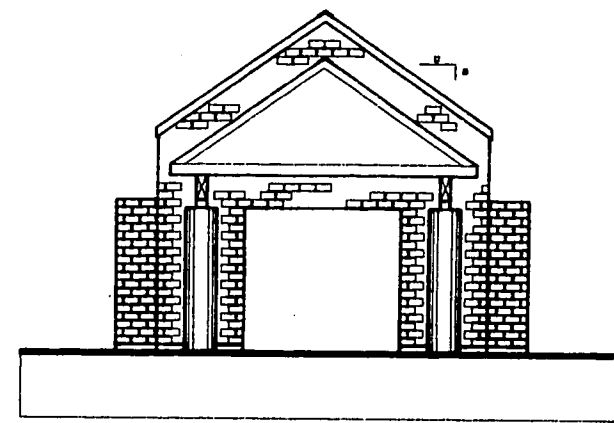
Revisions

Drawn By _____ Checked By _____
Job No. 4-467-0301 Date 10-18-91
MASTER UTILITIES PLAN
Sheet Title

Sheet No.
2

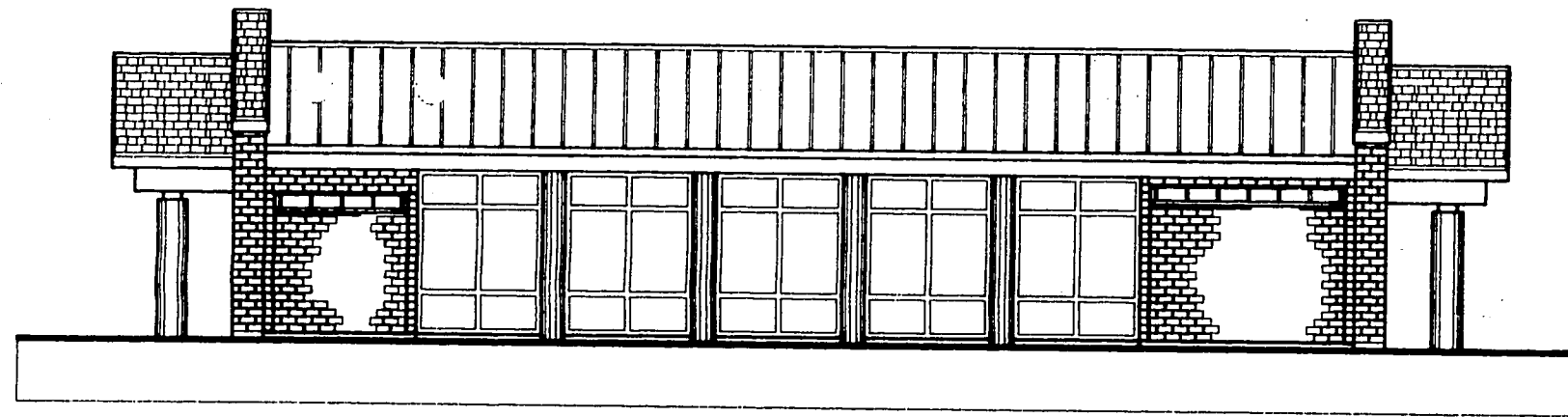
**WILSONVILLE TOWN CENTER
PROPOSED CAR WASH**

WILSONVILLE, OREGON



END ELEVATION

1/8" = 1'-0"

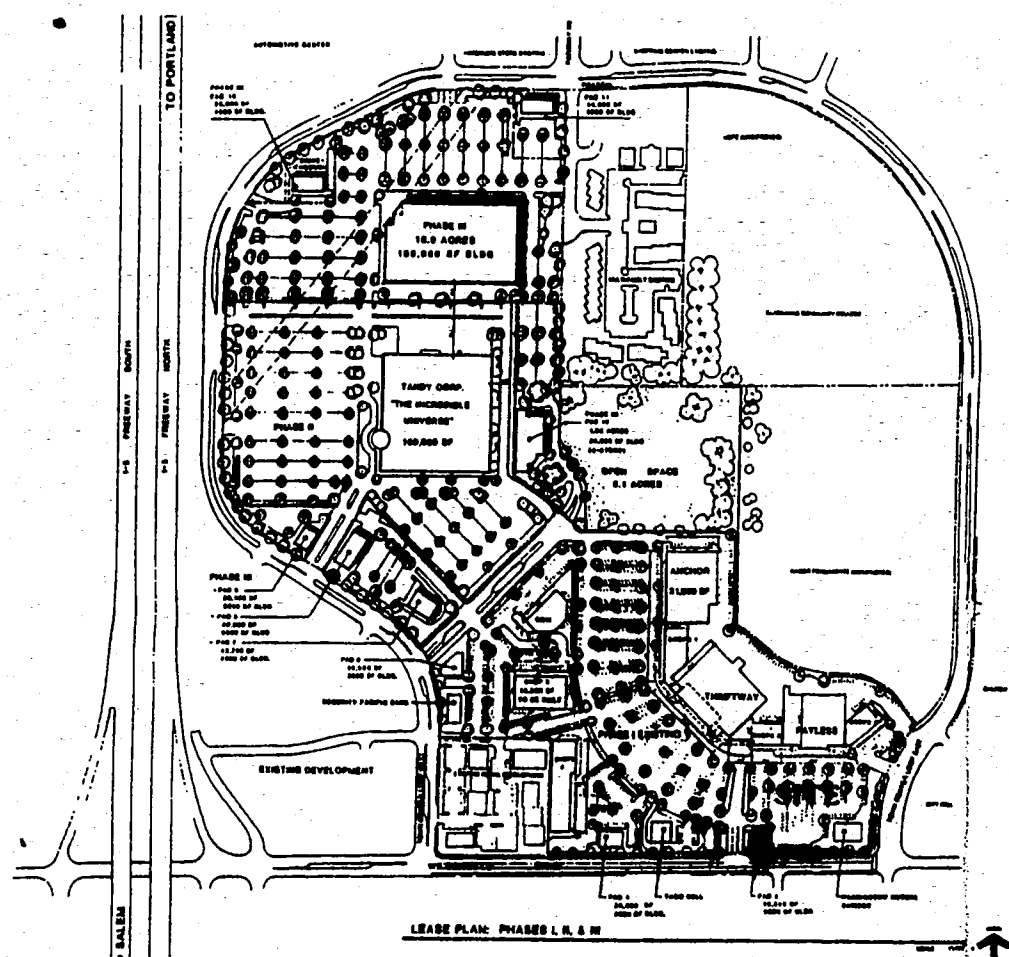


FRONT ELEVATION

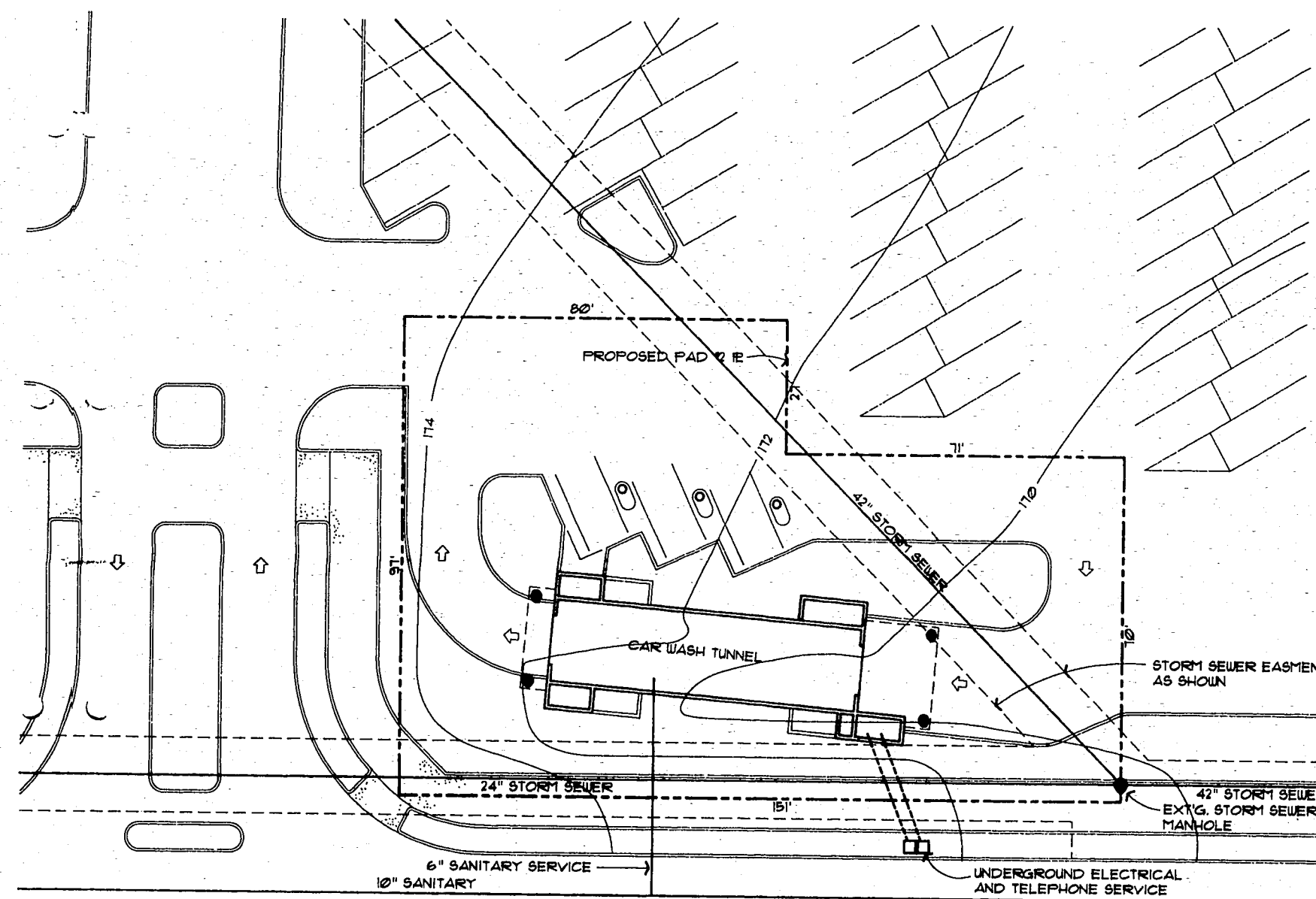
1/8" = 1'-0"

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%



VICINITY MAP



WILSONVILLE RD.



PRELIMINARY SITE PLAN

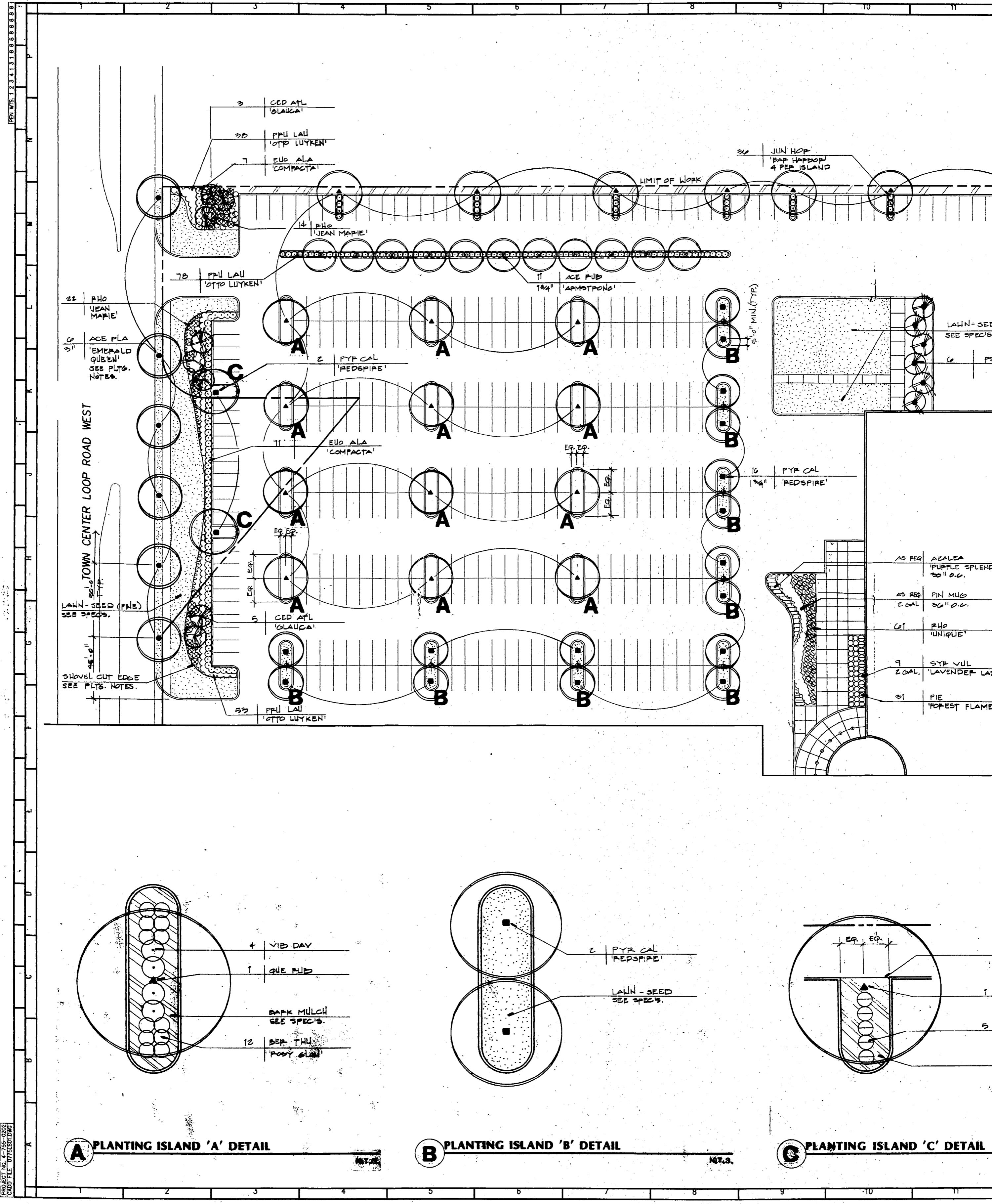
1" = 20'

CLIENT:
DENNIS THOMPSON

REVISIONS:

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

PER WS. 1, 2, 3, 4, 13, 18, 88, 88, 88, 88



PROJECT NO. 4-755-0329
CADD FILE 07/25/2017

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.

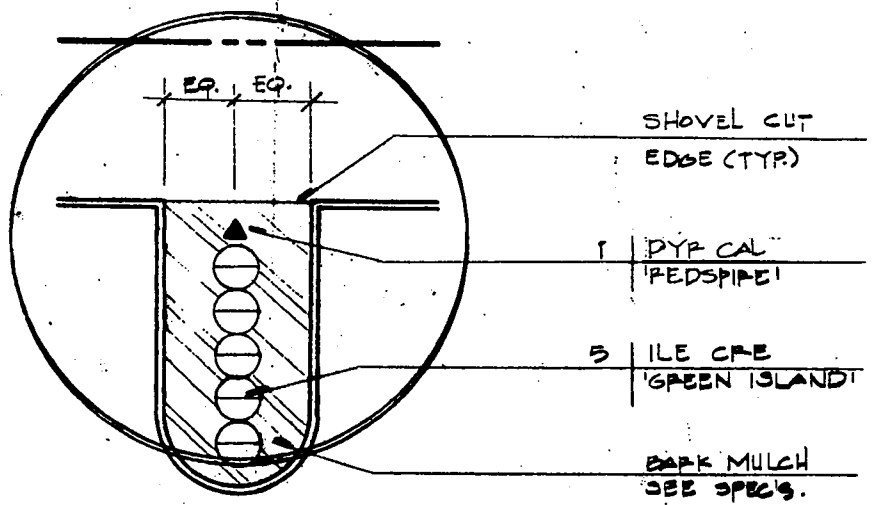
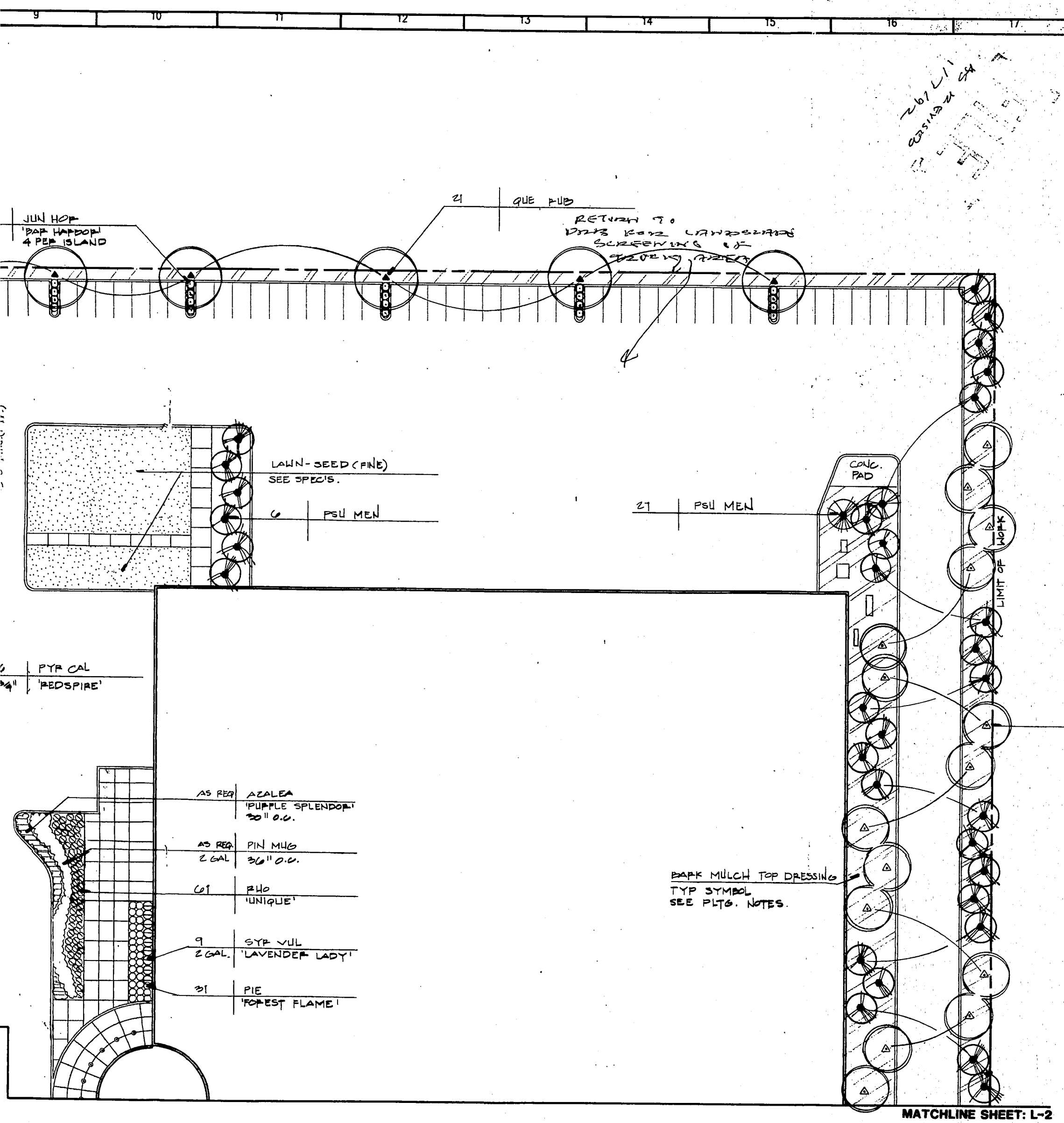
ALL SHRUB AND GROUNDCOVER PLANTING AREAS TO RECEIVE MINIMUM 2" DEPTH OF BARK MULCH. SEE SPECIFICATIONS 02950.

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.

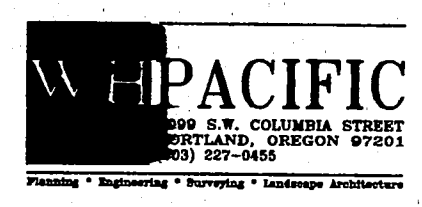
CONTRACTOR SHALL SUPPLY AND INSTALL ANNUAL COLOR, 4" POT SIZE AT 10" O.C. COLOR MATERIALS TO BE SELECTED BY CONTRACTOR AND APPROVED BY OWNER'S REPRESENTATIVE PRIOR TO PLANTING. ANNUAL COLOR MATERIAL SHALL BE IN SEASON (FULL BLOOM) AT TIME OF INSTALLATION.



PLANTING ISLAND 'C' DETAIL

NOT FOR CONSTRUCTION

PRINTED
JAN 06 1992
W & H PACIFIC



No.	Revisions/Submissions	Date

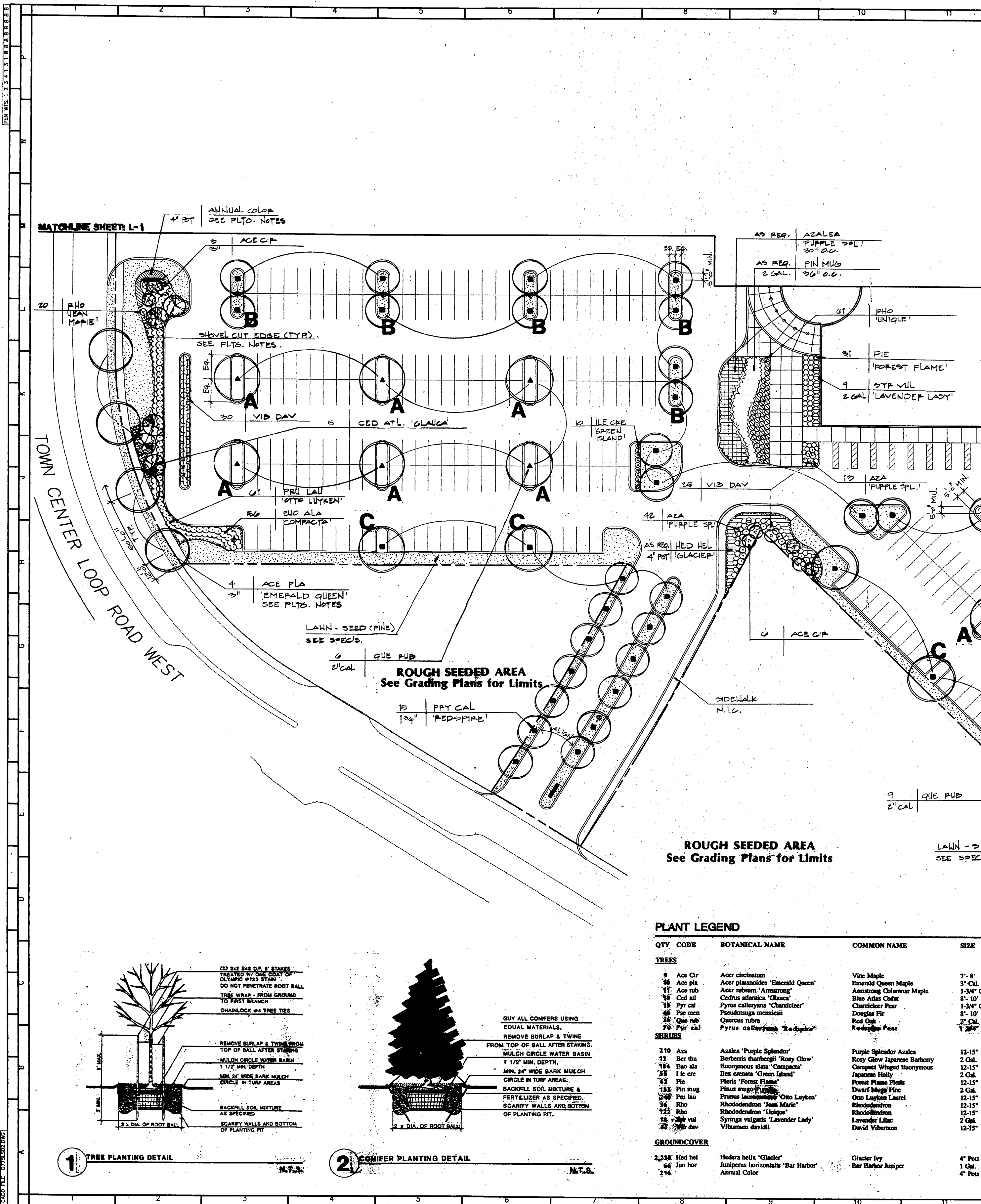
DesignForum ARCHITECTS

3484 For Hills Avenue, Dayton, Ohio 45428 Telephone: (513) 288-4400

Project Title: **PROJECT THUNDER**
WILSONVILLE, OREGON

Drawing Title: **LANDSCAPE PLAN**

Seal REGISTERED 2011 Matthew P. Simpson 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
© 1991 DESIGN FORUM ARCHITECTS		

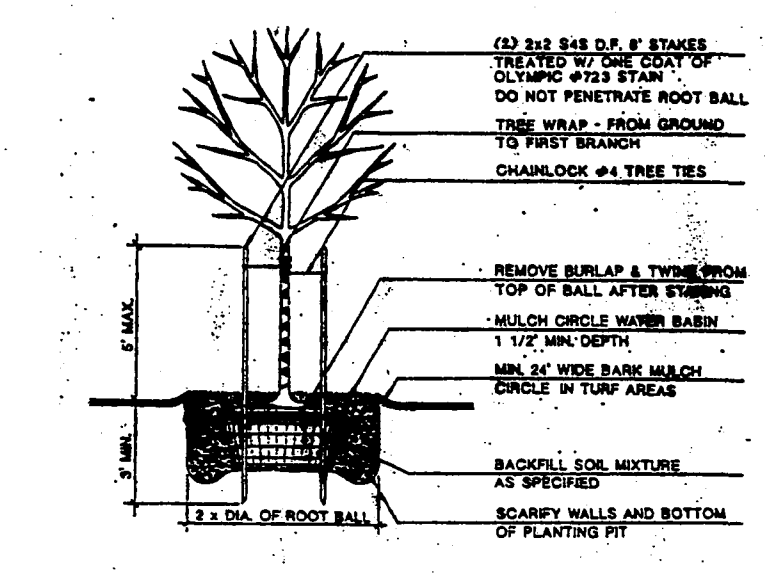


MATCHLINE SHEET: L-1
4" POT ANNUAL COLOR SEE PLTS. NOTES

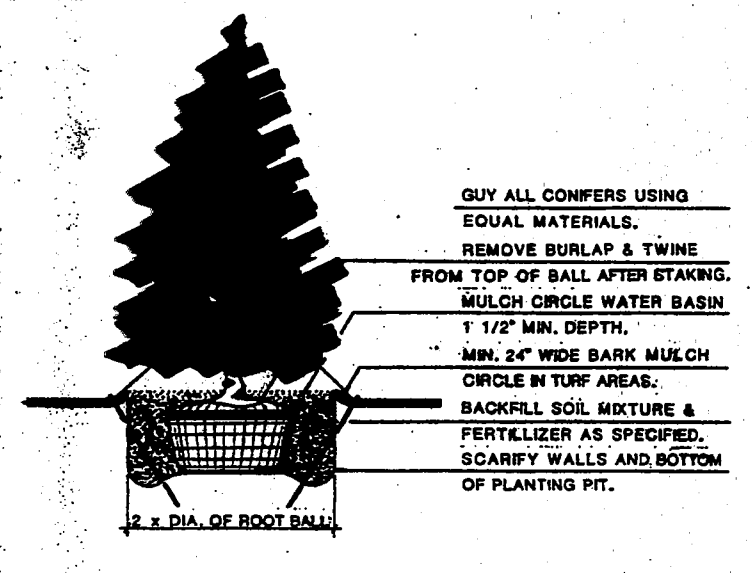
AS REQ. AZALEA 'PURPLE SPL.' 30" O.C.
AS REQ. PIN MUG 2 GAL. 30" O.C.
RHO 'UNIQUE'
PIE 'FOREST FLAME'
9 STY VIL 2 GAL 'LAVENDEE LADY'

ROUGH SEEDED AREA
See Grading Plans for Limits

ROUGH SEEDED AREA
See Grading Plans for Limits



1 TREE PLANTING DETAIL N.T.S.

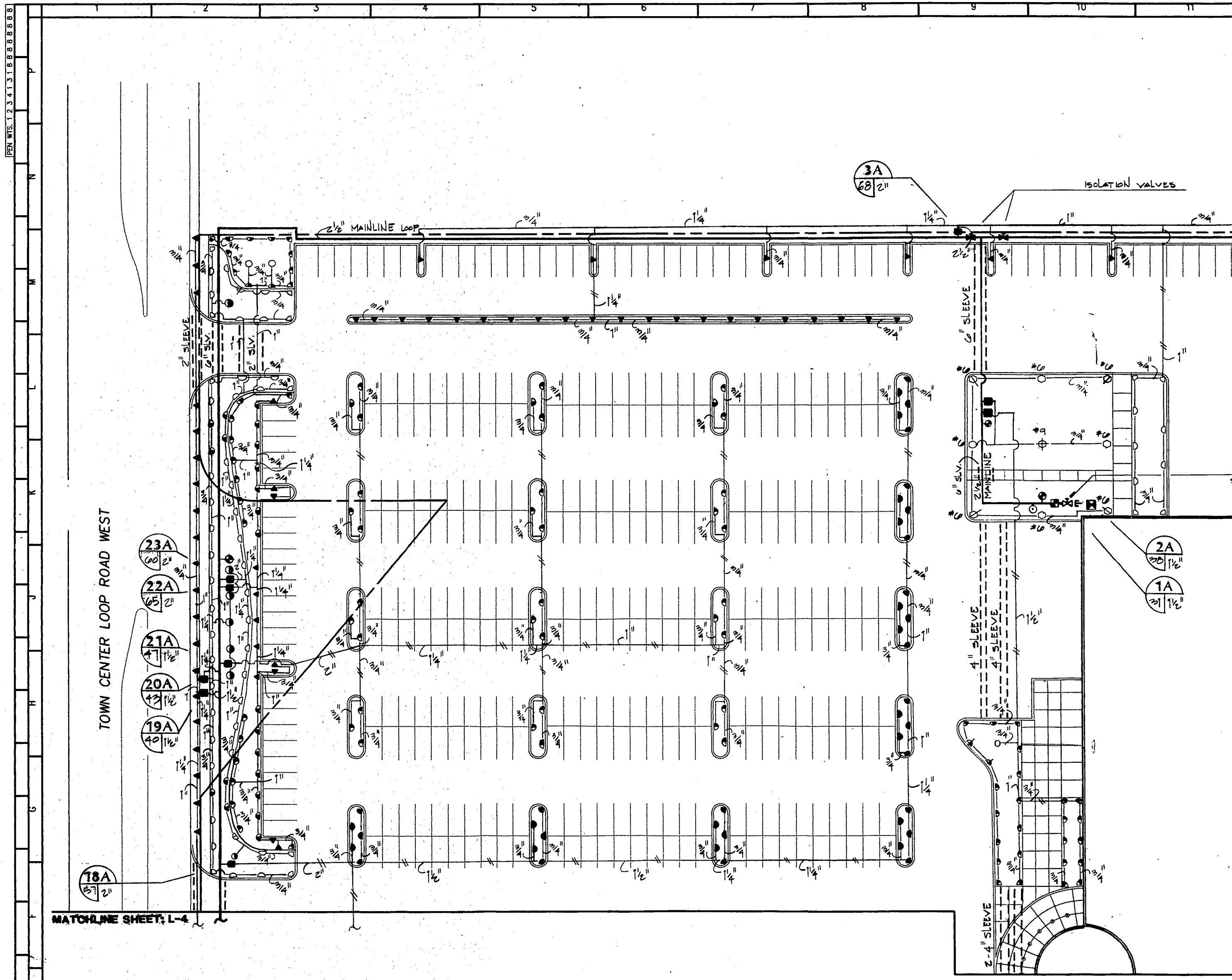


2 CONIFER PLANTING DETAIL N.T.S.

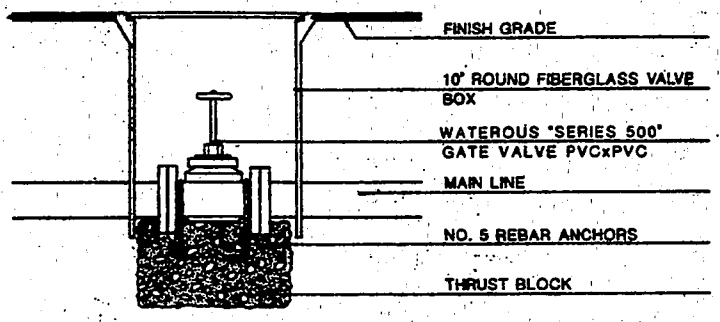
PLANT LEGEND

QTY	CODE	BOTANICAL NAME	COMMON NAME	SIZE
TREES				
9	Ace Cir	Acer circinatum	Vine Maple	7'-8'
11	Ace pla	Acer platanoides 'Emerald Queen'	Emerald Queen Maple	3" Cal.
11	Ace rub	Acer rubrum 'Armstrong'	Armstrong Columnar Maple	1-3/4" Cal.
18	Ced atl	Cedrus atlantica 'Glaucia'	Blue Atlas Cedar	8'-10'
18	Pyr cal	Pyrus calleryana 'Chanticleer'	Chanticleer Pear	1-3/4" Cal.
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" Cal.
SHRUBS				
210	Aza	Azalea 'Purple Splendor'	Purple Splendor Azalea	12-15"
12	Ber thu	Berberis thunbergii 'Rosy Glow'	Rosy Glow Japanese Barberry	2 Gal.
184	Euo ala	Euonymus alata 'Compacta'	Compact Winged Euonymus	12-15"
35	I le cre	Ilex crenata 'Green Island'	Japanese Holly	2 Gal.
63	Pie	Pieris 'Forest Flame'	Forest Flame Pieris	12-15"
133	Pin mug	Pinus mugo	Dwarf Mugo Pine	2 Gal.
140	Pru lau	Prunus laurocerasus 'Otto Luyken'	Otto Luyken Laurel	12-15"
36	Rho	Rhododendron 'Ines Marie'	Rhododendron	12-15"
112	Rho	Rhododendron 'Unique'	Rhododendron	12-15"
18	Sty vil	Syringa vulgaris 'Lavender Lady'	Lavender Lilac	2 Gal.
33	Vib dav	Viburnum davidii	David Viburnum	12-15"
GROUND COVER				
2,230	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

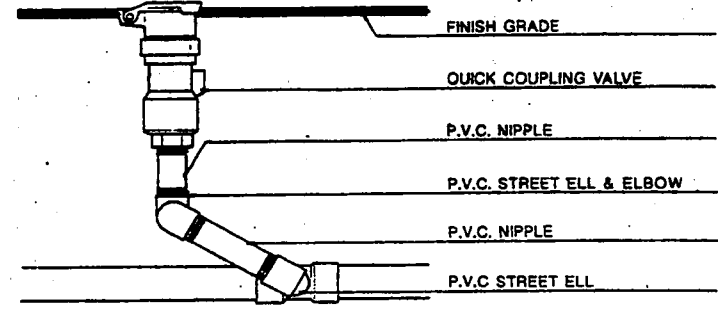
PROJECT NO. 4-755-0202
CADD FILE 07PES02D.MXD



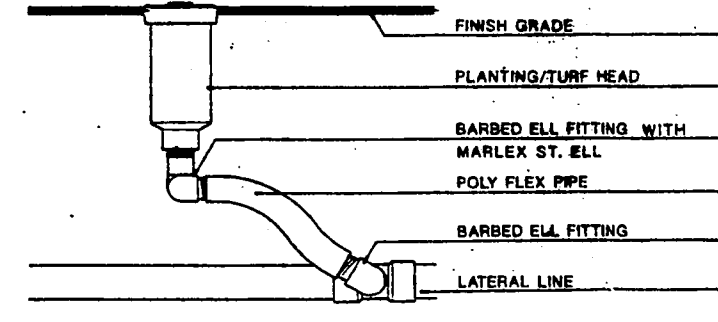
MATCHLINE SHEET: L-4



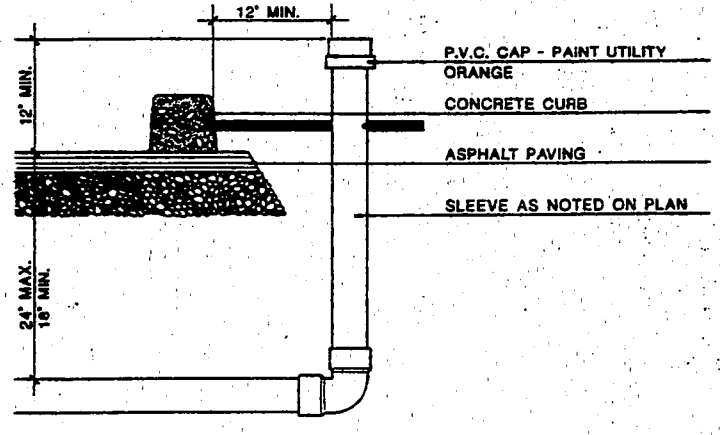
MAINLINE GATE VALVE



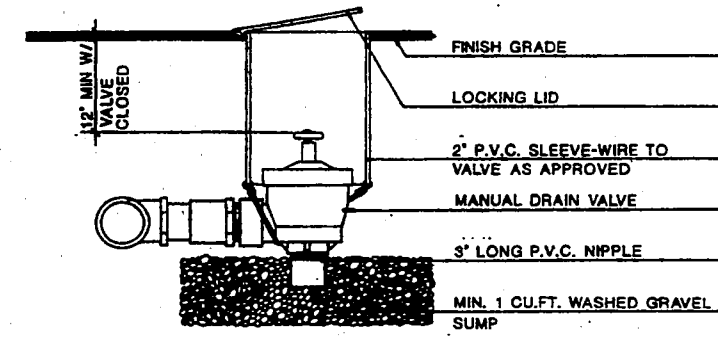
QUICK COUPLING VALVE DETAIL



POLY FLEX RISER DETAIL



SLEEVING DETAIL

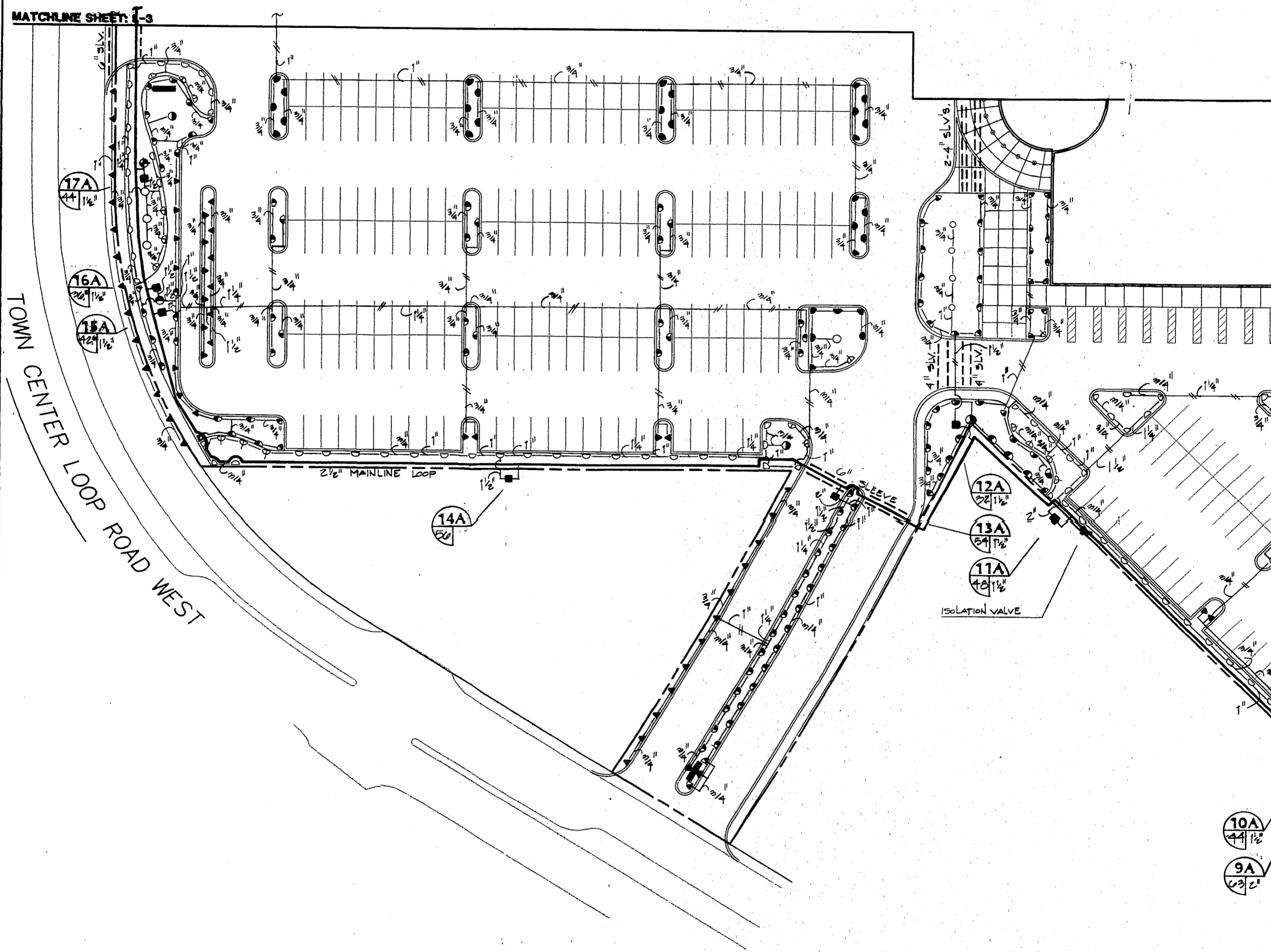


MANUAL DRAIN VALVE DETAIL

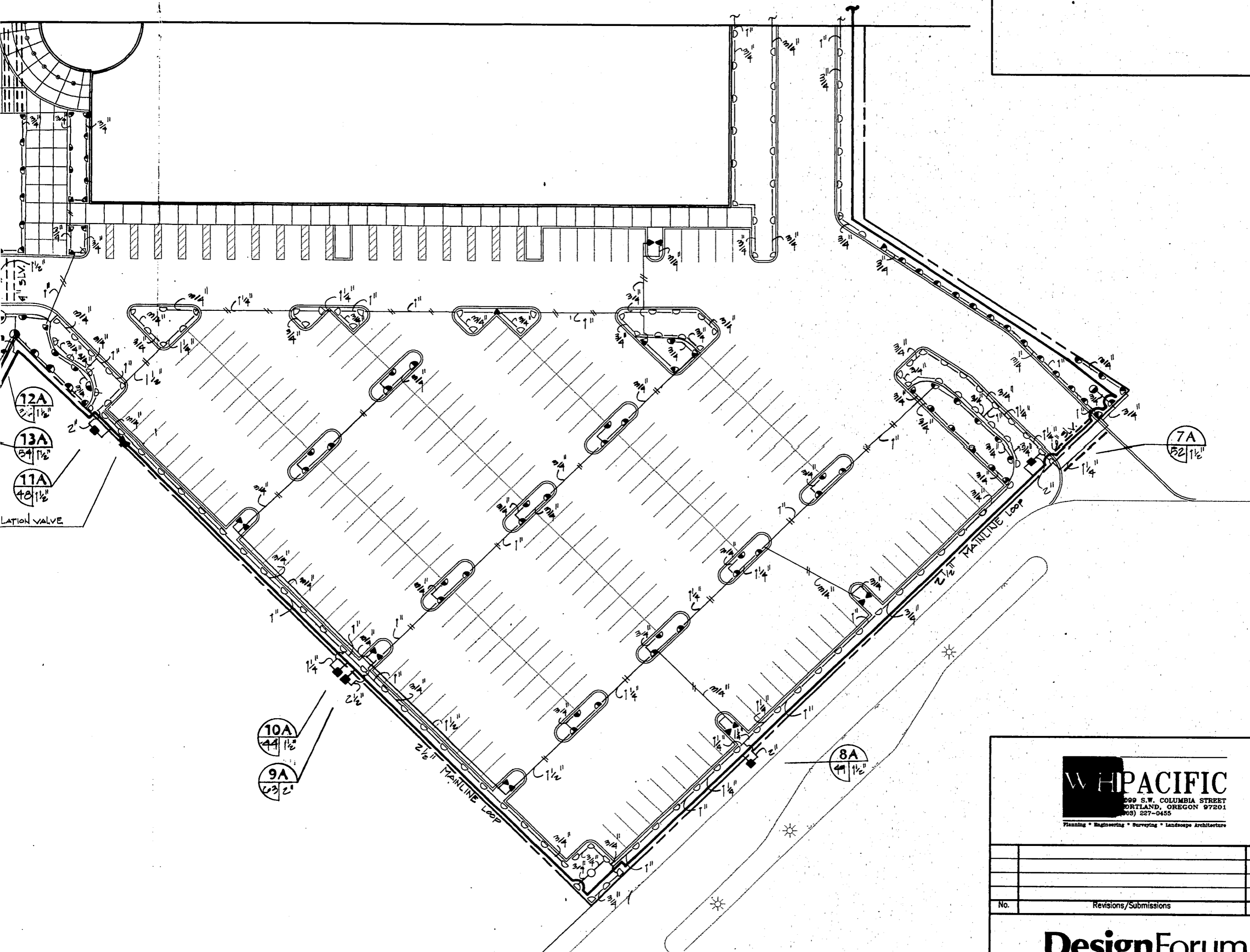
PROJECT NO. 7-15E-0002
DATE: 07/25/2005

PEN WS. 1 2 3 4 1 3 1 8 8 8 8 8 8 8 8 8

PROJECT NO. 4-755-0202
CAD FILE: 07150220WS



SHEET NOTES



WHPACIFIC
269 S.W. COLUMBIA STREET
PORTLAND, OREGON 97201
503 237-0405
Planning • Engineering • Surveying • Landscape Architecture

No.	Revisions/Submissions	Date

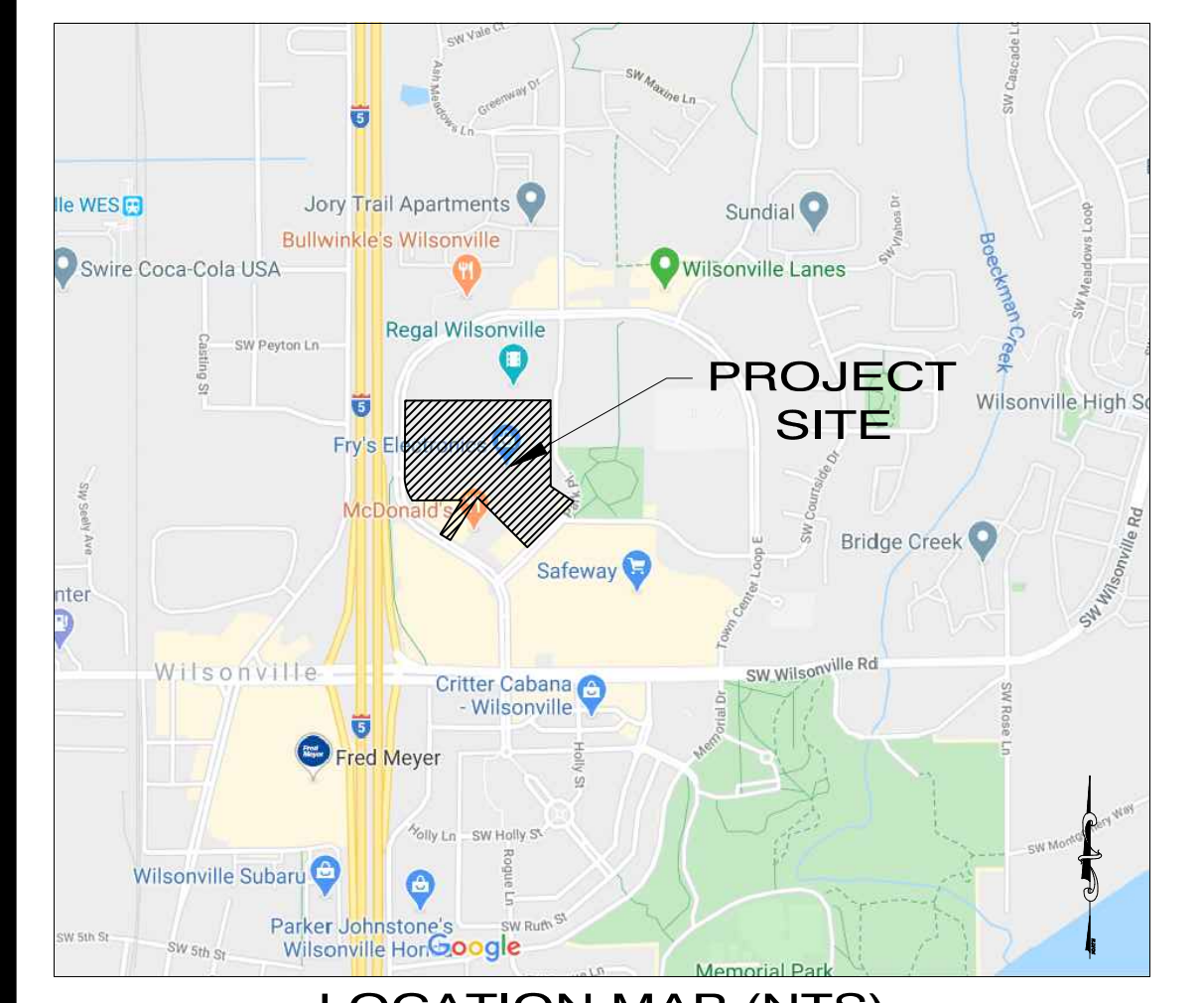
DesignForum
ARCHITECTS
3484 For Hills Avenue, Dayton, Ohio 45429 Telephone: (513) 298-4400

Project Title: **PROJECT THUNDER**
WILSONVILLE, OREGON

Drawing Title: **IRRIGATION PLAN**

Seal REGISTERED 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
	Date 12-27-91	© 1991 DESIGN FORUM ARCHITECTS





SITE AREA

THE HOME DEPOT PARCEL	15.01 AC	653,836 SF
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BUILDING AREA

THE HOME DEPOT	124,215 SF
MEZZANINE	0 SF
SUBTOTAL	124,215 SF
TOTAL BUILDING AREA	124,215 SF

PARKING REQUIRED

THE HOME DEPOT	4.1 / 1,000 SF	509 STALLS
TOTAL PARKING REQUIRED		509 STALLS

PARKING PROVIDED

FRONT FIELD	553 STALLS
SIDE FIELD / REAR	282 STALLS
TOTAL PARKING PROVIDED	839 STALLS

INCLUDED IN PARKING PROVIDED

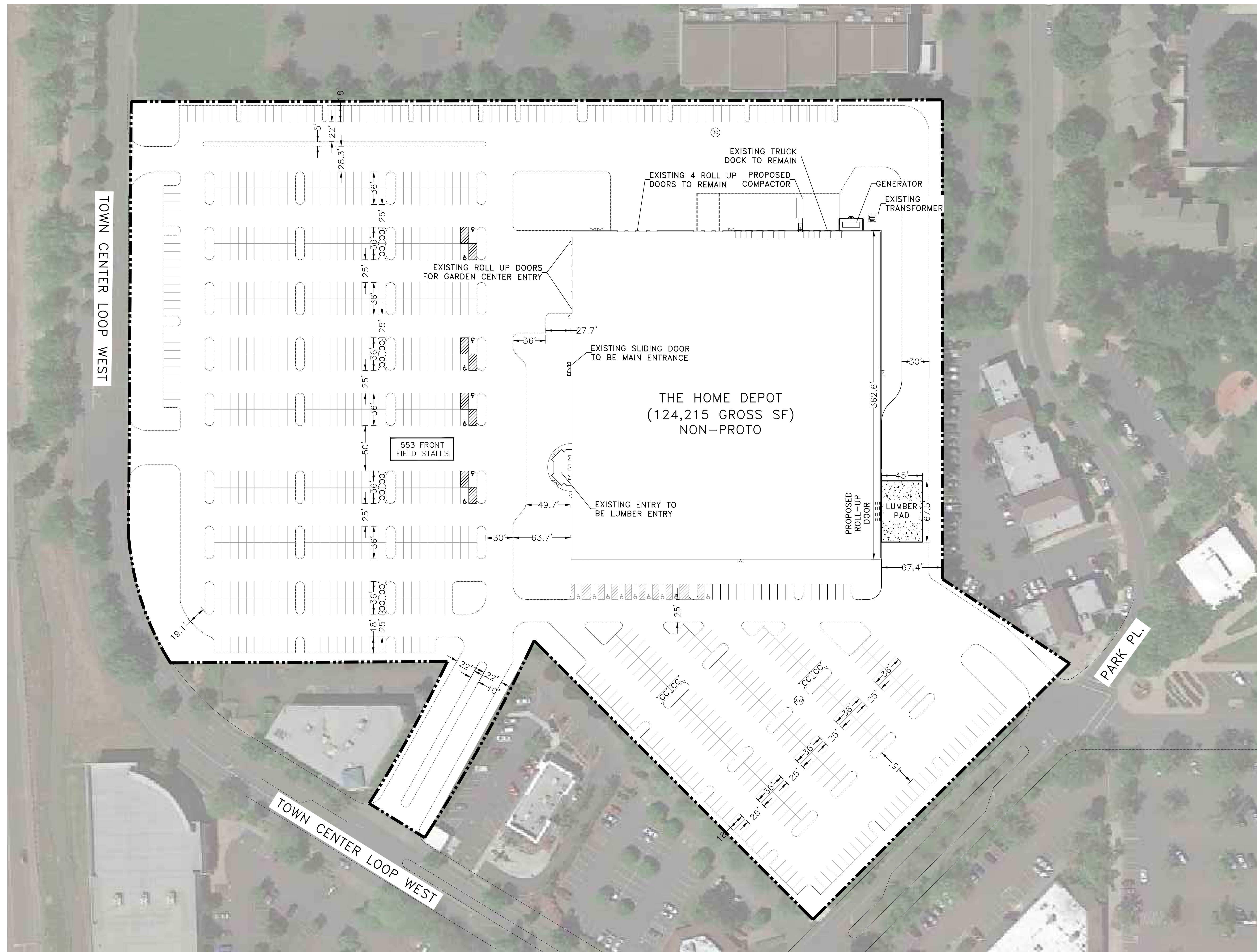
ACCESSIBLE STALLS (17 REQ. @ 2%)	17 STALLS
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NOT INCLUDED IN PARKING PROVIDED

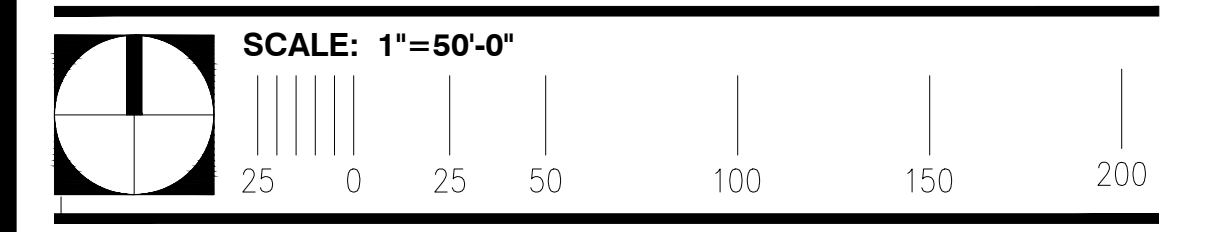
CART CORRALS	10 STALLS
ACCESSORY PARKING NOT INCLUDED	10 STALLS
TOTAL THD PARKING PROVIDED	839 STALLS

ZONING CLASSIFICATION

JURISDICTION	CITY OF WILSONVILLE
ZONING CLASSIFICATION	PLANNED DEVELOPMENT
THD USE PERMITTED BY RIGHT	COMMERCIAL TOWN CENTER (PDC-TC) YES



NOTES
 1. PLAN BOUNDARY IS BASED OFF AVAILABLE APN MAPS; AN ALTA SHOULD BE COMPLETED FOR ACCURACY.



OR - SITE PLAN 10

THE HOME DEPOT
THE HOME DEPOT WILSONVILLE, OR
 29400 TOWN CENTER LOOP W
 WILSONVILLE, OR 97070

DRAWING ISSUE DATE 10.19.2023
 HD SITE SELECTION NUMBER SS-02804.2001



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:

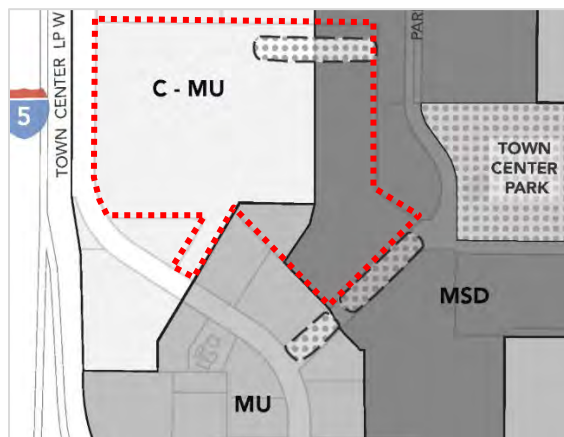
The City received your application on October 30, 2023, for Class 1 Review to confirm the status of the existing use and structure at 29400 SW Town Center Loop West. On November 28, 2023, City staff contacted you by email providing options for proceeding with your application and requesting that you 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](mailto:Luxhoj.Cindy)
To: dzoldak@larsandersen.com
Cc: dave@rdjdevelopment.com; [Bateschell, Miranda](mailto:Bateschell.Miranda); [Rybold, Kim](mailto:Rybold.Kim); [Daniel Pauly \(pauly@ci.wilsonville.or.us\)](mailto:Daniel.Pauly@ci.wilsonville.or.us)
Bcc: [Luxhoj, Cindy](mailto: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](https://www.facebook.com/CityofWilsonville)



29799 SW Town Center Loop East, Wilsonville, OR 97070

Disclosure Notice: Messages to and from this e-mail address may be subject to the Oregon Public Records Law.

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 of Approval #8 of 90PC15

Action: Approved with conditions

Project Expiration Date:

<u>Property Description:</u> 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 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 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.

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

Exhibit D-2

**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.

Attest:



Judge Emison, Planning Secretary



Chairman, Planning Commission

91PC43

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 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 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 Condition 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, redesignate 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"

NA = NOT APPLICABLE
DRB = DESIGN REVIEW BOARD

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

	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
4. Building Use					
a. Office	sq. ft.	9,117 SF	<input checked="" type="radio"/>	<input type="radio"/>	
b. Warehouse	sq. ft.	39,330 SF	<input checked="" type="radio"/>	<input type="radio"/>	
c. Manufacturing/SERVICE	sq. ft.	17,276 SF	<input checked="" type="radio"/>	<input type="radio"/>	
d. Other/RETAIL	sq. ft.	63,914 SF	<input checked="" type="radio"/>	<input type="radio"/>	
5. Building Specifications					
a. Building Height	35'	-	<input checked="" type="radio"/>	<input type="radio"/>	44
b. (Sun Exposure Plane)	NA		<input type="radio"/>	<input type="radio"/>	NA.
c. Gross Floor area of Building	NO LIMIT	150,400 SF	<input checked="" type="radio"/>	<input type="radio"/>	
6. Number of Off-Street Parking					
a. Standard 9' X 18'	472	850	<input checked="" type="radio"/>	<input type="radio"/>	48
b. Compact 8 1/2' X 17' (30% 10 allowed)	OPTIONAL	NOT SHOWN	<input checked="" type="radio"/>	<input type="radio"/>	
c. Handicapped 12' X 18' (1 to 50 required)	11	16	<input checked="" type="radio"/>	<input type="radio"/>	UBC TABLE 31-A
Total	483	872	<input checked="" type="radio"/>	<input type="radio"/>	46 to 48
d. Truck load berths	2	26	<input checked="" type="radio"/>	<input type="radio"/>	
7. Access/Egress					
a. Direct access to street	-	3	<input type="radio"/>	<input checked="" type="radio"/>	17, 18
b. Access provided by easement	NA		<input type="radio"/>	<input type="radio"/>	NA
c. Rail Access	NA		<input type="radio"/>	<input type="radio"/>	NA.
8. Open Space Slope Protection					
a. Existing vegetation protected	NA		<input type="radio"/>	<input type="radio"/>	NA
b. Slopes over 20% to 30% impervious coverage	NA		<input type="radio"/>	<input type="radio"/>	NA
c. River and stream corridors protected	NA		<input type="radio"/>	<input type="radio"/>	NA
d. Adequate erosion control provided			<input checked="" type="radio"/>	<input type="radio"/>	EXHIBIT G4
e. Within greenway	NA		<input type="radio"/>	<input type="radio"/>	NA

	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
C. <u>Other Planning Considerations</u>					
1. Outside storage area provided/ screening	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
2. Adequate screenage of mechanical equipment	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
3. Safety/crime prevention					
a. Location of addressing	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u> ↓ ↓ ↓
b. Natural surveillance	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	
c. Type of exterior lighting	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	

D. <u>Bike Paths, Pedestrian Trails, & Equestrian Trails</u>					
1. Pathway Standards					
a. Pathways are provided consistent with pathway master plan and design standards (Section 4.168 W.C.)	<u>REQ'd</u>	<u>HOT SHOW</u>	<input type="radio"/>	<input checked="" type="radio"/>	<u>201031</u>

E. <u>Previous Approval actions and applicable conditions or approvals</u>					
1. City Council	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>DRB 55</u>
2. DRB	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>90215 89R 50</u>
3. P.C.	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>_____</u>
4. Other	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>_____</u>
Inter-agency review comments					
Yes	<u>No</u>		See Exhibit No.		<u>_____</u>
Inter-agency review comments (Written Only)					
City Engineer	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>D</u>
Parks & Recreat.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>
Traffic Safety	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>
Building Dept.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>E</u>
Tualatin Fire Dept.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>
Sheriff	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>

91PC43

**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	<u>22.79 acres</u>	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)
<u>Phase III</u>	<u>22.08 acres (Undeveloped property)</u>
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 separately 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 development.

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 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, reclassified 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 orients 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 rooms, 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

Minimum 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.

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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 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 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

City of

WILSONVILLE
in OREGON



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

91PC43

Item 9.

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

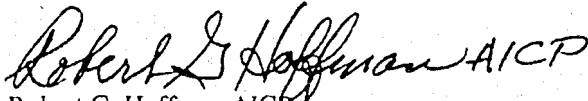
4. Type of Permitted Use:
Commercial (Planned Development)

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



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
Manager of Current Planning

Attachment: Decision and Conditions of Approval
98PC43
91DR29

RGH:sh

Bob

Item 9.

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.*

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 Portland. Many who watch insurance activities nationally agree. The change reflects nular strategies by nationwide carriers. tna wants to consolidate offices, re ce overhead and gain efficiencies in : increasingly competitive health insurance 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 icago Corp., a Chicago-based invest- ent bank that tracks insurance compa- nies. "Insurance companies, especially the big guys, have a big expense burden. They tend to be big and clumsy."

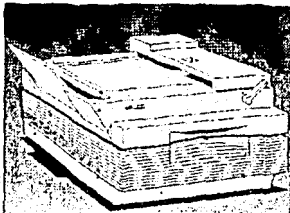
In Aetna's case, said Poll, the national carrier's life and health business has been its strongest asset. Hartford, Conn.-based Aetna is the third-largest U.S.-based property and casualty insurer, according to Value Line's December 1993 investment survey. Aetna, a public company traded on the New York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

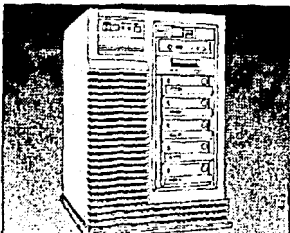
Aetna handles about 4.9 million Medicare claims representing some \$250 million annually out of the Portland office.

comes to working, DI onnected!



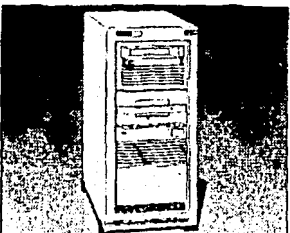
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Blaise
Pam
Sally

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.



Trust JBL&K

File
9.1pc 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 Kisheloff / Wayne Lorenson
SUBJECT: Project Thunder

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

COMMENTS: _____



City of
WILSONVILLE
in OREGON

September 29, 1993

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

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

Re: Systems Development Credit - Wilsonville Incredible Universe

91PC43

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



City of
WILSONVILLE
 in OREGON

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

Info —

Pam *[initials]*

Blaise *[initials]*

Sally *[initials]*

file *[initials]* 910643

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:

Mr. Wayne Kittelson
 Re: Incredible Universe Traffic Issues
 December 4, 1992 - Page 2

"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

Mr. Wayne Kittelso...
 Re: Incredible Universe Traffic Issues
 December 4, 1992 - Page 4

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

Mr. Wayne Kittelson
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 5

- 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."

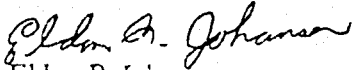
Your letter very eloquently describes your position with regard to the impact of the Incredible Universe on traffic. I have come to a somewhat different conclusion from reading the applicable reports. Although I would be very happy to meet with you to discuss this issue, it appears that this may be one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

Mr. Wayne Kittels
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 6

Item 9.

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 ✓
 Blaise ✓
 Sally ✓

Project file
 9/10/93

OCT 29 1992

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.

Mr. Wayne Sorensen
October 27, 1992
Page 2

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 hour 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.

Mr. Wayne Sorensen
October 27, 1992
Page 3

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

Mr. Wayne Sorensen
October 27, 1992
Page 4

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

Mr. Wayne Sorensen
October 27, 1992
Page 5

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, 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

LETTER OF TRANSMISSION

Item 9.

(503) 682-1011

TO _____

DATE 10/3/92	JOB NO.
ATTENTION Arlene Lohle	
RE Transportation Division	
Copy of Notice of Decision, and attachment	
File copy of Transportation Impact Analysis prepared by Kittelson & Associates	

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 Cooper Exhibit D

350

Wynne



City of
WILSONVILLE
in OREGON

3000 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.

Mr. Rich Hollander & Ms. Kim Beach
May 28, 1992

Page 2

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.

Mr. Rich Hollander & Ms. Kim Beach
May 28, 1992

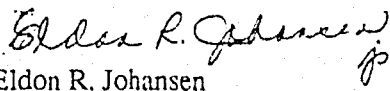
Page 3

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
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

W&H PACIFIC

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

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

- Planning
- Surveying
- Engineering
- Landscape Architecture
- Environmental Services

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
- X 682-7025

These Are Transmitted:

- For Your Info/File
- As Requested
- For Review And Comment

Copied To:

KUM BEACH w/o ENCL
FAK 223-0200

Copies	Description
<u>1</u>	<u>ADD'L Storm CACCS.</u>

margo 5/19
Orig to Elson
Thunder file
Copy to Wagne
myself
Eden

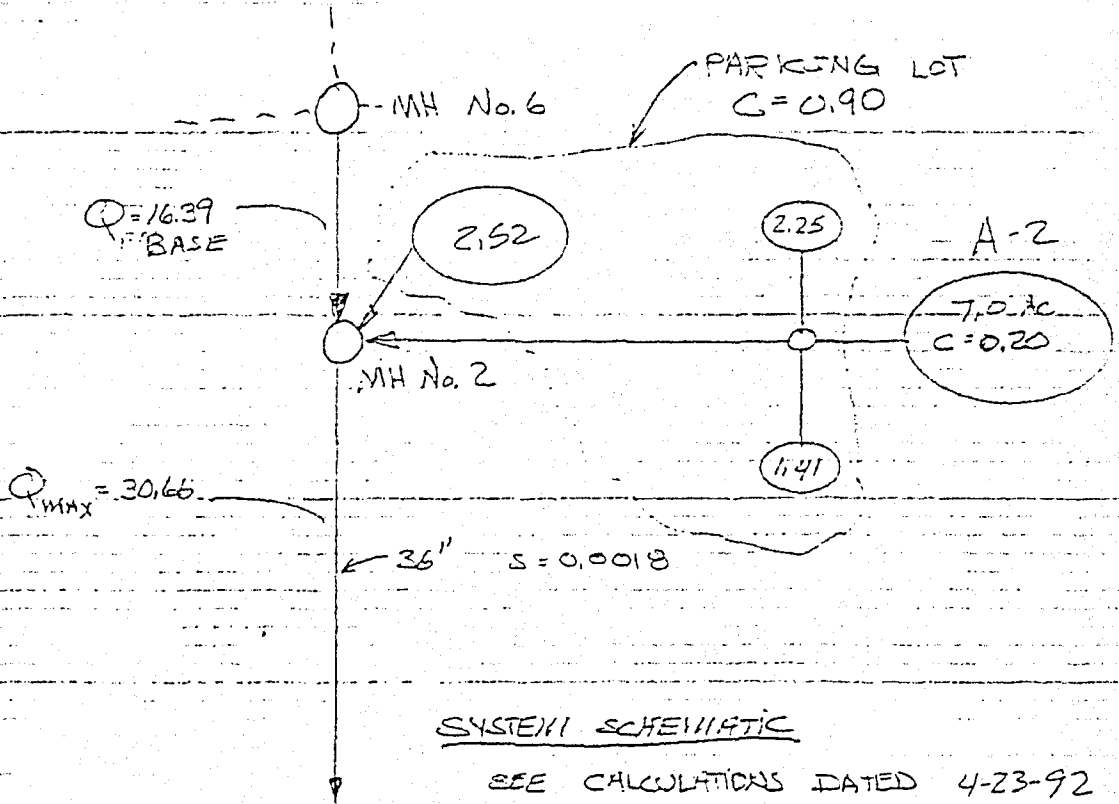
Comments

ELSON,
Jimi LEHWART HAS PREPARED ADD'L STORM RUNOFF
CACCS 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

Jack Martin

DETENTION REQUIREMENTS FOR A-2 IN MN UNDEVELOPED CONDITION.



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 500 FEET OVERLAND TRAVEL FROM A-2
 1st 200 FEET = 20 MINUTES
 REMAINING 300' = 4 MINUTES. (SLOPE = 1%)
 (IN CHANNEL)
 $t_c = 24$ MINUTES

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P.O. Box 80040
Portland, OR 97280

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

- Planning
- Engineering
- Surveying
- Landscape Architecture
- Environmental Services

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
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- For Your Info/File
- As Requested
- For Review And Comment
-

Copied To:

KIM BEACH W/ ENCL
FAX 223-0200

Copies	Description
1	ADD'L Storm Cages.

Comments

ELDON,

Jim LEMKERT HAS PREPARED ADD'L STORM RUNOFF
CAVES 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 PH III OR EITHER PROPERTY NORTH
OF TANDY.

(Signature)
 Eric Henthorn

Signed

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

$Q_{PEAK} = i \sum CA_i = (0.2)(7.0 \text{ AC})(1.6) = 2.24$
 $(0.9)(6.18)(1.6) = 11.33,$

13.57 CFS.

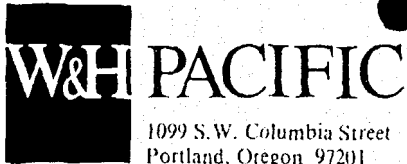
$Q_{ALLOWABLE \text{ IN PIPE}} = Q_{MAX} - Q_{BASE} = 30,66 - 16,39$

$Q_{ALLOWABLE} = \underline{14,27 \text{ CFS.}}$

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

NO DETENTION IS REQUIRED

NOTE! THIS CALCULATION IS FOR UNDEVELOPED
CONDITIONS ONLY.



1099 S.W. Columbia Street
Portland, Oregon 97201

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• Engineering • Landscape Architecture

• Environmental Services

Item 9.

To: William L. Parks
DIVISION OF STATE LANDS
1100 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:

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- For Your Info/File
- As Requested
- For Review And Comment

Copied To: _____

Copies	Description
1	VICINITY MAP 8 1/2 x 11
1	SITE MAP 11 x 17

X No Jurisdiction 10/4R 3/4
NO Hydrology - Area Detrit
by Flowing

Comments

Bill,

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

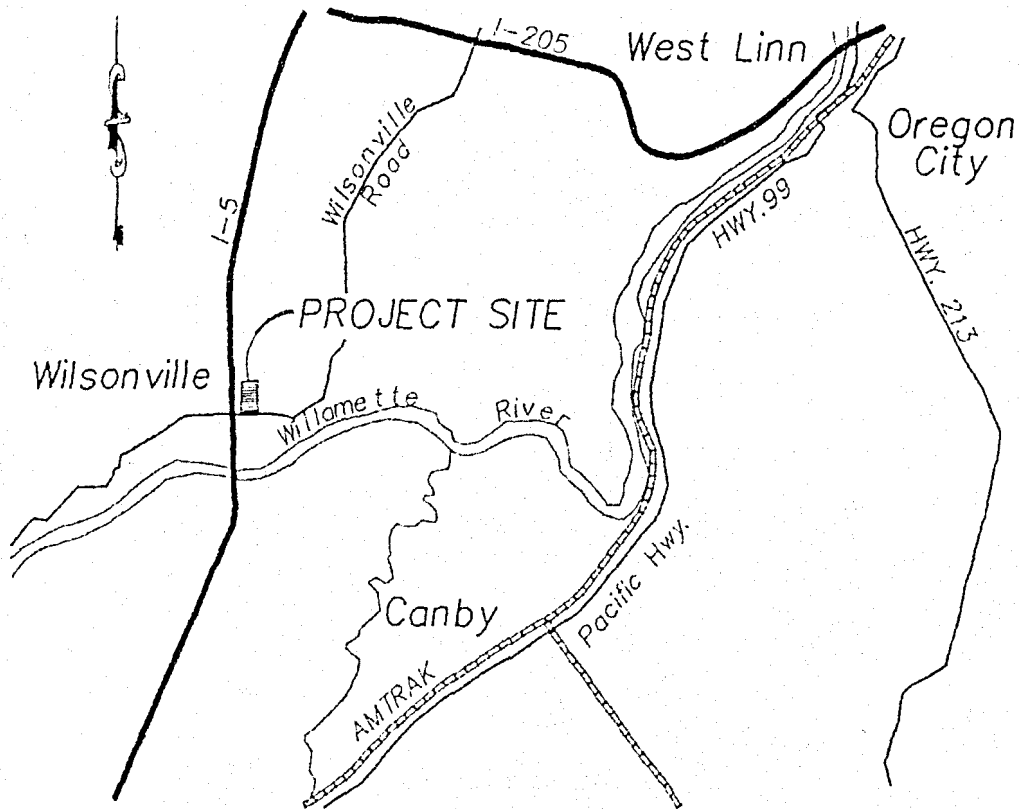
*I prefer a response as soon as possible, but no
later than January 3, 1992. If this presents a
problem, please call me at your earliest.*

Signed

thanks,

Rick Martin

358



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.



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 building 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,

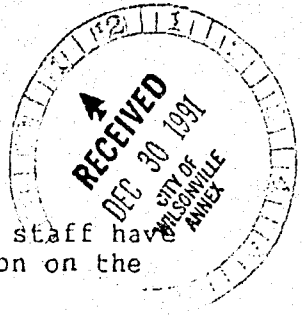
A handwritten signature in cursive script that reads "Kim Beach".

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

Item 9.



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 @ W. Wilsonville TR left @ Centerloop R west 1/4 mile
T 35 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 of Site Plan Map
 City of Wilsonville Planning Department
 _____, Corps of Engineers
 DSL file copy
 Reading file copy - TO LORNA no Turs.

City of
WILSONVILLE
in OREGON

December 30, 1991

30000 SW Town Center Loop E • ~~PO Box 226~~
Wilsonville, OR 97070
(503) 682-1011

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.

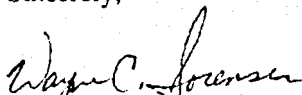
Enclosed is a copy of my notes which generally outline the basic issues we discussed at the December 23rd meeting. I am also enclosing material to provide additional insight into our planning process for the Town Center:

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
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

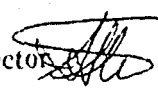
good example of something coming to Council's attention so late in the planning process that you have not had any meaningful input and yet now the City will be asked to make a substantial financial commitment. If the land is to be dedicated the developers justifiably want to know that the property will 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 onsite 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.

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 Wilsonville'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 visibility 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 Park

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.

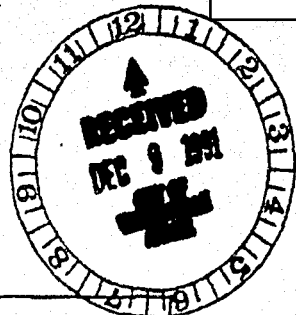
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PROJECT THUNDER

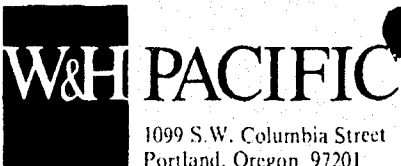
Item 9.

PEOPLE IN ATTENDANCE

MEETING: PLANNING COMMISSION
DATE: 9 DEC 91



NAME	ADDRESS
Tom Lertz	233 SE Washington St Hillsboro OR 97123
LEGAL CRAVENS	JKS ARCHITECTS 1676 SW TAYLOR PORTLAND 97222
JIM FAULKNER	3484 FAR HILLS AV DESIGN FLOOR DAYTON, OH 45429 ARCHITECTS
Chris Tope	29025 S.W. towncenter Wilsonville OR LOOP
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 Allen	8755 SW Citizens Drive Wilsonville
Marie Vandehy	610 SW Alder Suite 700 PDX 97205
Bob Lamb	13890 SW Bull Mt Road TIGARD OR 97224



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
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:

Attached

For Your Info/File

KIM BEACH

Facsimile

As Requested

LOGAN CRAVEN

Number Of Pages Including Cover

For Review And Comment

Copies	Description
10	FOLDED FULL SIZE REVERSED MASTER PLAN (SHT. #1)
1	PMT (8 1/2" x 11") OF ABOVE
1	ORIGINAL (8 1/2" x 11"): ALTERNATIVE OPEN SPACE CONCEPT.

Comments

Blaise:

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

s. - again for all your help !!!

1 Jones

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:

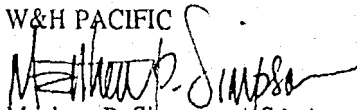
Thank you again for taking time this morning to discuss Project Thunder. As per our discussion, the following items were discussed and agreed upon:

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
210
39,330

SERVICE

4700
 900
 1020
 640
 1932
 5016
 2040
1008
17,270

RETAIL

47,874
 2,240
 5,880
1,920
63,914

RENT

572
 1024
4500
6096

OFFICE

1856
 200
 50
 5,294
 280
 912
 240
 149
120
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 (1) (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 maxims, *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 maxims 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

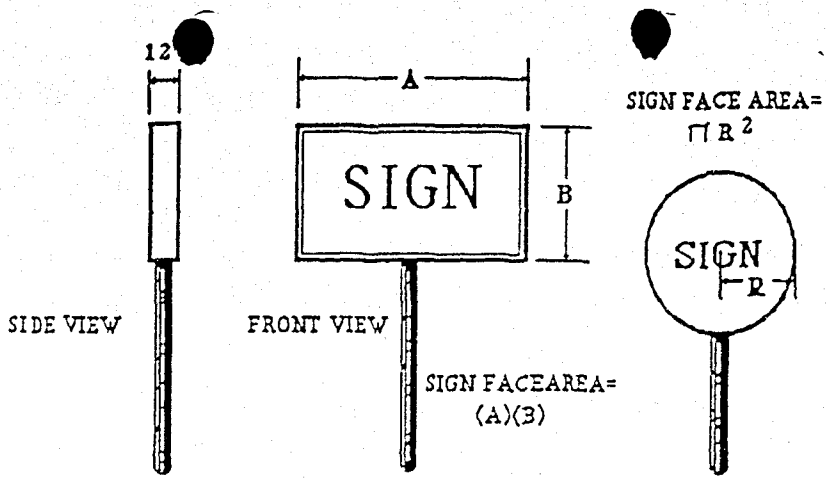
coordinated signage program which is both functional and aesthetic and to provide a method of administration through a Design Review Board for Town Center development. Clearly, this is in keeping with the multiple and often interrelated purposes set forth in 4.440 of the City's Code for Design Review 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 Citv v. Hartke, 240 Or 35, 400 Ord. 255.(1965); Naegele Outdoor Advertising v. City of Wavnesville, 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.

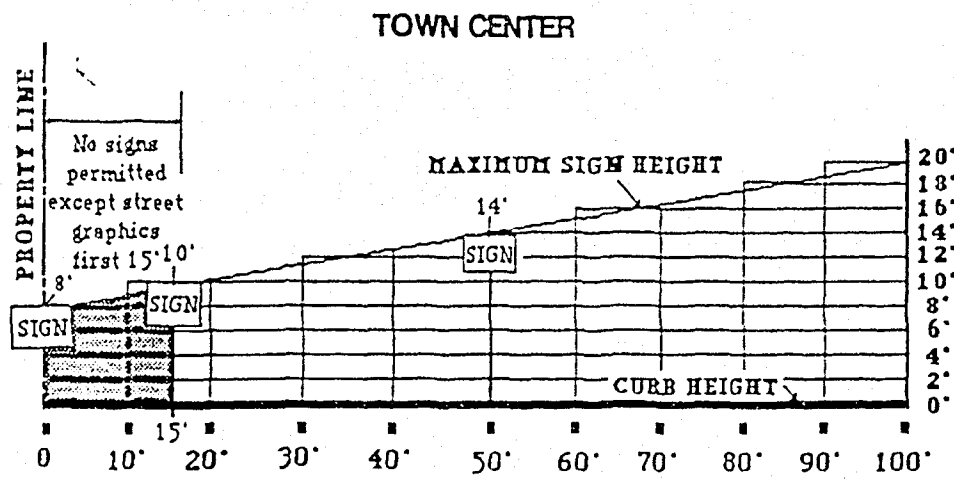
On the other hand, such necessity has not risen to the same level of need to regulate the use of homes as signs. The business entrepreneurs who are willing to advertise their commercial product by virtue of using gross advertising structures in commercial areas have not historically turned their private 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 (1)(a), bulletin boards, 4.151 (1)(b); real estate signs advertising individual lots, 4.151 (1)(c); subdivision signage, 4.151 (1)(d) and home occupation signage, 4.151 (1)(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



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, whichever is less.

MAXIMUM SIGN HEIGHT

EaE1aE1a
 abcdefghijklmnopqrstuvwxyz
 ABCDEFGHIJKLMNOPQRST
 UVWXYZ
 123456780&?!\$('')&><

FIG. 2

CHAPTER 4, ZONING CODE
 TOWN CENTER SIGNAGE CODE

EXHIBIT D

City of Wilsonville

COMMUNITY DEVELOPMENT DEPARTMENT

Memorandum

November 7, 1991

TO: Blaise Edmonds, Planning
FROM: *MB* 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/

EXHIBIT E

DEFECTS IN

ORIGINAL

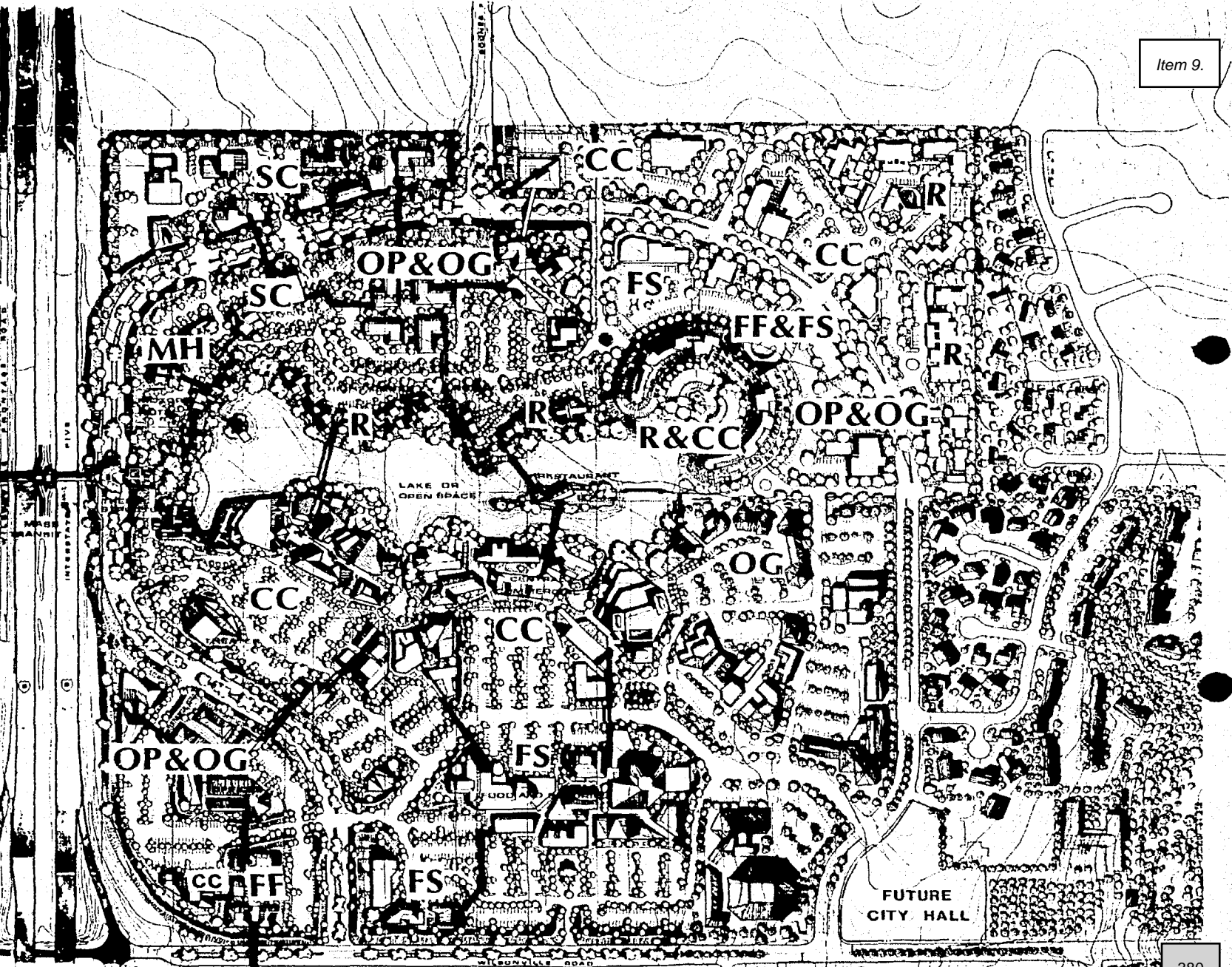
DOCUMENT

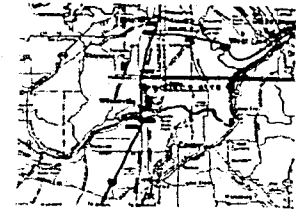
LEGEND

Item 9.

- 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



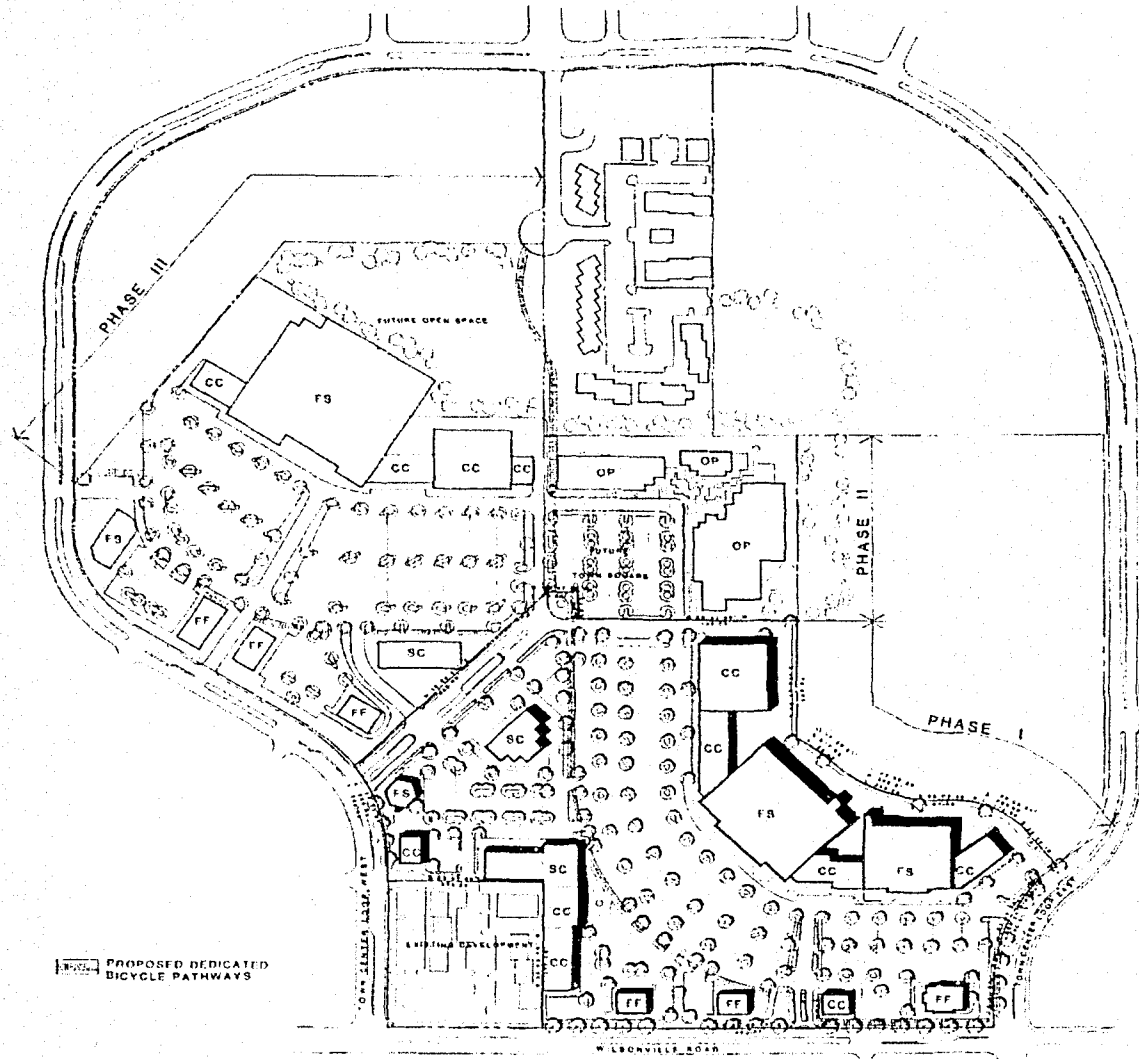


VICINITY MAP

ACREAGE	
PHASE I	22.17 ACRES
PHASE II	5.41 ACRES
PHASE III	22.02 ACRES
TOTAL	49.60 ACRES

PHASE ONE ZONING DESCRIPTION

A parcel of land situated in the southeast corner of Section 10, Township 36 North, Range 12 East, County of Clatsop, Oregon, hereinafter referred to as the "Site", is shown on the attached map. The Site is bounded on the north by the Clatsop River, on the east by the Clatsop River, on the south by the Clatsop River, and on the west by the Clatsop River. The Site is approximately 100 feet wide and 200 feet deep. The Site is currently zoned as "Rural Residential" and is being proposed for rezoning to "Community Center". The rezoning is necessary to allow for the development of a community center on the Site. The community center will include a library, a meeting room, and a multipurpose room. The community center will be used to provide a place for the community to meet and to provide a place for the community to learn. The community center will be a valuable asset to the community and will provide a place for the community to meet and to provide a place for the community to learn. The rezoning is necessary to allow for the development of a community center on the Site. The community center will include a library, a meeting room, and a multipurpose room. The community center will be used to provide a place for the community to meet and to provide a place for the community to learn. The community center will be a valuable asset to the community and will provide a place for the community to meet and to provide a place for the community to learn.



MASTER PLAN: PHASE I, II, & III
1"=100'

EXHIBIT H



KITTELSON & ASSOCIATES, INC.
TRANSPORTATION PLANNING/TRAFFIC ENGINEERING

610 SW ALDER, SUITE 700 • PORTLAND, OREGON 97205 • (503) 228-5230 • FAX (503) 273-8169

Item 9.

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 EXHIBIT D

Ms. Kim Beach
October 16, 1991
Page 2

- 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.

Ms. Kim Beach
 October 16, 1991
 Page 3

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.

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

Ms. Kim Beach
 October 16, 1991
 Page 4

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.

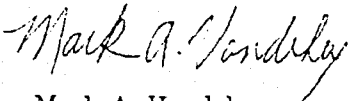
Based on these results, and given that background traffic volumes on Wilsonville Road are likely to continue to increase somewhat, it is recommended that a traffic signal be installed at the Wilsonville Road/Town Center Loop West intersection coinciding with the completion of the current Phase II development 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.

Ms. Kim Beach
 October 16, 1991
 Page 5

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

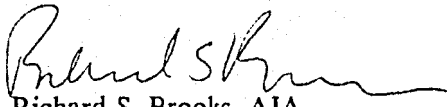
On behalf of the Owner, Capital Realty Corp., we request a reconsideration of Condition No. 8 of Planning Commission Resolution No. 90PC15 to provide the opportunity for Capital Realty to work with the City to accomplish the following:

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:\BCRSB\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

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

Page 2

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.

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

Page 3

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.

C:\BCRSB\WTC-1017.PM

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

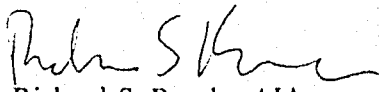
EXHIBIT
6-90

Wilsonville Town Center
Stage I Re-submittal
October 18, 1991

Page 2

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

Alternative Open Space Concept

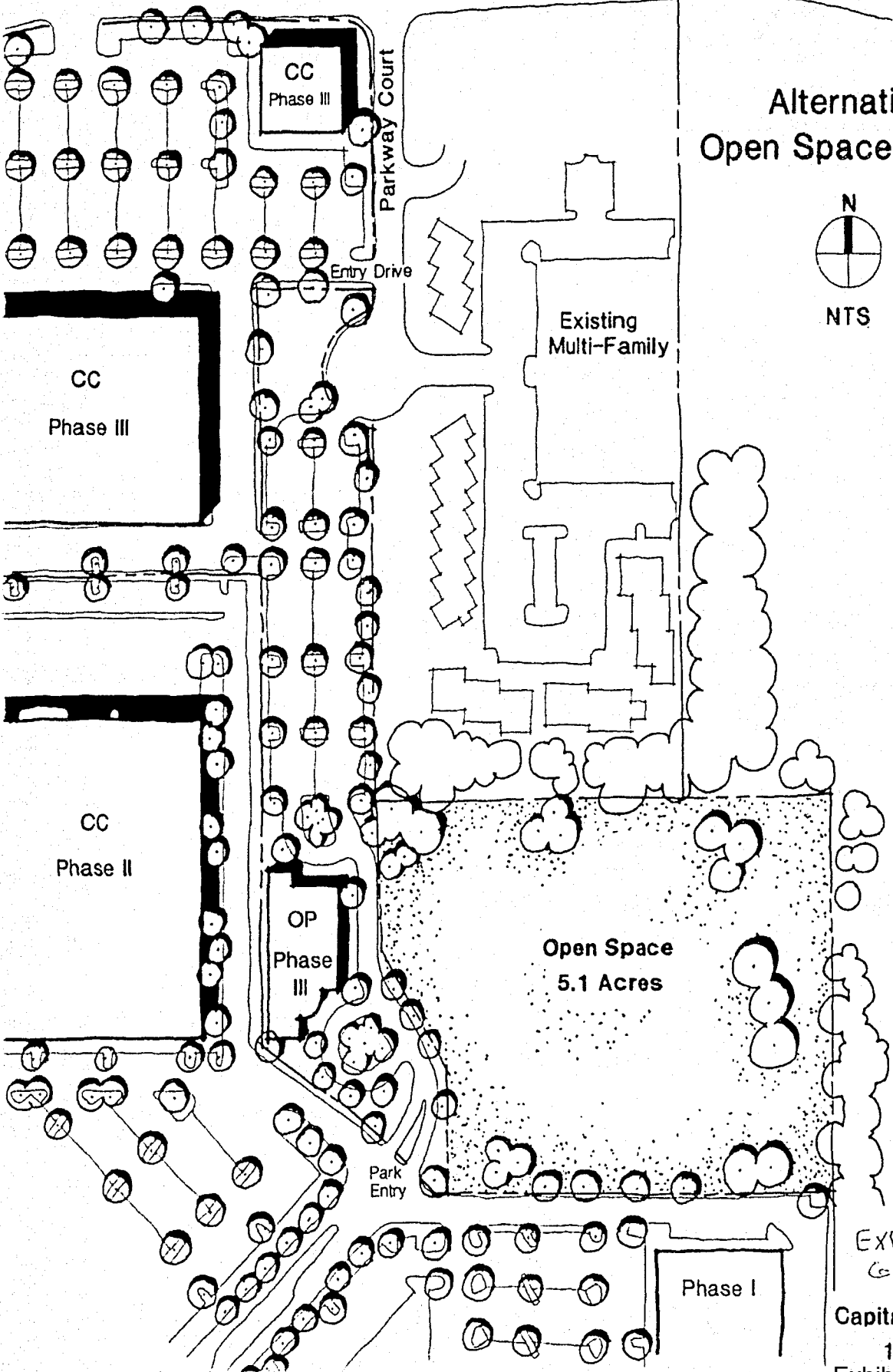
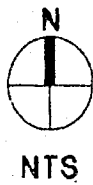


EXHIBIT
G-11

Capital Realty Corp.

11/26/9

Exhibit D

393

AS REVISED
1/7/92

DesignForum
ARCHITECTS

DesignForum

ARCHITECTS

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 accessory 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.

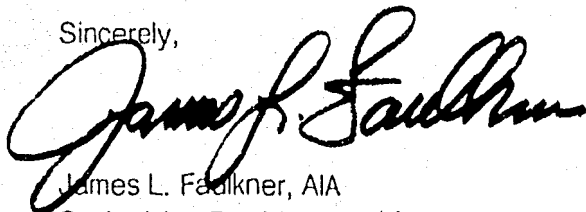
As per phone conversations with Blaise Edmonds, Associate Planner, the materials and colors sample board will be presented at the evening of the actual meeting. It will not be forgotten. We will provide a sample board of wall elements, as requested, as soon as we receive material samples from the manufacturers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

DesignForum

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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ARCHITECTS

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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ARCHITECTS

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

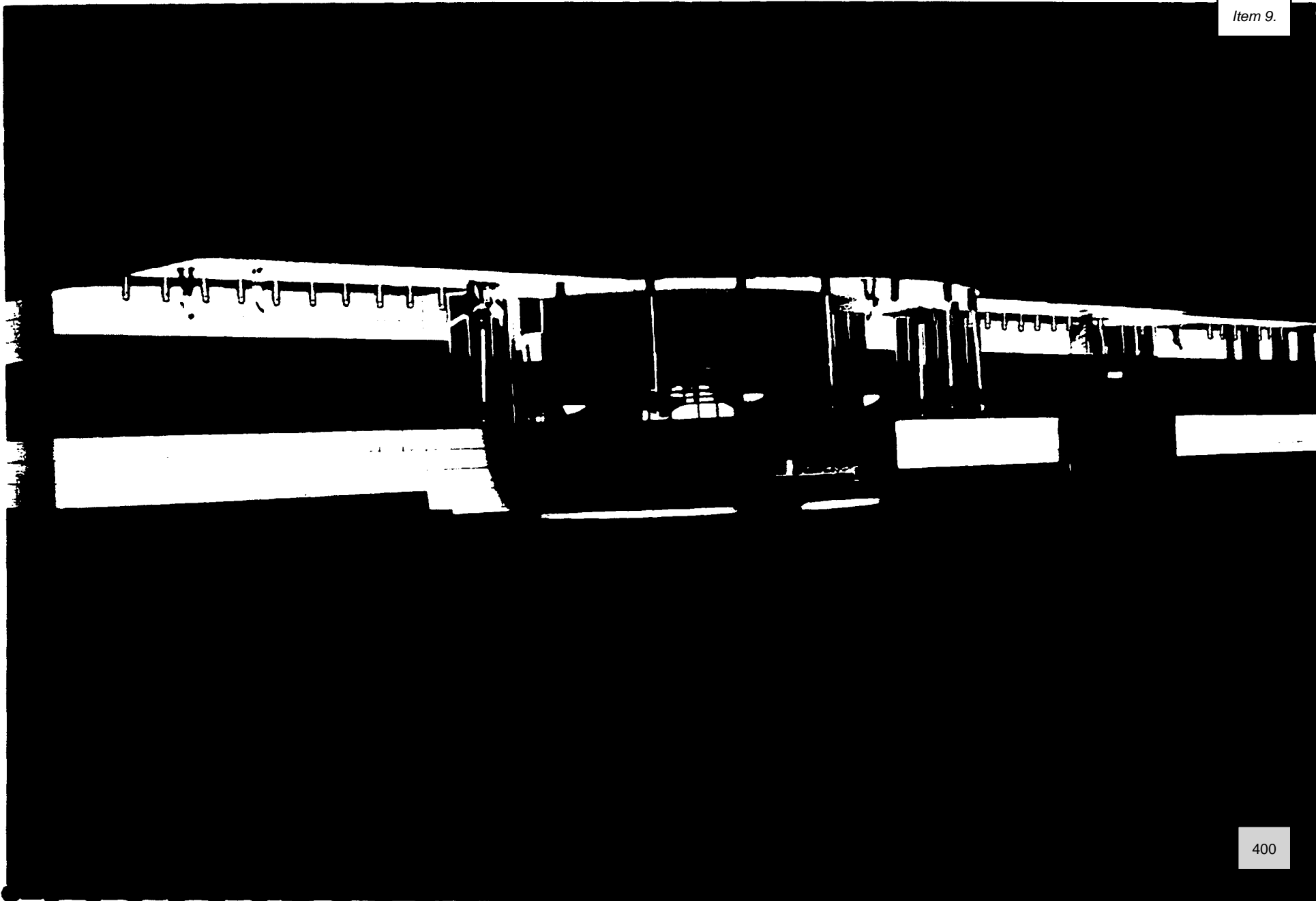
Deviation #1 from Phase I signage program for Wilsonville Town Center

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

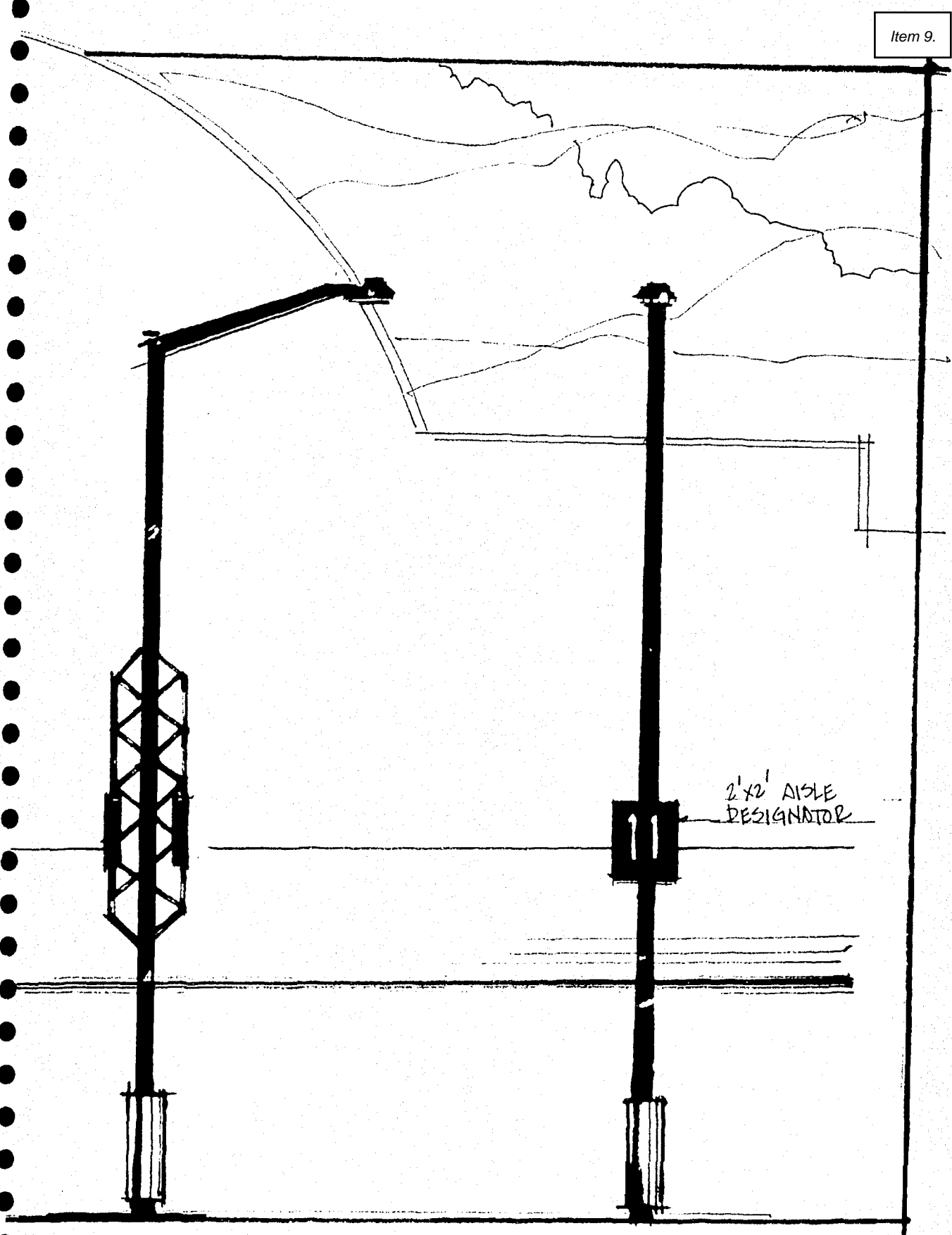
ORIGINAL

DOCUMENT



Item 9.





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

DesignForum
 ARCHITECTS

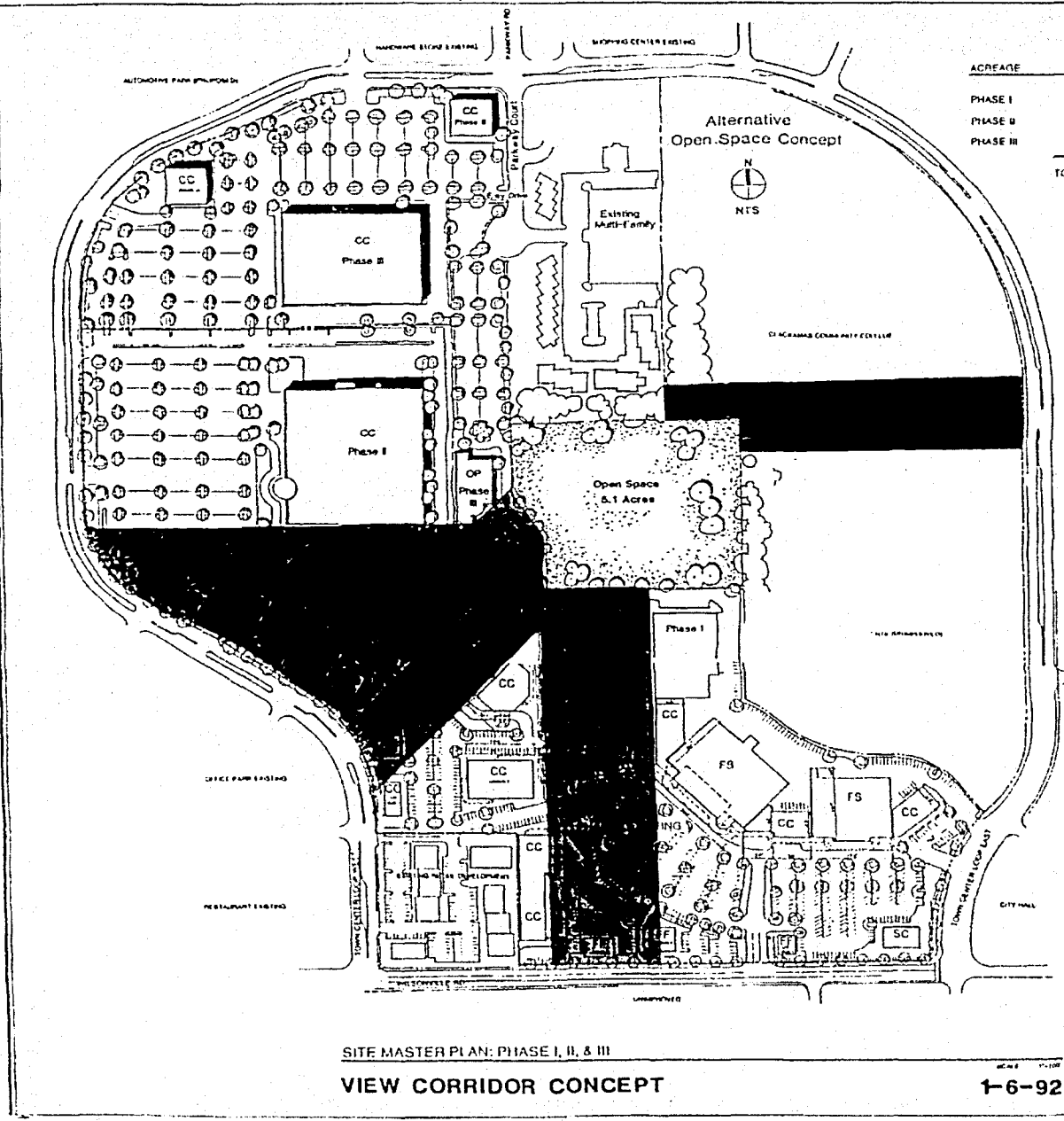
3401 Fox Hills Avenue, Dayton, Ohio 45424 Telephone (937) 233-4488

Exhibit D

JKS Architects PC
425 SW Oak Street, Suite 202 - Portland, Oregon 97204
Tel: 503-226-1100 Fax: 503-226-1101

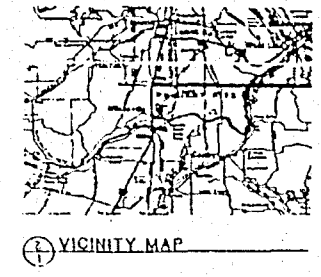
WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON

Scale bars and other technical details.



ACREAGE

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



VICINITY MAP

NOTES

1. THIS SITE PLAN IS A PRELIMINARY DESIGN AND IS SUBJECT TO CHANGE WITHOUT NOTICE.

2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES AND THE LATEST EDITIONS OF THE INTERNATIONAL PLUMBING, MECHANICAL AND ELECTRICAL CODES.

4. THE DESIGNER HAS CONDUCTED VISUAL ANALYSES AND HAS DETERMINED THAT THE PROJECT IS VISUALLY COMPATIBLE WITH THE SURROUNDING ENVIRONMENT.

5. THE DESIGNER HAS CONDUCTED VISUAL ANALYSES AND HAS DETERMINED THAT THE PROJECT IS VISUALLY COMPATIBLE WITH THE SURROUNDING ENVIRONMENT.

6. THE DESIGNER HAS CONDUCTED VISUAL ANALYSES AND HAS DETERMINED THAT THE PROJECT IS VISUALLY COMPATIBLE WITH THE SURROUNDING ENVIRONMENT.

PHASE II AND III 2006 ANALYSIS

The purpose of this analysis is to evaluate the visual quality of the proposed Phase II and III development. The analysis is based on the following assumptions:

- The development will be constructed in accordance with the proposed site plan.
- The surrounding environment will remain as shown on the vicinity map.
- The proposed development will be visually compatible with the surrounding environment.

The analysis concludes that the proposed Phase II and III development is visually compatible with the surrounding environment.

SITE MASTER PLAN: PHASE I, II, & III
VIEW CORRIDOR CONCEPT

1-6-92

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:

- | | | | | |
|---------------------------------|--|---|---|-----------------------------------|
| <input type="checkbox"/> Prints | <input type="checkbox"/> Estimates | <input type="checkbox"/> Copy of letter | <input type="checkbox"/> Photography | <input type="checkbox"/> Keylines |
| <input type="checkbox"/> Plans | <input type="checkbox"/> Shop Drawings | <input type="checkbox"/> Samples | <input type="checkbox"/> Specifications | <input type="checkbox"/> Layouts |
| | | <input type="checkbox"/> Comps Prototypes | | |

COPIES DATE OR NO.

DESCRIPTION

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

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> For your use | <input type="checkbox"/> Approved & noted | <input type="checkbox"/> Return _____ corrected prints |
| <input type="checkbox"/> For approval | <input type="checkbox"/> Construction approval | <input type="checkbox"/> Submit _____ copies for _____ |
| <input checked="" type="checkbox"/> As requested | <input type="checkbox"/> Returned for corrections | <input type="checkbox"/> Resubmit _____ copies for _____ |
| <input type="checkbox"/> For review & comment | <input type="checkbox"/> Returned after loaned to us | <input type="checkbox"/> For bids due _____ |
| <input type="checkbox"/> _____ | | |

Remarks: _____

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

Date: 10/28/91

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.

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.

*Blaine -
I understand
W & H says 150 cfs
for Town Center to go into
48" culvert - is there
more from other properties -
if so how does that affect
park drainage - if you
know & if not I'd be probably
need to make sure all
info is available - before
abandoning on site retention -
could be a plus as a water
feature for Town Center
Mike,
cc. Steve Stamer*

PLEASE MAIL
TO
LESLIE
DO NOT
WAYNE
SAID THAT
YOU HAVE
HLS
ADVISORY.

MEMORANDUM

TO: Development Review Team

DATE:

FROM: Blaise Edmonds, Associate Planner, City

B

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W&H Pacific

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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
• Engineering • Landscape Architecture

• Environmental Services

To: Blaise Edmunds Date: 10/16/91
Pam Edmunds Project Number: 407-0301
City of Wilsonville, Annex Project Name: PROJECT THUNDER
30000 SW TOWN CENTRAL LOOP EAST Regarding:
Wilsonville, OR, 97070

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 ea	Minutes of 10/14/91 Meeting

Comments

Blaise & Pam

We'll see you 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

Tan Stines

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.

October 15, 1991
Page 2

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 submittal 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

1099 S.W. Columbia Street
Portland, Oregon 97201

Creative Solutions ... Superior Service

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

- Planning
- Engineering

- Surveying
- Landscape Architecture

- Environmental Services

FAXED
10/17/91

Item 9.

To: Blaise Edmonds Date: 10/16/91
Pam Emmons Project Number: 467-0301
City of Wilsonville, Annex Project Name: PROJECT THUNDER
30000 SW TOWN CENTER LOOP EXT. Regarding:
WILSONVILLE, OR. 97070

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
1es.	Minutes of 10/14/91 Meeting

Comments

Blaise & Pam

We'll see you 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

Jan Jones

412

DesignForum

A R C H I T E C T S

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.

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 excavation, 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.

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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.

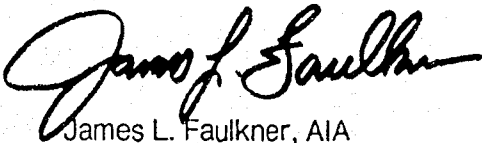
DesignForum

ARCHITECTS

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

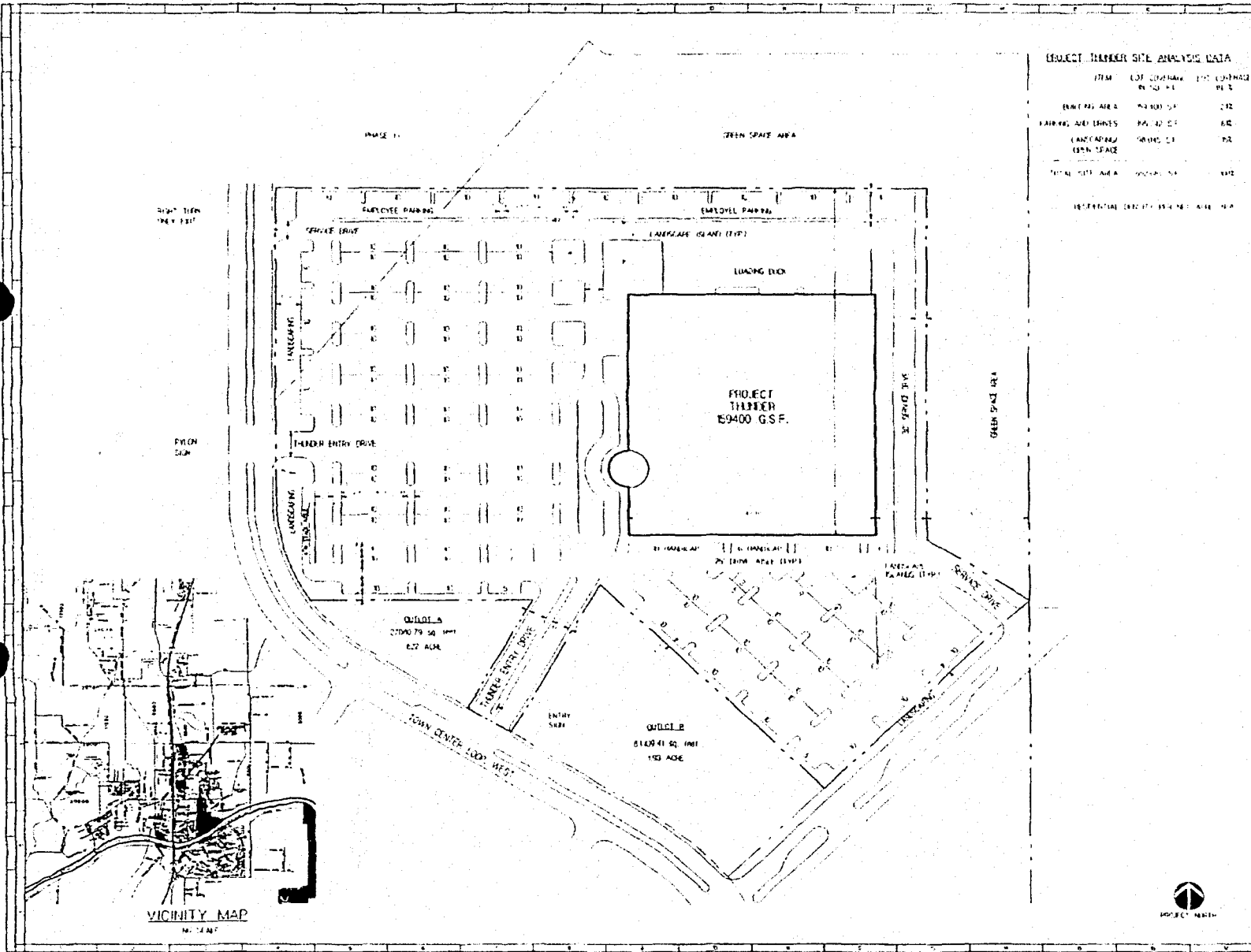
The meeting notes represent comments that have been paraphrased as accurately as possible. The notes will be held as an accurate and true account as to intent unless notice to the contrary is set forth within 10 days of the date above.

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	EST. CONTAINMENT	EST. CONTAINMENT
	PER AC	PER AC
EMLOYEE PARKING	16,500 SF	132
LANDSCAPED OPEN SPACE	10,000 SF	80
TOTAL SITE AREA	26,500 SF	212
15,900 G.S.F. / 26,500 SF = 60%		

SHEET NOTES

- OWNER'S STATEMENT OF WORK
- PROJECT NUMBER WILL BE THE PROJECT NUMBER IN THE PLANS. THE PROJECT NUMBER WILL BE THE PROJECT NUMBER IN THE PLANS. THE PROJECT NUMBER WILL BE THE PROJECT NUMBER IN THE PLANS.

GENERAL NOTES

- PROJECT THUNDER SITE
- DESIGNED BY: [Firm Name]
- DATE: [Date]
- PROJECT NUMBER: [Number]
- SCALE: [Scale]

DesignForum ARCHITECTS

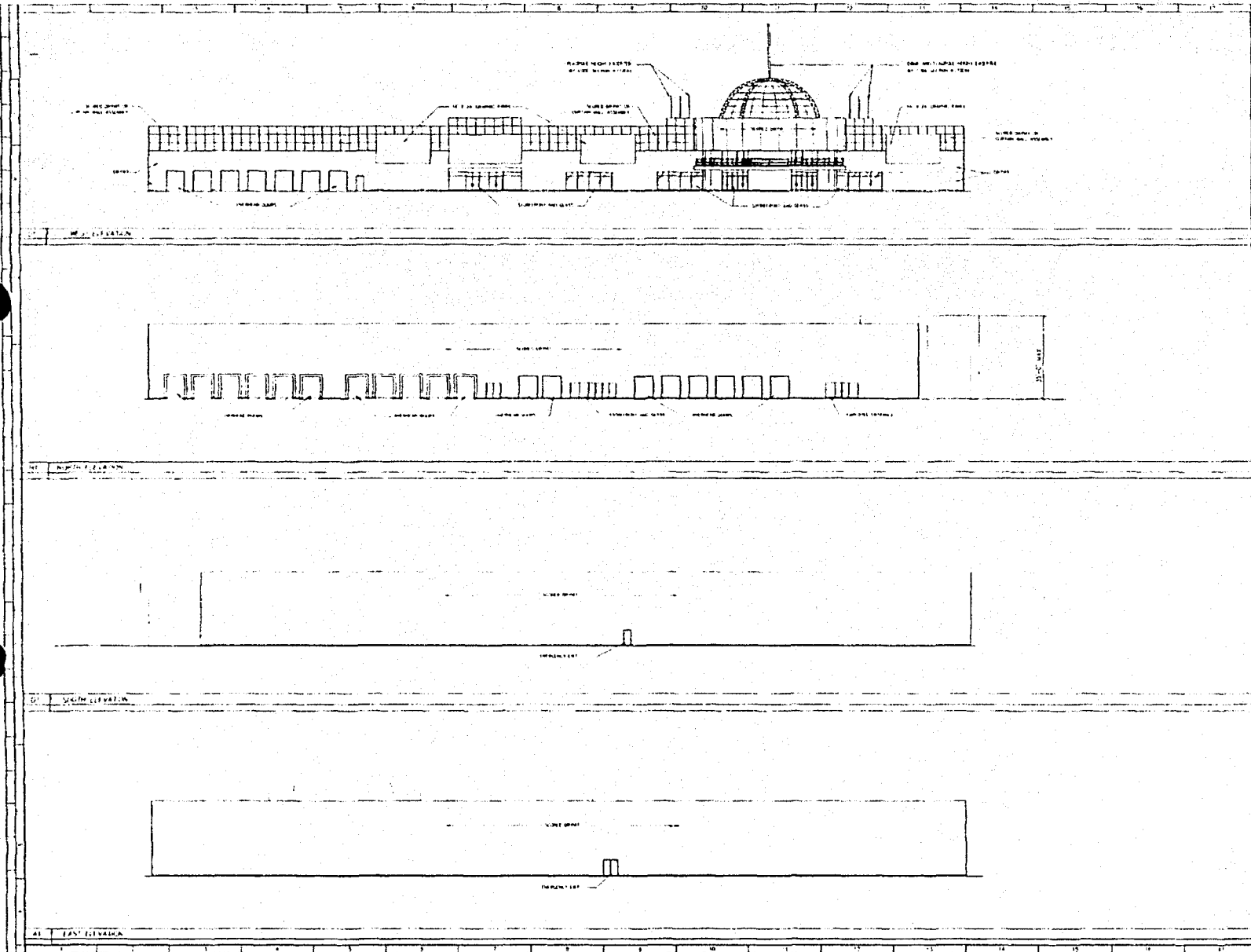
PROJECT THUNDER
15,900 G.S.F.

SITE PLAN

DATE: [Date]

SCALE: [Scale]

PROJECT NUMBER: [Number]



EXTERIOR ELEVATIONS

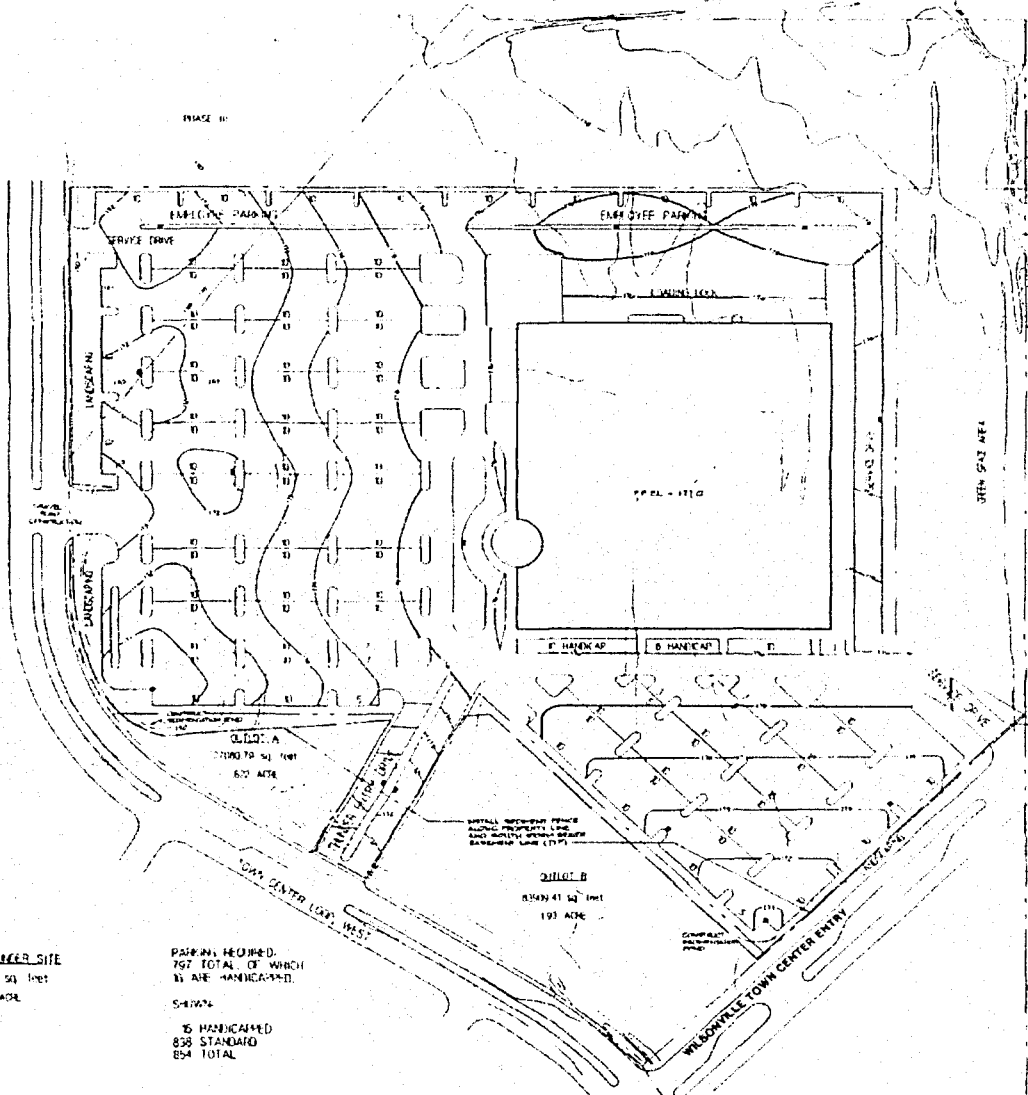
DesignForum ARCHITECTS

PROJECT THUNDER
MILLSVILLE, MICHIGAN

EXTERIOR ELEVATIONS

Project No.	97-022-14
Date	1/10/07
Author	WFB
Checker	WFB
Scale	1/8" = 1'-0"

418



NOTES:

- 1) RECALCULATE ALL SQUARE FEETAGES, LENGTHS, AREAS, AND PERCENTS TO BE SHOWN ON THIS PLAN AND ALL RELATED DOCUMENTS TO BE SUBMITTED TO CLACK COUNTY DEPARTMENT OF LAND USE AND PLANNING FOR REVIEW.
- 2) WHERE SHOWN, ACCESS SHALL BE MAINTAINED AT ALL TIMES TO ALL ADJACENT PROPERTIES AND TO ALL PUBLIC UTILITIES AND TO ALL PUBLIC HIGHWAYS AND TO ALL PUBLIC UTILITIES.

LEGEND

- HORIZONTAL CURVE
- VERTICAL CURVE
- PERMANENT FENCE
- PERMANENT CURB
- PERMANENT DRIVE
- PERMANENT SIDEWALK
- PERMANENT FENCE

PROJECT THUNDER SITE
 1420 ACRES
 1420 ACRES

PARKING REQUIRED:
 767 TOTAL OF WHICH
 15 ARE HANDICAPPED.
 548 TOTAL

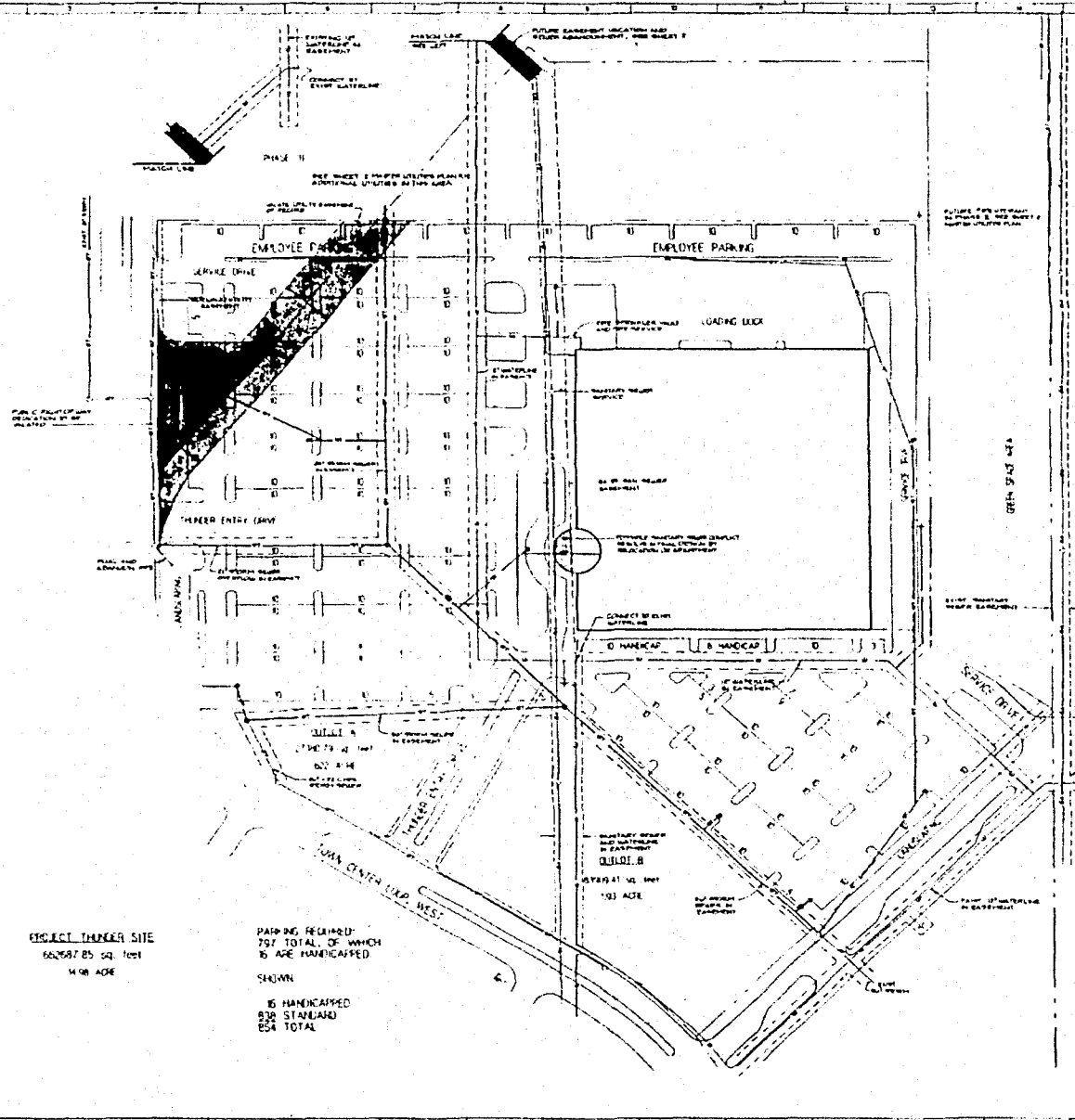
INSTALL RETENTION FENCE
 TO PREVENT EROSION
 AND STABILIZE SLOPES
 AS SHOWN ON THIS PLAN



PROJECT THUNDER
 WILSONVILLE, OREGON
 PHASE II GRADING/EROSION
 CONTROL PLAN



DATE	DESCRIPTION
11/11/11	ISSUED FOR PERMIT
11/11/11	ISSUED FOR PERMIT
11/11/11	ISSUED FOR PERMIT
11/11/11	ISSUED FOR PERMIT
11/11/11	ISSUED FOR PERMIT



PROJECT THUNDER SITE
66,267.85 sq. feet
14.98 ACRE

PARKING REQUIRED:
757 TOTAL, OF WHICH
16 ARE HANDICAPPED
SHOWN
16 HANDICAPPED
830 STANDARD
854 TOTAL

LEGEND

SYMBOL	DESCRIPTION
(Symbol)	WATER LINE
(Symbol)	SEWER LINE
(Symbol)	EMMENT LINE
(Symbol)	HANDICAP
(Symbol)	STANDARD
(Symbol)	WATER LINE
(Symbol)	SEWER LINE
(Symbol)	EMMENT LINE
(Symbol)	HANDICAP
(Symbol)	STANDARD



GENERAL NOTES

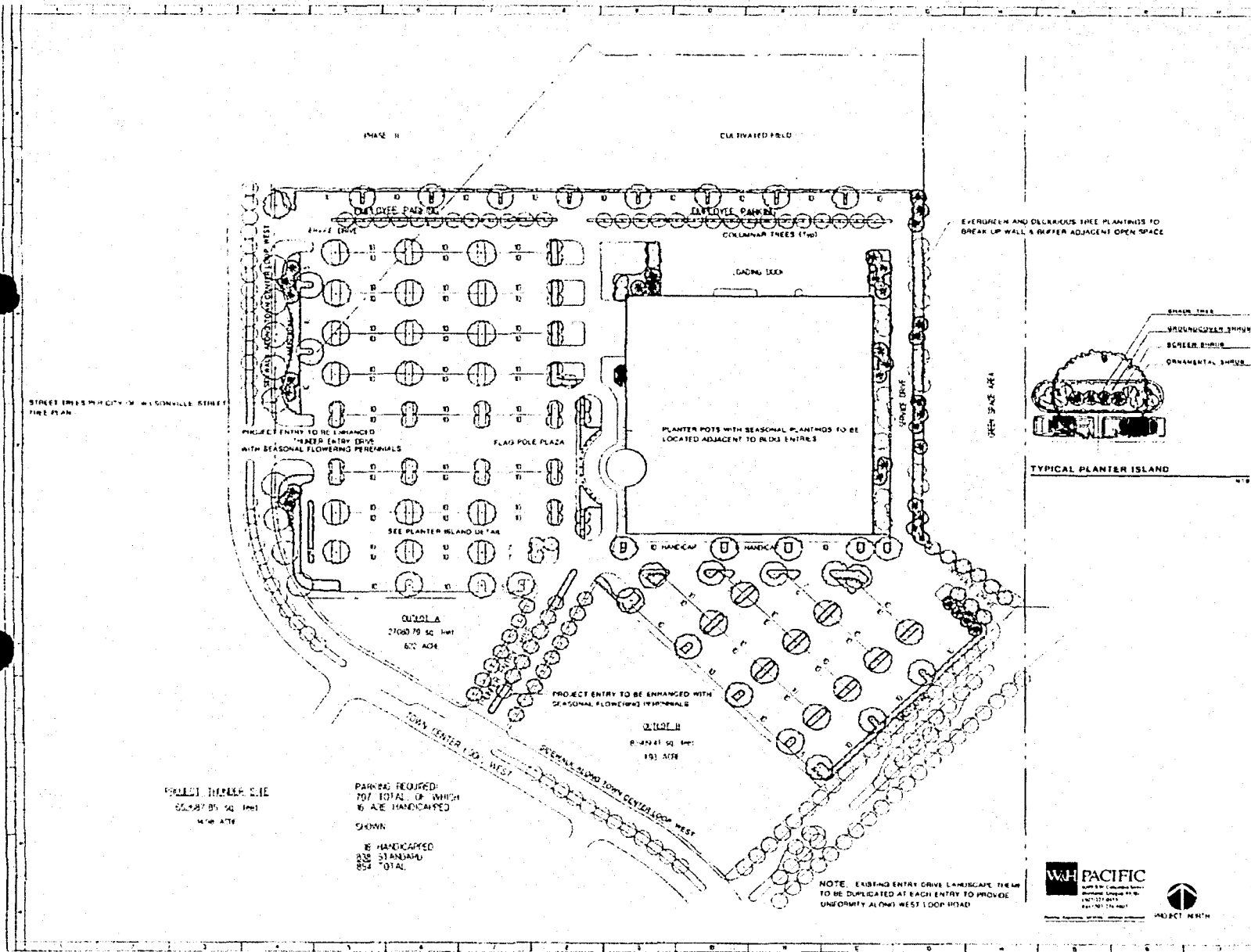
Key Plan

DesignForum
ARCHITECTS

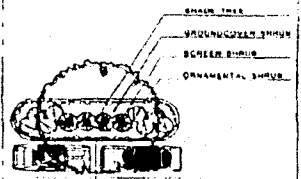
PROJECT THUNDER
WILSONVILLE, OREGON

PHASE II UTILITIES PLAN

Scale	1" = 50'
Date	
Sheet No.	420



- LEGEND**
- SHADE TREES
 - FLOWERING TREES
 - EVERGREEN CONIFER TREES
 - ORNAMENTAL LANDSCAPE SHRUBS & GROUNDCOVER
 - LAWN
 - EXISTING STREET TREES



GENERAL NOTES
 * AUTOMATIC IRRIGATION SYSTEM WILL BE PROVIDED

PROJECT NUMBER: 05-287 05 54 1001
 1/18/07

PARKING REQUIRED:
 707 TOTAL OF WHICH
 16 ARE HANDICAPPED
 SHOWN
 8 HANDICAPPED
 238 STANDARD
 854 TOTAL

NOTE: EXISTING ENTRY DRIVE LANDSCAPE THEM TO BE DUPLICATED AT EACH ENTRY TO PROVIDE UNIFORMITY ALONG WEST LOOP ROAD



DesignForum ARCHITECTS

PROJECT: THUNDER
 WASHINGTON, DC 200

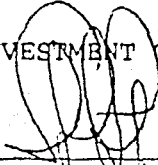
PHASE II LANDSCAPE PLAN

DATE	BY	REV
1/18/07

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.

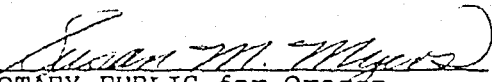
February 1, 1990,

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

Parcel III

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-13D, 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 500, MAP 3-1W-13D 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 6391 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.

~~tion.~~ The Option to purchase Phase 2 in its entire 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 before November 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

Sherilyn J. Young
SHERILYNN J. YOUNG

By [Signature]
SFS President
Steven F. Styles

David S. Young
DAVID S. YOUNG
Marlene A. Young
by [Signature], attorney in fact
MARLENE A. YOUNG

SFS INVESTMENT CORP.
By [Signature]
SFS OFFICER

ESTATE OF HAROLD J. LASWELL
DECEASED

GRANTEES

By Emma D. Laswell
Emma D. Laswell
Personal Representative

By Eugene L. Doffler
Eugene L. Doffler
Personal Representative

Fred A. Anderson
FRED A. ANDERSON

GRANTORS

ST IES PROPERTIES LTD.
by [Signature]

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, together 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 & 405, Clackamas County MAP 3-1W-14B and a triangle of land approximately 6,391 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, 1969 and August 23, 1969, 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 entirety per 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. (F)
S. X. Z.

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, 1990 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 14 day of November, 1989.

Jack L. Lozo
JACK L. LOZO

SFS INVESTMENT CORP.

ANN S. LOZO, Trustee for
CLAUDE F. SMITH TRUST *Q.T.T.*

By *[Signature]*
SFS President
Steven F. Stiles

GRANTORS

SFS INVESTMENT CORP.

By *[Signature]*
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 $00^{\circ}03'01''$ 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 $45^{\circ}03'00''$ West 400.00 feet; thence North $44^{\circ}57'00''$ 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 $65^{\circ}07'50''$ West) through a central angle of $07^{\circ}23'12''$ an arc distance of 257.84 feet (the long chord bears South $28^{\circ}33'46''$ 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 $57^{\circ}44'38''$ 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 $05^{\circ}32'12''$ an arc distance of 186.31 feet (the long chord bears North $29^{\circ}29'16''$ East 186.23 feet); thence South $89^{\circ}52'55''$ 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 $56^{\circ}01'43''$ East) through a central angle of $33^{\circ}55'55''$ an arc distance of 158.81 feet (the long chord bears North $17^{\circ}00'19''$ West 156.50 feet) to a point of tangency; thence continuing along said right-of-way line North $00^{\circ}02'22''$ 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 $38^{\circ}37'19''$ East 215.39 feet to the northerly line of said tract per fee 86-44959; thence tracing said northerly line South $89^{\circ}58'19''$ 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 $89^{\circ}59'19''$ an arc distance of 47.12 feet (the long chord bears North $45^{\circ}02'02''$ 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 $00^{\circ}02'22''$ 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

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Pat Marquis

OREGON
JANUARY 20, 1989
PAT MARQUIS
2382

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

Lindy - Transfer 170⁺ ^{thou} footprint
Electronics +

Driveway / TC (E) + (W)

Driveway → Open Space

Submit Stage I + II Simultaneously

Blaise
What else?

* Gave Stage I + II + application x 2
250' radius map owners

Topo - 1' intervals - (map has readings)

~~Blaise 52' top down~~
Phase

100-1-

CITY

100 - 120 DWELING UNITS.

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

- CONTOUR SURVEY - 720' / 0

[TREE SURVEY
 > 6" CALIBER]

MAJOR DRAINAGEWAY.

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

CALL MINE ~~120' SURVEY~~

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 by 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.

<u>Item</u>	<u>Lot Coverage in sq. ft.</u>	<u>Lot Coverage in %</u>
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 !

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.

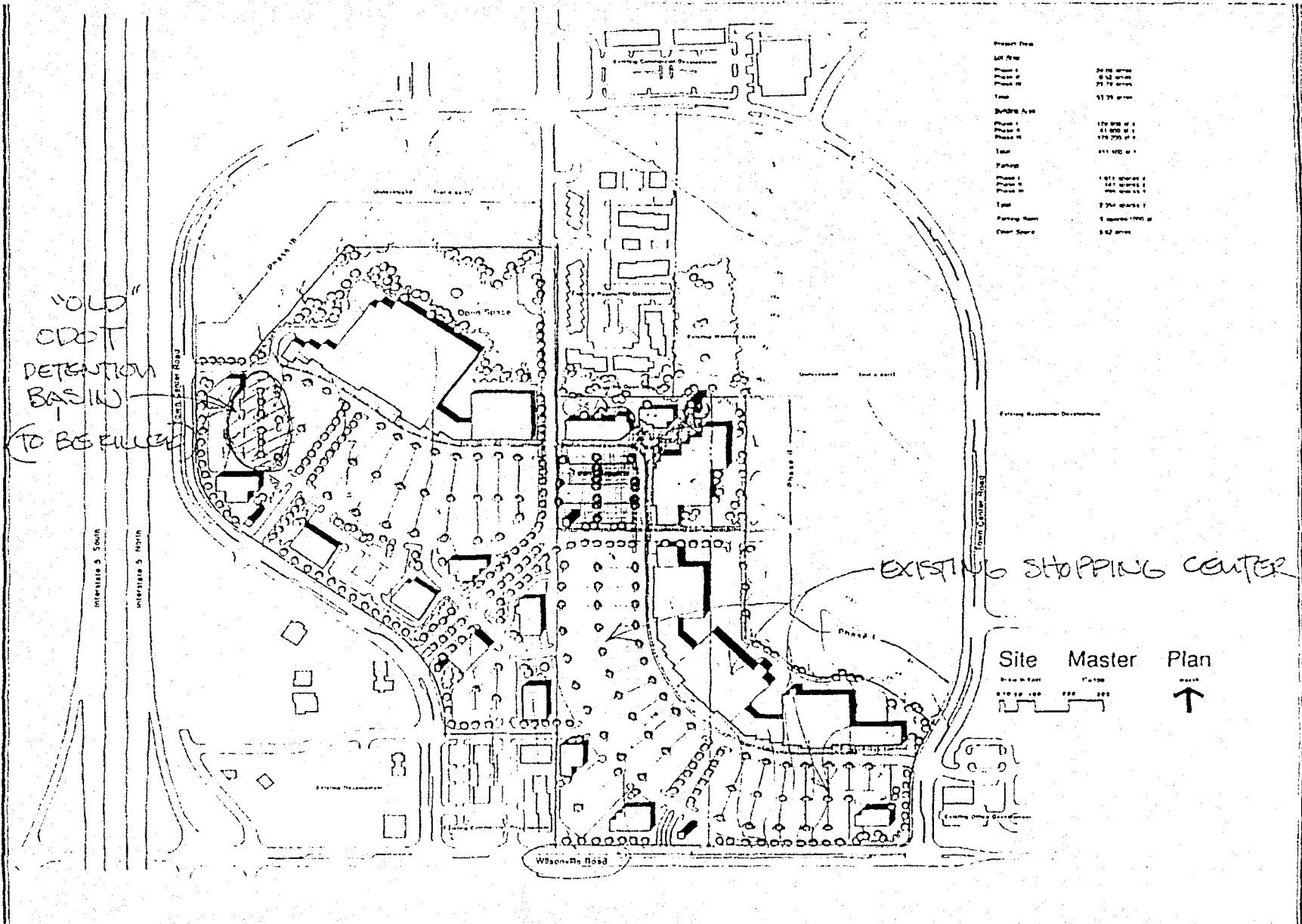
Second, the study assumed that 40 percent of the flow into the Incredible Universe would be "drop-in" traffic — that is, traffic already on the streets for other reasons. But the store has become a regional draw, and "drop-in" traffic is a tiny percentage of traffic it attracts. Finally, the traffic 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."

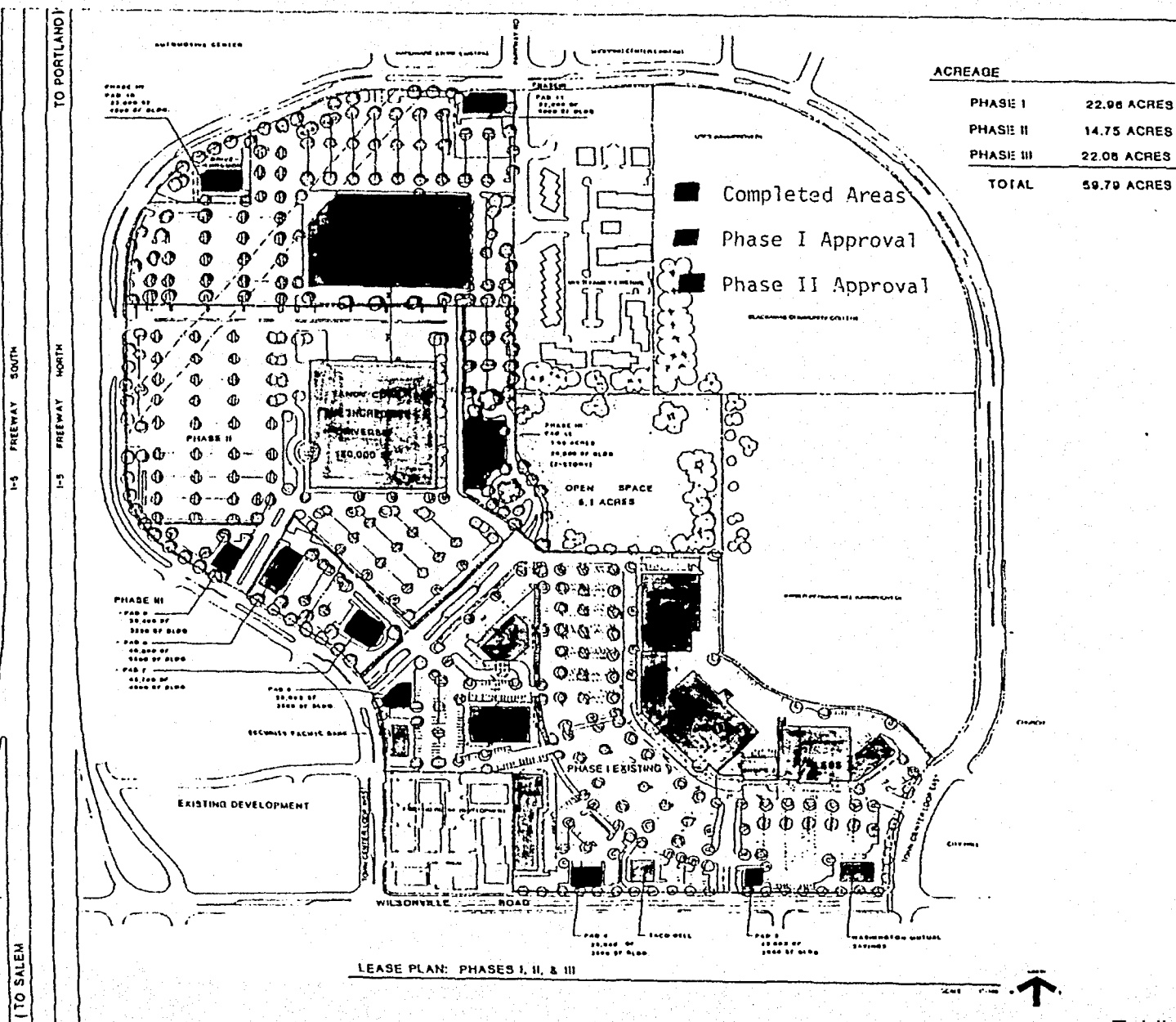
Sorensen, however, later said there are no plans to tinker with the engineering manual — he called it "the bible" — that predicts how many new trips will be generated by a particular use.

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.

cc: Bill, JAVLS



Project Area	170,000 sq. ft.
Lot Area	2,000,000 sq. ft.
Phase I	1,000,000 sq. ft.
Phase II	1,000,000 sq. ft.
Total	2,000,000 sq. ft.
Building Area	170,000 sq. ft.
Parking Area	1,000,000 sq. ft.
Open Space	830,000 sq. ft.



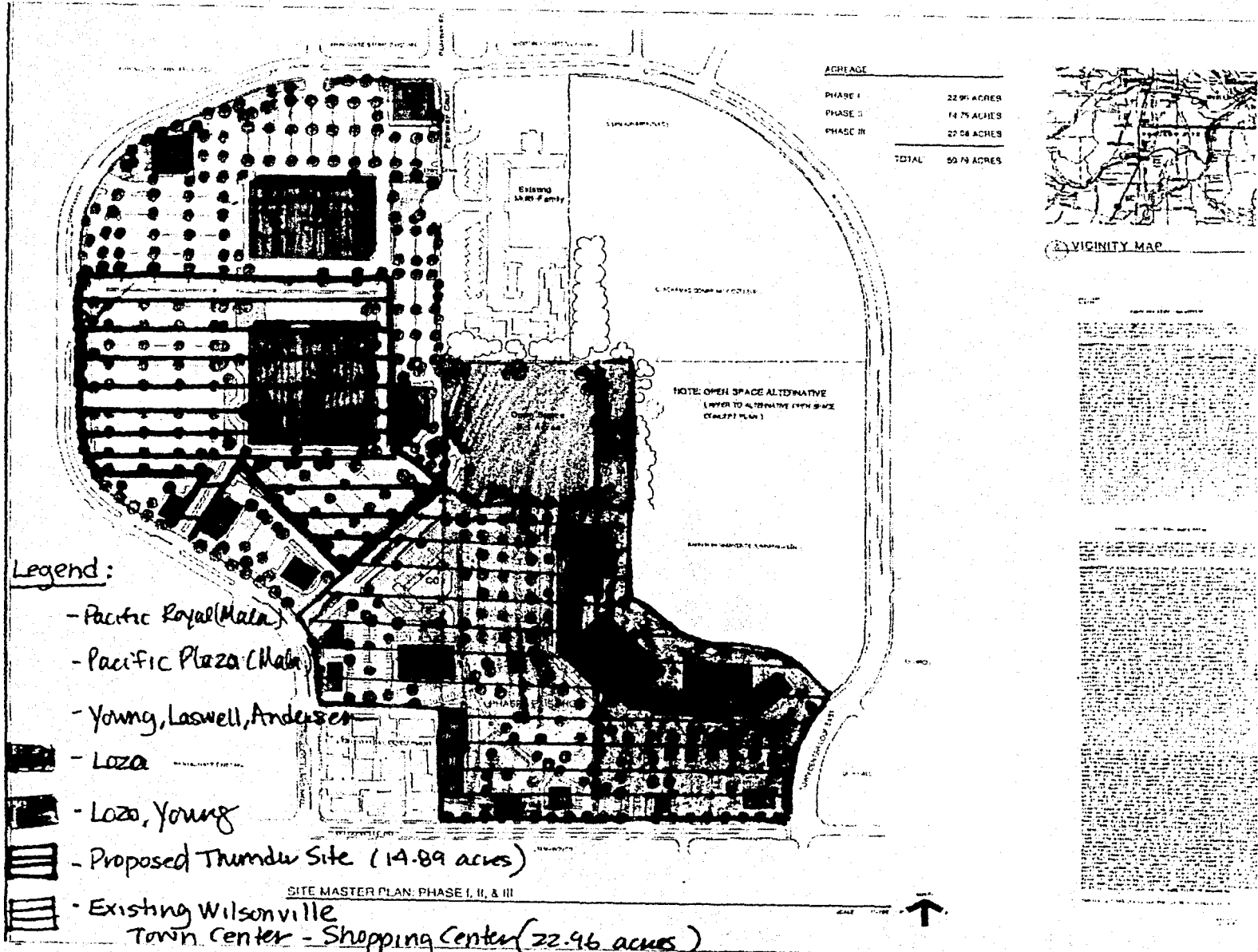
ACREAGE	
PHASE I	22.98 ACRES
PHASE II	14.75 ACRES
PHASE III	22.05 ACRES
TOTAL	59.79 ACRES

- Completed Areas
- ▨ Phase I Approval
- ▤ Phase II Approval

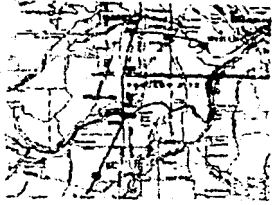
LEASE PLAN: PHASES I, II, & III

JKS Architects PC
 433 W. Taylor Street, Suite 200 • Portland, Oregon 97204
 503.251.1411 • Fax: 503.251.1412

WILSONVILLE TOWN CENTER
 WILSONVILLE, OREGON



ACREAGE	
PHASE I	22.96 ACRES
PHASE II	14.75 ACRES
PHASE III	22.58 ACRES
TOTAL	59.79 ACRES



VICINITY MAP

[Faded text, likely project description or site notes]

Legend:

- Pacific Royal (Mala)
- Pacific Plaza (Mala)
- Young, Laswell, Anderson
- 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
 22 SW 3rd Ave, Suite 200, Wilsonville, Oregon 97150
 503.738.1111

WILSONVILLE TOWN CENTER
 WILSONVILLE, OREGON

DEFECTS IN

ORIGINAL

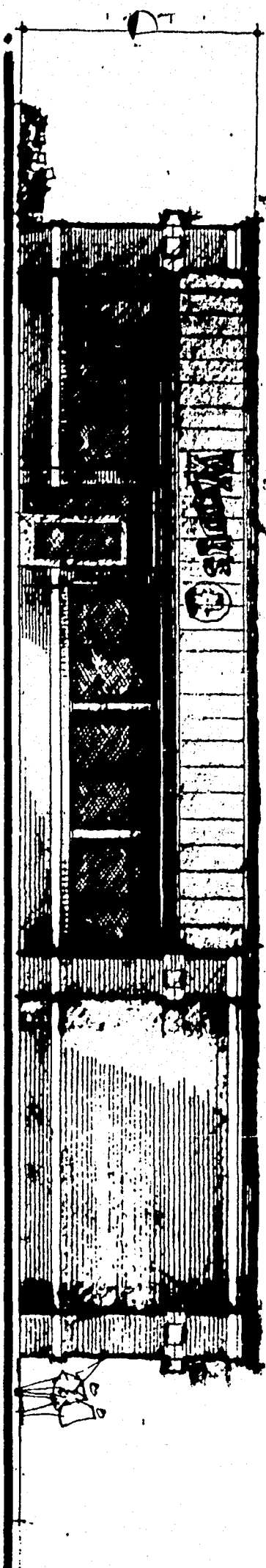
DOCUMENT

EXHIBIT F

Item 9.

1/8" = 1'-0"

NORTH ELEVATION



1/8" = 1'-0"

SOUTH ELEVATION

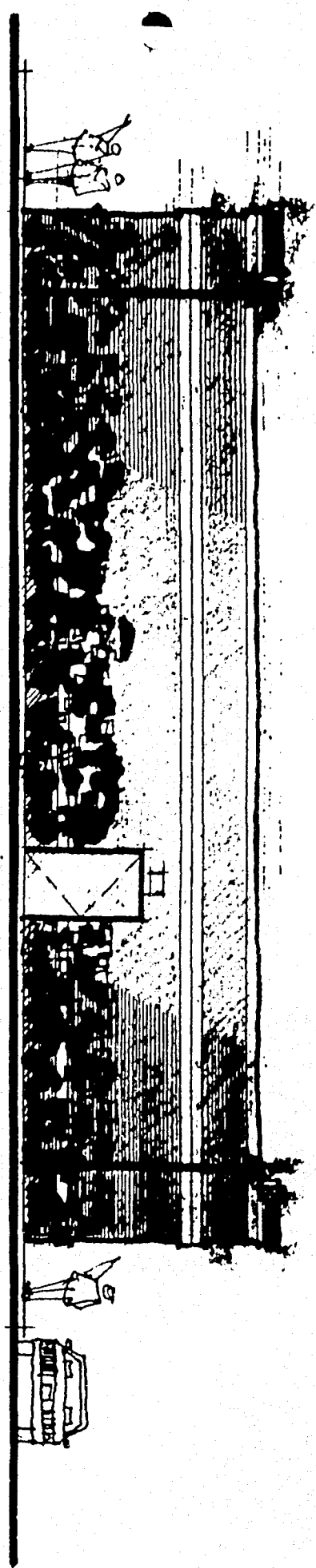


1 DRAWING NO:	PROJECT NAME: Wendy's Restaurant	DATE: 2/5/93
	DRAWING TITLE: Elevations	REVISION:



1/8" = 1'-0"

WEST ELEVATION



1/8" = 1'-0"

EAST ELEVATION



2	DRAWING NO.:	PROJECT NAME:	DATE:
		DRAWING TITLE:	REVISION:

Wendy's Restaurant
Elevations

2/5/93



CITY OF WILSONVILLE

PLANNING DEPARTMENT SITE DEVELOPMENT APPLICATION AND

Item 9.

3445 S.W. Elsworth Road
P.O. Box 220 Wilsonville, OR 97158-0220
503-662-3445

File No. 91 PC 43 1/4 Sec.
Final action on application or other change is required within 120 days in accordance with provisions of ORS 227.175
A pre-application conference normally is required prior to submission of an application. Please contact the Planning Department at (503) 662-3445 for an appointment.

Pte-App. No. Day Yr

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 Kimberly Beach, Vice President Capital Realty Corp

Property Description: 101 S.W. MAIN SUITE 1500 Map 13 & 14-D Tax class 200, 201, 101
102, 300

Request: STAGE I MASTER PLAN REVISION
STAGE II PHASE II WILSONVILLE Town Center
SITE PLAN - MOBILE CONDITION #8 OF 90PC15

Please attach a plat 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 12/19/91

Staff Signature Brian Edwards

Class I Class II Class III

- | | | |
|---|---|---|
| <input type="checkbox"/> PLAN AMENDMENT | <input type="checkbox"/> MAJOR PARTITION | <input type="checkbox"/> DESIGN REVIEW |
| <input type="checkbox"/> ZONE CHANGE | <input type="checkbox"/> MINOR PARTITION | <input type="checkbox"/> TEXT AMENDMENT |
| <input type="checkbox"/> PRELIMINARY PLAT | <input type="checkbox"/> CONDITIONAL USE | <input type="checkbox"/> SIGN REVIEW |
| <input type="checkbox"/> FINAL PLAT | <input type="checkbox"/> VARIANCE | <input type="checkbox"/> TEMPORARY USE |
| <input checked="" type="checkbox"/> PLANNED DEVELOPMENT | <input checked="" type="checkbox"/> OTHER RECONSIDERED CONDITION #8 OF 90PC15 | |

SITE FINDINGS

- Zoning: PC & TOWN CENTERS, Building Area _____
- Area of lot: SEE FILE
- Building or Sign Height: TOWN CENTERS LOOP WEST
(Max) _____
- Zoning Code Minimum Set-backs:
Front _____
Side _____
Rear _____
- Access to Property _____
- Other: _____

Approved Denied Approved with Conditions (See attached)

Conditions of Development:

Approval of this Development Permit is submitted on the basis of information submitted by the applicant or called for above. Any change of plans or incorrect information submitted may result in revocation of permit. This decision may be appealed in accordance with the provisions of the Wilsonville Code and ORS 227.180.

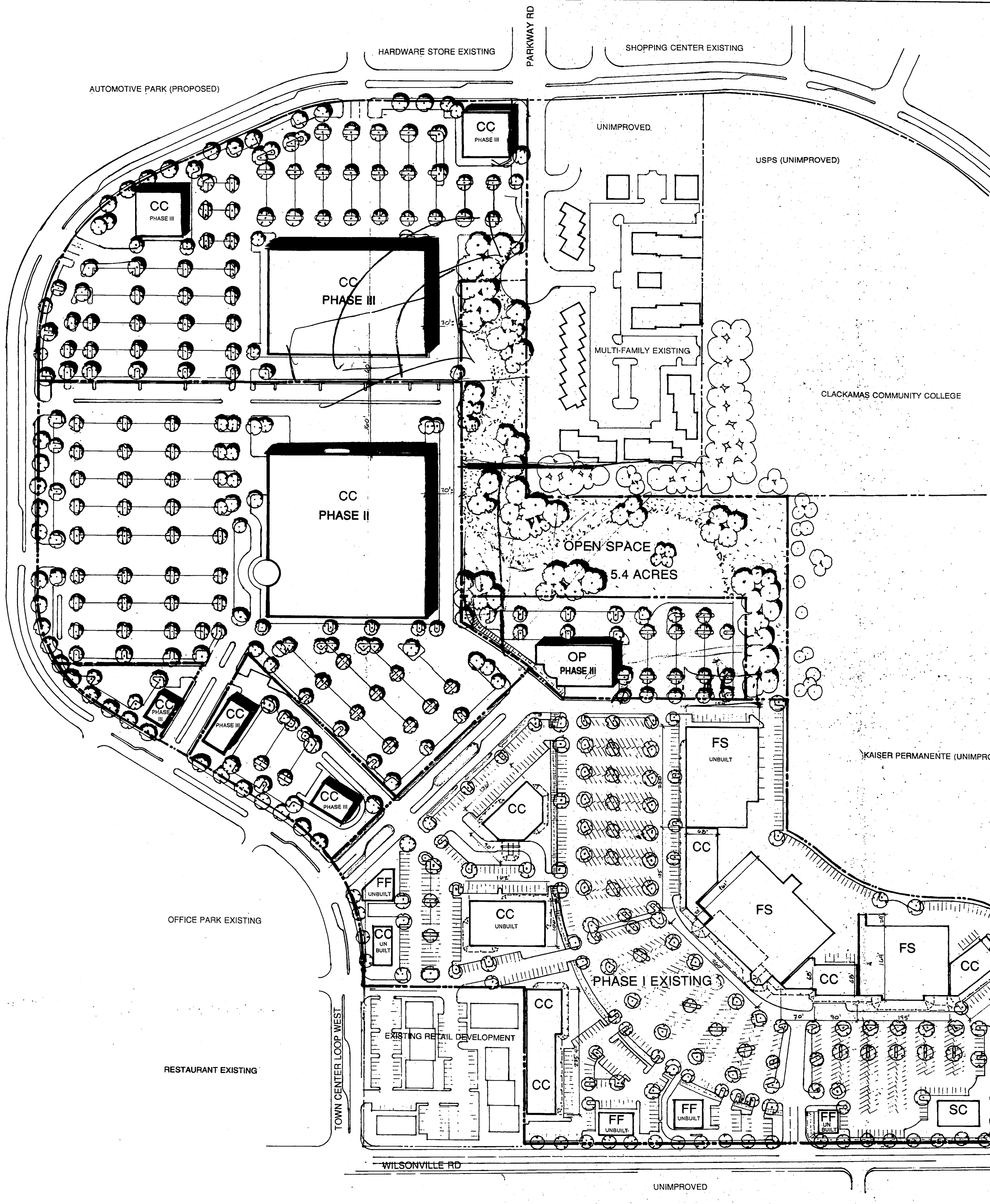
Fee Amount Paid \$1315.00 Check No. SEE FILE Cash 1205 Fee \$500.00 PER - I
1206 Fee \$825.00
1207 Fee \$250.00 - cash

Permit Approval: Planner's Signature _____

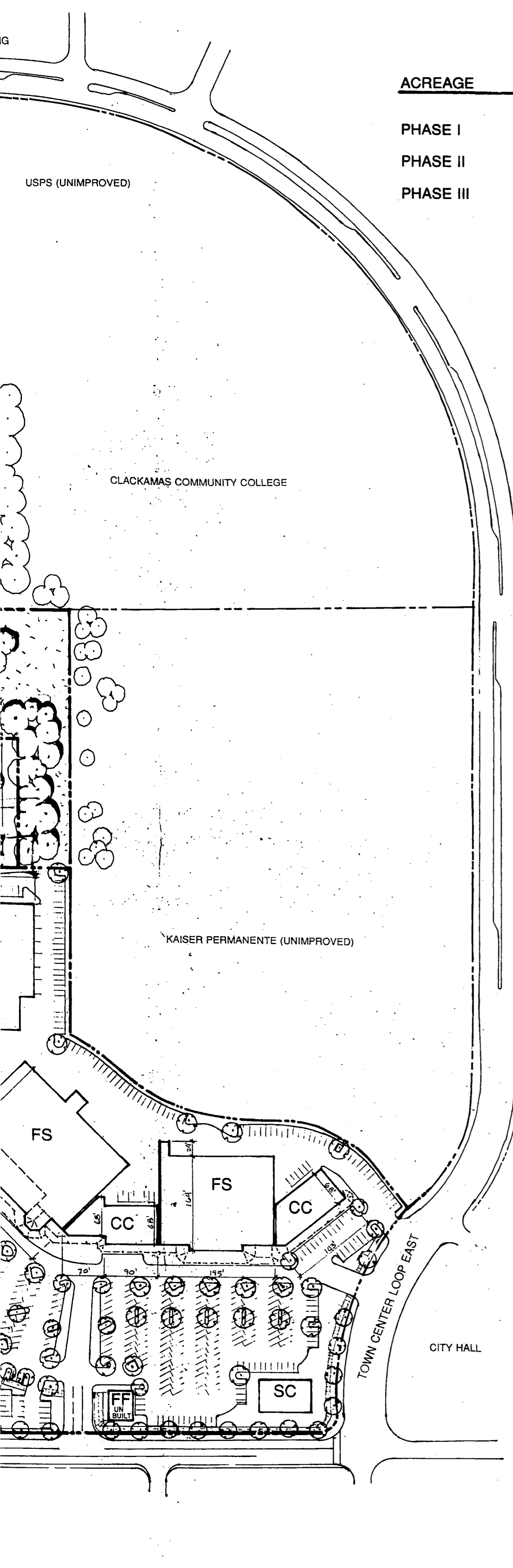
City Council or Planning Commission Approval Yes No

Order: Resolution _____

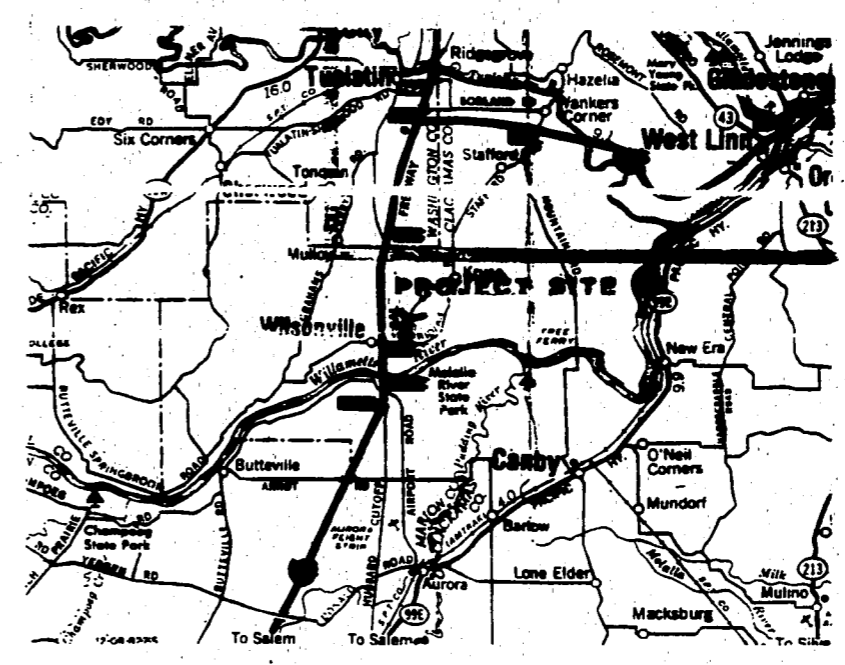
447



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 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°03'21" East along the section line between Sections 13 and 14 a distance of 44.00 feet to the **POINT OF BEGINNING**; thence continuing North 02°03'00" East along said section line a distance of 339.50 feet; thence South 89°55'30" 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 46.55 feet to a point of curvature; thence 247.91 feet along the arc of a 250.34 foot radius curve to the left through a central angle of 37°15'11" and whose chord bears North 15°39'23" West a distance of 243.55 feet to a point on a curve; thence North 45°03'00" East a distance of 554.11 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 285.58 feet to the intersection with a non-tangent curve; thence 33.82 feet along the arc of a 317.35 foot radius curve to the right through a central angle of 16°55'21" and whose chord bears South 55°30'50" East a distance of 93.45 feet to a point of reverse curvature; thence 348.26 feet along the arc of a 338.67 foot radius curve to the left through a central angle of 42°03'30" and whose chord bears South 89°02'49" East a distance of 51.65 feet to a point of curvature; thence 74.68 feet along the arc of a 200.00 foot radius curve to the right through a central angle of 5°27'10" and whose chord bears South 89°01'32" East a distance of 69.15 feet to a point of tangency; thence South 29°00'15" East a distance of 97.50 feet to a point on a non-tangent curve; thence 325.41 feet along the arc of a 222 foot radius curve to the left through a central angle of 19°14'18" and whose chord bears South 29°40'08" West a distance of 331.74 feet to a point of tangency; thence South 00°03'01" West a distance of 88.17 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 89°16'20" and whose chord bears South 89°42'00" West a distance of 48.17 feet to a point of tangency; thence South 22°22'25" West a distance of 97.50 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 4,077.07 feet to the most westerly northwest corner of Parcel 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 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 350.84 foot radius curve to the left the radial center of which bears South 52°40'44" West) through a central angle of 20°25'22" an arc distance of 135.64 feet (the long chord bears North 47°01'56" West 134.32 feet) to a point of tangency; thence North 57°44'38" West 463.50 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°27'16" 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 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 as deeded to the City of Wilsonville in deed recorded November 12, 1986 in recorder's fee 86-44959 North 38°37'13" East 215.39 feet to the northerly line of said tract per fee 84-4353; 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°58'19" 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 and southeasterly right-of-way lines of said Town Center Loop Road West along the following courses and distances: North 00°02'22" West 230.31 feet to a point of curvature; thence tracing the arc of a 250.00 foot radius curve to the right through a central angle of 84°13'44" an arc distance of 258.91 feet (the long chord bears North 32°24'30" East 244.25 feet) to a point of tangency; thence North 89°57'00" East 285.04 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 150.41 feet (the long chord bears North 70°22'24" East 178.36 feet) to a point of tangency; thence North 89°43'25" 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 of a 20.00 foot radius curve to the right through a central angle of 47°09'23" an arc distance of 15.46 feet (the long chord bears South 23°27'42" West 15.90 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°55'01" 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 1 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°28'52" East 849.20 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

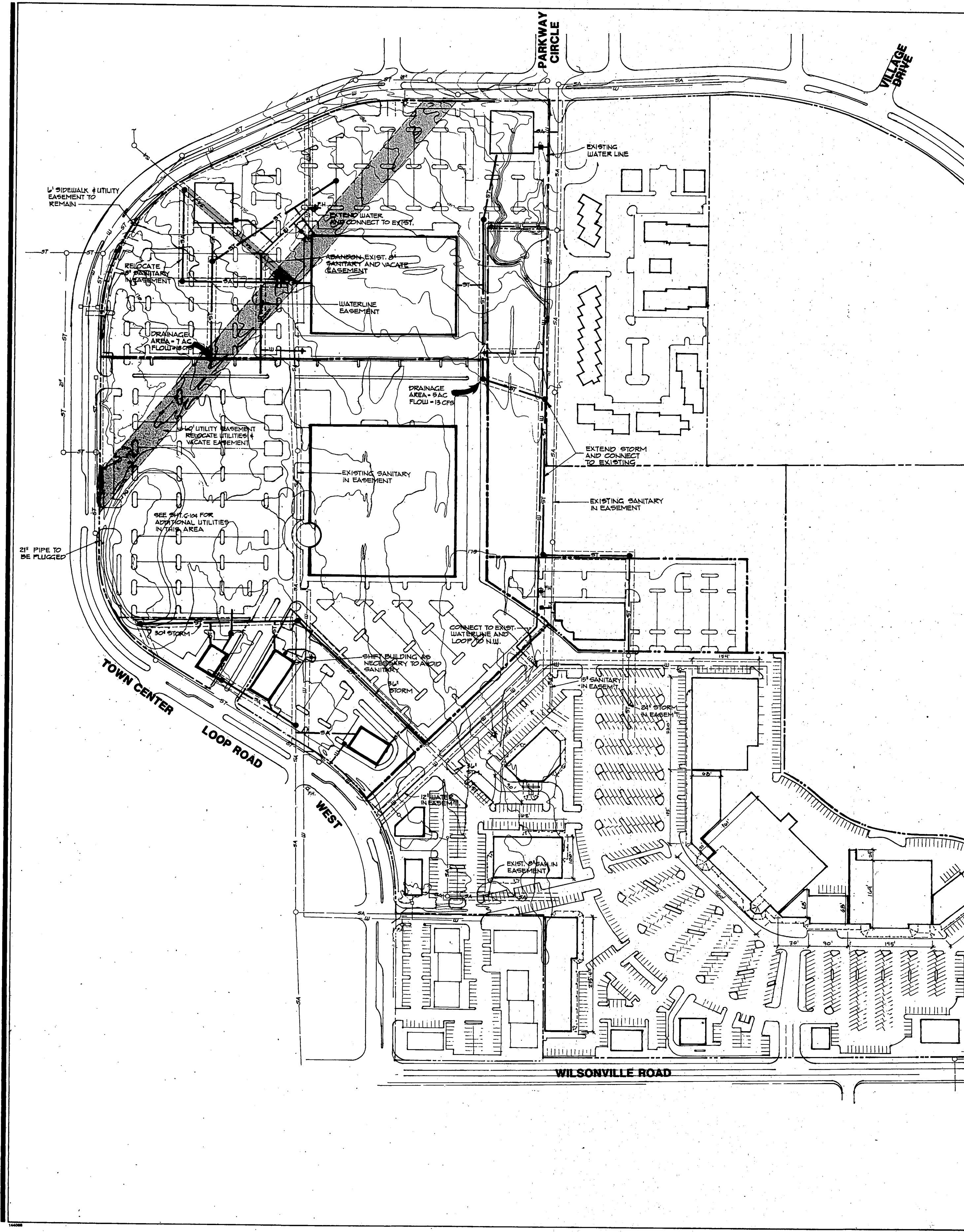
JKS Architects PC
1620 S.W. Taylor Street • Suite 200 • Portland, Oregon 97205
503-227-5616 • FAX 503-227-3590

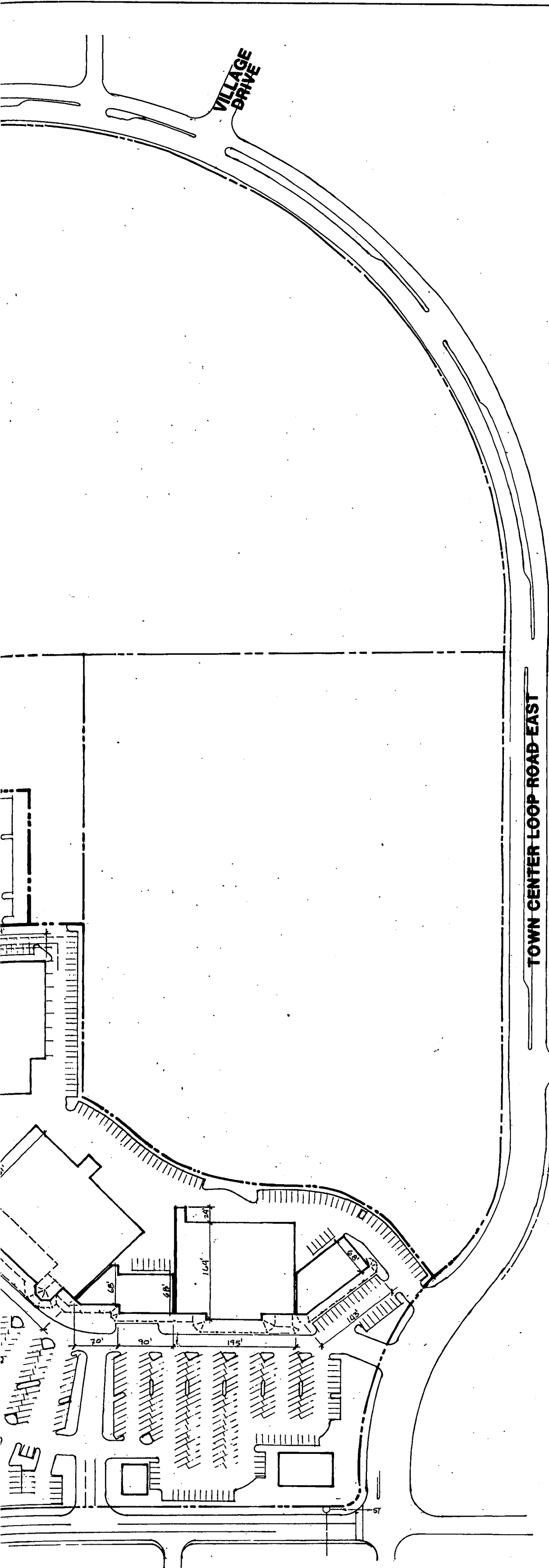
WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON

Revisions	
KJD Drawn By	RBB Checked By
8963	10/18/91
Job No.	Date
SITE MASTER PLAN	
Sheet Title	
Sheet No.	
1	
of	

SCALE 1"=100' W ↑ E





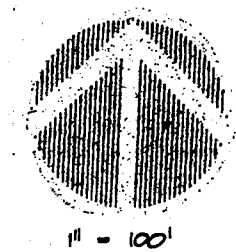


COURTSIDE DRIVE

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	



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

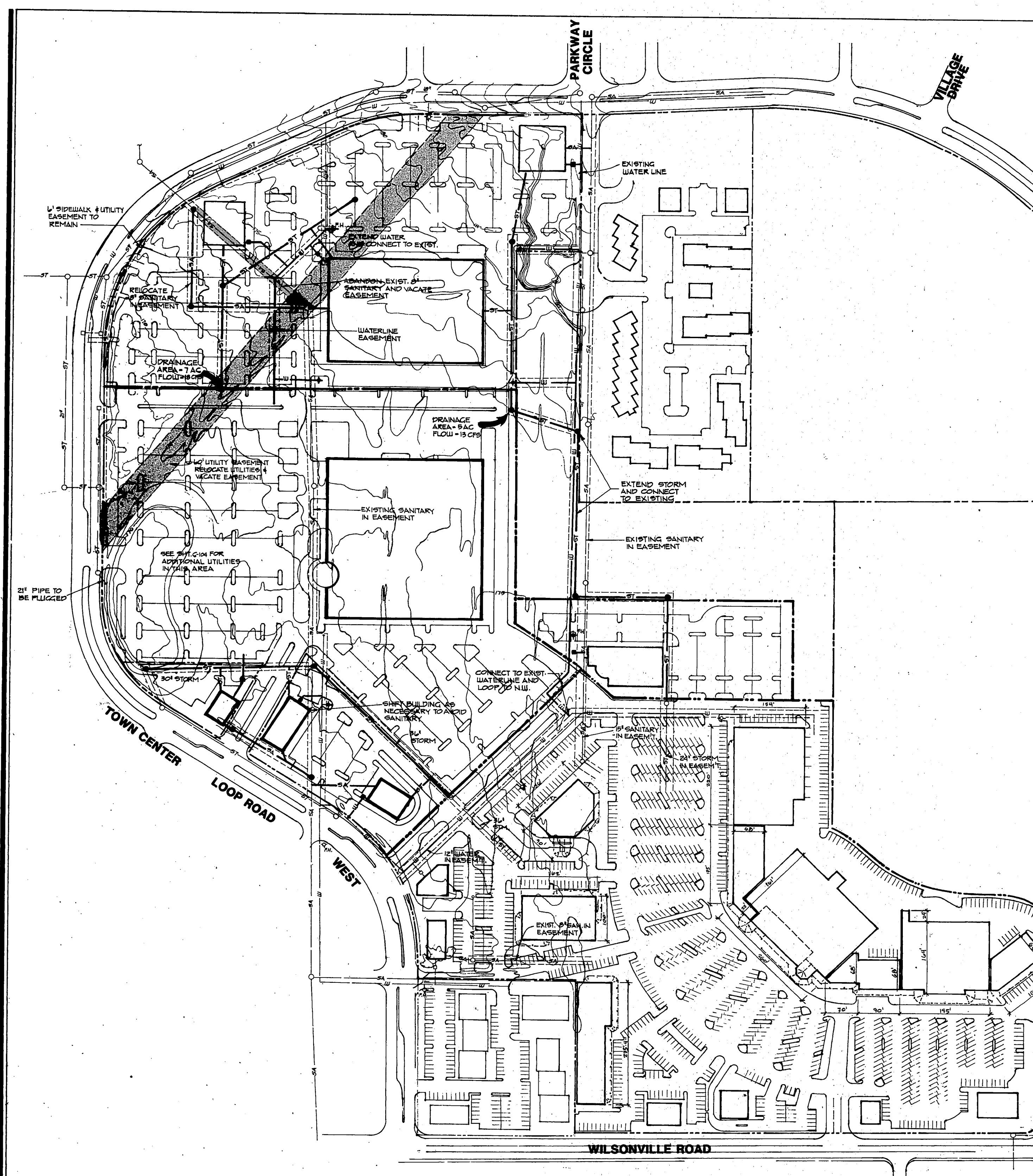
WILLIAMS PACIFIC
 1099 S.W. Columbia Street
 Portland, Oregon 97201
 Fax (503) 224-4407
 Planning • Lighting • Surveying • Landscape Architecture

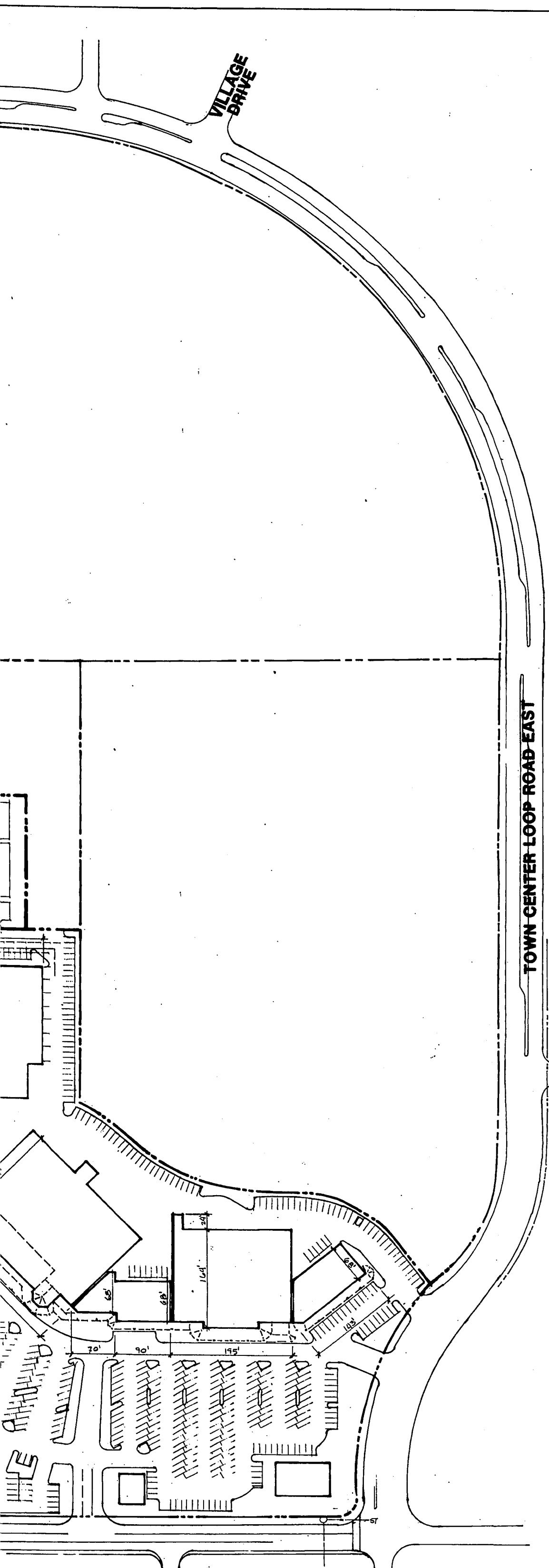
WILSONVILLE TOWN CENTER
 Wilsonville, Oregon

Revisions

Drawn By _____ Checked By _____
 Job No. 4-467-0301 Date 10-18-11
MASTER UTILITIES PLAN
 Sheet Title

Sheet No.
2
 of





COURTHOUSE DRIVE

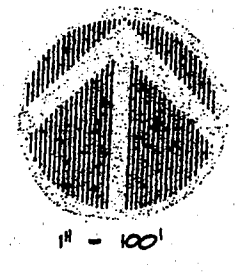
TOWN CENTER LOOP ROAD EAST

VILLAGE DRIVE

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 *[Signature]*
[Signature]

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

WILL PACIFIC
 1620 S.W. Taylor Street
 Portland, Oregon 97205
 (503) 227-0435
 Fax (503) 274-4607
 Planning • Engineering • Surveying • Landscape Architecture

WILSONVILLE TOWN CENTER
 Wilsonville, Oregon

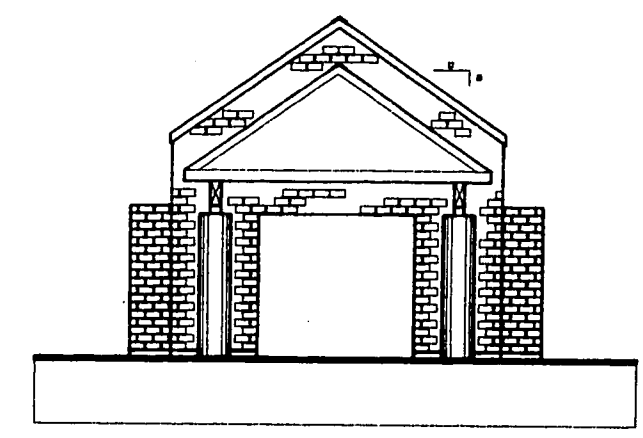
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 Job No. 4-467-0301 Date 10-18-91
MASTER UTILITIES PLAN
 Sheet Title

Sheet No.
2

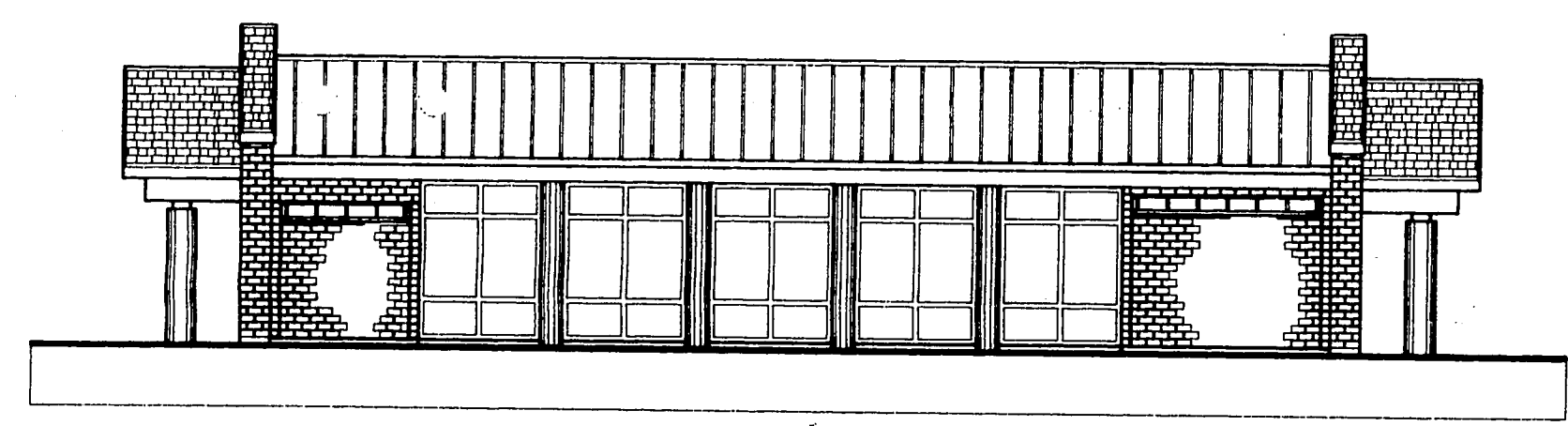
**WILSONVILLE TOWN CENTER
 PROPOSED CAR WASH**

WILSONVILLE, OREGON



END ELEVATION

1/8" = 1'-0"

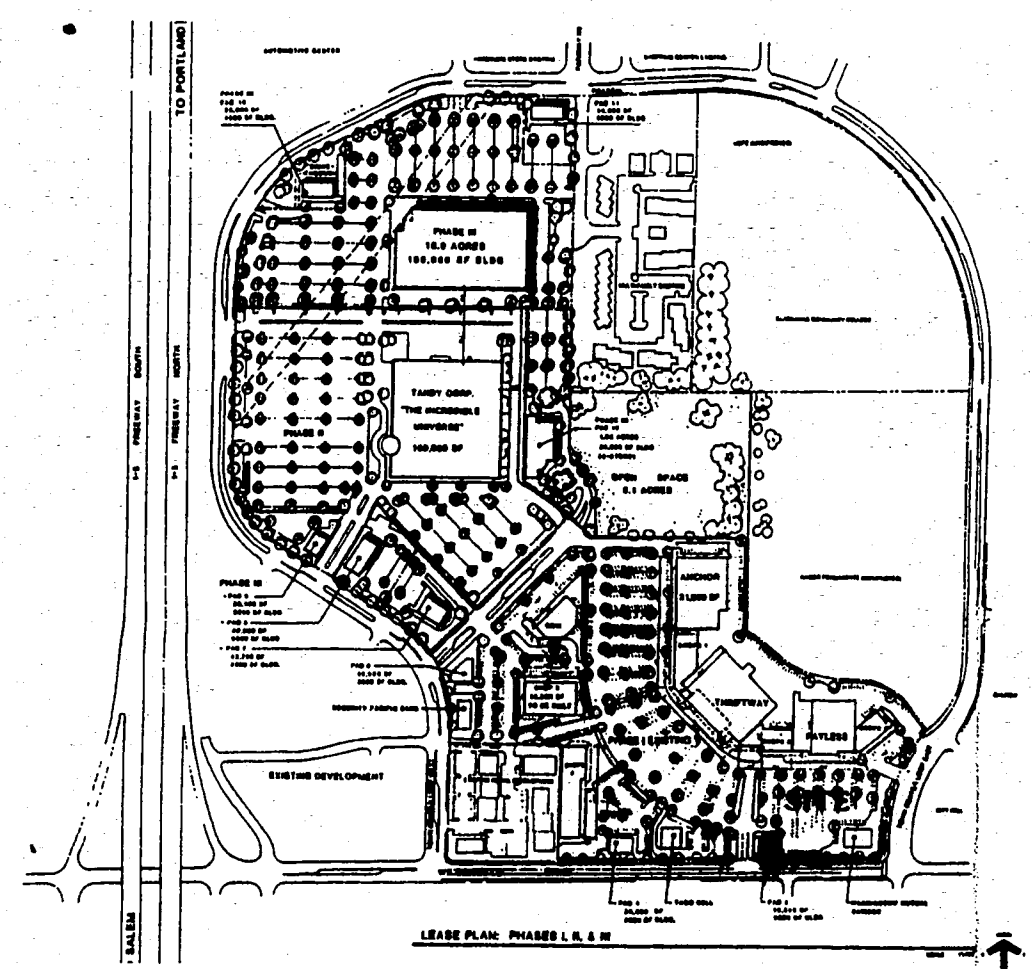


FRONT ELEVATION

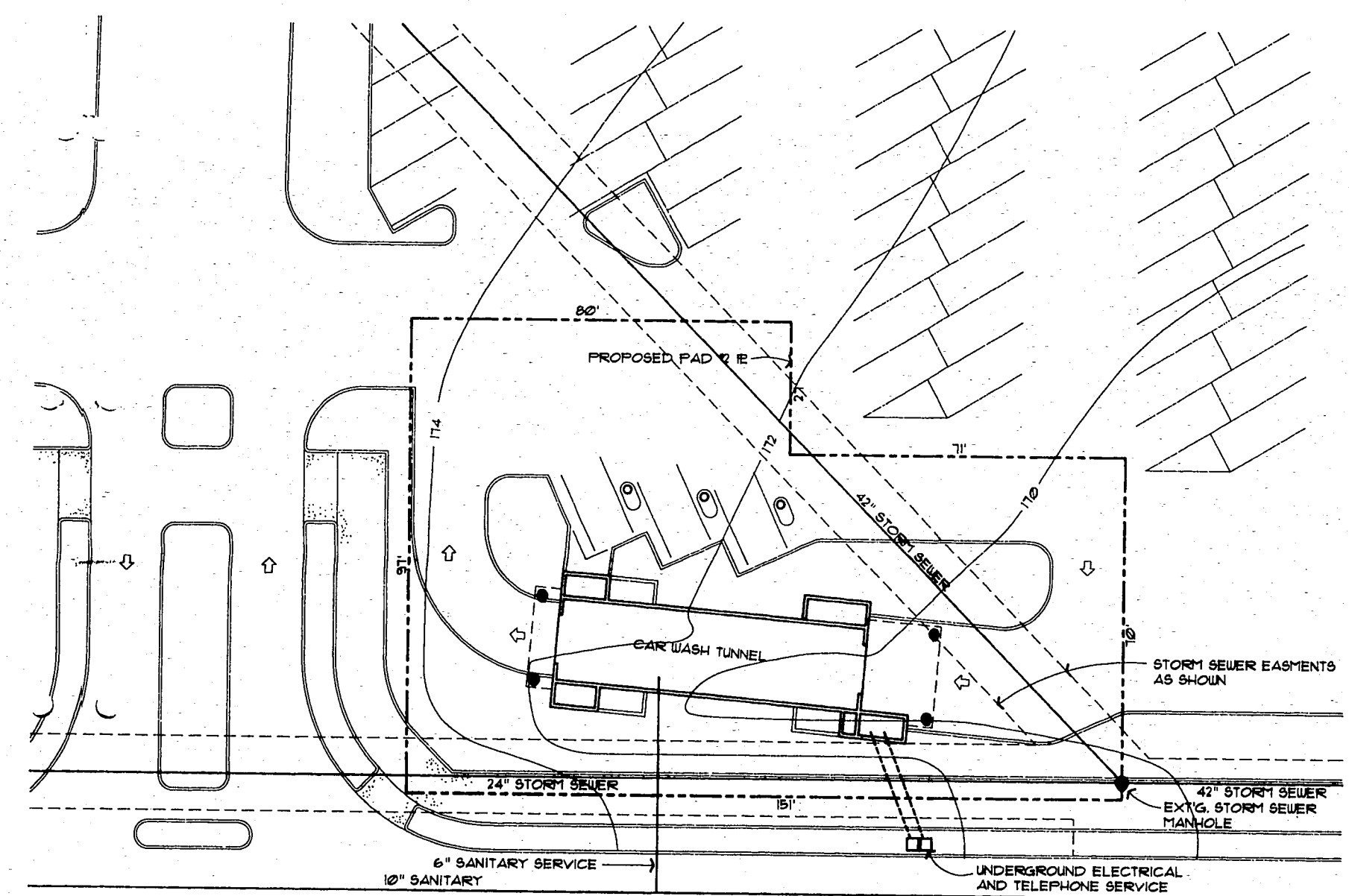
1/8" = 1'-0"

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%



VICINITY MAP



WILSONVILLE RD.



PRELIMINARY SITE PLAN

1" = 20'

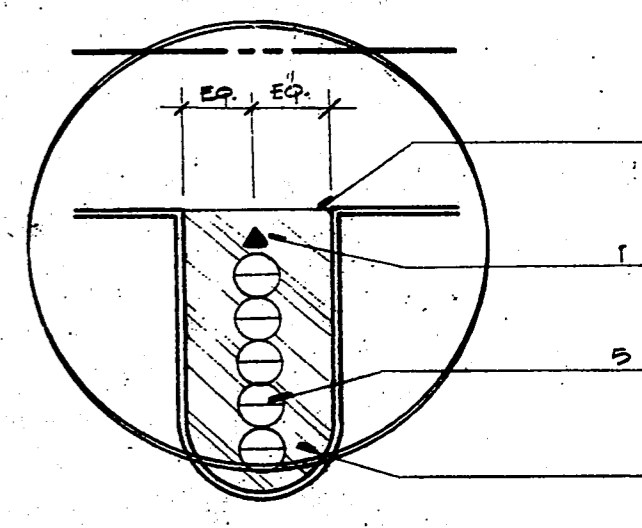
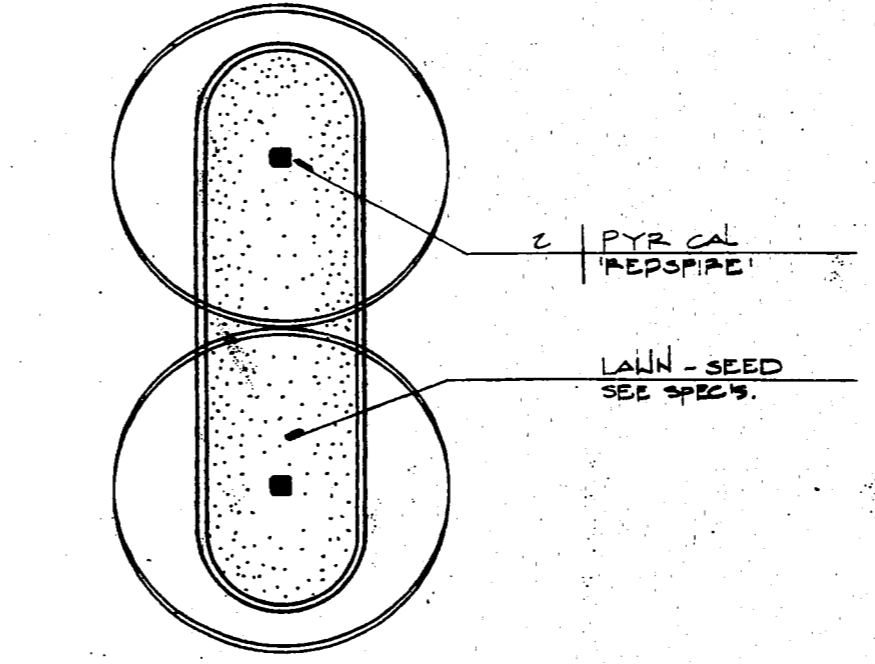
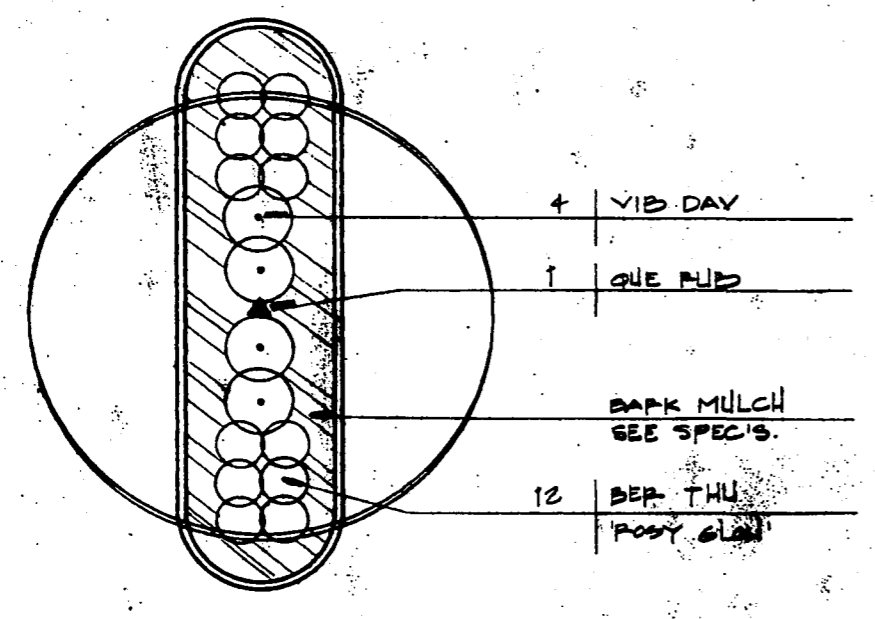
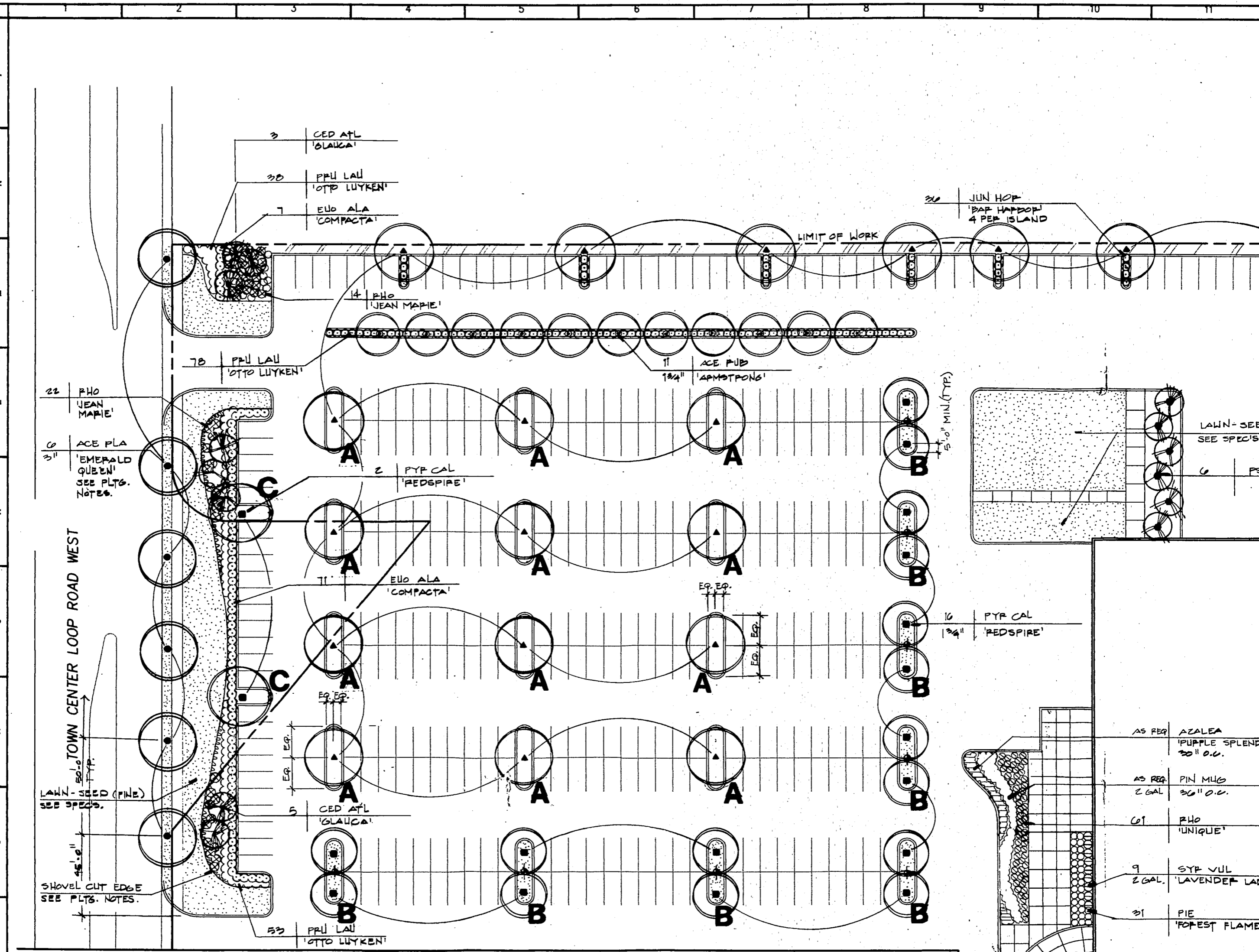
CLIENT:
DENNIS THOMPSON

REVISIONS:

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

PER WS. 1, 2, 3, 4, 13, 18, 88, 88, 88, 88

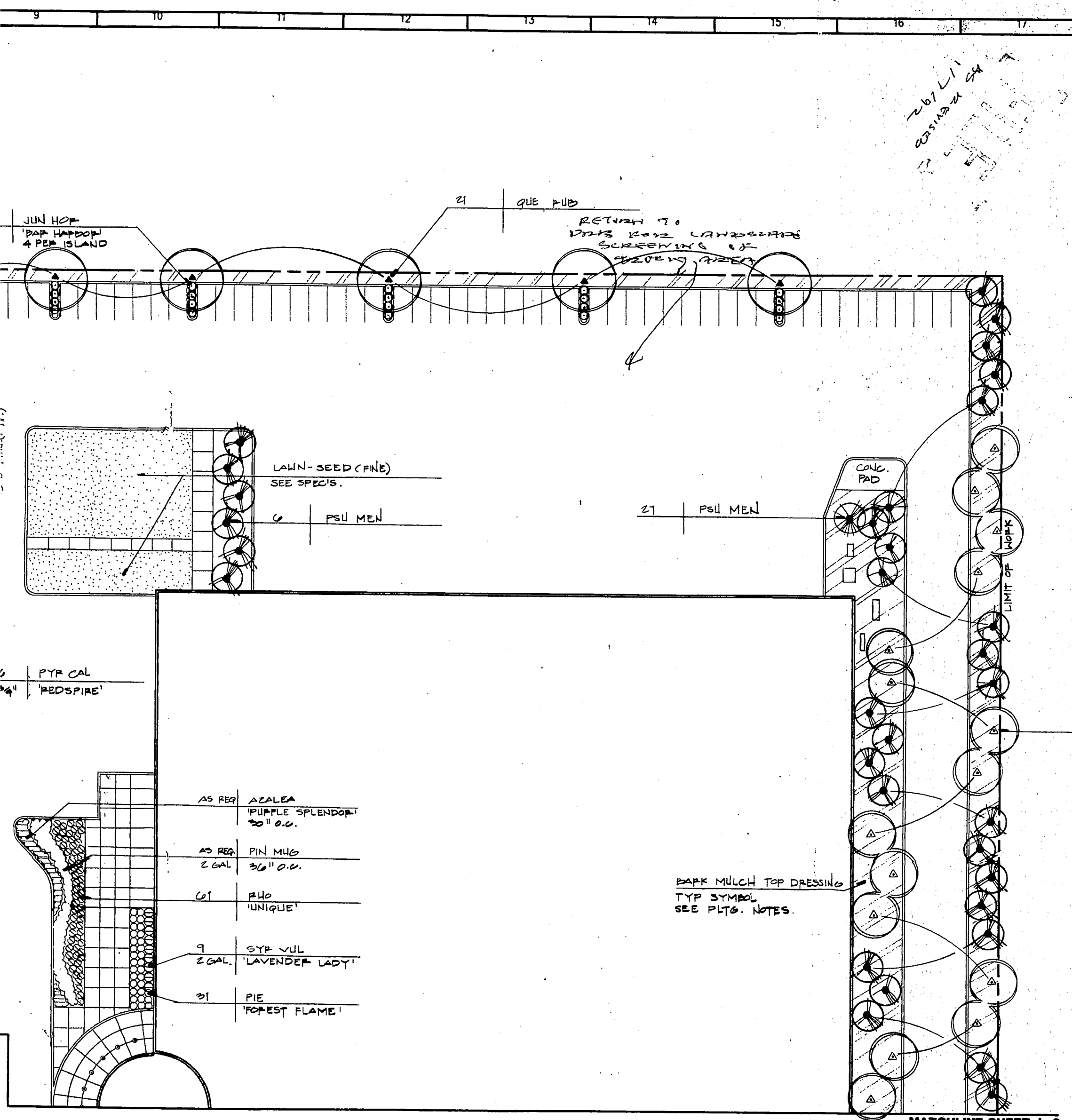
PROJECT NO. 4-755-0327
CADD FILE: 07/25/2017.DWG



A PLANTING ISLAND 'A' DETAIL

B PLANTING ISLAND 'B' DETAIL

C PLANTING ISLAND 'C' DETAIL



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.

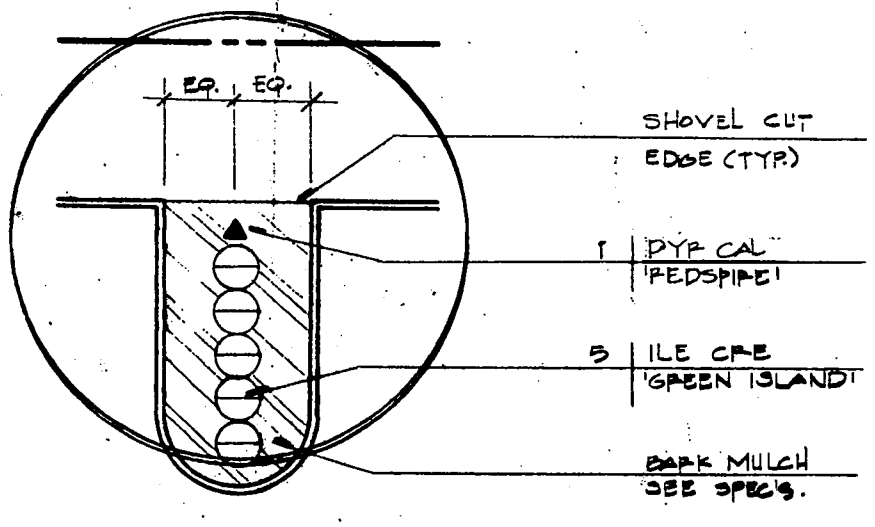
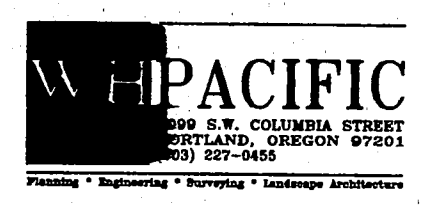
ALL SHRUB AND GROUNDCOVER PLANTING AREAS TO RECEIVE MINIMUM 2" DEPTH OF BARK MULCH. SEE SPECIFICATIONS 02950.

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.



APPROVED

PLANTING ISLAND 'C' DETAIL

NOT FOR CONSTRUCTION

PRINTED
JAN 06 1992
W & H PACIFIC



No.	Revisions/Submissions	Date

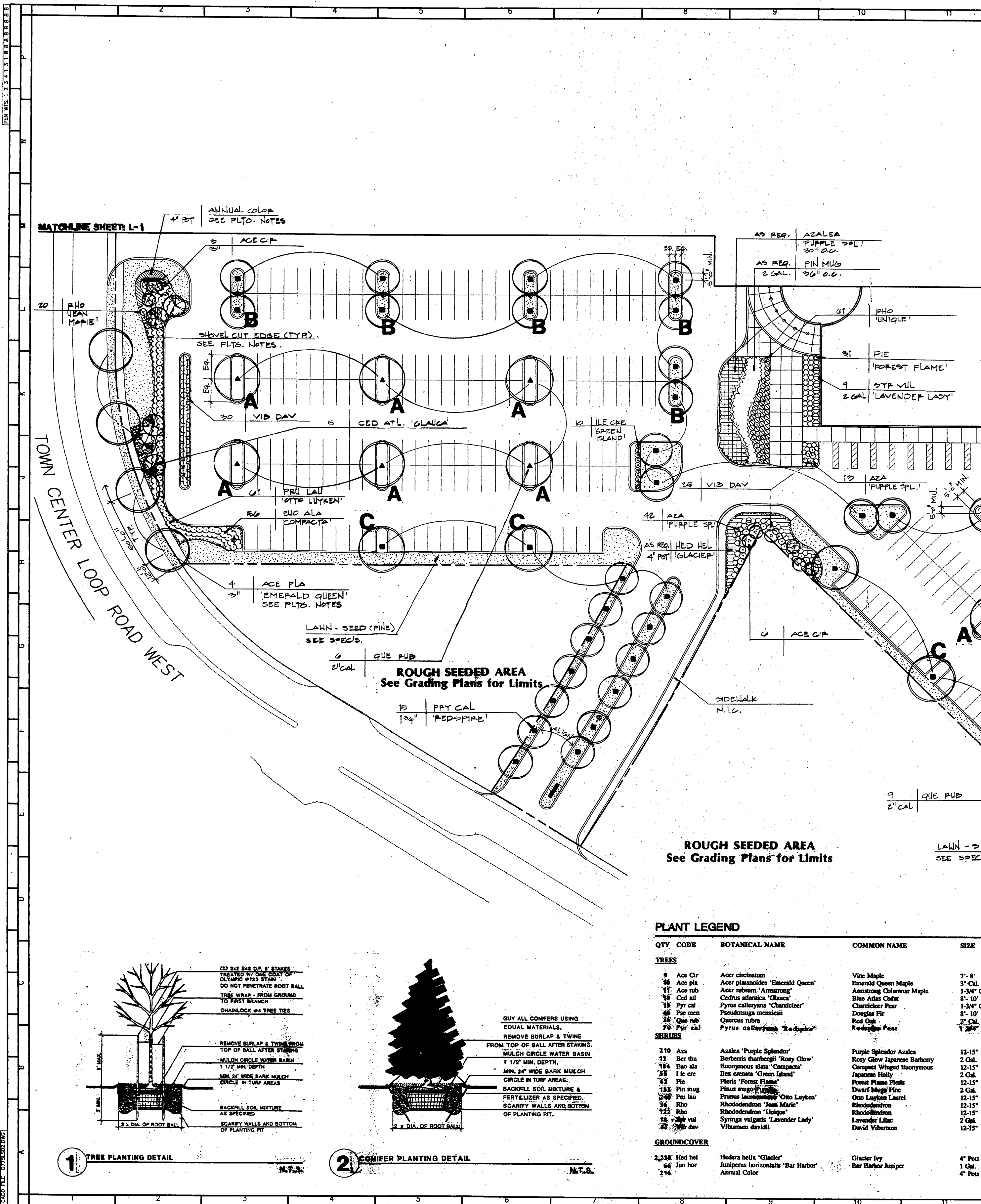
DesignForum ARCHITECTS

3484 For Hills Avenue, Dayton, Ohio 45428 Telephone: (513) 288-4400

Project Title **PROJECT THUNDER**
WILSONVILLE, OREGON

Drawing Title **LANDSCAPE PLAN**

Seal REGISTERED 2011 Matthew P. Simpson 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



AS REQ. AZALEA 'PURPLE SPL.' 30" O.C.

AS REQ. PIN MUG 2 GAL 30" O.C.

PHO 'UNIQUE'

PIE 'FOREST FLAME'

9 SYR VIL 2 GAL 'LAVENDER LADY'

42 AZA 'PURPLE SPL.'

AS REQ. HED HEL 4" POT 'GLACIER'

9 QUE PUB 2" CAL

15 PPY CAL 1 3/4" 'RED SPIRE'

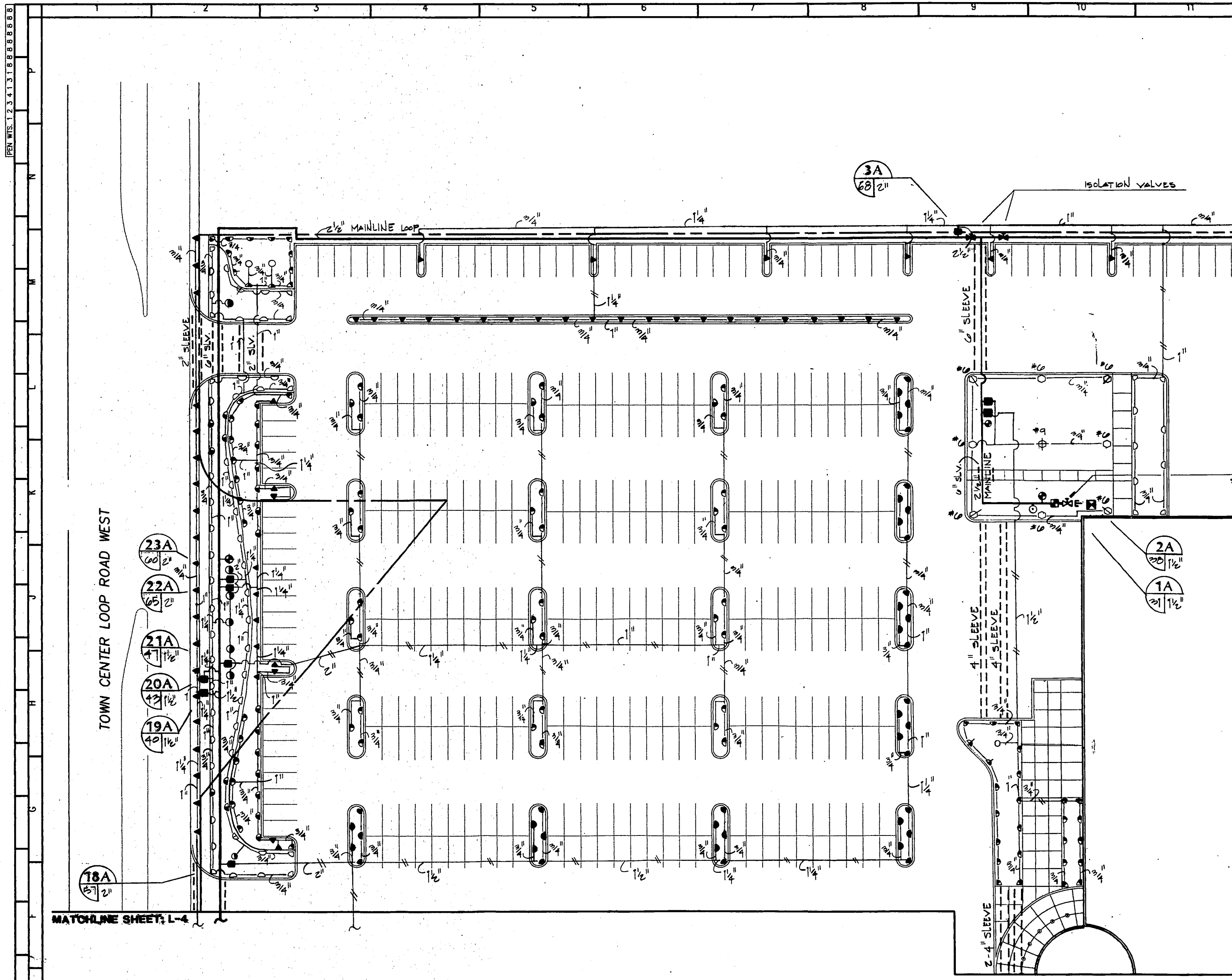
PLANT LEGEND

QTY	CODE	BOTANICAL NAME	COMMON NAME	SIZE
TREES				
9	Ace Cir	Acer circinatum	Vine Maple	7'-8'
11	Ace pla	Acer platanoides 'Emerald Queen'	Emerald Queen Maple	3" Cal.
11	Ace rub	Acer rubrum 'Armstrong'	Armstrong Columnar Maple	1-3/4" Cal.
18	Ced atl	Cedrus atlantica 'Glaucia'	Blue Atlas Cedar	8'-10'
18	Pyr cal	Pyrus calleryana 'Chanticleer'	Chanticleer Pear	1-3/4" Cal.
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" Cal.
SHRUBS				
210	Aza	Azalea 'Purple Splendor'	Purple Splendor Azalea	12-15"
12	Ber thu	Berberis thunbergii 'Rosy Glow'	Rosy Glow Japanese Barberry	2 Gal.
184	Euo ala	Euonymus alata 'Compacta'	Rosy Glow Japanese Barberry	12-15"
35	I le cre	Illex crenata 'Green Island'	Compact Winged Euonymus	2 Gal.
63	Pie	Pieris 'Forest Flame'	Japanese Holly	12-15"
133	Pin mug	Pinus mugo	Forest Flame Pieris	12-15"
133	Pru lau	Prunus laurocerasus 'Otto Luyken'	Dwarf Mugo Pine	2 Gal.
36	Rho	Rhododendron 'Jesse Marie'	Otto Luyken Laurel	12-15"
112	Rho	Rhododendron 'Unique'	Rhododendron	12-15"
18	Syr vul	Syringa vulgaris 'Lavender Lady'	Rhododendron Lilac	2 Gal.
33	Vib dav	Viburnum davidii	Lavender Lady	12-15"
GROUND COVER				
2,230	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

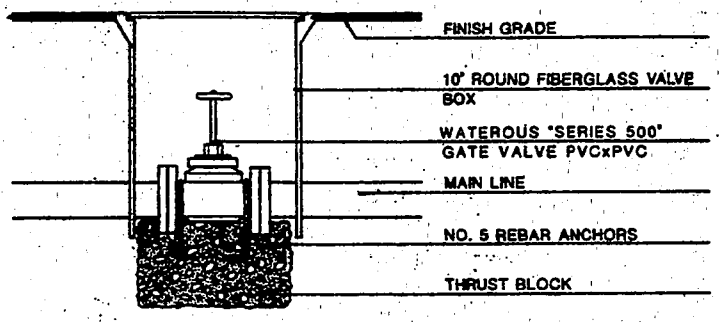
1 TREE PLANTING DETAIL

2 CONIFER PLANTING DETAIL

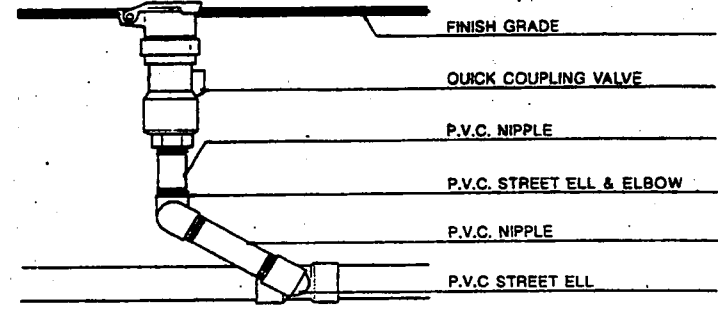
PROJECT NO. 4-755-0202
 CAD FILE 07PES02.DWG



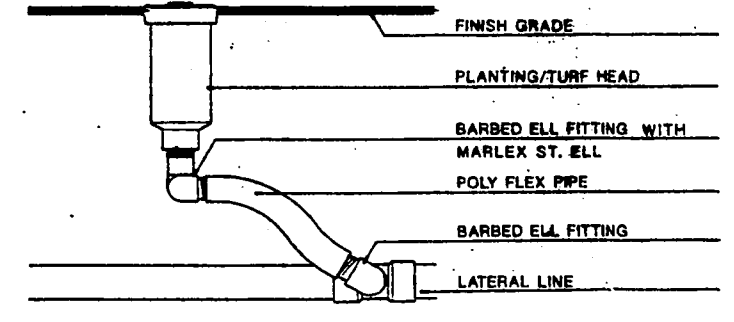
MATCHLINE SHEET: L-4



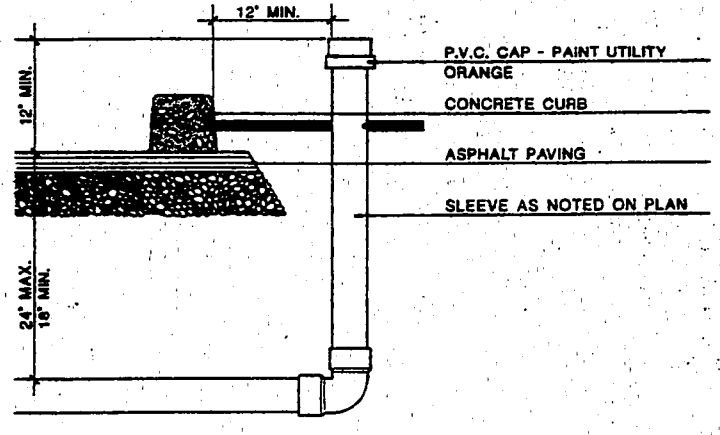
MAINLINE GATE VALVE



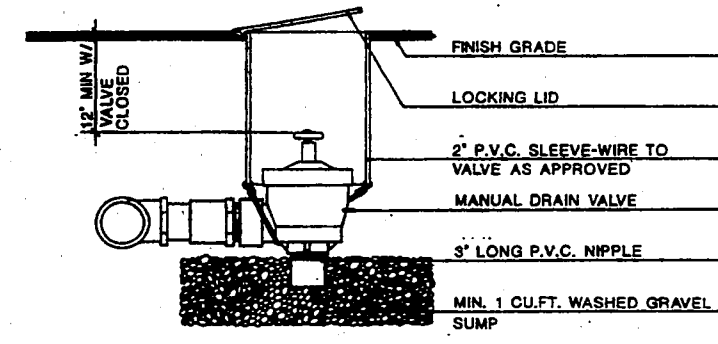
QUICK COUPLING VALVE DETAIL



POLY FLEX RISER DETAIL



SLEEVING DETAIL

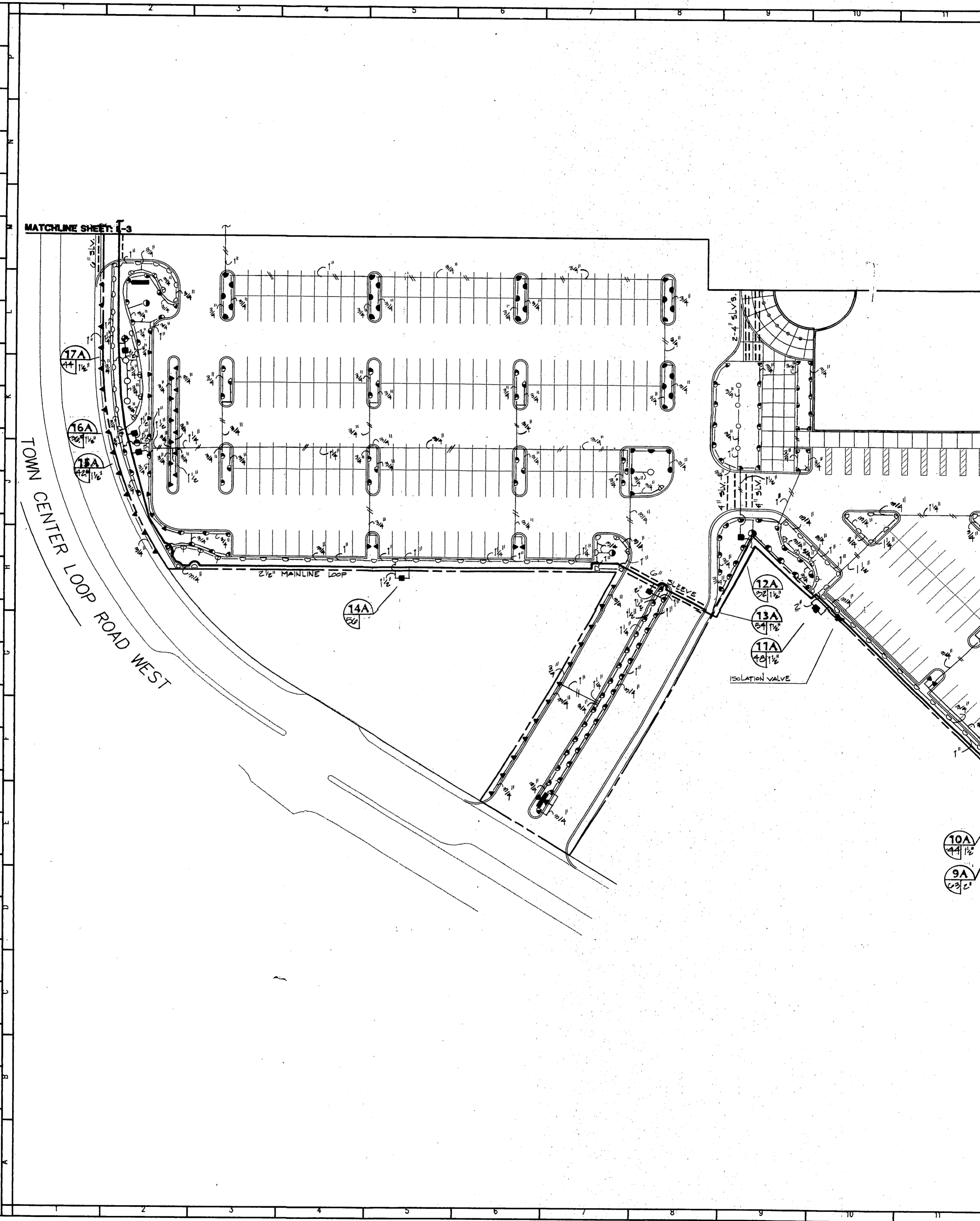


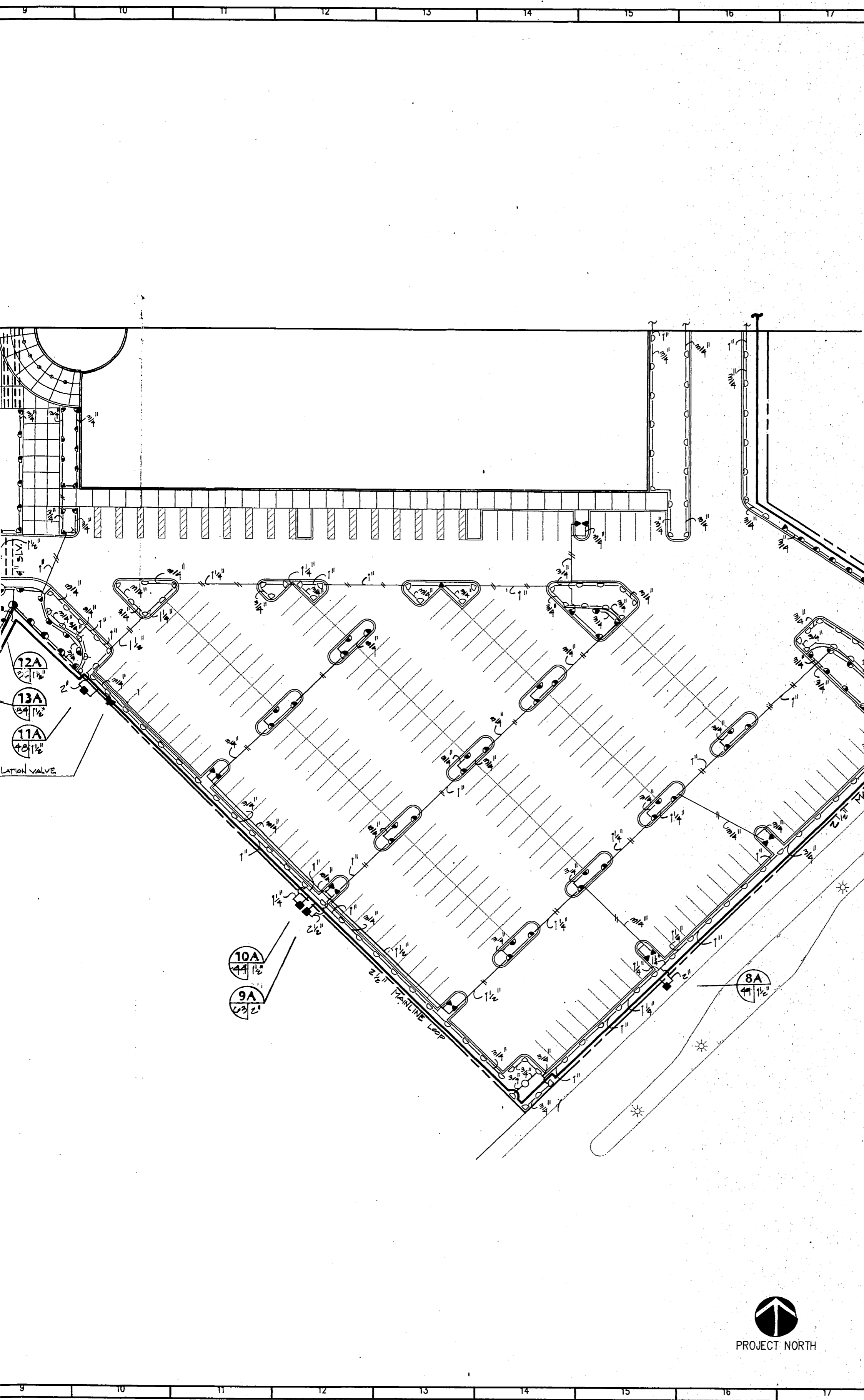
MANUAL DRAIN VALVE DETAIL

PROJECT NO. 7-15E-0002
CADD FILE: 07580002

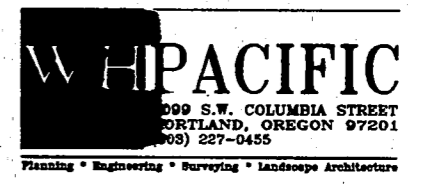
PEN WS. 1 2 3 4 1 3 1 8 8 8 8 8 8 8 8

PROJECT NO. 4-755-0202
CAD FILE: 07150220WS





SHEET NOTES



No.	Revisions/Submissions	Date

DesignForum
ARCHITECTS

3484 For Hills Avenue, Dayton, Ohio 45429 Telephone: (513) 298-4400

Project Title **PROJECT THUNDER**
WILSONVILLE, OREGON

Drawing Title **IRRIGATION PLAN**

Seal REGISTERED 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 c 1991 DESIGN FORUM ARCHITECTS



DEVELOPMENT REVIEW BOARD MEETING

MONDAY, FEBRUARY 26, 2024
6:30 PM

Public Hearing:

3. **Resolution No. 429. Appeal of Administrative Decision.** The applicant is appealing the Planning Director's determination of non-conformance in Case File ADMN23-0029.

Case File:

DB24-0002 Appeal of Administrative Decision

**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; and

WHEREAS, the subject of the Class 1 Administrative Review was a Planning Director Determination on non-conformance per Subsection 4.030 (.01) A. 7. of the Wilsonville Development Code; and

WHEREAS, the City issued the Planning Director 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, the Development Review Board considered all evidence and testimony on the record and, thereafter, deliberated.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby affirm the Planning Director 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 26th day of February 2024, and filed with the Planning Administrative Assistant on _____. 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:

 Shelley White, 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

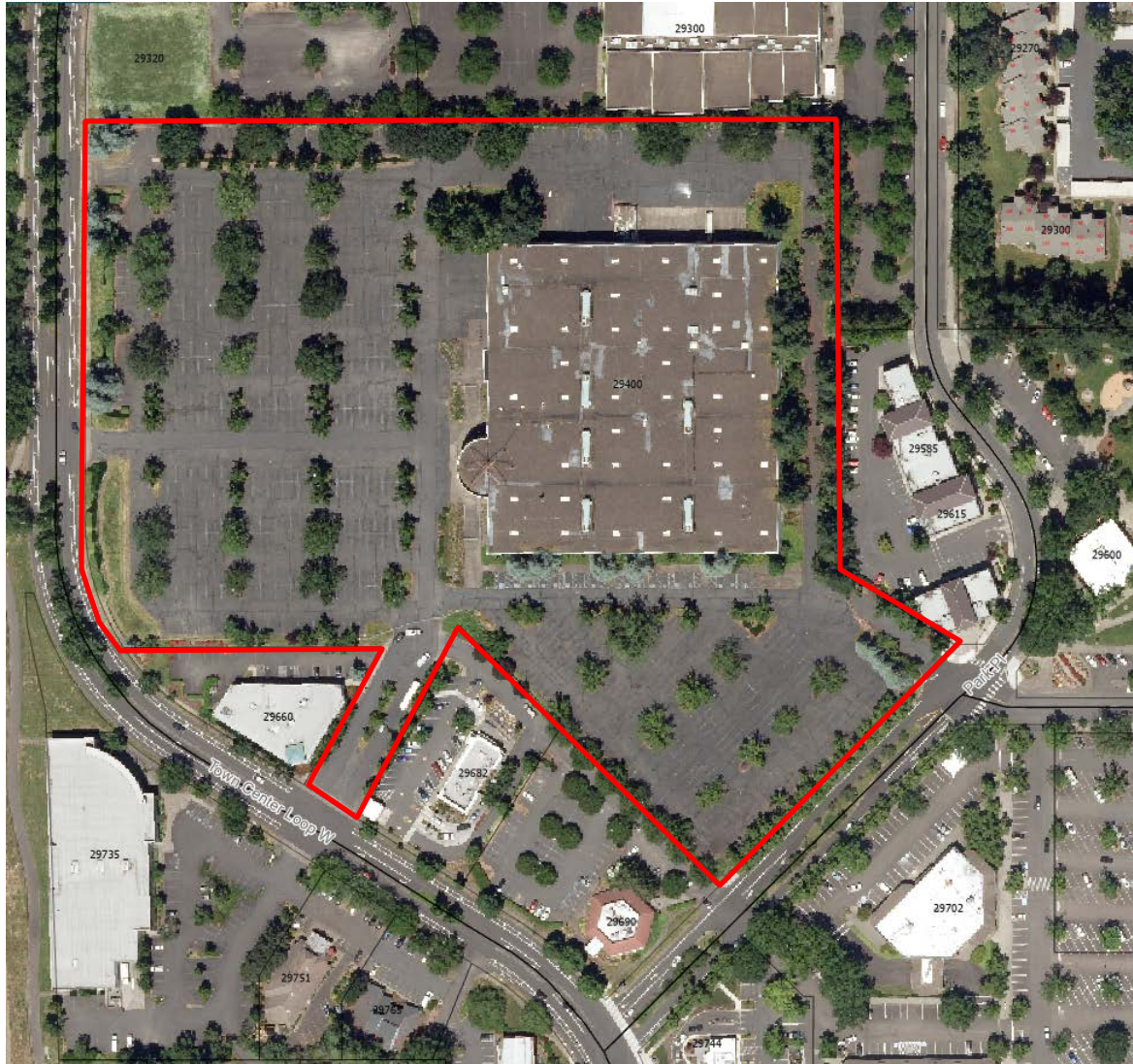
Hearing Date:	February 26, 2024
Date of Report:	February 15, 2024

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	
<u>Development Code:</u>	
Section 4.022	Appeal and Call-up Procedures
ADMN23-0029 Class 1 Review Request	
<u>Development Code:</u>	
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
<u>Other Planning Documents:</u>	
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.

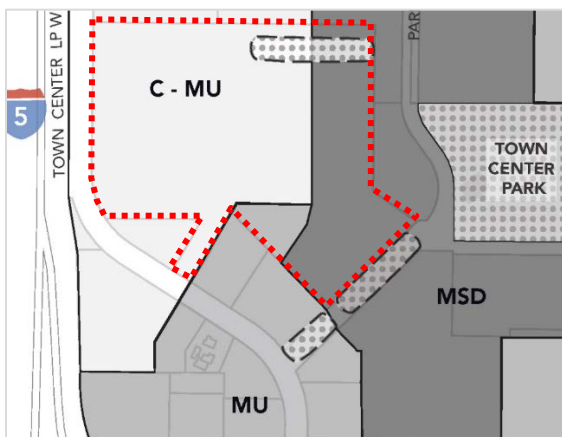
To summarize the legal standard articulated above, the Development Review Board should answer the following questions:

- 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

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.

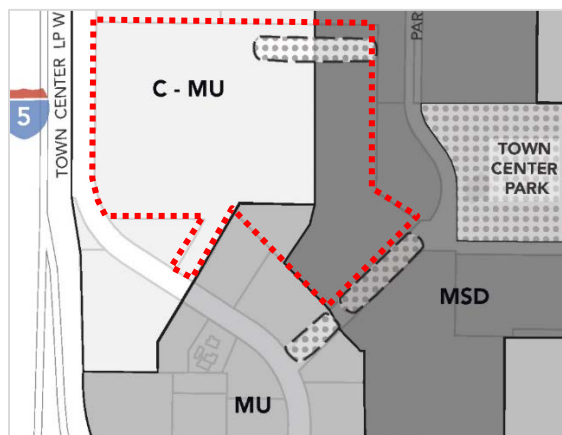
Request: ADMN23-0029 Class 1 Review Request

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.

From: [Luxhoj, Cindy](mailto:Luxhoj.Cindy)
To: dzoldak@larsandersen.com
Cc: dave@rdjdevelopment.com; [Bateschell, Miranda](mailto:Bateschell.Miranda); [Rybold, Kim](mailto:Rybold.Kim); [Daniel Pauly \(pauly@ci.wilsonville.or.us\)](mailto:Daniel.Pauly@ci.wilsonville.or.us)
Bcc: [Luxhoj, Cindy](mailto: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
Exhibit A3 DB24-0002

City of Wilsonville

503.570.1572

luxhoj@ci.wilsonville.or.us

www.ci.wilsonville.or.us

[Facebook.com/CityofWilsonville](https://www.facebook.com/CityofWilsonville)



29799 SW Town Center Loop East, Wilsonville, OR 97070

Disclosure Notice: Messages to and from this e-mail address may be subject to the Oregon Public Records Law.



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.

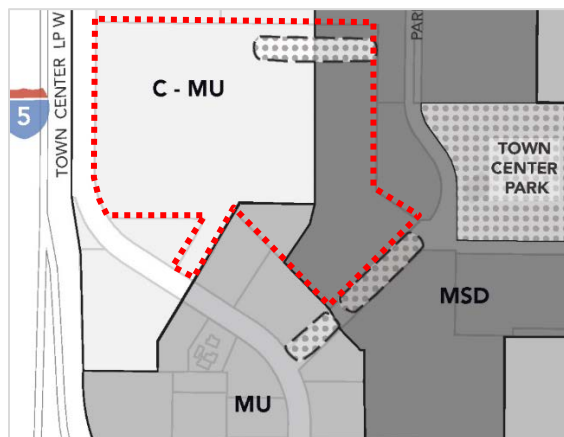
Here are some additional data points regarding the subject property:

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



City of Wilsonville
Exhibit A4 DB24-0002

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](mailto:Luxhoj.Cindy)
To: dzoldak@larsandersen.com
Cc: dave@rdjdevelopment.com; [Bateschell, Miranda](mailto:Bateschell.Miranda); [Rybold, Kim](mailto:Rybold.Kim); [Daniel Pauly \(pauly@ci.wilsonville.or.us\)](mailto:Daniel.Pauly@ci.wilsonville.or.us)
Bcc: [Luxhoj, Cindy](mailto: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,

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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.
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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](https://www.facebook.com/CityofWilsonville)



29799 SW Town Center Loop East, Wilsonville, OR 97070

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Appeal of Administrative Decision

ADMN23-0029

DRB Case File No. DB24-0002

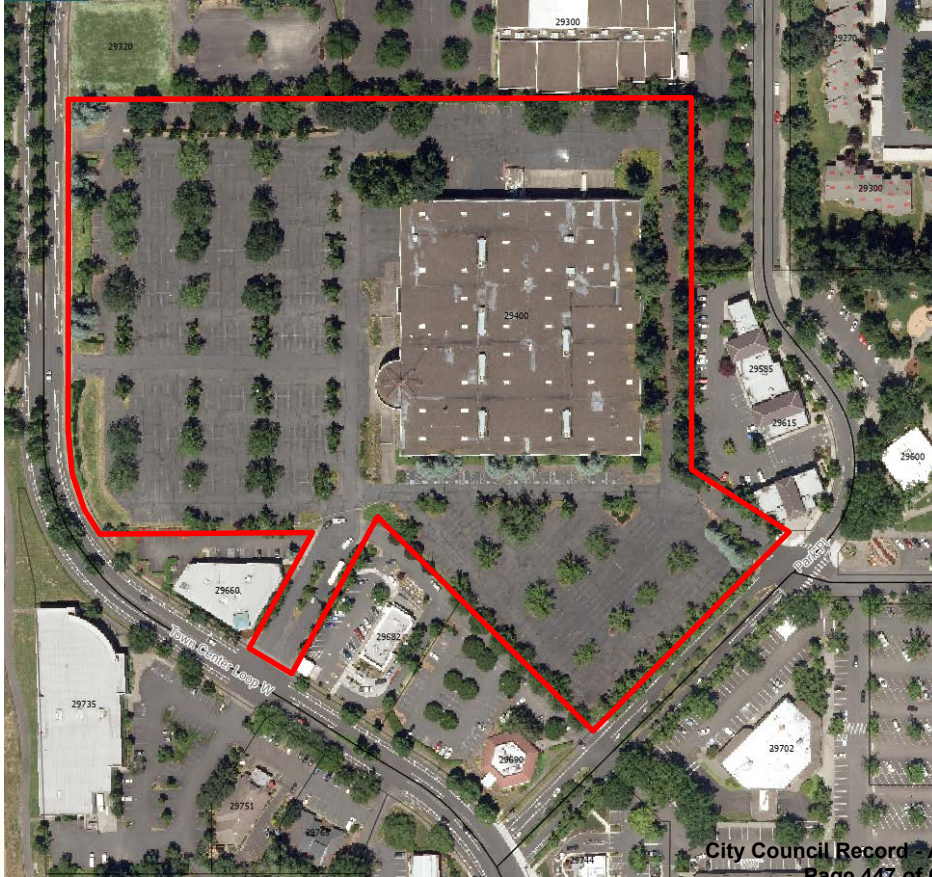
Development Review Board Meeting

February 26, 2024

Presented by:

Cindy Luxhoj AICP, Associate Planner

Existing Development



Existing Development



Procedural Background

October 30, 2023
Received Class 1
Review Application

December 23, 2023
Issued Planning
Director
Determination of
Non-Conformance

January 10, 2024
Received Notice of
Appeal

February 26, 2024
DRB Public Hearing
on Appeal

Class 1 Review

- Ministerial action without public notice or hearing
- Determination of Non-Conformance
 - Processed as Class 1 Review
 - Except Planning Director may choose to process as Class 2 when there is any uncertainty as to the history of the property
- Appeal to Development Review Board
 - Only applicant may appeal Class 1 Decision



Scope of Review

- “De novo” review
- Decision based on testimony, evidence and other material submitted in Class 1 Review application
- DRB shall, by order, affirm, reverse, or modify, in whole or in part, Planning Director’s Decision
- 120-day time limit is March 28,2024



Beyond Scope of Review

- Separate, but related, Class 2 Review application AR23-0031



Summary of Case Law

- To be deemed non-conforming, use must be impermissible under current land use ordinance
- Provisions for limiting non-conforming uses liberally construed to prevent continuation or expansion uses as much as possible
- To determine existence of non-conforming use, must determine what use existed on the date restrictive regulations were applied



Questions Presented

- Is the Location a non-conforming use?
- Does the Location contain a non-conforming structure?
- Does the Location contain non-conforming site conditions?



Non-Conforming Use Inquiry

- Is the current use of the Location impermissible under a current land use ordinance?
- 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)?



Non-Conforming Structure Inquiry

Item 9.

- Is the Location's structure impermissible under a current land use ordinance?
- If the answer to the first question is "yes", was the structure legally established and may it continue to be used?



Non-Conforming Site Conditions Inquiry

Item 9.

- Are the Location's site conditions impermissible under a current land use ordinance?
- If the answer to the first question is "yes", were the site conditions legally established and may the Location continue to be used?



Recommendation

- **Affirm** the Planning Director Determination of Non-Conformance (ADMN23-0029)



Item 9.

Questions?

501

Updated 1/11/2019 all previous version of this form are obsolete



29799 SW Town Center Loop E, Wilsonville, OR 97070
Phone: 503.682.4960 Fax: 503.682.7025
Web: www.ci.wilsonville.or.us

Planning Division Development Permit Application

Final action on development application or zone change is required within 120 days per ORS 227.175 or as otherwise required by state or federal law for specific application types.

A pre application conference may be required.

The City will not accept applications for wireless communication facilities or similar facilities without a completed copy of a Wireless Facility Review Worksheet.

The City will not schedule incomplete applications for public hearing or send administrative public notice until all of the required materials are submitted.

Applicant:

Name: Dan Zoldak
Company: Lars Andersen & Associates, Inc.
Mailing Address: 4694 W Jacquelyn Avenue
City, State, Zip: Fresno, CA 93722
Phone: 559.276.0850 Fax: _____
E-mail: dzoldak@larsandersen.com

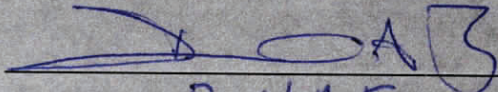
Authorized Representative:

Name: Dan Zoldak
Company: Lars Andersen & Associates, Inc.
Mailing Address: 4694 W Jacquelyn Avenue
City, State, Zip: Fresno, CA 93722
Phone: 559.276.0850 Fax: _____
E-mail: dzoldak@larsandersen.com

Property Owner:

Name: David A. Fry
Company: Lumberjack LP
Mailing Address: 600 E Brokaw RD
City, State, Zip: San Jose, CA 95112
Phone: _____ Fax: _____
E-mail: dave@rdjdevelopment.com

Property Owner's Signature:


Printed Name: David A. Fry Date: 9/8/2023

Applicant's Signature: (if different from Property Owner)

Printed Name: _____ Date: _____

Site Location and Description:

Project Address if Available: 29400 Town Center Loop W Wilsonville, OR 97070 Suite/Unit _____
Project Location: 29400 Town Center Loop W Wilsonville, OR 97070
Tax Map #(s): 01507257 Tax Lot #(s): _____ County: Washington Clackamas

Request:

An APPEAL of Planning Director Determination ADMN20-0029 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

Project Type: Class I **Class II** **Class III**

Residential Commercial Industrial Other: _____

Application Type(s):

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Annexation | <input checked="" type="checkbox"/> Appeal | <input type="checkbox"/> Comp Plan Map Amend | <input type="checkbox"/> Parks Plan Review |
| <input type="checkbox"/> Final Plat | <input type="checkbox"/> Major Partition | <input type="checkbox"/> Minor Partition | <input type="checkbox"/> Request to Modify Conditions |
| <input type="checkbox"/> Plan Amendment | <input type="checkbox"/> Planned Development | <input type="checkbox"/> Preliminary Plat | <input type="checkbox"/> Site Design Review |
| <input type="checkbox"/> Request for Special Meeting | <input type="checkbox"/> Request for Time Extension | <input type="checkbox"/> Signs | <input type="checkbox"/> Stage II Final Plan |
| <input type="checkbox"/> SROZ/SRIR Review | <input type="checkbox"/> Staff Interpretation | <input type="checkbox"/> Stage I Master Plan | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Type C Tree Removal Plan | <input type="checkbox"/> Tree Permit (B or C) | <input type="checkbox"/> Temporary Use | <input type="checkbox"/> Other (describe) |
| <input type="checkbox"/> Villebois SAP | <input type="checkbox"/> Villebois PDP | <input type="checkbox"/> Villebois FDP | <small>Non conforming use application (NCU)</small> |
| <input type="checkbox"/> Zone Map Amendment | <input type="checkbox"/> Waiver(s) | <input type="checkbox"/> Conditional Use | |



Item 9.

X Daniel J Zoldak

503

VIA E-MAIL

BEFORE THE DEVELOPMENT REVIEW BOARD FOR THE CITY OF WILSONVILLE,
OREGON

An APPEAL of Planning Director
Determination ADMN20-0029 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

APPLICANT’S NOTICE OF APPEAL

This is a notice of appeal of the Class I Planning Director Determination ADMN20-0029 (the “**Decision**”) finding 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 (the “**subject property**”). *See attached, Exhibit A* This appeal is timely submitted, in writing, prior to January 11, 2024, the deadline that *may* be established by Wilsonville Development Code (“**WDC**”) 4.022.01.¹

1. STANDING

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 Decision was issued. “Only the applicant may appeal a Class I decision unless otherwise specified in Section 4.030.” WDC 4.022.01. Therefore, 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

¹ This is Notice of Appeal for a Class I decision. The Notice of Decision for ADMN 23-0029 was issued on December 28, 2023. WDC 4.022.01 does not specify a deadline for appeals of Class I decisions, however, WDC 4.022.01 does state that appeals of Class II decisions must be filed within “14 calendar days of notice of the decision.” Out of an abundance of caution, the Appellant is submitting this Notice of Appeal *early*, prior to the January 11, 2024 deadline that would constitute 14 calendar days from the issuance of the Notice of Decision.

KKatzaroff@SCHWABE.com
Kordon-bakalian@schwabe.com

b. Reference to the Subject Development and Case Number.

The decision being appealed is Planning Director Determination ADMN23-0029 finding that Fry’s Electronics is a legally established Non-Conforming Use in a Non-Conforming Structure with Non-Conforming Site Conditions at the subject property. Exhibit A. On October 30, Appellant submitted an application for a Class I application to confirm the legality of a nonconforming use at the subject property. *See attached, Exhibit B.* The City of Wilsonville (the “City”) issued its Notice of Decision on December 28, 2023. Exhibit A.

c. Statement of the Basis for Appeal.

The Appellant hereby files this appeal to challenge several findings within the Decision related to the status of the existing use and structure at the subject property. Specifically, the Appellant appeals the following findings:

- “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.” Decision, at 2.
- “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.” Decision, at 2.
- “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.” Decision, at 3.
- “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.” Decision, at 3-4.
- “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.).” Decision, at 4.

Exhibit A.

The Appellant intends to operate a Home Depot within the existing structure at the subject property. To this end, the Appellant sought a Class I director’s determination that the warehouse retail use that was established as a result of the 1991 development approval (Case File

Nos. 91PC43 and 91DR29)² remained a lawfully established non-conforming use at the subject property.

Upon receipt of the Appellant’s application, the City attempted to bifurcate Appellant’s request to confirm the legality of a nonconforming use at the subject property from Appellant’s request for a determination to establish the scope of use at the property. Exhibit A, Enclosure.³ To this end, the City has required the Appellant 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 use at the subject property. Appellant’s Class II application was submitted to the City on December 15, 2023 and is currently in the 30-day completeness review period. Exhibit A, at 4. However, based on many of the findings contained within the Decision, the City appears to have prejudged Appellant’s Class II application for a use determination. Specifically, within the Decision subject to this appeal, the City has determined that the lawfully established non-conforming use at the subject property is a “Fry’s Electronics.” Exhibit A, at 3-4.

The City’s nonconforming use determination is contrary to the express language of the 1991 Decision, in addition to well-established principles of Oregon nonconforming use case law. A nonconforming use is one that “ ‘lawfully existed prior to enactment of a zoning ordinance, and which is maintained after the effective date of the ordinance although it does not comply with the use restrictions applicable to the area * * *.’ ” *Clackamas County v. Portland City Temple*, 13 Or.App. 459, 461 n. 1, 511 P.2d 412 (1973) (quoting 1 Anderson, *American Law of Zoning* 306, § 6.01 (1968)). The *use and structure* approved by the 1991 Decision was a “commercial retail store,” specifically a 159,400 square foot (“SF”) retail, office, warehouse, manufacturing, and service store, *not a* “Fry’s Electronics.” Exhibit C, at 12, 14. A “Fry’s Electronics” use is not mentioned or approved *anywhere* in the 1991 Decision, and the 1991 Decision is the controlling authority for determining the scope and nature of the legally established nonconforming use present at the subject property – a commercial retail use without additional restriction. The City’s findings within the Decision abrogate the plain language of the 1991 Decision and impermissibly narrow the scope and nature of the lawfully established nonconforming use at the property. As such, the City’s findings that the legally established non-conforming use and structure at the subject property is a “Fry’s Electronics” must be reversed.

² Attached hereto as **Exhibit C** (the “**1991 Decision**”).

³ “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 A, Enclosure, at 1.

The Decision also finds that “[t]he 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.” Exhibit A, at 3. This finding renders the Decision internally inconsistent because – as stated above – the City also included findings that the legally established nonconforming use is a “Fry’s Electronics,” which is a narrower use than a “single-user electronics retail store.” *Id.* Moreover, the City’s finding that the nonconforming use at the property is a “single-user electronics retail store” is still in contravention with the use approved in the 1991 Decision, which is a “commercial retail store” that includes retail, office, warehouse, manufacturing, and service offerings. Exhibit C, at 12, 14. Again, the Decision disregards the controlling authority of the 1991 Decision and adopts an overly narrow finding regarding the scope and nature of the nonconforming use at the subject property. The Appellant respectfully requests that the Decision’s finding that the nonconforming use at the property is a “single-user electronics retail store” be reversed.

Furthermore, the Appellant 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 Appellant is also not aware of any state law that makes such a distinction. As such, the Decision must be reversed or modified to reject the limitation of the use approved by the 1991 Decision to either a “Fry’s Electronics” or “single-user electronics retail store.”

Finally, the Appellant challenges the Decision’s finding that the retail, office, warehouse, manufacturing, and service uses approved by the 1991 Decision relate only to “minimum parking requirements for the site.” Decision, at 2; *see also* Exhibit C, at 12 (approving retail, office, warehouse, manufacturing, and service uses within the 159,400 commercial retail structure). The City’s finding on this point is unsupported by any authority and again represents an attempt to narrow the scope and nature of the legally established nonconforming use at the property. The Appellant requests that this finding be struck from the Decision.

3. REQUESTED RELIEF

The Appellant requests that the Development Review Board impose the relief requested by the Appellant in the above argument. Specifically, Appellant respectfully requests that the Development Review Board find that the legally established nonconforming 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 “Fry’s Electronics” or “single-user electronics 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.

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:

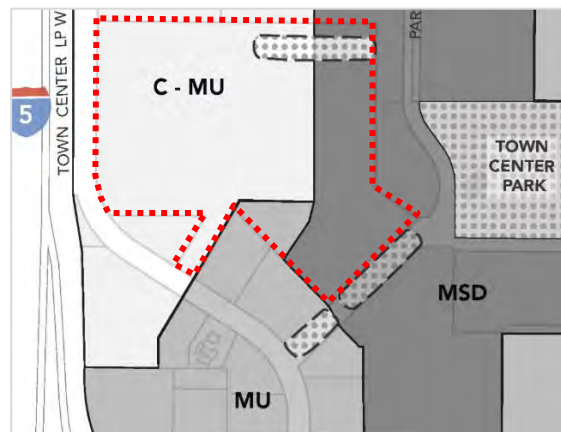
The City received your application on October 30, 2023, for Class 1 Review to confirm the status of the existing use and structure at 29400 SW Town Center Loop West. On November 28, 2023, City staff contacted you by email providing options for proceeding with your application and requesting that you 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 \(pauly@ci.wilsonville.or.us\)](mailto:Daniel.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](https://www.facebook.com/CityofWilsonville)



29799 SW Town Center Loop East, Wilsonville, OR 97070

Disclosure Notice: Messages to and from this e-mail address may be subject to the Oregon Public Records Law.

Updated 1/11/2019 all previous version of this form are obsolete



29799 SW Town Center Loop E, Wilsonville, OR 97070
Phone: 503.682.4960 Fax: 503.682.7025
Web: www.ci.wilsonville.or.us

**Planning Division
Development Permit Application**

Final action on development application or zone change is required within 120 days per ORS 227.175 or as otherwise required by state or federal law for specific application types.

A pre application conference may be required.

The City will not accept applications for wireless communication facilities or similar facilities without a completed copy of a Wireless Facility Review Worksheet.

The City will not schedule incomplete applications for public hearing or send administrative public notice until all of the required materials are submitted.

Applicant:

Name: Dan Zoldak
Company: Lars Andersen & Associates, Inc.
Mailing Address: 4694 W Jacquelyn Avenue
City, State, Zip: Fresno, CA 93722
Phone: 559.276.0850 Fax: _____
E-mail: dzoldak@larsandersen.com

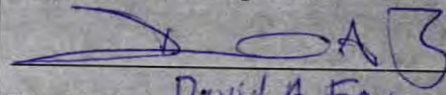
Authorized Representative:

Name: Dan Zoldak
Company: Lars Andersen & Associates, Inc.
Mailing Address: 4694 W Jacquelyn Avenue
City, State, Zip: Fresno, CA 93722
Phone: 559.276.0850 Fax: _____
E-mail: dzoldak@larsandersen.com

Property Owner:

Name: David A. Fry
Company: Lumberjack LP
Mailing Address: 600 E Brokaw RD
City, State, Zip: San Jose, CA 95112
Phone: _____ Fax: _____
E-mail: dave@rdjdevelopment.com

Property Owner's Signature:


Printed Name: David A. Fry Date: 9/8/2023

Applicant's Signature: (If different from Property Owner)

Printed Name: _____ Date: _____

Site Location and Description:

Project Address if Available: 29400 Town Center Loop W Wilsonville, OR 97070 Suite/Unit _____
Project Location: 29400 Town Center Loop W Wilsonville, OR 97070
Tax Map #(s): 01507257 Tax Lot #(s): _____ County: Washington Clackamas

Request:

Applicant proposes a Home Improvement store within the footprint of the existing structure. Need non conforming use confirmation (NCU) for TI Permit

Project Type: Class I Class II Class III

Residential Commercial Industrial Other: _____

Application Type(s):

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Appeal | <input type="checkbox"/> Comp Plan Map Amend | <input type="checkbox"/> Parks Plan Review |
| <input type="checkbox"/> Final Plat | <input type="checkbox"/> Major Partition | <input type="checkbox"/> Minor Partition | <input type="checkbox"/> Request to Modify Conditions |
| <input type="checkbox"/> Plan Amendment | <input type="checkbox"/> Planned Development | <input type="checkbox"/> Preliminary Plat | <input type="checkbox"/> Site Design Review |
| <input type="checkbox"/> Request for Special Meeting | <input type="checkbox"/> Request for Time Extension | <input type="checkbox"/> Signs | <input type="checkbox"/> Stage II Final Plan |
| <input type="checkbox"/> SROZ/SRIR Review | <input type="checkbox"/> Staff Interpretation | <input type="checkbox"/> Stage I Master Plan | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Type C Tree Removal Plan | <input type="checkbox"/> Tree Permit (B or C) | <input type="checkbox"/> Temporary Use | <input checked="" type="checkbox"/> Other (describe) |
| <input type="checkbox"/> Villebois SAP | <input type="checkbox"/> Villebois PDP | <input type="checkbox"/> Villebois FDP | <small>Non conforming use application (NCU)</small> |
| <input type="checkbox"/> Zone Map Amendment | <input type="checkbox"/> Waiver(s) | <input type="checkbox"/> Conditional Use | |



PROPERTY OWNER
ACKNOWLEDGEMENT FORM

By signing below, I certify that I am the property owner for the application in question and that the applicant, Lars Andersen & Associates, Inc., has my permission to submit this application for the property located at:

Site Address: 29400 Town Center Loop W, Wilsonville, OR 97070

Tax Lot(s): 01507257 Section: _____

I understand the application will not be deemed complete without this documentation. I understand that submittal of this application does not entitle the applicant to engage in the work applied for until such an application is approved, the plan approval is issued, and the specified appeal period has passed. I also understand that all work must be performed in compliance with all applicable state, federal, and local laws, ordinances and regulations.

Property Owner's Signature:

Printed Name: David A. Fry Date: 9/18/2023

Property Owner Contact Information:

Company (if applicable): Lumberjack LP

Mailing Address: 600 E. Brokaw Rd.

City, State, Zip: San Jose, CA 95112

Phone: _____ E-mail: dave@rdjdevelopment.com

BEFORE THE PLANNING DIRECTOR FOR THE CITY OF WILSONVILLE

In the Matter of an application to confirm the
legality of a nonconforming use at 29400
Town Center Loop W, Wilsonville, OR
97070

APPLICANT'S NARRATIVE AND
EXHIBITS DEMONSTRATING
COMPLIANCE WITH THE RELEVANT
APPROVAL CRITERIA

SUBJECT PROPERTY: 29400 Town Center Loop W,
Wilsonville, OR 97070
TL ID: 31W14D 00220

APPLICANT: Lars Andersen & Associates, Inc.
4694 W. Jacquelyn Ave.,
Fresno, CA 93722
Attn: Dan Zoldak
Phone: 559-276-0850
E-Mail: dzoldak@larsandersen.com

**APPLICANT
REPRESENTATIVE:** J. Kenneth Katzaroff
Keenan Ordon-Bakalian
Schwabe, Williamson & Wyatt, P.C.
1211 SW 5th Avenue, Suite 1900
Portland, Oregon 97204
Phone: 206-405-1985
E-Mail: KKatzaroff@SCHWABE.com
E-Mail: Kordon-bakalian@schwabe.com

PROPERTY OWNER: Lumberjack LP
600 E Brokaw Rd.
San Jose, CA 95112

REQUEST: A Class I review and determination verifying the status of an
existing non-conforming office, warehouse, manufacturing,
service and retail use.

I. APPLICABLE STANDARDS AND CRITERIA

The applicant has identified the following code provisions that the City of Wilsonville (hereinafter, the "City") may apply to its review of this application:

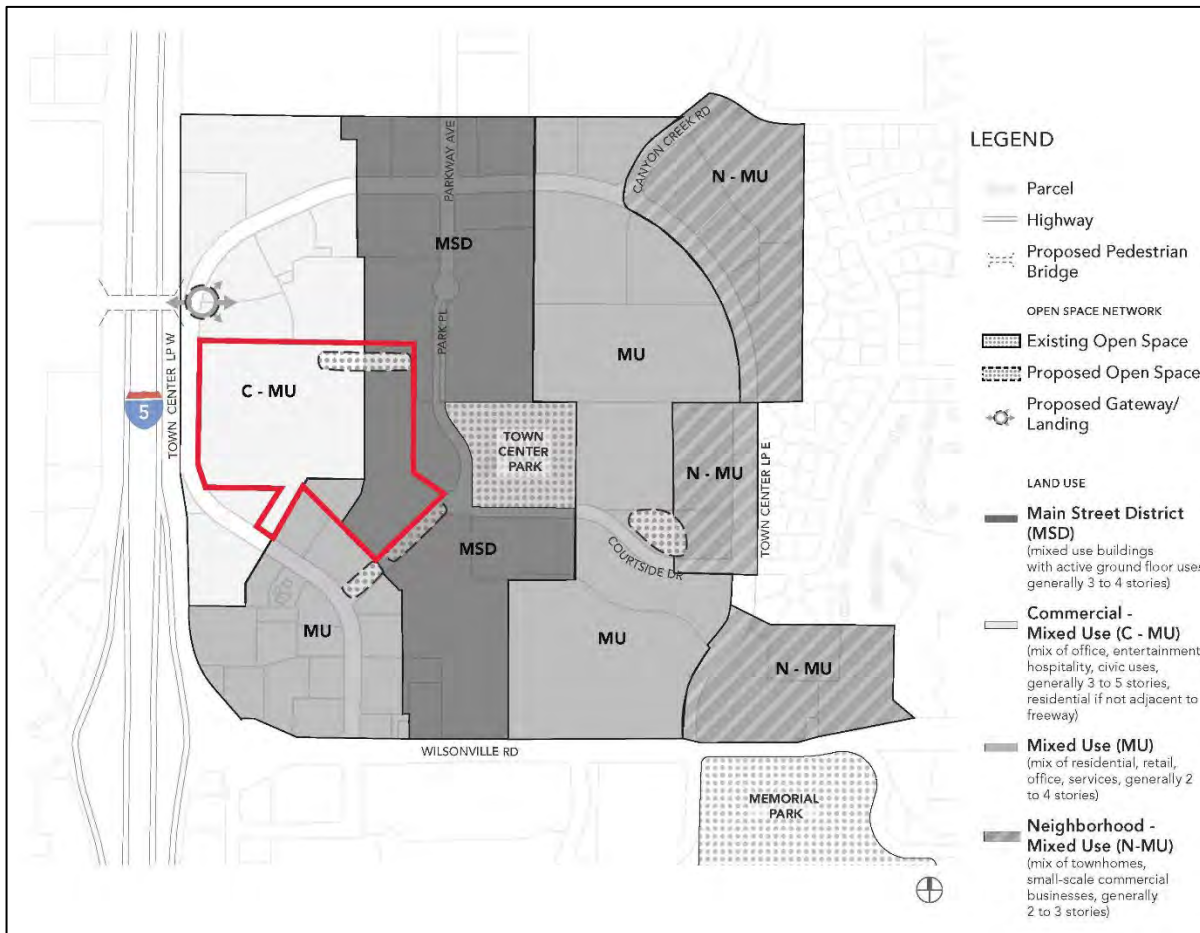
Title 4 – the Wilsonville Development Code ("WDC")

Section 4.000-4.035 – Administration
Section 4.001 – Definitions

Section 4.030 – Jurisdiction and Powers of Planning Director and Community Development Director
 Section 4.132 – Town Center Zone
 Section 4.189-4.192 – Non-Conforming Uses, Structures, Site Conditions, and Lots

II. INTRODUCTION AND BACKGROUND

Lars Andersen & Associates, Inc. (the “**applicant**”) is seeking a Class I review to confirm the status of the existing non-conforming office, warehouse, manufacturing, service and retail use (the “**subject use**”) at 29400 SW Town Center Loop W, Wilsonville, OR 97070¹ (the “**property**”). The 15.01-acre property is located within the City of Wilsonville (the “**City**”) and is zoned Planned Development Commercial – Town Center (“**TC**”). The property is designated with three Town Center Sub-Districts – Commercial-Mixed Use (“**C-MU**”), Mixed Use (“**MU**”), and Main Street District (“**MSD**”).



¹ TL 31W14D 00220.

As pictured below, the property is located in a relatively flat, developed commercial area within the City's Town Center District. There is an existing structure at the property that was operated as a Fry's Electronics ("Fry's") from 1991 to 2021.



In 1991 the City approved a Modification to the Stage I Wilsonville Town Center Master Plan and Stage II Phase II Site Development Plan (the "**1991 Decision**") to allow the development of a 159,400 square foot ("**SF**") retail, office, warehouse, manufacturing, and service store at the property. *See attached, Exhibit A.* The property was zoned Planned Development Commercial ("**PDC**") and designated commercial in the City's Comprehensive Plan when the City approved the subject use of the property. *Id.*, at 14. Subsequent to the City's land use approval, Fry's began operating a retail, office, warehouse, manufacturing, and service store at the property.

Fry's was a large electronics warehouse store that retailed software, consumer electronics, household appliances, cosmetics, tools, toys, accessories, magazines, technical books, snack foods, electronic components, and computer hardware. Fry's also had in-store computer repair and custom computer building services, and offered technical support to customers. The Fry's model was unique for electronics retail outlets of the time, in that Fry's was an electronics warehouse that offered customers a variety of retail, manufacturing and service offerings that exceeded the offerings of Fry's competitors. Because Fry's stocked a wide range of electronics products, they were popular with electronics and computer hobbyists, as well as professionals.

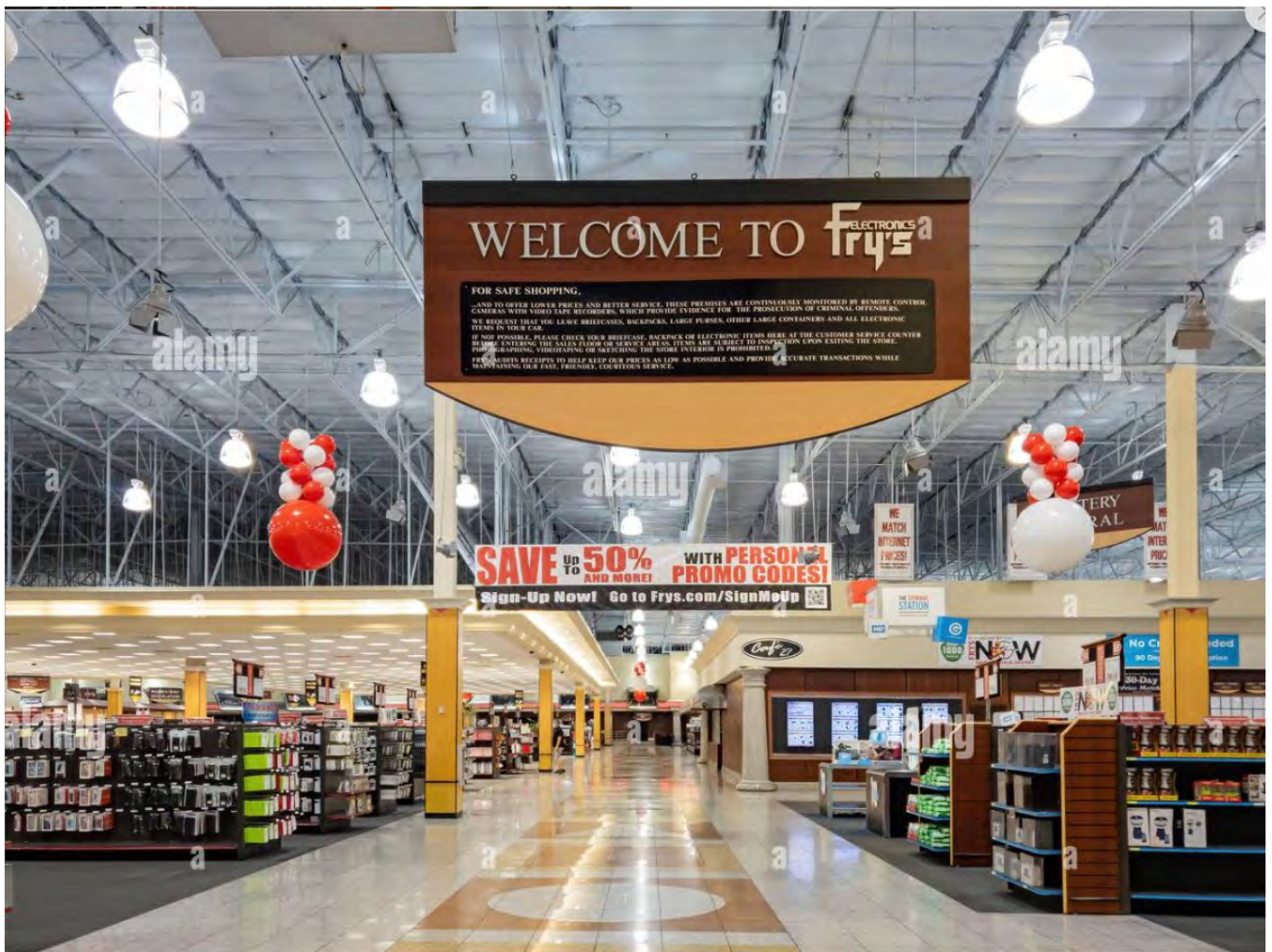


Image Credit: Alamy, <https://www.alamy.com/las-vegas-sep-7-2020-interior-view-of-the-frys-electronics-image375519870.html?imageid=595679EA-E5D6-4FAA-8BDE-4437A0B5DF19&p=283543&pn=1&searchId=9fd62e6ba47e6193d28e3b42e316bc4e&searchtype=0> (last accessed Oct. 20, 2023).



Image Credit: PC Magazine, <https://www.pcmag.com/opinions/to-all-the-frys-i-loved-before-an-elegy-for-the-best-electronics-chain> (last accessed Oct. 20, 2023).

In February 2021, Fry's suddenly went out of business, closing all 31 stores across the United States including the Wilsonville Fry's that was operating at the property.² Since the closure of the Fry's in 2021, the owner of the property has been actively marketing the site and making other plans for its use. The owner has also continued to make utility payments for city services. *See attached, Exhibit B.*

The Home Depot, Inc. ("HD") 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. *See attached, Exhibit C.* HD operates home improvement warehouse stores that retail tools, construction products, appliances, and services, including transportation and equipment rentals. HD's Home Services division also offers technical expertise for home improvement projects, and both onsite and offsite install, repair, and

² *Fry's Electronics suddenly went out of business*, CNN, <https://www.cnn.com/2021/02/24/business/frys-electronics-closure/index.html> (last accessed Oct. 9, 2023); *Fry's Electronics closes, leaving Wilsonville store barren*, Portland Tribune, https://www.portlandtribune.com/news/frys-electronics-closes-leaving-wilsonville-store-barren/article_cde50d46-de09-5ce3-a647-9f54ce7d4bb1.html (last accessed Oct. 9, 2023).

remodel services. Although the vast majority of HD customers are private individuals, contractors and other professionals account for close to half of HD's annual sales.³

Fry's and HD stores are retail, office, warehouse, manufacturing, and service uses allowed at the subject property pursuant to the 1991 Decision and the property's historic PDC zoning. Both Fry's and HD stores are [were] organized warehouse-style, stock a large range of supplies available for retail, cater to retail consumers and professionals, and offer onsite services and technical support. As both Fry's and HD are warehouse retailers that fall within the subject use approved in the 1991 Decision, the applicant is seeking a non-conforming use determination to verify the status of the property's existing non-conforming use rights.

The applicant requests that the Planning Director process this application through the City's Class I review procedures because there no uncertainty as to the history of the property due to the existence of the 1991 Decision. WDC 4.030.01(A)(7); *see also* Exhibit A.

III. APPROVAL CRITERIA

WDC 4.189.01 – Continuation of Use

A. A non-conforming use may be continued subject to the requirements of this Section.

RESPONSE: In compliance with WDC 4.189.03, the lawfully established non-conforming subject use at the property has not been discontinued or abandoned. The ongoing non-conforming use complies with the criteria of WDC 4.189 and is therefore permitted to continue.

WDC 4.189.02 – Change of Use

A. A non-conforming use may not be changed unless the change or replacement is to a use that is determined by the Planning Director to be no less conforming to the regulations for the zone district in which the use is located than the existing use.

RESPONSE: The purpose of this provision is to consider the impacts of potential changes in use for lawfully established non-conforming uses. In this case, the applicant is not proposing to change the established non-conforming use of the property. Rather, the applicant is seeking a non-conforming use determination to confirm the status of the existing non-conforming use of the property. Therefore, this criterion is not applicable.

WDC 4.189.03 – Abandoned Use.

If a non-conforming use is abandoned for a period of 18 consecutive months, the use shall not be re-established without fully complying with the use requirements of the zone. Mere vacancy of a site or building while it is being marketed or other plans for its use are being

³ *Home Depot CEO Says Contractor Spend Remains Strongest Business Line*, PYMNTS, <https://www.pymnts.com/earnings/2023/home-depot-ceo-says-contractor-spend-remains-strongest-business-line/> (last accessed Oct. 25, 2023).

readied, does not constitute abandonment. In order to be considered abandoned, a site must not be receiving City utilities and must not actively be marketed for rent, lease, or sale. These standards concerning abandonment do not in any way affect the City's processes for the abatement of nuisances as delineated in Chapter 6 of the Wilsonville Code.

RESPONSE: The existing non-conforming subject use at the property has not been abandoned. For a non-conforming use to be abandoned, “a site must not be receiving City utilities and must not actively be marketed for rent, lease, or sale.” WDC 4.189.03. Here, the subject property is actively being marketed for rent, lease, or sale, and is currently receiving, and paying for, City utilities. *See Exhibit B.* Therefore, the non-conforming use of the property has not been abandoned. This criterion is met.

WDC 4.190.02 – Non-Conforming Structures

If a non-conforming structure is abandoned, as defined herein, for a period of 18 months, it may not again be used unless brought into conformity with the requirements of this ordinance. Except, however, that an abandoned non-conforming structure may be re-occupied if a Variance is approved per the requirements of Section 4.196.

RESPONSE: The existing structure at the property is not non-conforming per the definition set forth in WDC 4.001.195 because it conforms to the standards for structures within the TC zone. Therefore this criterion is not applicable.

WDC 4.190.05 – Non-Conforming Structures

A non-conforming structure may be expanded or enlarged, provided that the portion of the structure being enlarged meets zoning requirements in terms of setbacks, height, and lot coverage.

RESPONSE: The existing structure at the property is not non-conforming because it meets the setback, height, and lot coverage requirements for the TC zone. The applicant’s plans involve alterations to the Fry’s building and the subsequent operation of a Home Depot at the property. *See attached, Exhibit C.* The proposed project would consist of up to 124,215 SF of building area, previously occupied by Fry’s. The reduction in square footage will result from interior renovations, specifically the removal of the existing mezzanine within the structure. **Exhibit C.** Exterior alterations include changes to the parking lot, including curbs and the approach to the building. The concept plan demonstrates that the applicant’s proposed alterations are not an expansion. Therefore, this criterion is not applicable.

IV. CONCLUSION

For the reasons stated above, the Planning Director can find that all applicable criteria are met and approve the subject application.

Enclosed with this application are the following exhibits:

- A. 1991 Decision
- B. Proof of Utility Payments
- C. Concept Plan

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 of Approval #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 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
J. J.

**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.

Attest:


Judge Emison, Planning Secretary



Chairman, Planning Commission

91PC43

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 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 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 Condition 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, redesignate 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"

NA = NOT APPLICABLE
DRB = DESIGN REVIEW BOARD

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

	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
4. Building Use					
a. Office	sq. ft.	9,117 SF	<input checked="" type="radio"/>	<input type="radio"/>	
b. Warehouse	sq. ft.	39,330 SF	<input checked="" type="radio"/>	<input type="radio"/>	
c. Manufacturing/SERVICE	sq. ft.	17,276 SF	<input checked="" type="radio"/>	<input type="radio"/>	
d. Other/DETAIL	sq. ft.	63,914 SF	<input checked="" type="radio"/>	<input type="radio"/>	
5. Building Specifications					
a. Building Height	35'	-	<input checked="" type="radio"/>	<input type="radio"/>	44
b. (Sun Exposure Plane)	NA		<input type="radio"/>	<input type="radio"/>	NA.
c. Gross Floor area of Building	NO LIMIT	150,400 SF	<input checked="" type="radio"/>	<input type="radio"/>	
6. Number of Off-Street Parking					
a. Standard 9' X 18'	412	350	<input checked="" type="radio"/>	<input type="radio"/>	43
b. Compact 8 1/2' X 17' (30% 10 allowed)	OPTIONAL	NOT SHOWN	<input checked="" type="radio"/>	<input type="radio"/>	
c. Handicapped 12' X 18' (1 to 50 required)	11	10	<input checked="" type="radio"/>	<input type="radio"/>	UBC TABLE 31-A
Total	483	372	<input checked="" type="radio"/>	<input type="radio"/>	46 to 48
d. Truck load berths	2	26	<input checked="" type="radio"/>	<input type="radio"/>	
7. Access/Egress					
a. Direct access to street	-	3	<input type="radio"/>	<input checked="" type="radio"/>	17,18
b. Access provided by easement	NA		<input type="radio"/>	<input type="radio"/>	NA
c. Rail Access	NA		<input type="radio"/>	<input type="radio"/>	NA.
8. Open Space Slope Protection					
a. Existing vegetation protected	NA		<input type="radio"/>	<input type="radio"/>	NA
b. Slopes over 20% to 30% impervious coverage	NA		<input type="radio"/>	<input type="radio"/>	NA
c. River and stream corridors protected	NA		<input type="radio"/>	<input type="radio"/>	NA
d. Adequate erosion control provided			<input checked="" type="radio"/>	<input type="radio"/>	EXHIBIT G4
e. Within greenway	NA		<input type="radio"/>	<input type="radio"/>	NA

	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
C. <u>Other Planning Considerations</u>					
1. Outside storage area provided/ screening	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
2. Adequate screenage of mechanical equipment	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
3. Safety/crime prevention					
a. Location of addressing	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
b. Natural surveillance	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	
c. Type of exterior lighting	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	
					↓
D. <u>Bike Paths, Pedestrian Trails, & Equestrian Trails</u>					
1. Pathway Standards					
a. Pathways are provided consistent with pathway master plan and design standards (Section 4.168 W.C.)	<u>REQ'D</u>	<u>HOT SHOWH</u>	<input type="radio"/>	<input checked="" type="radio"/>	<u>281031</u>
E. <u>Previous Approval actions and applicable conditions or approvals</u>					
1. City Council	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>DRB 55</u>
2. DRB	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>40215 89R 50</u>
3. P.C.	<u>Yes</u>	<u>No</u>	File No.	See finding	<u> </u>
4. Other	<u>Yes</u>	<u>No</u>	File No.	See finding	<u> </u>
Inter-agency review comments					
Yes	<u>No</u>	See Exhibit No.			<u> </u>
Inter-agency review comments (Written Only)					
City Engineer	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>D</u>
Parks & Recreat.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u> </u>
Traffic Safety	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u> </u>
Building Dept.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>E</u>
Tualatin Fire Dept.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u> </u>
Sheriff	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u> </u>

91PC43

**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	<u>22.79 acres</u>	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 separately 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 development.

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 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, reclassified 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 orients 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 rooms, 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

Minimum 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.

91PC43

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 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 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



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:

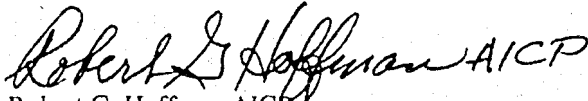
1. Zoning Classification Code:
Planned Development Commercial (PDC) (Town Center)
2. Property Owner's Name and Lender's Name
Lumberjack, L.P. (owner)
PO Box 7458
Menlo Park, CA 94026

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



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
Manager of Current Planning

Attachment: Decision and Conditions of Approval
98PC43
91DR29

RGH:sh

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

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 Portland. Many who watch insurance activities nationally agree. The change reflects nilar strategies by nationwide carriers. tna wants to consolidate offices, re ce overhead and gain efficiencies in : increasingly competitive health insurance 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 icago Corp., a Chicago-based invest- ent bank that tracks insurance compa- nies. "Insurance companies, especially the big guys, have a big expense burden. They tend to be big and clumsy."

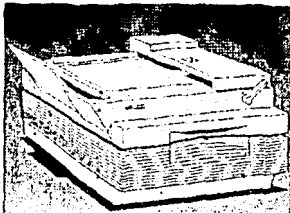
In Aetna's case, said Poll, the national carrier's life and health business has been its strongest asset. Hartford, Conn.-based Aetna is the third-largest U.S.-based property and casualty insurer, according to Value Line's December 1993 investment survey. Aetna, a public company traded on the New York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

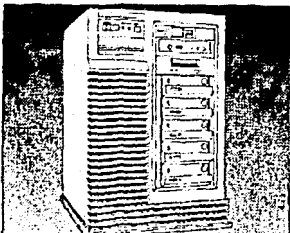
Aetna handles about 4.9 million Medicare claims representing some \$250 million annually out of the Portland office.

comes to working, DI onnected!



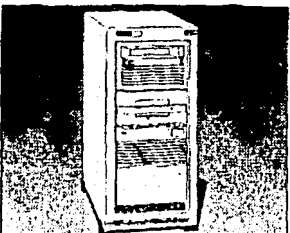
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Blaise
Pam
Sally

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.



Trust JBL&K

File
9.1pc 43

Item 9.

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 Kisheloff / Wayne Lorenson

SUBJECT: Project Thunder

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

COMMENTS: _____

560



City of
WILSONVILLE
in OREGON

September 29, 1993

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

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



City of
WILSONVILLE
in OREGON

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

Info —
Pam ✓
Blaise ✓
Sally ✓
file ✓ 910643

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:

Mr. Wayne Kittelson
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 2

"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

Mr. Wayne Kittelson
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 3

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

Mr. Wayne Kittelso...
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 4

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

Mr. Wayne Kittelson
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 5

- 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.

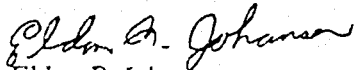
"If you believe it would be appropriate, we would be happy to meet with you personally at a time and location convenient to you in order to further discuss this matter."

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

Mr. Wayne Kittels
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 6

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 ✓
Blaise ✓
Sally ✓

Project file
9/1/93

OCT 29 1992

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.

Mr. Wayne Sorensen
October 27, 1992
Page 2

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 hour 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.

Mr. Wayne Sorensen
October 27, 1992
Page 3

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

Mr. Wayne Sorensen
October 27, 1992
Page 4

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

Mr. Wayne Sorensen
October 27, 1992
Page 5

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, 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

LETTER OF TRANSMISSION

EXHIBIT C
 Page 10 of 16

Item 9.

(503) 682-1011

TO _____

DATE 10/3/92	JOB NO.
ATTENTION Arlene Lohle	
RE Inver Hills University	
Copy of Notice of Decision, and attachment	
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 Oberasch 92

573

Wagner



City of
WILSONVILLE
in OREGON

3000 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.

Mr. Rich Hollander & Ms. Kim Beach
May 28, 1992

Page 2

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.

Mr. Rich Hollander & Ms. Kim Beach
May 28, 1992

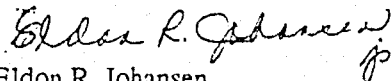
Page 3

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.

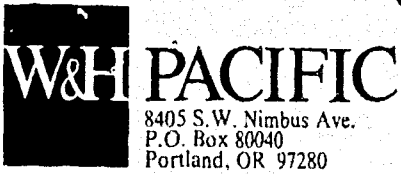
Sincerely,



Eldon R. Johansen
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



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

Creative Solutions ... Superior Service

EXHIBIT C
Page 54 of 161

Item 9.

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

- Planning
- Surveying
- Engineering
- Landscape Architecture
- Environmental Services

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
- X 682-7025

These Are Transmitted:

- For Your Info/File
- As Requested
- For Review And Comment

Copied To:

KUM BEACH w/o ENCL
FAK 223-0200

Copies	Description
<u>1</u>	<u>ADD'L Storm CACCS.</u>

margo 5/19
Orig to Elson
Thunder file
Copy to Wagne
myself
Eden

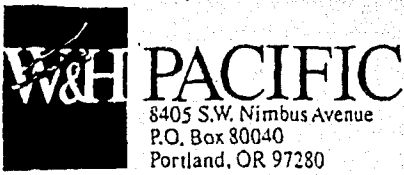
Comments

ELSON,
Jimi LEHMAN HAS PREPARED ADD'L STORM RUNOFF
CACCS 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

Jack Martin

577



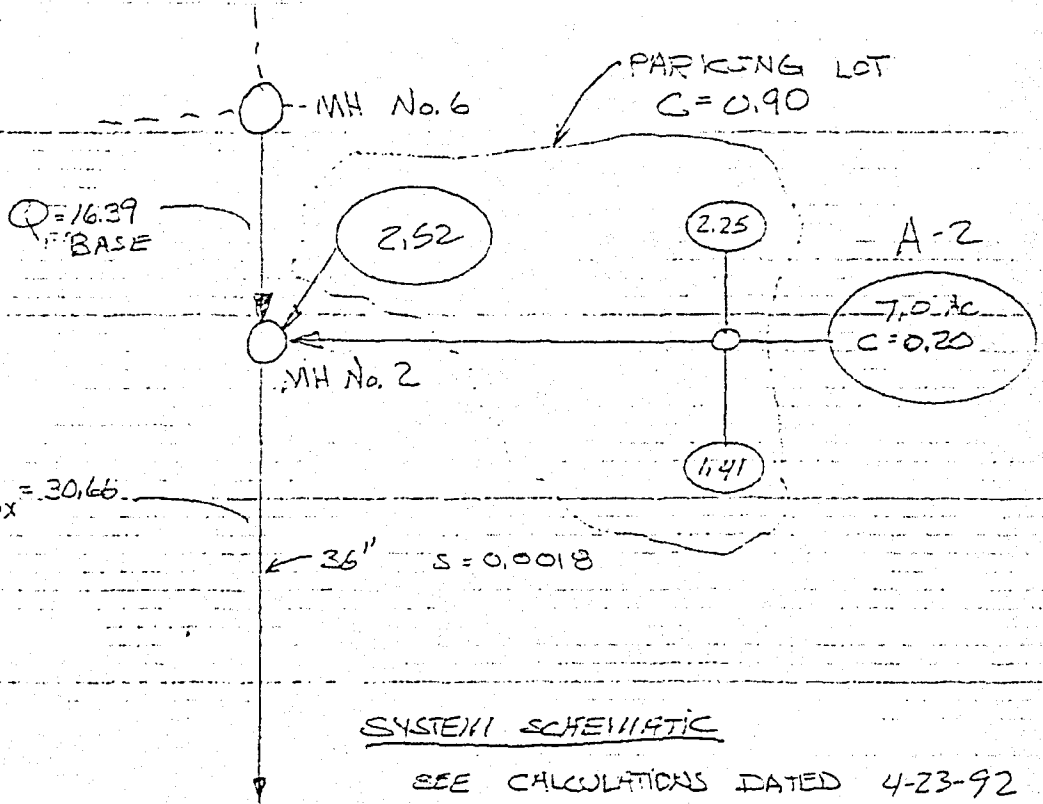
(503) 626-0455
Fax (503) 526-0775

• Planning
• Engineering

• Surveying
• Landscape Architecture

• Environmental
Services

DETENTION REQUIREMENTS FOR A-2 IN MN UNDEVELOPED CONDITION.



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 500 FEET OVERLAND TRAVEL FROM A-2

1st 200 FEET = 20 MINUTES
REMAINING 300' = 4 MINUTES. (SLOPE = 1%)
(IN CHANNEL)

$t_c = 24$ MINUTES

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:

KIM BEACH W/ ENCL
FAX 223-0200

Copies	Description
1	ADD'L Storm Cages.

Comments

ELDON,

Jim LEMKERT HAS PREPARED ADD'L STORM RUNOFF
CAVES 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 PH III OR EITHER PROPERTY NORTH
OF TANDY.

Eric Henthorn

Signed

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

• Planning
 • Engineering

• Surveying
 • Landscape Architecture

• Environmental
 Services

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

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

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

13.57 CFS.

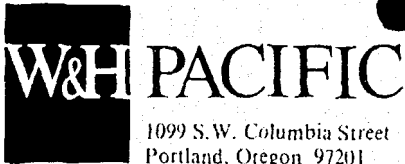
$$Q_{ALLOWABLE \text{ IN PIPE}} = Q_{MAX} - Q_{BASE} = 30.66 - 16.39$$

$$Q_{ALLOWABLE} = \underline{14.27 \text{ CFS.}}$$

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

NO DETENTION IS REQUIRED

NOTE! THIS CALCULATION IS FOR UNDEVELOPED CONDITIONS ONLY.



1099 S.W. Columbia Street
Portland, Oregon 97201

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

- Planning
- Surveying
- Environmental Services
- Engineering
- Landscape Architecture

To: William L. Parks
DIVISION OF STATE LANDS
1100 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:

- Attached
- Facsimile
- Number Of Pages Including Cover
-

These Are Transmitted:

- For Your Info/File
- As Requested
- For Review And Comment

Copied To:

Copies	Description
1	VICINITY MAP 8 1/2 x 11
1	SITE MAP 11 x 17

X No Jurisdiction 10 YR 3/4
NO Hydrology - Area Detrit
By Flowing

Comments

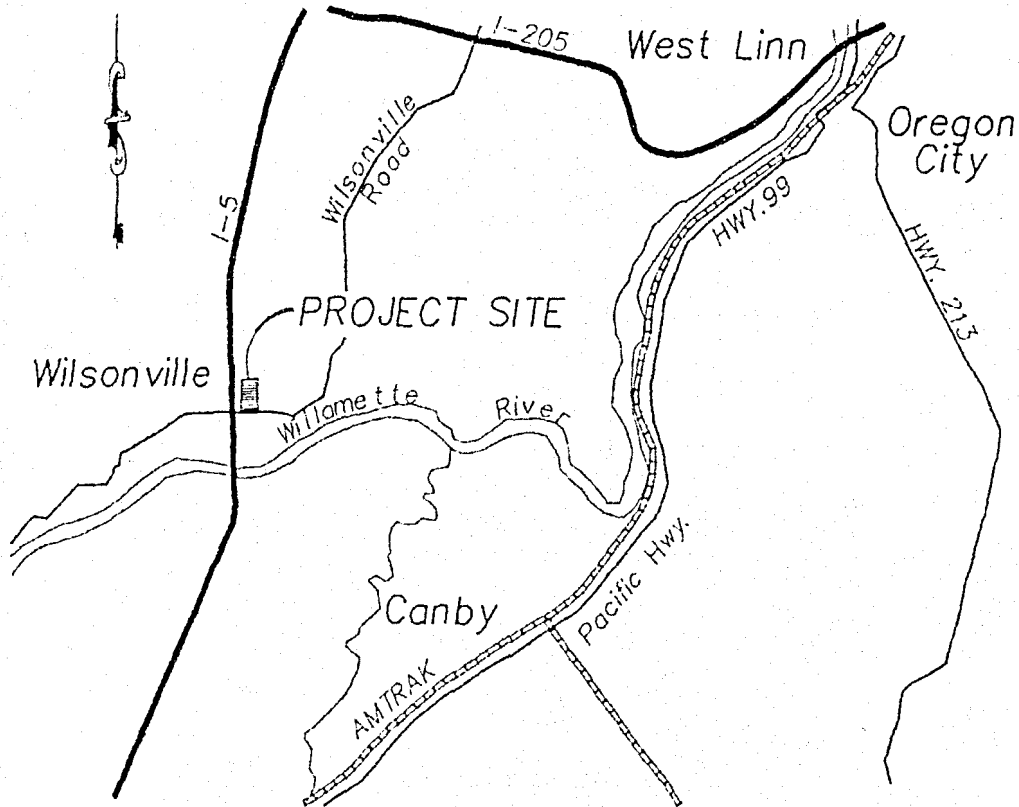
Bill,

*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.



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 building 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.

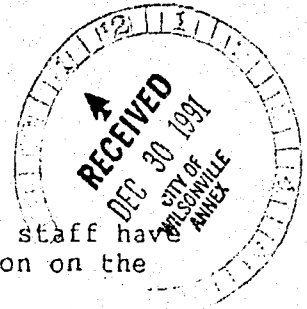
Very truly yours,

A handwritten signature in cursive script that reads "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



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 @ W. Wilsonville TR left @ Centerloop R west 1/4 mile
T 35 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 of Site Plan Map
 City of Wilsonville Planning Department
 _____, Corps of Engineers
 DSL file copy
 Reading file copy - TO LORNA no Turs.

City of
WILSONVILLE
in OREGON

30000 SW Town Center Loop E • ~~PO Box 226~~
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.

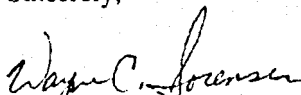
Enclosed is a copy of my notes which generally outline the basic issues we discussed at the December 23rd meeting. I am also enclosing material to provide additional insight into our planning process for the Town Center:

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
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.

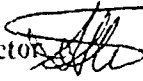
There are a couple conditions of approval that need to be brought to Council's attention. One of the conditions of approval requires the dedication of a 5.4 acre public park. The dedication would be required at the time occupancy permits are issued unless the City Council and the applicant agree to a 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 onsite 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.

City of
WILSONVILLE
in OREGON30000 SW Town Center Loop E • PO Box 220
Wilsonville, OR 97070
(503) 682-1011MEMORANDUM

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 Wilsonville'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 visibility 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 Park

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.

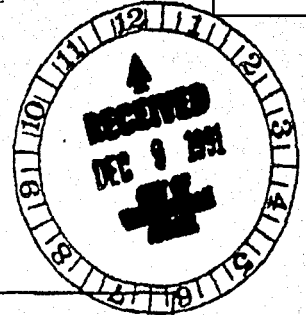
I hope this information is helpful.

ss:jme

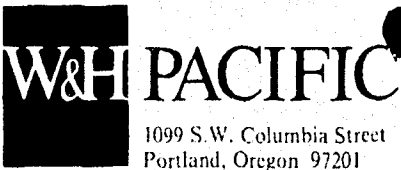
PROJECT THUNDER

PEOPLE IN ATTENDANCE

MEETING: PLANNING COMMISSION
DATE: 9 DEC 91



NAME	ADDRESS
Tom Lertz	233 SE Washington St Hillsboro OR 97123
LEGAL CRAVENS	JKS ARCHITECTS 1676 SW TAYLOR PORTLAND 97222
JIM FAULKNER	3484 FAR HILLS AV DESIGN FOUNDRY DAYTON, OH 45429 ARCHITECTS
Chris Tope	29025 S.W. towncenter Wilsonville OR LOOP
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 Allen	8755 SW Citizens Drive Wilsonville
Marie Vandehy	610 SW Alder Suite 700 PDX 97205
Bob Lamb	13890 SW 30th MT ROAD TIGARD OR 97224



1099 S.W. Columbia Street
Portland, Oregon 97201

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Fax (503) 274-4607

- Planning
- Engineering
- Surveying
- Landscape Architecture

EXHIBIT C
Page 69 of 161

Item 9.

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:

- Attached
- Facsimile
- Number Of Pages Including Cover

These Are Transmitted:

- For Your Info/File
- As Requested
- For Review And Comment

Copied To:

KIM BEACH
LOGAN CRAVEN

Copies	Description
10	FOLDED FULL SIZE REVERSED MASTER PLAN (SHT. #1)
1	PMT (8 1/2" x 11") OF ABOVE
1	ORIGINAL (8 1/2" x 11"): ALTERNATIVE OPEN SPACE CONCEPT.

Comments

Blaise:

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

s. again for all your help !!!

1 Jones

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:

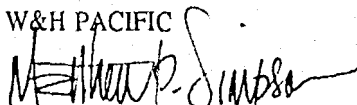
Thank you again for taking time this morning to discuss Project Thunder. As per our discussion, the following items were discussed and agreed upon:

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

<u>STORAGE</u>	<u>SERVICE</u>	<u>RETAIL</u>	<u>REST</u>
6208	4700	47,874	572
9600	900	2,240	1024
22,892	1020	5,880	<u>4500</u>
420	640	<u>7,920</u>	<u>5096</u>
<u>210</u>	1932	<u>63,914</u>	
<u>39,330</u>	5016		
	2040		
	<u>1008</u>		
	<u>17,276</u>		
<u>OFFICE</u>			
1856			
200			
50			
5,294			
280			
912			
240			
149			
<u>120</u>			
<u>9,117</u>			

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:

Memorandum: Design Review Board
Re: Les Schwab Tires
Page 2 of 5

"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 (1) (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

Memorandum: Design Review Board
Re: Les Schwab Tires
Page 3 of 5

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 maxims, *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 maxims 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

Memorandum: Design Review Board
Re: Les Schwab Tires
Page 5 of 5

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 Citv v. Hartke, 240 Or 35, 400 Ord. 255.(1965); Naegele Outdoor Advertising v. City of Wavnesville, 833 F.2d 43 (CA4 1987); Don's Porta Signs Inc. v. City of Clearwater, 829 F2d 1051 (CA11 1987).

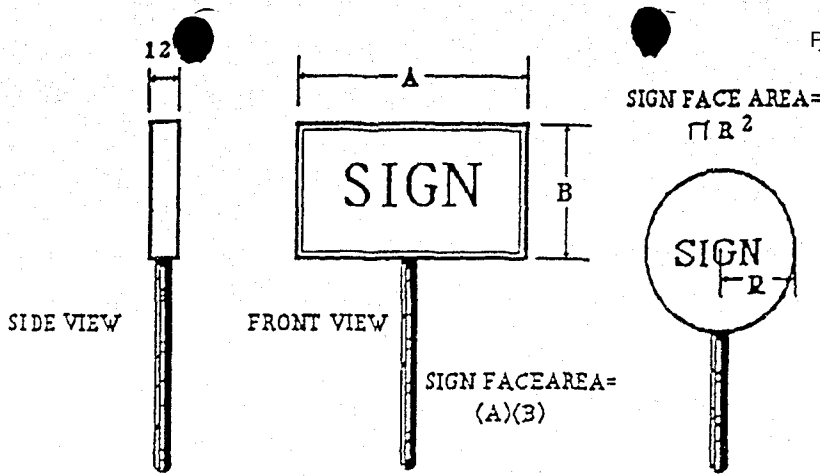
The dynamic nature of police power is clearly seen in the contemporary, community trends to view aesthetic considerations as valid subjects for the exercise of police power. The very exercise of police power is based upon need. Modern, contemporary society has recognized that advertising in the commercial 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 (1)(a), bulletin boards, 4.151 (1)(b); real estate signs advertising individual lots, 4.151 (1)(c); subdivision signage, 4.151 (1)(d) and home occupation signage, 4.151 (1)(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.

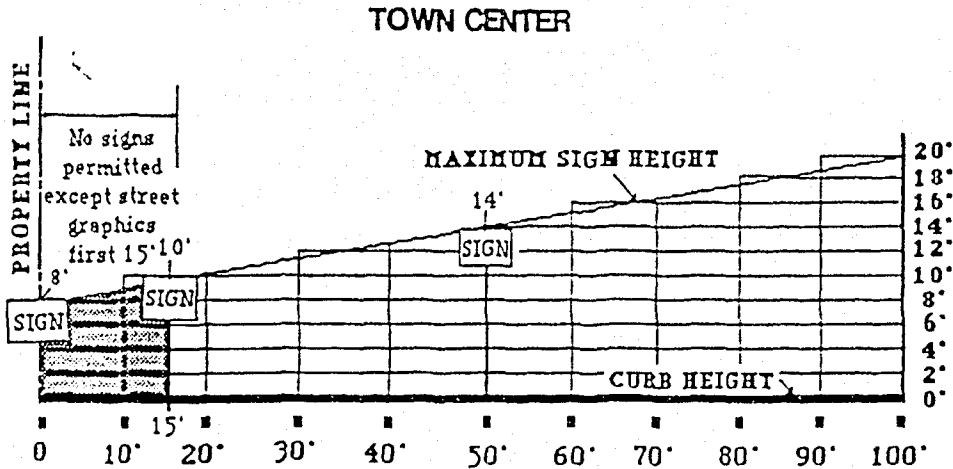
Therefore, I am of the opinion that the recommended revisions submitted by staff are reasonable time, place and manner restrictions, to prevent the use of a building as a grossly, large sign offensive to aesthetic sensibilities, coupled with the use of materials which are not harmonious with existing 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

Item 9.



SIGN FACE MEASUREMENT



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, whichever is less.

MAXIMUM SIGN HEIGHT

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

FIG. 2

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

600

City of Wilsonville

COMMUNITY DEVELOPMENT DEPARTMENT

Memorandum

November 7, 1991

TO: Blaise Edmonds, Planning
FROM: *MB* 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/

EXHIBIT E

DEFECTS IN

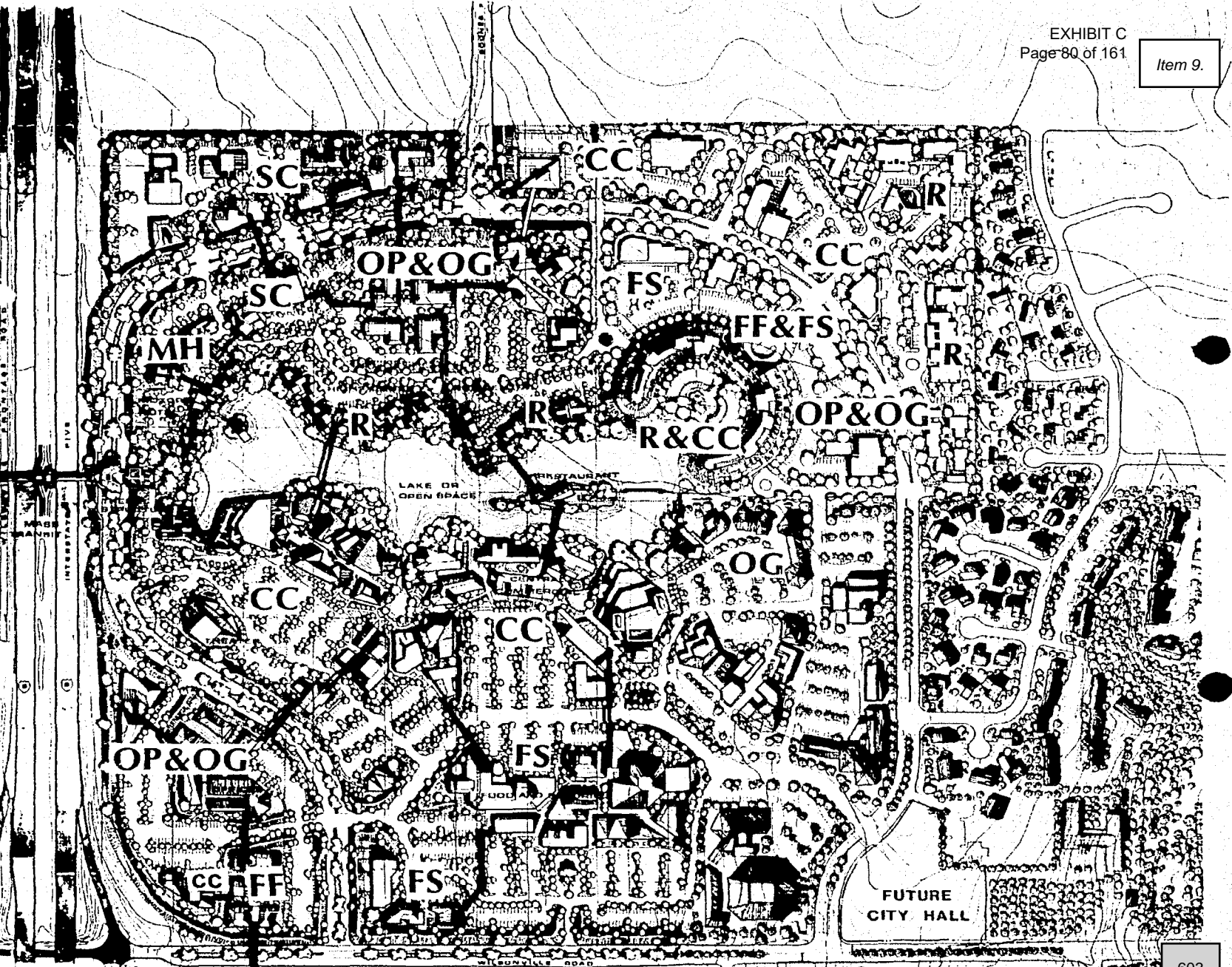
ORIGINAL

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





KITTELSON & ASSOCIATES, INC.
TRANSPORTATION PLANNING/TRAFFIC ENGINEERING

610 SW 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
SUPPLEMENT.

Ms. Kim Beach
October 16, 1991
Page 2

- 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.

Ms. Kim Beach
October 16, 1991
Page 3

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.

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

Ms. Kim Beach
October 16, 1991
Page 4

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.

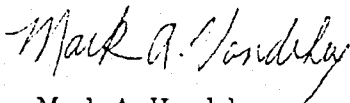
Based on these results, and given that background traffic volumes on Wilsonville Road are likely to continue to increase somewhat, it is recommended that a traffic signal be installed at the Wilsonville Road/Town Center Loop West intersection coinciding with the completion of the current Phase II development 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.

Ms. Kim Beach
October 16, 1991
Page 5

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

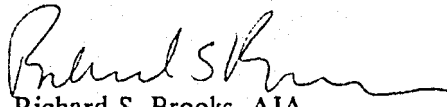
On behalf of the Owner, Capital Realty Corp., we request a reconsideration of Condition No. 8 of Planning Commission Resolution No. 90PC15 to provide the opportunity for Capital Realty to work with the City to accomplish the following:

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:\BCRSB\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

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

Page 2

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.

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

Page 3

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

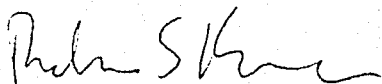
EXHIBIT
6-90

Wilsonville Town Center
Stage I Re-submittal
October 18, 1991

Page 2

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

Alternative Open Space Concept

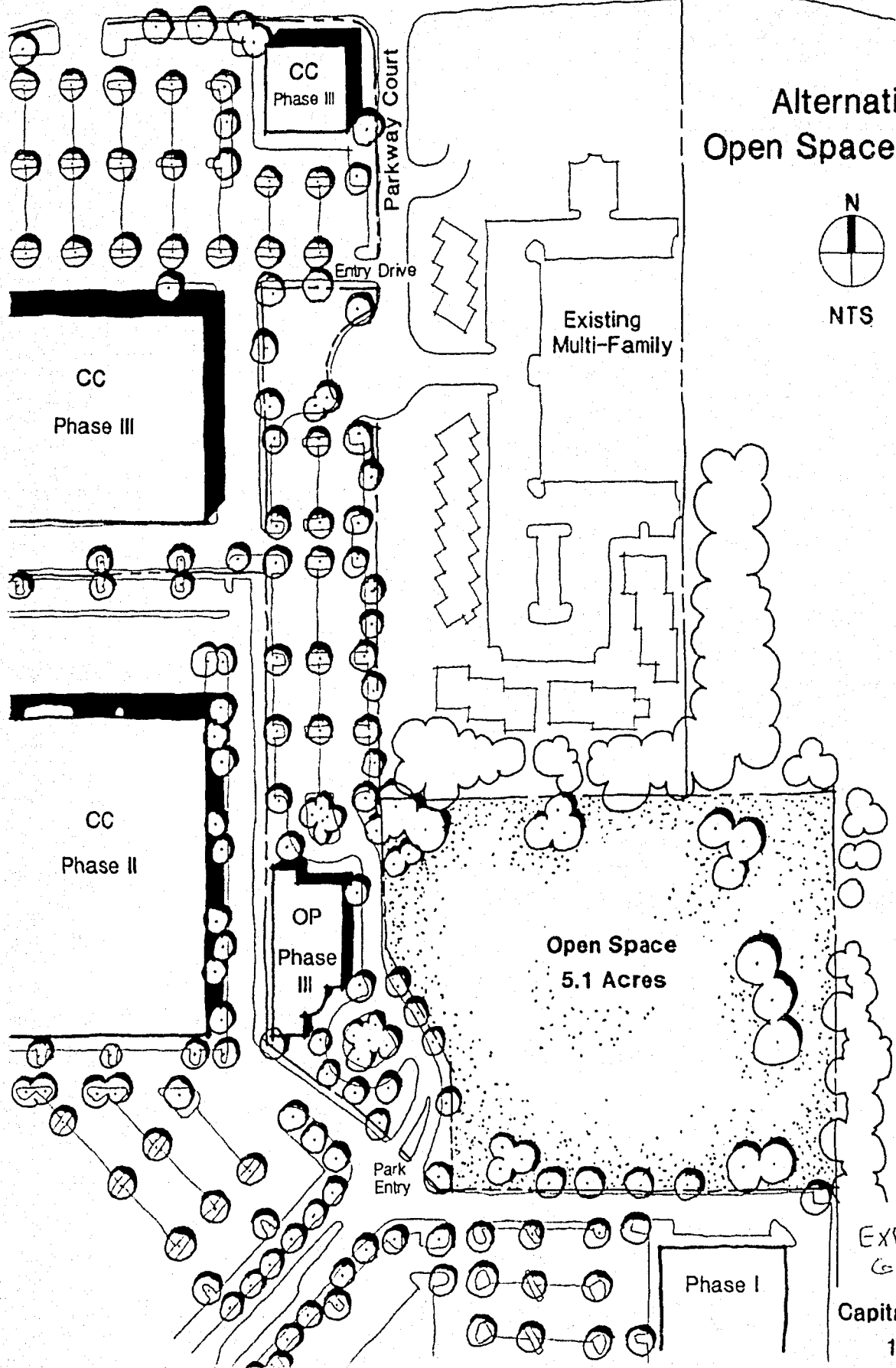
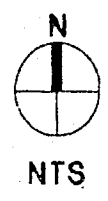


EXHIBIT
C-11

Capital Realty Corp.

11/26/9

616

Item 9.

AS REVISED
1/7/92

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ARCHITECTS

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 accessory 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.

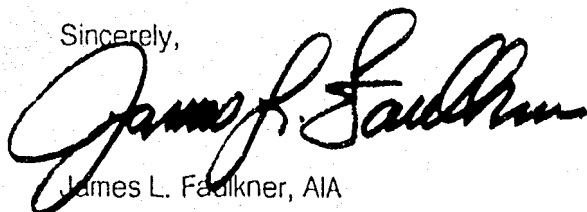
As per phone conversations with Blaise Edmonds, Associate Planner, the materials and colors sample board will be presented at the evening of the actual meeting. It will not be forgotten. We will provide a sample board of wall elements, as requested, as soon as we receive material samples from the manufacturers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

DesignForum

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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ARCHITECTS

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

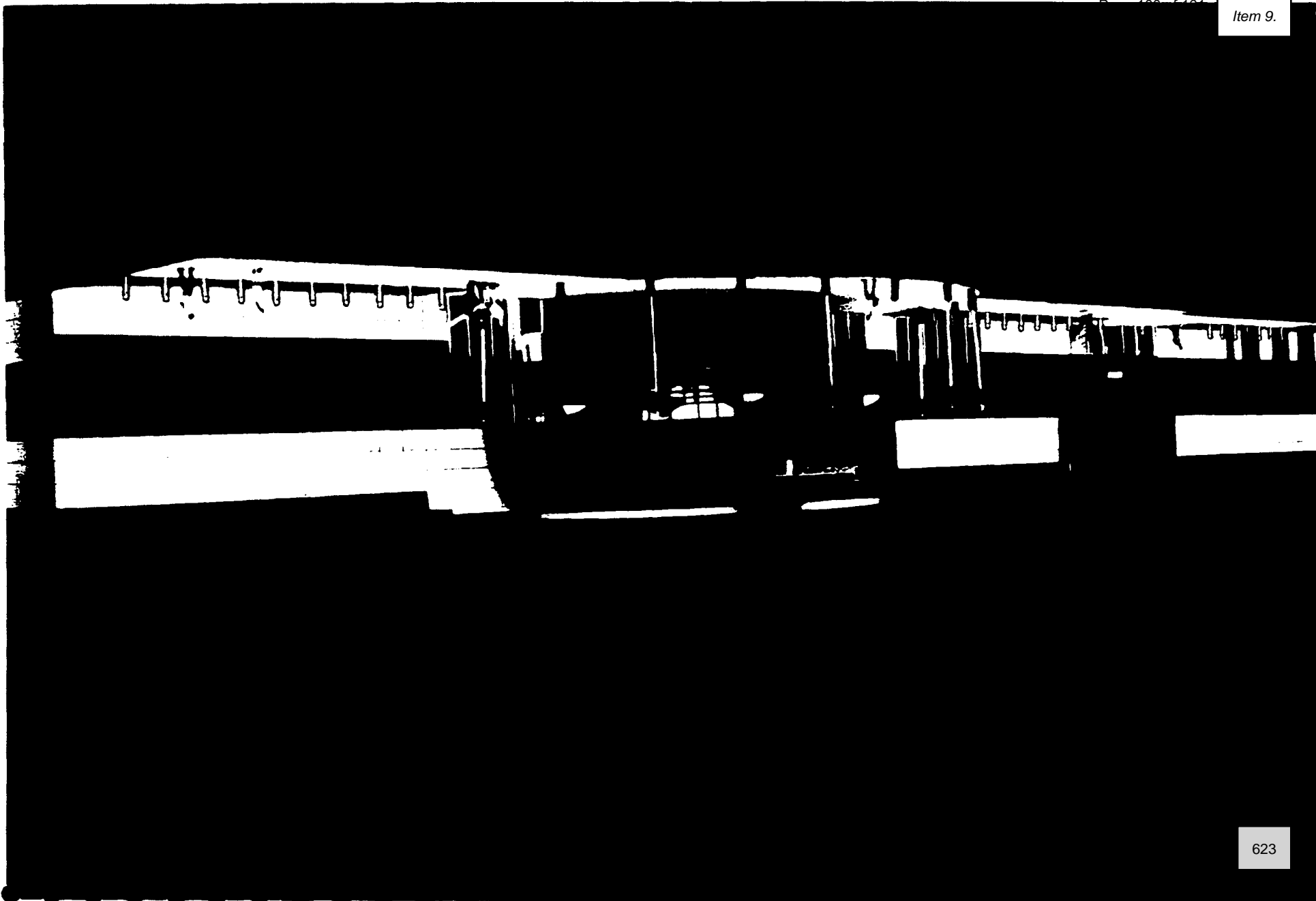
We request this deviation from the approved program for the purpose of changing the method of construction for the 3 fascia signs (aggregate area approximate 81 SF) to be consistent with our design idiom. We feel our approach of a fascia panel type sign, back lit, cutout individual letters, appearing 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

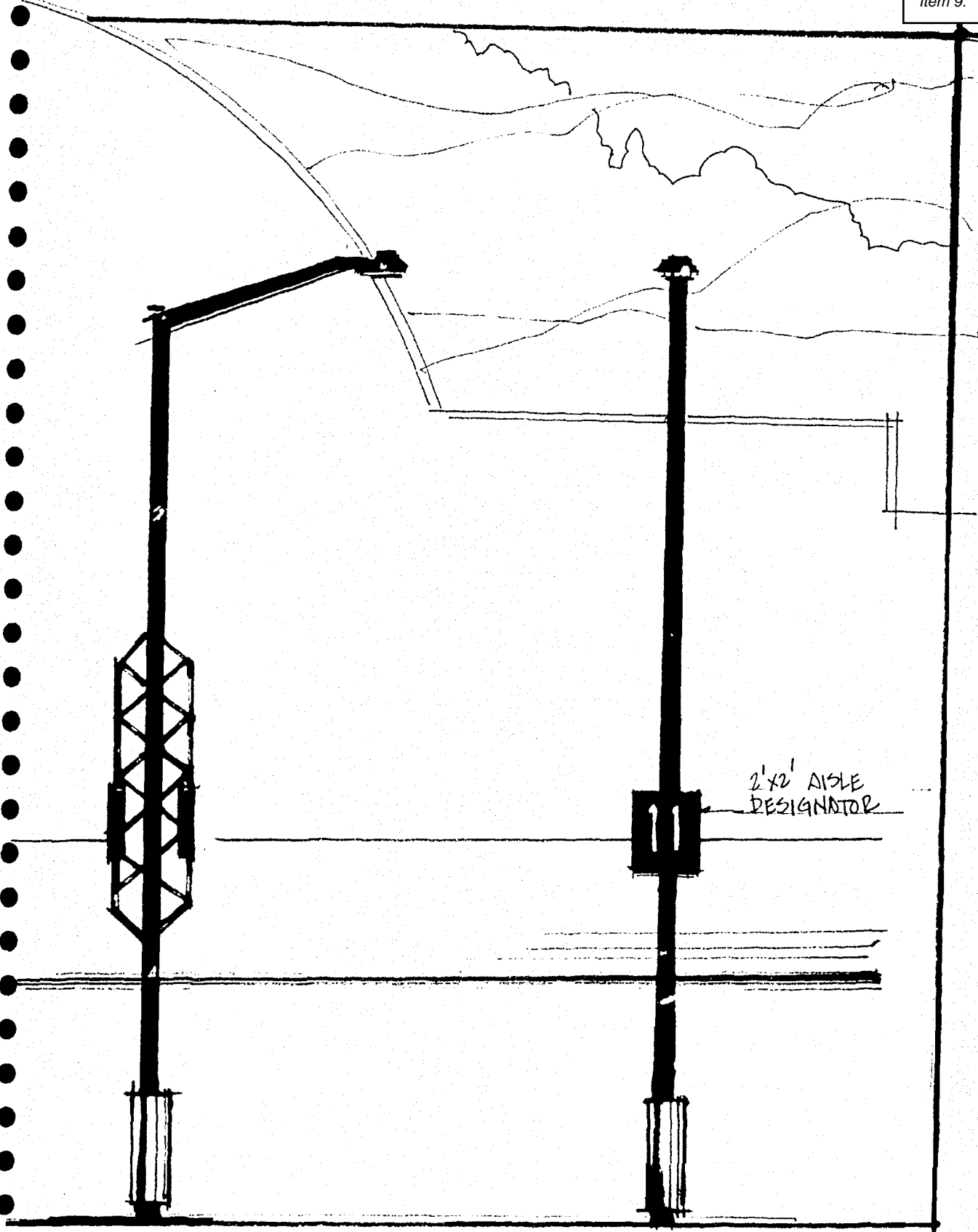
DOCUMENT

Item 9.



Item 9.



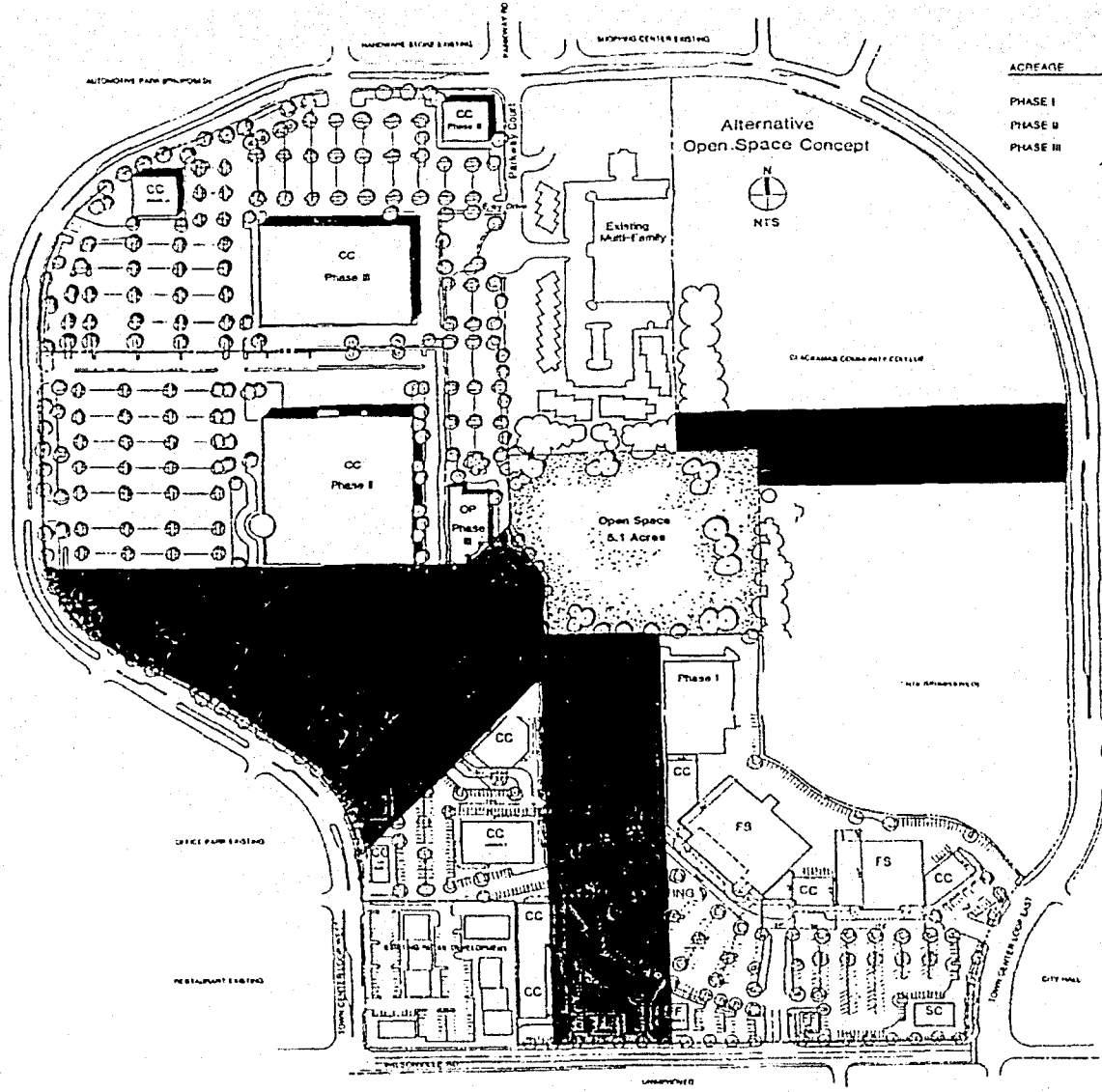


PROJECT THUNDER
Wilsonville, Oregon
Design Review Board
January 27, 1992 Meeting

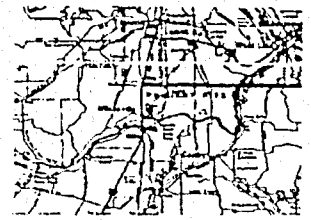
DesignForum
ARCHITECTS

3481 Fox Hills Avenue, Dayton, Ohio 45424 Telephone (612) 258-4488

Item 9.



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



VICINITY MAP

NOTES

1. THIS PLAN IS A PRELIMINARY DESIGN AND IS SUBJECT TO CHANGE WITHOUT NOTICE.

2. THE PROPERTY IS BOUND BY [Street Name] TO THE NORTH, [Street Name] TO THE SOUTH, [Street Name] TO THE WEST, AND [Street Name] TO THE EAST.

3. THE TOTAL AREA OF THE PROPERTY IS 59.79 ACRES.

4. THE PHASE I DEVELOPMENT IS 22.96 ACRES, PHASE II IS 14.75 ACRES, AND PHASE III IS 22.08 ACRES.

5. THE OPEN SPACE AREA IS 6.1 ACRES.

6. THE EXISTING MULTI-FAMILY BUILDING IS TO BE DEMOLISHED AND REPLACED WITH A NEW BUILDING.

7. THE CITY HALL AND CHURCH ARE TO BE PRESERVED.

8. THE OFFICE PARK AND RESTAURANT ARE TO BE DEVELOPED IN PHASE I.

9. THE CITY HALL AND CHURCH ARE TO BE DEVELOPED IN PHASE II.

10. THE OFFICE PARK AND RESTAURANT ARE TO BE DEVELOPED IN PHASE III.

PHASE I AND III DEVELOPMENT

The Phase I and III development consists of a multi-story office building, a restaurant, and a parking lot. The office building is to be developed on the east side of the property, and the restaurant and parking lot are to be developed on the west side. The development is to be completed by the end of 2002.

The Phase II development consists of a multi-story office building, a parking lot, and a city hall. The office building is to be developed on the east side of the property, and the parking lot and city hall are to be developed on the west side. The development is to be completed by the end of 2003.

SITE MASTER PLAN: PHASE I, II, & III
VIEW CORRIDOR CONCEPT

1-6-92

WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON

JKS Architects PC
225 SW 4th Street, Suite 202, Portland, Oregon 97204
Tel: 503.224.1111 Fax: 503.224.1112

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:
- | | | | | |
|---------------------------------|--|---|---|-----------------------------------|
| <input type="checkbox"/> Prints | <input type="checkbox"/> Estimates | <input type="checkbox"/> Copy of letter | <input type="checkbox"/> Photography | <input type="checkbox"/> Keylines |
| <input type="checkbox"/> Plans | <input type="checkbox"/> Shop Drawings | <input type="checkbox"/> Samples | <input type="checkbox"/> Specifications | <input type="checkbox"/> Layouts |
| | | <input type="checkbox"/> Comps Prototypes | | |

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

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> For your use | <input type="checkbox"/> Approved & noted | <input type="checkbox"/> Return _____ corrected prints |
| <input type="checkbox"/> For approval | <input type="checkbox"/> Construction approval | <input type="checkbox"/> Submit _____ copies for _____ |
| <input checked="" type="checkbox"/> As requested | <input type="checkbox"/> Returned for corrections | <input type="checkbox"/> Resubmit _____ copies for _____ |
| <input type="checkbox"/> For review & comment | <input type="checkbox"/> Returned after loaned to us | <input type="checkbox"/> For bids due _____ |
| <input type="checkbox"/> _____ | | |

Remarks: _____

Signed: William F. Bergman Date: 10/28/91
William F. Bergman, AIA
Project Architect

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.

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.

Blair -
I understand
W & H says 150 cfs
for Town Center to go into
48" culvert - is there
more from other properties -
if so how does that affect
park drainage - if you
know & if not I'd be probably
need to make sure all
info is available - before
abandoning on site retention -
could be a plus as a water
feature for town center
Mike,
cc. Steve Stamer

PLEASE MAIL
TO
LESLIE
DON'T
WAYNE
SAID THAT
YOU HAVE
HLS
ADVISORY

MEMORANDUM

TO: Development Review Team

DATE:

FROM: Blaise Edmonds, Associate Planner, City

B

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- 2. ~~Office and warehouse, Liberty Organization, applicant.~~
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City of Wilsonville

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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.



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W H PACIFIC

1099 S.W. Columbia Street
Portland, Oregon 97201

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

• Planning • Surveying
• Engineering • Landscape Architecture

• Environmental Services

To: Blaise Edmunds Date: 10/16/91
Pam Edmunds Project Number: 407-0301
City of Wilsonville, Annex Project Name: PROJECT THUNDER
30000 SW TOWN CENTER LOOP EAST Regarding:
Wilsonville, OR, 97070

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
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These Are Transmitted:

- For Your Info/File
- As Requested
- For Review And Comment
-

Copied To:

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

Comments

Blaise & Pam

We'll see you 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

Tan Stines

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.



October 15, 1991
Page 2

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 submittal 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.



1099 S.W. Columbia Street
Portland, Oregon 97201

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Fax (503) 274-4607

- Planning
- Engineering

- Surveying
- Landscape Architecture

- Environmental Services

EXHIBIT C
Page 112 of 161
FAKED
10/17/91

Item 9.

To: Blaise Edmunds Date: 10/16/91
Pam Eumons Project Number: 467-0301
City of Wilsonville, Annex Project Name: PROJECT THUNDER
30000 SW TOWN CENTER LOOP EXT. Regarding:
WILSONVILLE, OR. 97070

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
1es.	Minutes of 10/14/91 Meeting

Comments

Blaise & Pam

We'll see you 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 Tan Jones

635

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.

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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 excavation, 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.

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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.

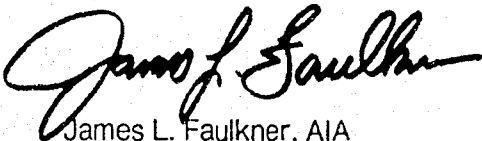
DesignForum

ARCHITECTS

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

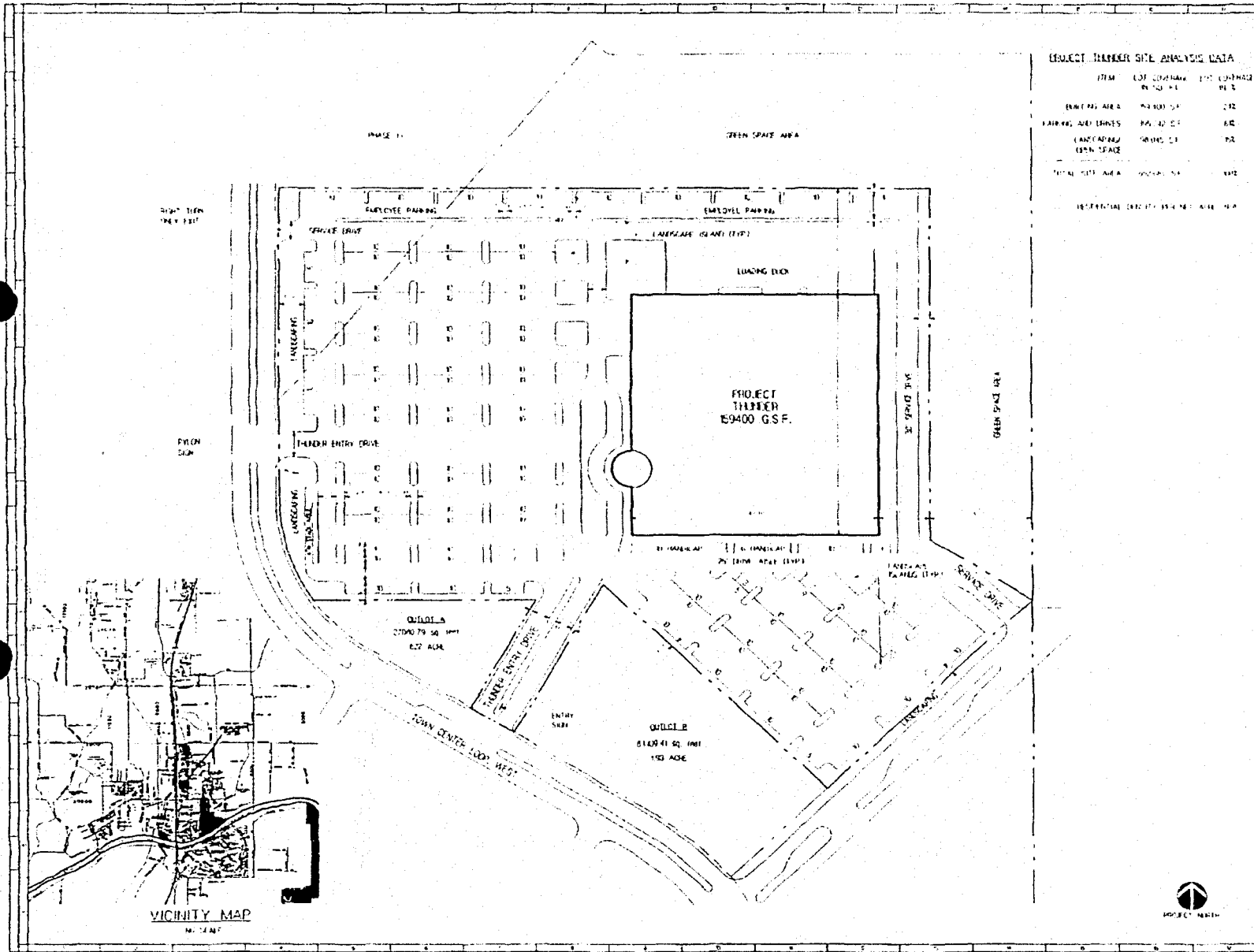
The meeting notes represent comments that have been paraphrased as accurately as possible. The notes will be held as an accurate and true account as to intent unless notice to the contrary is set forth within 10 days of the date above.

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	EST. CONTAINMENT	EST. CONTAINMENT
	PER AC	PER AC
EMPAVED AREA	14,300 SQ. FT.	232
PARKING AND DRIVEWAYS	10,400 SQ. FT.	172
LANDSCAPING OPEN SPACE	10,000 SQ. FT.	167
TOTAL SITE AREA	34,700 SQ. FT.	571
PERCENTAGE IMPERVIOUS SURFACE AREA	41.8%	

SHEET NOTES

1. OWNER'S STATEMENT OF WORK
2. PROJECT THUNDER WILL BE THE FIRST PHASE IN DEVELOPING THE PROJECT. THE SECOND PHASE WILL BE THE DEVELOPMENT OF THE SECOND PHASE OF THE PROJECT. THE PROJECT WILL BE DEVELOPED IN PHASES. THE PROJECT WILL BE DEVELOPED IN PHASES. THE PROJECT WILL BE DEVELOPED IN PHASES.

GENERAL NOTES

1. PROJECT THUNDER WILL BE THE FIRST PHASE IN DEVELOPING THE PROJECT.
2. PROJECT THUNDER WILL BE THE FIRST PHASE IN DEVELOPING THE PROJECT.

PROJECT THUNDER SITE
DESIGNED BY: [Name]
DATE: [Date]

PROJECT FEATURES
797 TOTAL SQ. FT. WHICH ARE HANDICAPPED
SHOWN
10. HATCH ASSY-1856 STANDARD
B12 TO 'A'

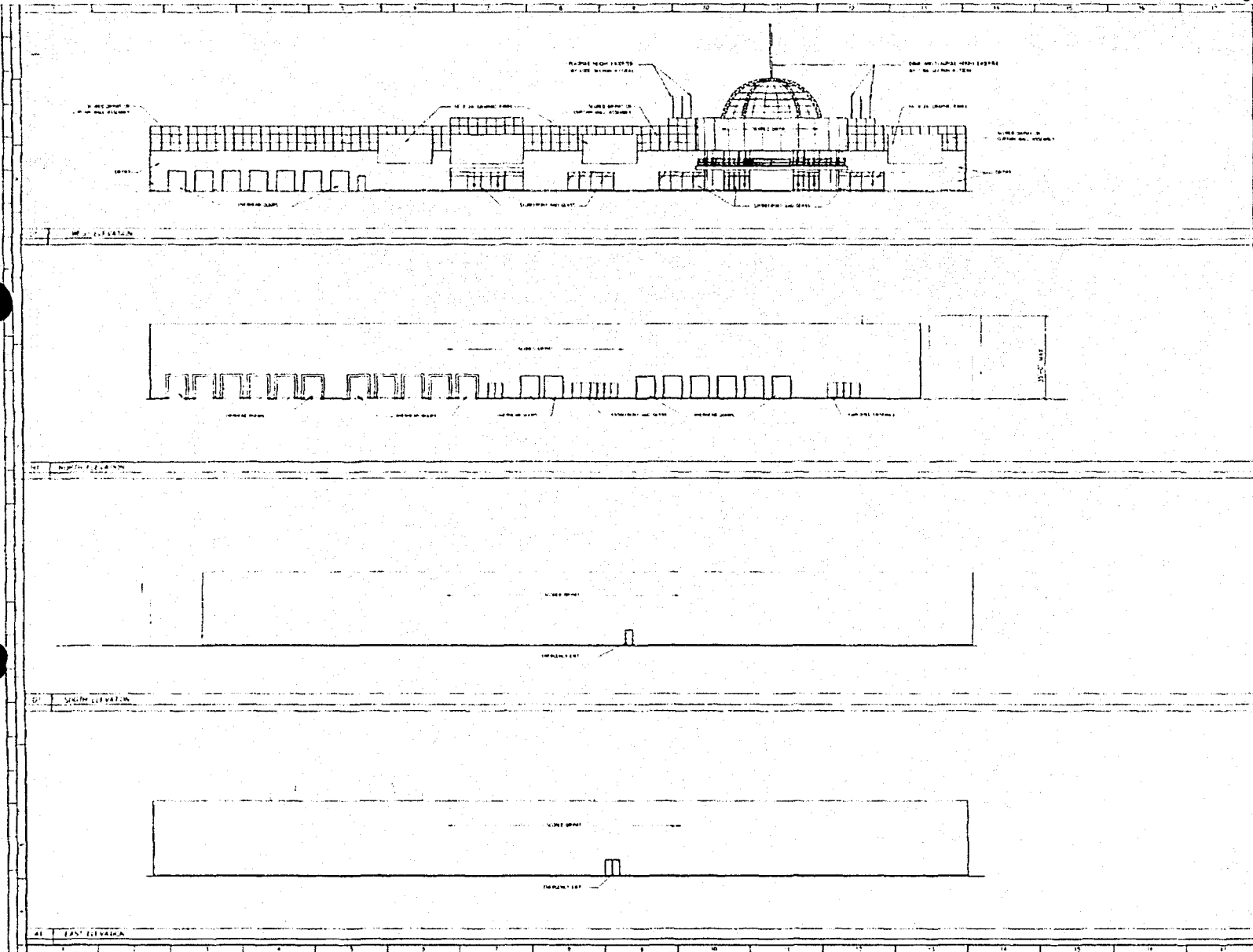
DesignForum ARCHITECTS

PROJECT THUNDER
MEMPHIS, TN

SITE PLAN

DATE: [Date]
SCALE: [Scale]

Item 9.

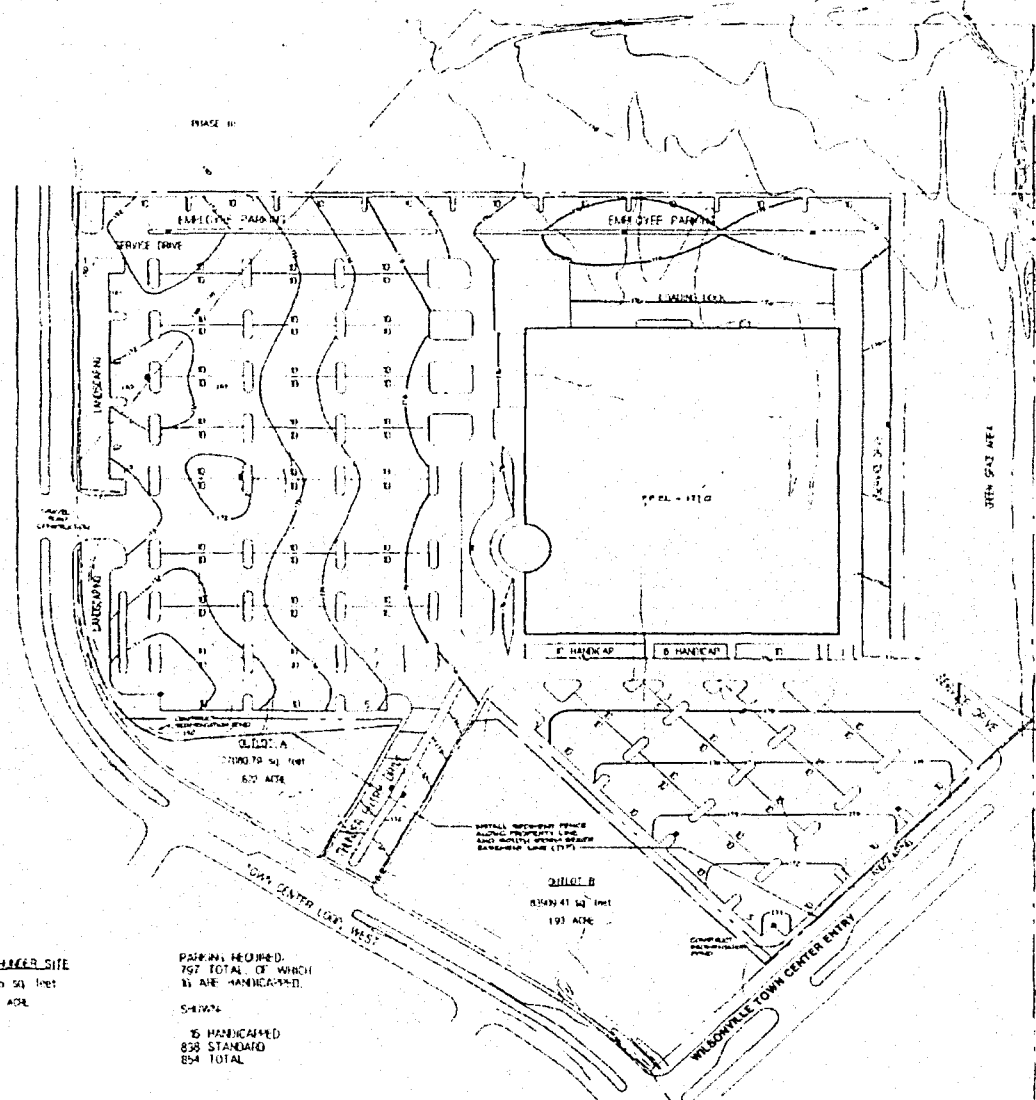


EXTERIOR ELEVATIONS

Project Name	PROJECT THUNDER
Architect	DesignForum ARCHITECTS
Client	MESQUITE TRUCK
Location	
Scale	
Date	1/10/11
Drawn by	WFB
Checked by	
Project No.	10-18-5

641

SHEET TITLES



PROJECT THUNDER SITE
825451 SQ. FEET
14.38 ACRES

PARKING REQUIRED:
767 TOTAL OF WHICH
15 ARE HANDICAPPED.

SERVING
15 HANDICAPPED
838 STANDARD
854 TOTAL

NOTES

- 1) RECALCULATION OF ALL SQUARE FOOTAGES, LOT AREA, AND PERCENT COVERED FOOTPRINTS TO BE PROVIDED BY CLIENT'S ARCHITECTURAL DRAWINGS TO CLIENT'S DEPARTMENT OF LAND USE AND PLANNING.
- 2) WHEREAS THE ACCESS DRIVE SHALL BE FINISHED AND SHALL BE THE ONLY ACCESS DRIVE TO THE AREA OF THE PROJECT, THE CLIENT SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE DRIVE.

LEGEND

- EXISTING CURBLINE
- PROPOSED CURBLINE
- IMPROVED CURBLINE
- PROPOSED PLANT PLACEMENT
- HORIZONTAL FENCE

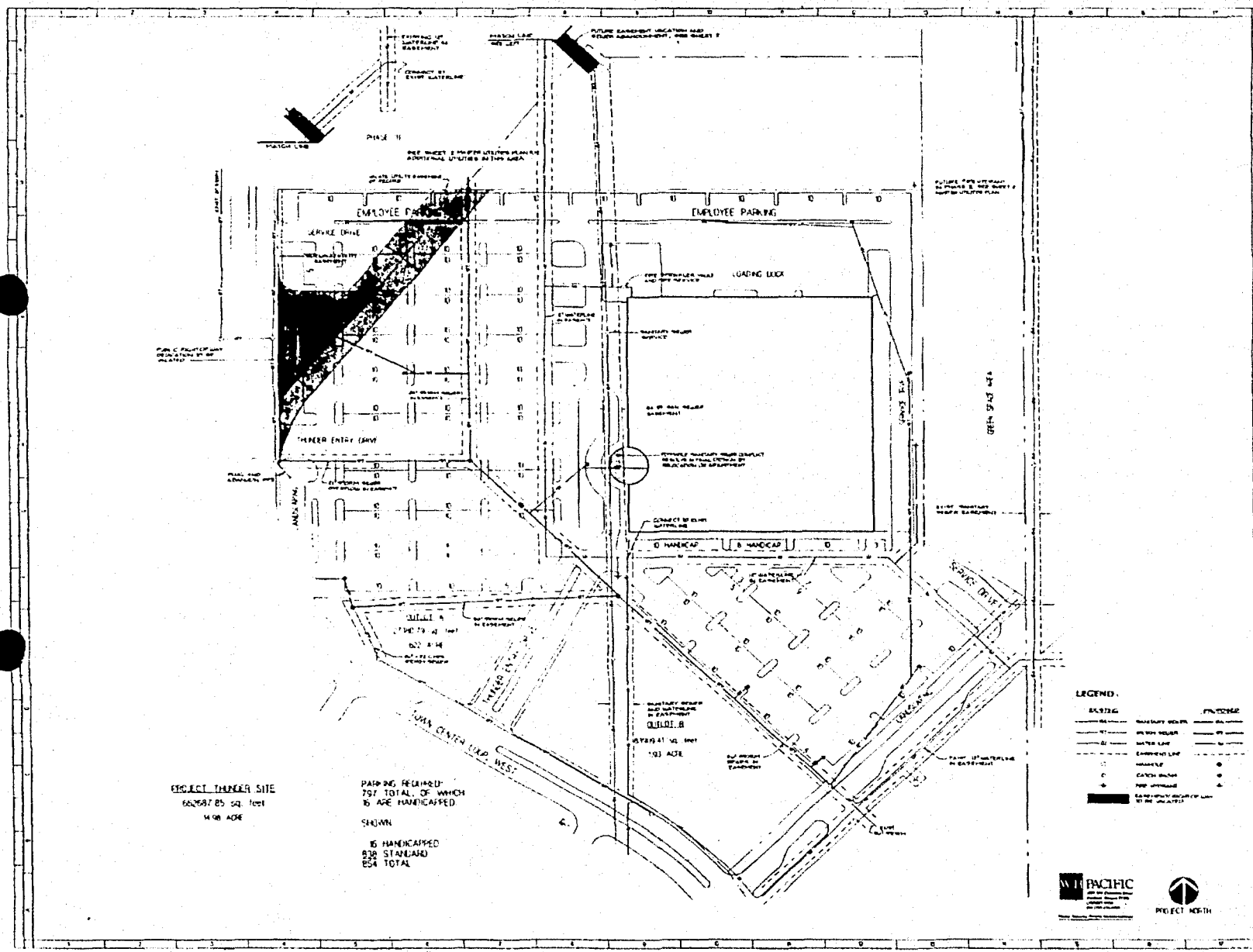
DesignForum ARCHITECTS
100 N. Main Street, Suite 200, Wilsonville, OR 97158

PROJECT THUNDER
WILSONVILLE, OREGON

PHASE II GRADING/EROSION CONTROL PLAN

Scale	1" = 50'
Date	11/11/11
Author	J.C.P.
Checker	M.A.P.
Project No.	11-001

Item 9.



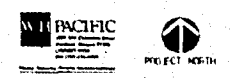
PROJECT THUNDER SITE
66,268.785 sq. feet
14.98 ACRE

PARKING REQUIRED:
757 TOTAL, OF WHICH
16 ARE HANDICAPPED

SHOWN
16 HANDICAPPED
830 STANDARD
854 TOTAL

LEGEND

SYMBOL	DESCRIPTION
---	PROPERTY BOUNDARY
---	EXISTING DRIVE
---	NEW DRIVE
---	EXISTING UTILITY
---	NEW UTILITY
---	EXISTING SIDEWALK
---	NEW SIDEWALK
---	EXISTING CURB
---	NEW CURB
---	EXISTING PAVEMENT
---	NEW PAVEMENT
---	EXISTING CONCRETE
---	NEW CONCRETE
---	EXISTING ASPHALT
---	NEW ASPHALT
---	EXISTING GRAVEL
---	NEW GRAVEL
---	EXISTING SOIL
---	NEW SOIL
---	EXISTING VEGETATION
---	NEW VEGETATION



SHEET NOTES

GENERAL NOTES

Key Plan

DesignForum ARCHITECTS

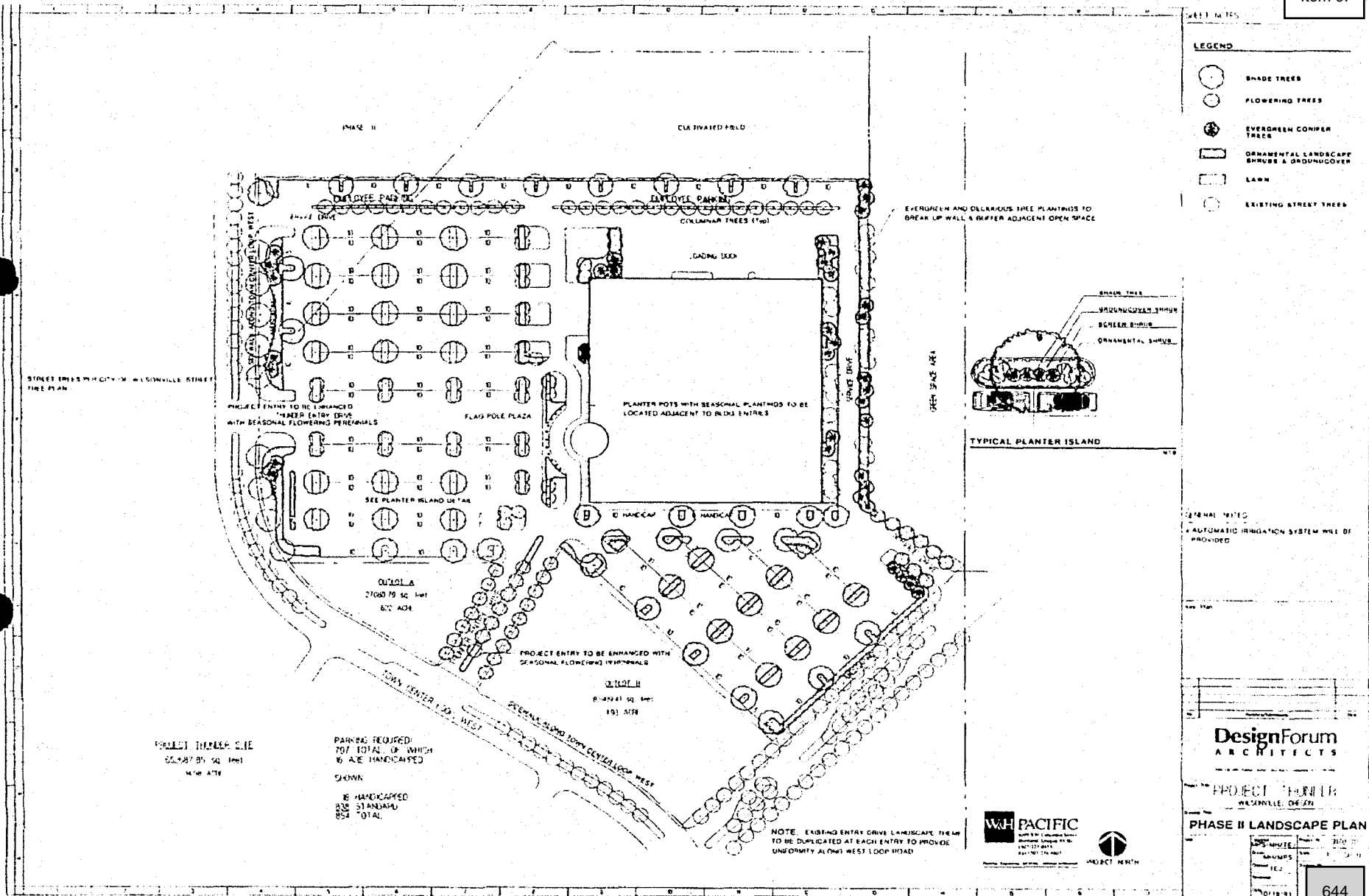
PROJECT THUNDER
WESCHVILLE, OREGON

PHASE II UTILITIES PLAN

DATE	DESCRIPTION

Scale: 1" = 50'

643




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,

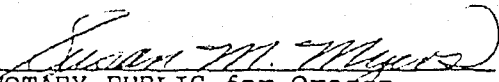
SFS INVESTMENT CORP.

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

Parcel III

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-13D, 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 500, MAP 3-1W-13D, 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 6391 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.

~~tion.~~ The Option to purchase Phase 2 in its entire 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 before November 2, 1992, at the purchase price of [redacted] plus 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

Sherilyn J. Young
SHERILYNN J. YOUNG

By [Signature]
SFS President
Steven F. Styles

David S. Young
DAVID S. YOUNG
Marlene A. Young
by [Signature], attorney in fact
MARLENE A. YOUNG

SFS INVESTMENT CORP.
By [Signature]
SFS OFFICER

ESTATE OF HAROLD J. LASWELL
DECEASED

GRANTEES

By Emma D. Laswell
Emma D. Laswell
Personal Representative

BY [Signature]
Eugene L. Doffler
Personal Representative

Fred A. Anderson
FRED A. ANDERSON

GRANTORS

ST IES PROPERTIES LTD.
by [Signature]

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, together 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 & 405, Clackamas County MAP 3-1W-14B and a triangle of land approximately 6,391 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, 1969 and August 23, 1969, said options are valid through December 31, 1979.

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 entirety per 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, 1990 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 14 day of November, 1989.

Jack L. Lozo
JACK L. LOZO

SFS INVESTMENT CORP.

ANN S. LOZO, Trustee for
CLAUDE F. SMITH TRUST *Q.T.T.*

By *[Signature]*
SFS President
Steven F. Stiles

GRANTORS

SFS INVESTMENT CORP.

By *[Signature]*
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

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Pat Marquis

OREGON
JANUARY 20, 1989
PAT MARQUIS
2382

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

Lindy - Transfer 170⁺ ^{thou} footprint
Electronics +

Driveway / TC (E) + (W)

Driveway → Open Space

Submit Stage I + II Simultaneously

Blaise
What else?

* Gave Stage I + II + application x 2
250' radius map owners

Topo - 1' intervals - (map has readings)

~~Blaise 52' top down~~
Phase

100-1-

CITY

100-120 DWELING UNITS.

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

- CONTOUR SURVEY - 720' 0

[TREE SURVEY
 > 6" CALIBER]

MAJOR DRAINAGEWAY.

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

CALL MINE ~~120-124~~

**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 by 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.

<u>Item</u>	<u>Lot Coverage in sq. ft.</u>	<u>Lot Coverage in %</u>
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 !

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.

Item 9.

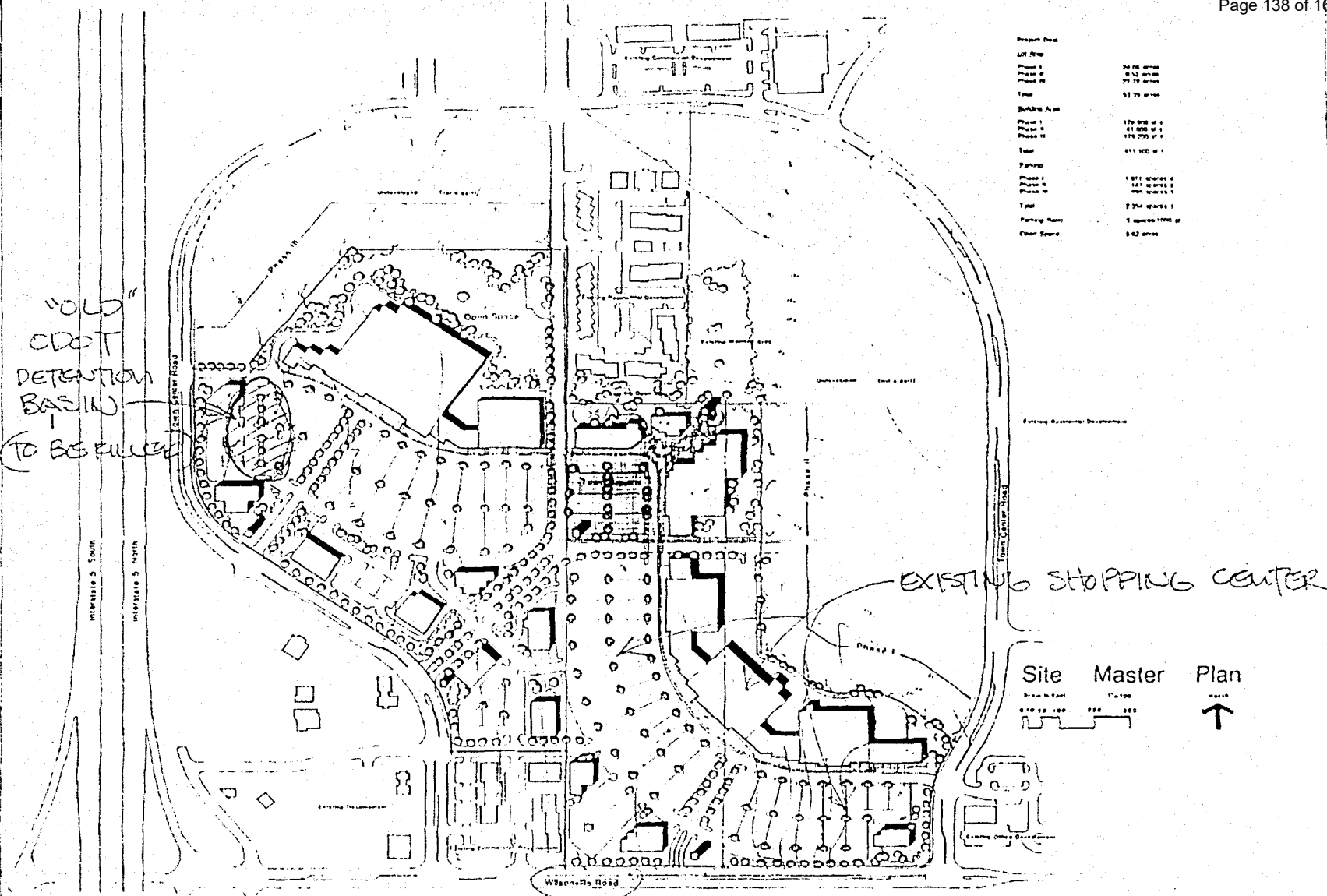
JKS Architects PC
10000 Wilsonville Road, Suite 100
Wilsonville, OR 97150
503.261.1111

Wilsonville Town Centre

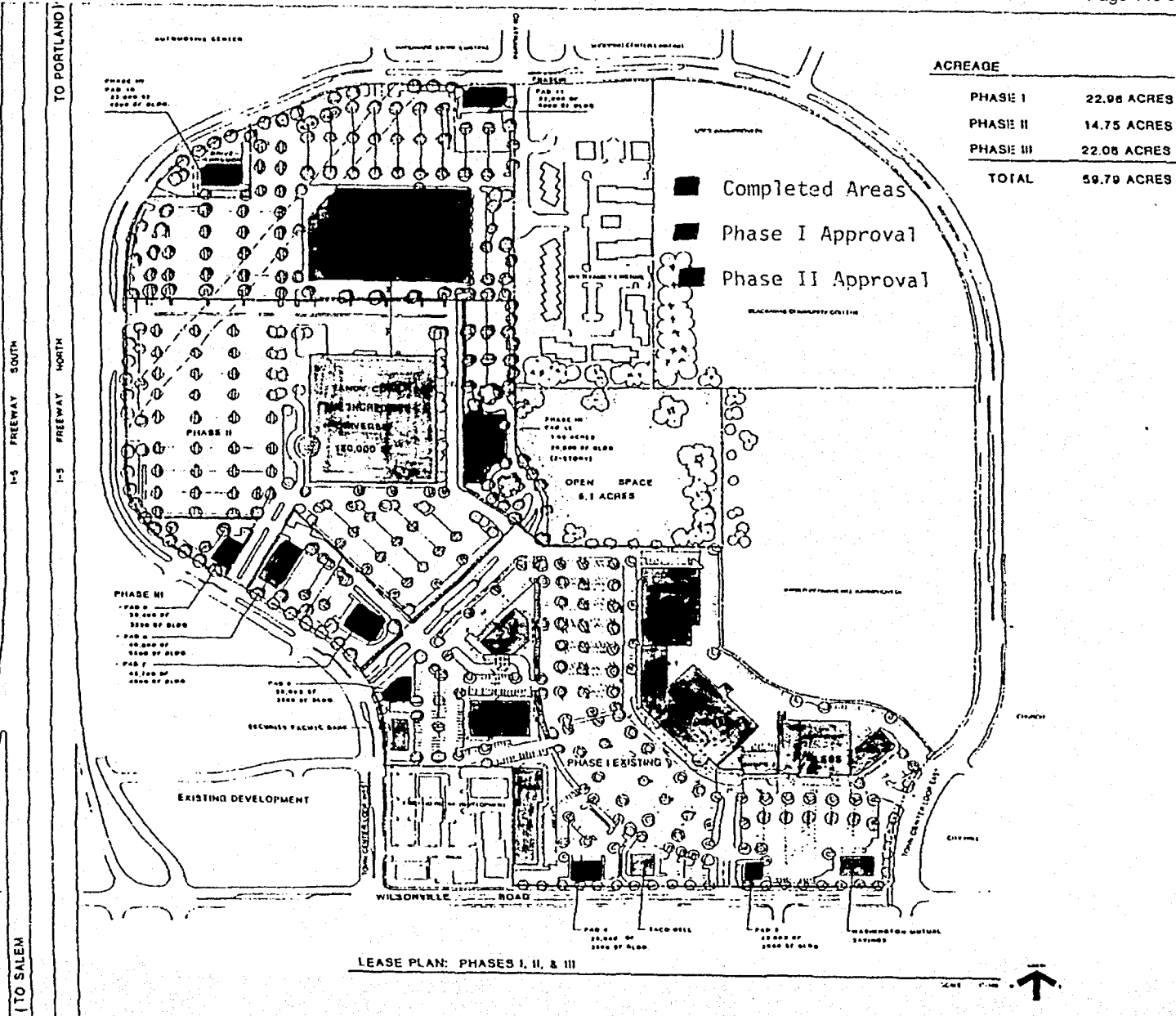
P 1

661

cc: Bill, JAVLS

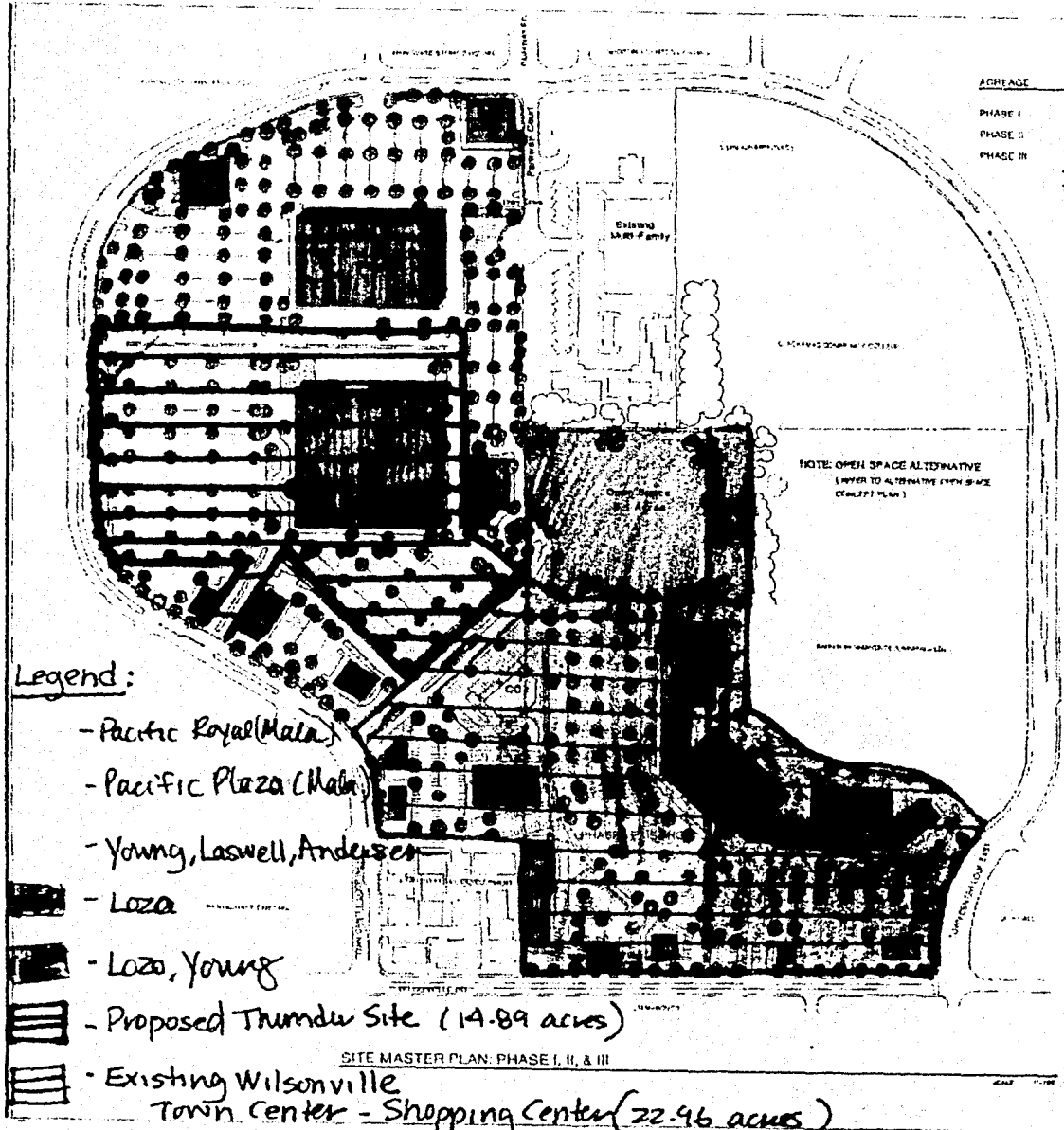


Project Area	
Lot Area	21.20 ac
Impervious	8.62 ac
Tree	11.78 ac
Building Area	
Phase I	170,000 sq ft
Phase II	141,000 sq ft
Phase III	178,000 sq ft
Total	489,000 sq ft
Tree	1.00 ac
Tree	1.47 ac
Tree	2.70 ac
Parking Area	1.00 ac
Other Area	0.42 ac

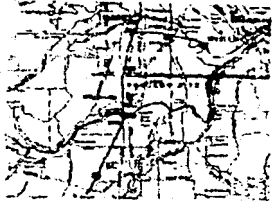


JKS Architects PC
 433 W. Taylor Street, Suite 200 • Portland, Oregon 97204
 503.255.1111 • Fax: 503.255.1112

WILSONVILLE TOWN CENTER
 WILSONVILLE, OREGON



ACREAGE	
PHASE I	22.96 ACRES
PHASE II	14.75 ACRES
PHASE III	22.58 ACRES
TOTAL	59.79 ACRES



VICINITY MAP

[Faded text, likely project description or site notes]

Legend:

- Pacific Royal (Mala)
- Pacific Plaza (Mala)
- 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
22 SW 3RD AVE, SUITE 200, WILSONVILLE, OREGON 97150
503.398.1111

WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON

DEFECTS IN

ORIGINAL

DOCUMENT

Item 9.

EXHIBIT F

NORTH ELEVATION
1/8" = 1'-0"



SOUTH ELEVATION
1/8" = 1'-0"

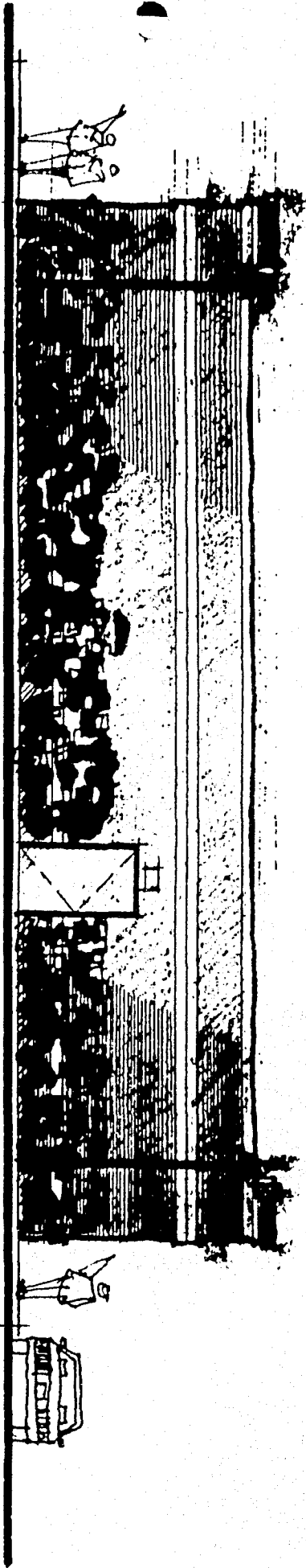


DRAWING NO: 1	PROJECT NAME: Wendy's Restaurant	DATE: 2/5/93
	DRAWING TITLE: Elevations	REVISION:



1/8" = 1'-0"

WEST ELEVATION



1/8" = 1'-0"

EAST ELEVATION



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



CITY OF WILSONVILLE

PLANNING DEPARTMENT SITE DEVELOPMENT APPLICATION AND

Item 9.

3445 S.W. Elsworth Road
P.O. Box 220 Wilsonville, OR 97150-0220
(503) 662-3445

File No. 91 PC 43 1/4 Sec.
Final action on application or other change is required within 120 days to conform with provisions of ORS 227.175
A pre-application conference normally is required prior to submission of an application. Please contact the Planning Department at (503) 662-3445 for an appointment.

Ple-App. No. Day Yr

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 Kimberly Beach, Vice President Capital Realty Corp
Plaza Royal Office Center Representative 500 on 13
Property Description: 1 3 Map 13 & 14-D Tax class 200, 201, 101
102, 300
Request: STAGE I MASTER PLAN REVISION
STAGE II PHASE II WILSONVILLE Town Center
SITE PLAN - MOBILE CONDITION #8 OF 90PC15

Please attach a plat 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 12/19/91

Staff Signature Brian Edwards

Class I Class II Class III

- | | | |
|---|--|---|
| <input type="checkbox"/> PLAN AMENDMENT | <input type="checkbox"/> MAJOR PARTITION | <input type="checkbox"/> DESIGN REVIEW |
| <input type="checkbox"/> ZONE CHANGE | <input type="checkbox"/> MINOR PARTITION | <input type="checkbox"/> TEXT AMENDMENT |
| <input type="checkbox"/> PRELIMINARY PLAT | <input type="checkbox"/> CONDITIONAL USE | <input type="checkbox"/> SIGN REVIEW |
| <input type="checkbox"/> FINAL PLAT | <input type="checkbox"/> VARIANCE | <input type="checkbox"/> TEMPORARY USE |
| <input checked="" type="checkbox"/> PLANNED DEVELOPMENT | <input checked="" type="checkbox"/> OTHER RECONSIDER. COND. #8 OF 90PC15 | |

SITE FINDINGS

- Zoning: PC & TOWN CENTERS, Building Area _____
- Area of lot: SEE FILE
- Building or Sign Height: TOWN CENTER LOOP WEST
(Max) _____
- Zoning Code Minimum Set-backs:
Front _____
Side _____
Rear _____
- Access to Property _____
- Other: _____

Approved Denied Approved with Conditions (See attached)

Conditions of Development:

Approval of this Development Permit is submitted on the basis of information submitted by the applicant or called for above. Any change of plans or incorrect information which may result in revocation of approval. This decision may be appealed in accordance with the provisions of the Wilsonville Code and ORS 227.180.

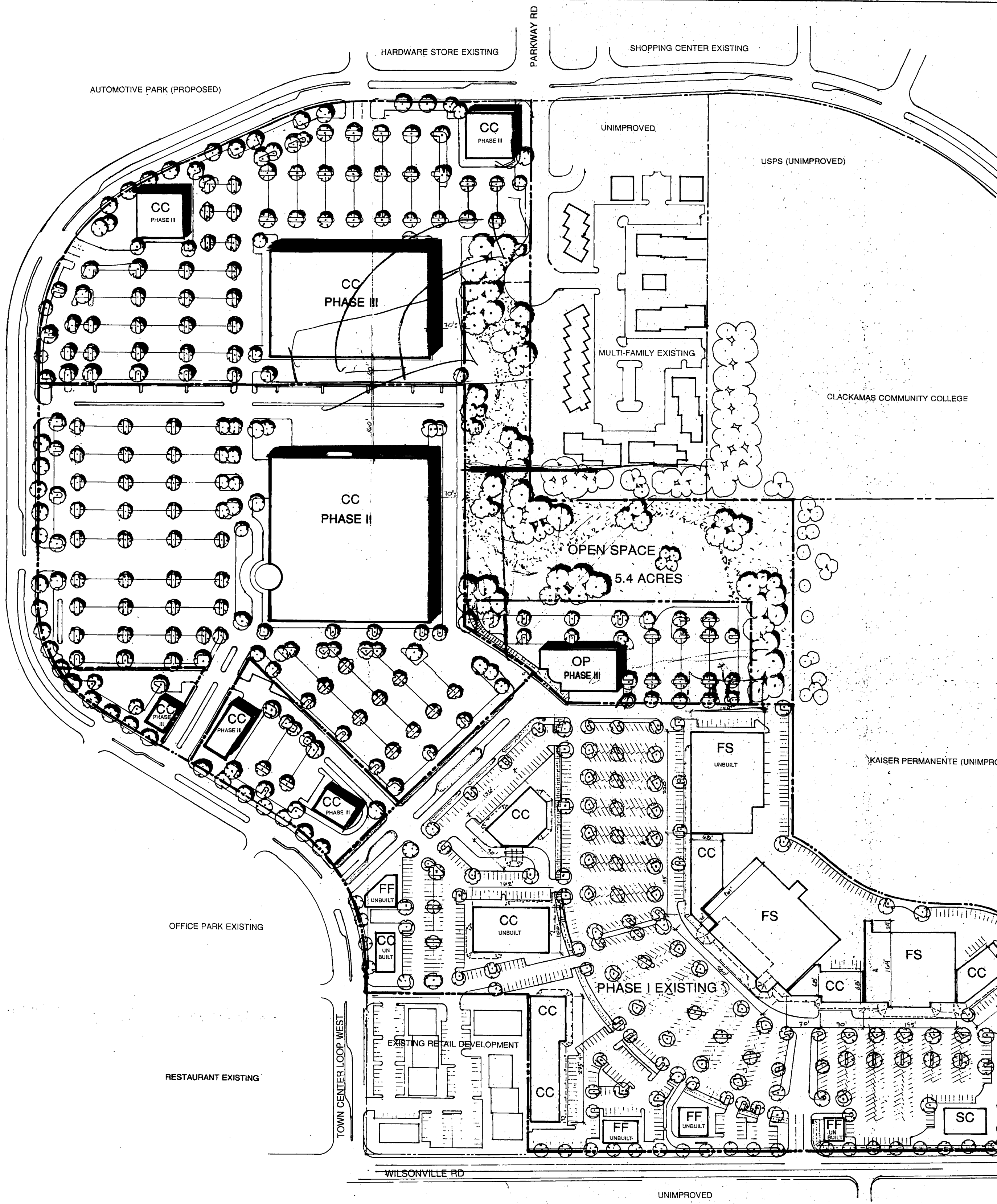
Fee Amount Paid \$1315.00 Check No. SEE FILE Cash 1205 Fee \$500.00 Fee I
1206 Fee \$25.00
1207 Fee \$25.00 Date: _____

Permit Approval: Planner's Signature _____

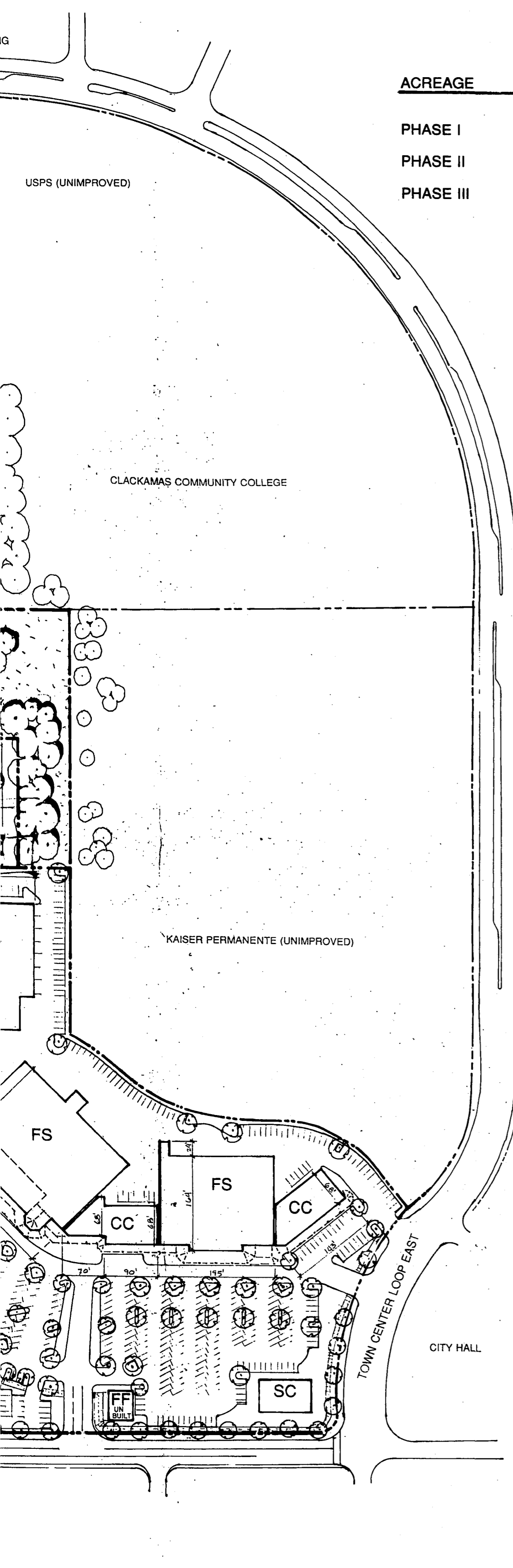
City Council or Planning Commission Approval Yes No

Order: Resolution _____

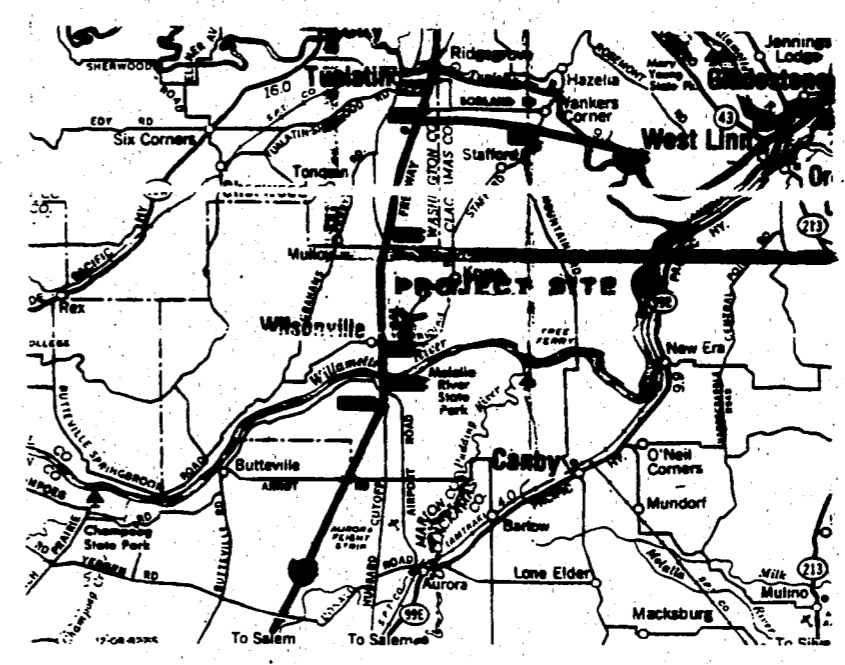
670



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
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°03'21" 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°55'30" 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 46.55 feet to a point of curvature; thence 247.91 feet along the arc of a 315.34 foot radius curve to the left through a central angle of 30°15'11" and whose chord bears North 15°39'27" West a distance of 243.55 feet to a point on a curve; thence North 45°03'00" East a distance of 554.11 feet; thence South 89°57'00" East a distance of 66.14 feet; thence South 00°03'01" 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 285.58 feet to the intersection with a non-tangent curve; thence 33.82 feet along the arc of a 317.35 foot radius curve to the right through a central angle of 16°55'21" and whose chord bears South 55°30'50" East a distance of 93.45 feet to a point of reverse curvature; thence 348.26 feet along the arc of a 338.67 foot radius curve to the left through a central angle of 42°03'30" and whose chord bears South 89°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 14.68 feet along the arc of a 200.00 foot radius curve to the right through a central angle of 5°27'30" and whose chord bears South 89°01'32" East a distance of 169.15 feet to a point of tangency; thence South 29°00'13" East a distance of 87.50 feet to a point on a non-tangent curve; thence 325.11 feet along the arc of a 422 foot radius curve to the left through a central angle of 39°14'18" and whose chord bears South 29°40'08" West a distance of 331.74 feet to a point of tangency; thence South 00°03'01" West a distance of 88.17 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 89°16'20" and whose chord bears South 89°42'00" West a distance of 48.17 feet to a point of tangency; thence South 22°22'25" West a distance of 375.4 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 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 350.84 foot radius curve to the left the radial center of which bears South 52°40'44" West) through a central angle of 20°25'22" an arc distance of 135.64 feet (the long chord bears North 47°11'56" West 134.32 feet) to a point of tangency; thence North 57°44'38" West 463.50 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°27'16" 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 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 as deeded to the City of Wilsonville in deed recorded November 12, 1986 in recorder's fee 86-44959 North 38°37'13" East 215.39 feet to the northerly line of said tract per fee 84-4353; 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°58'19" 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 arc curvilinearly and curvilinearly along the right-of-way line of said Parkway Avenue the following courses and distances: North 00°02'22" West 230.00 feet to a point of curvature; thence tracing the arc of a 413.44 foot radius curve to the right through a central angle of 84°13'44" an arc distance of 458.91 feet (the long chord bears North 32°24'30" East 444.25 feet) to a point of tangency; thence North 89°57'00" East 285.04 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 150.41 feet (the long chord bears North 70°22'24" East 178.36 feet) to a point of tangency; thence North 89°43'25" 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 15.46 feet (the long chord bears South 23°27'42" West 15.90 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°55'01" 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 1 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°25'52" East 849.20 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 1,604,249 square feet or 36.83 acres more or less.

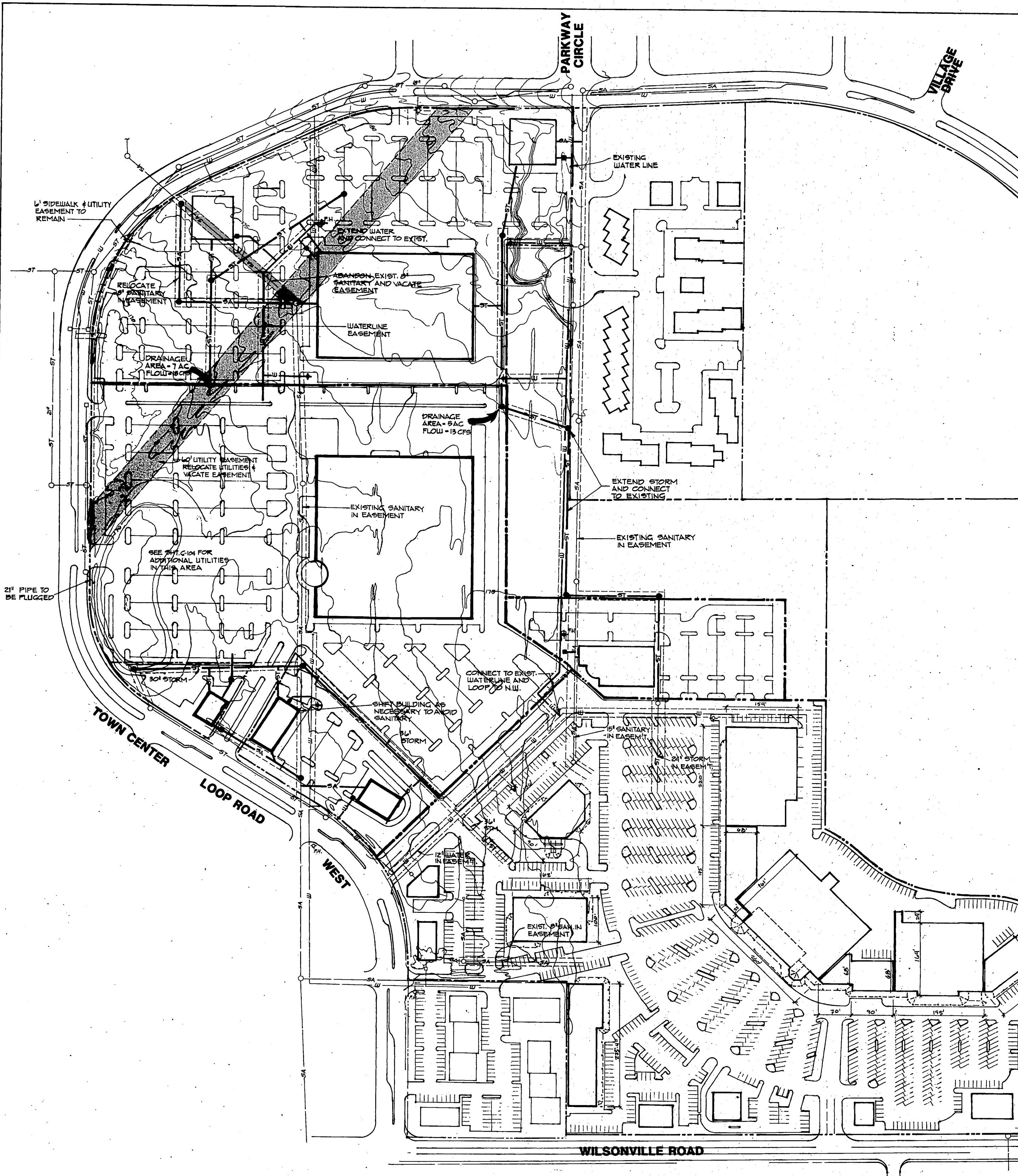
467-0301
10/16/91

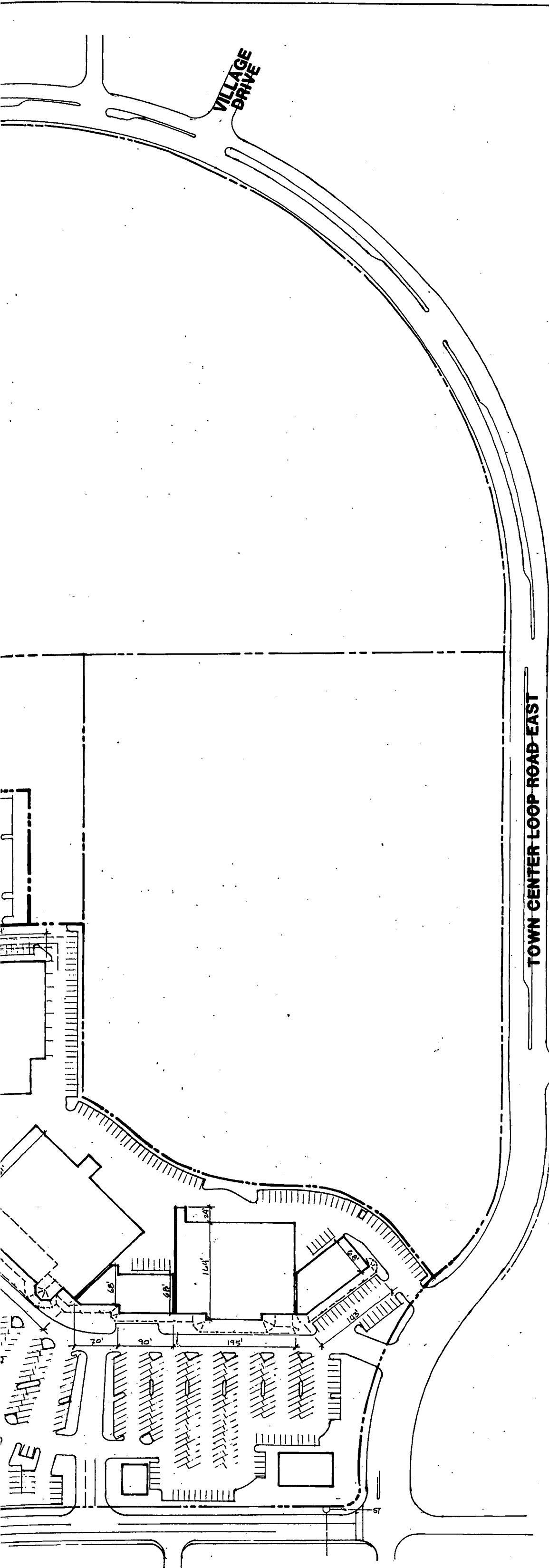
JKS Architects PC
1620 S.W. Taylor Street • Suite 200 • Portland, Oregon 97205
503-227-5616 • FAX 503-227-3590

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





COURTSIDE DRIVE

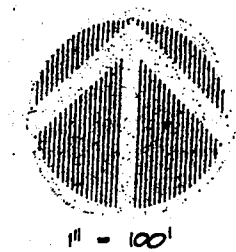
TOWN CENTER LOOP ROAD EAST

VILLAGE DRIVE

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	



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MULTI PACIFIC
 1099 S.W. Columbia Street
 Portland, Oregon 97201
 Fax (503) 224-4407
 Planning • Lighting • Surveying • Landscape Architecture

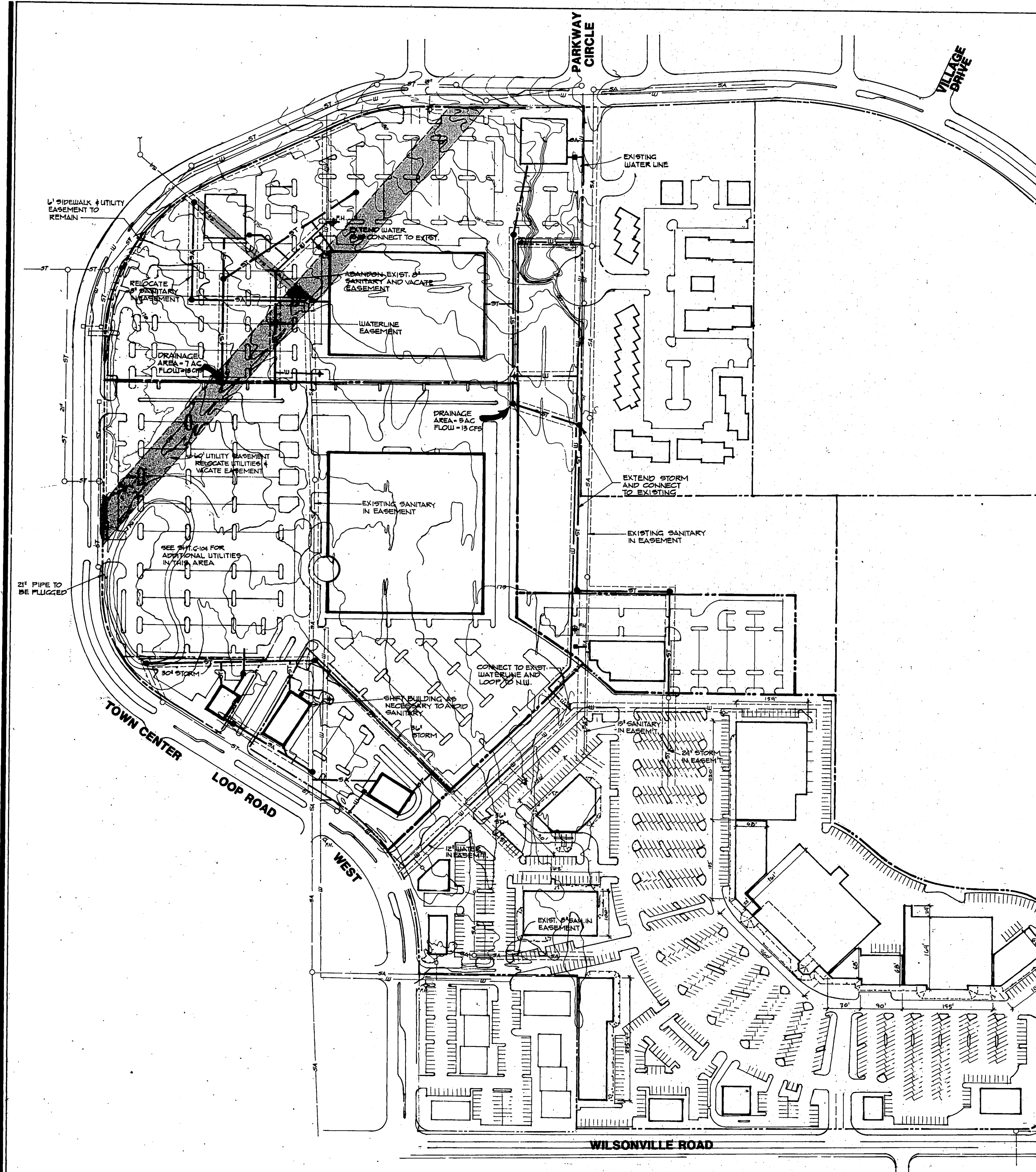
WILSONVILLE TOWN CENTER
 Wilsonville, Oregon

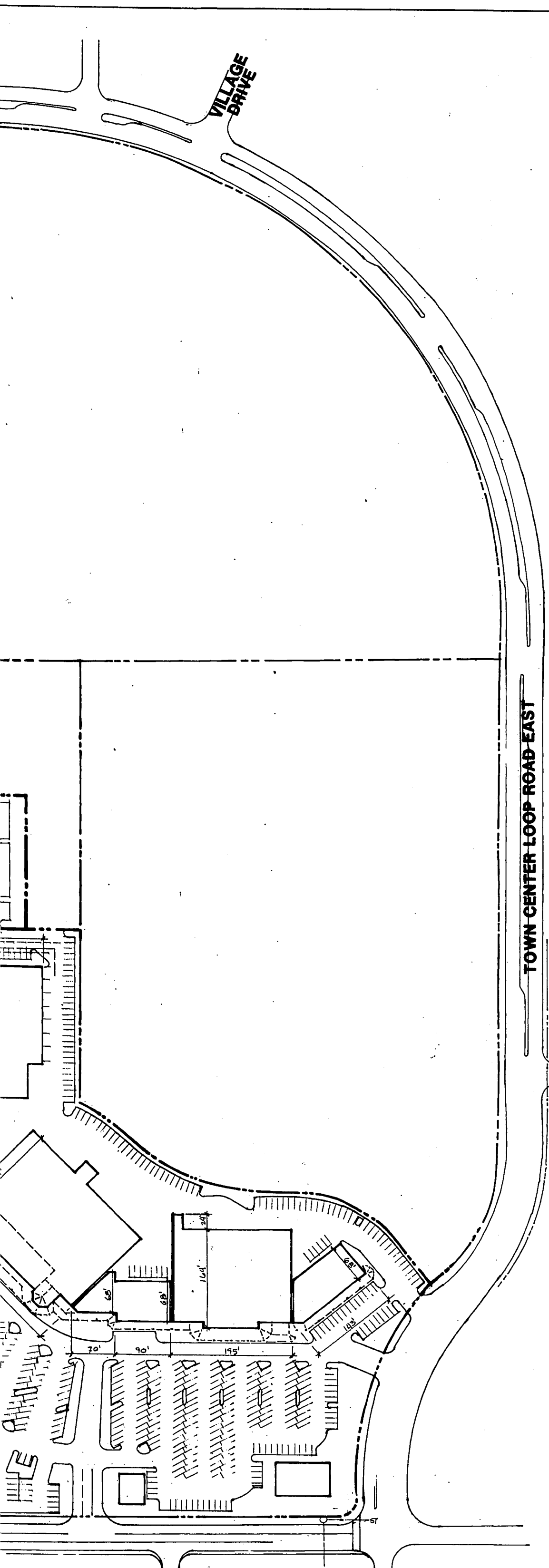
Revisions

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Drawn By _____ Checked By _____
 Job No. 4-467-0301 Date 10-18-11
MASTER UTILITIES PLAN
 Sheet Title

Sheet No.
2





COURTSIDE DRIVE

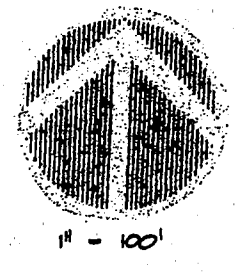
TOWN CENTER LOOP ROAD EAST

VILLAGE DRIVE

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 *[Signature]*
[Signature]

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WILSONVILLE TOWN CENTER
Wilsonville, Oregon

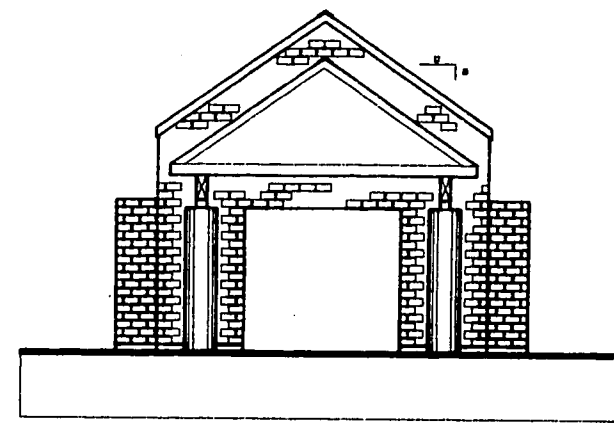
Revisions

Drawn By _____ Checked By _____
Job No. 4-467-0301 Date 10-18-91
MASTER UTILITIES PLAN
Sheet Title

Sheet No.
2

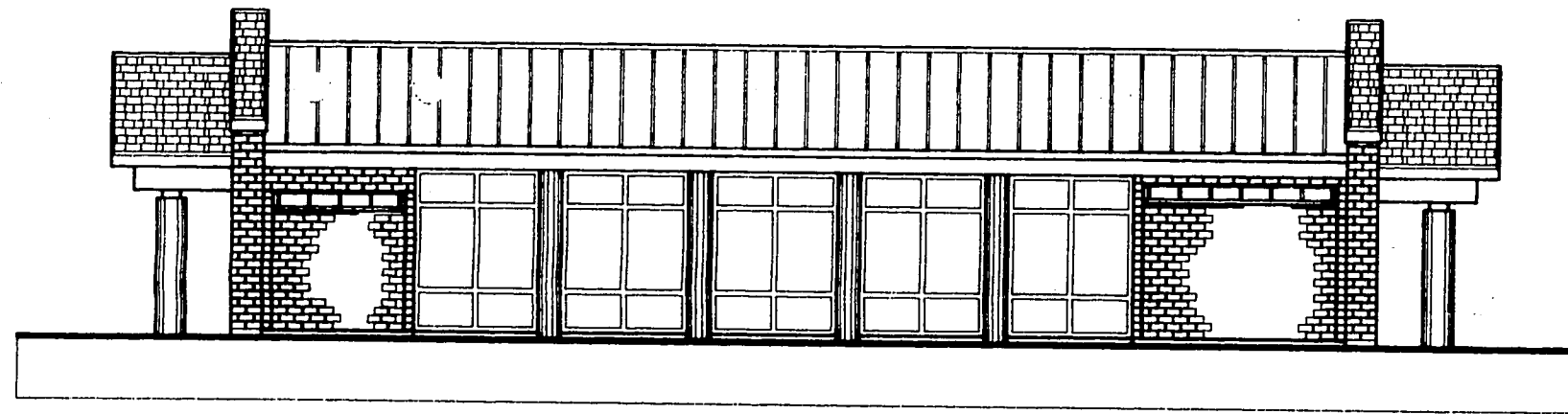
**WILSONVILLE TOWN CENTER
PROPOSED CAR WASH**

WILSONVILLE, OREGON



END ELEVATION

1/8" = 1'-0"

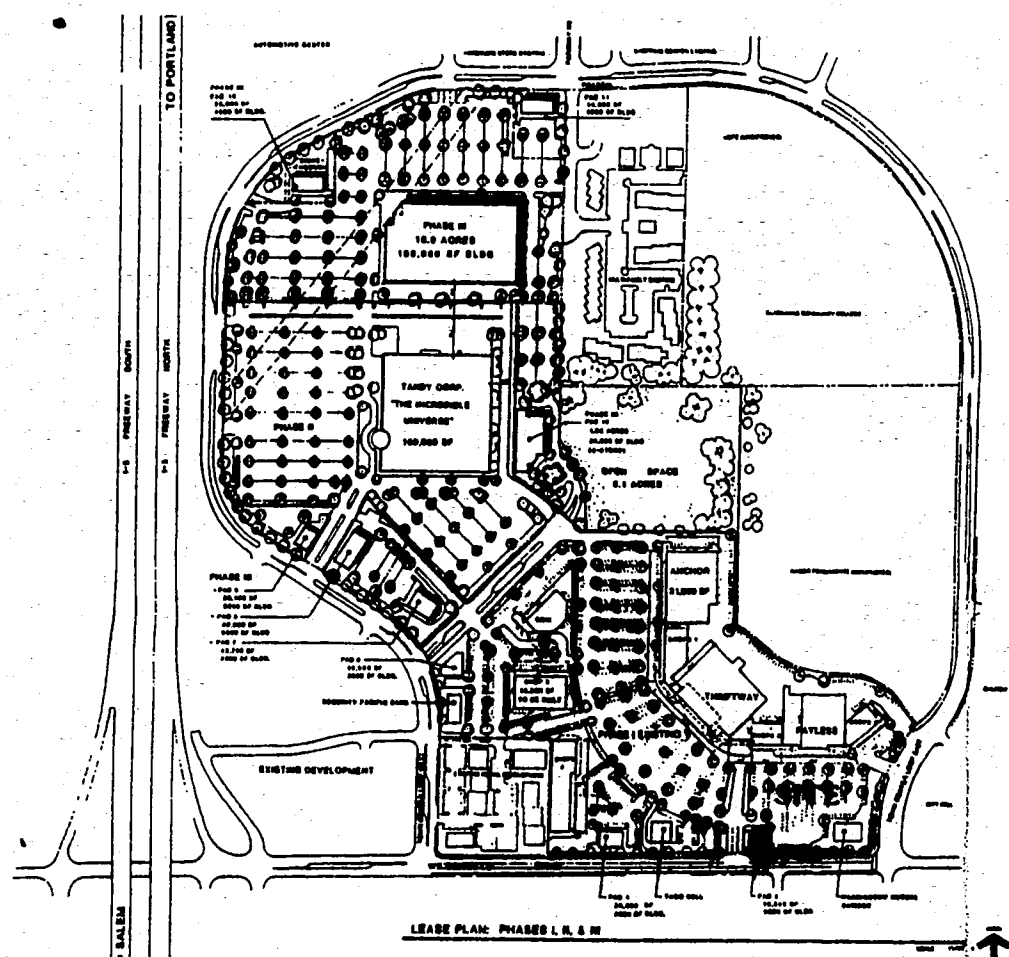


FRONT ELEVATION

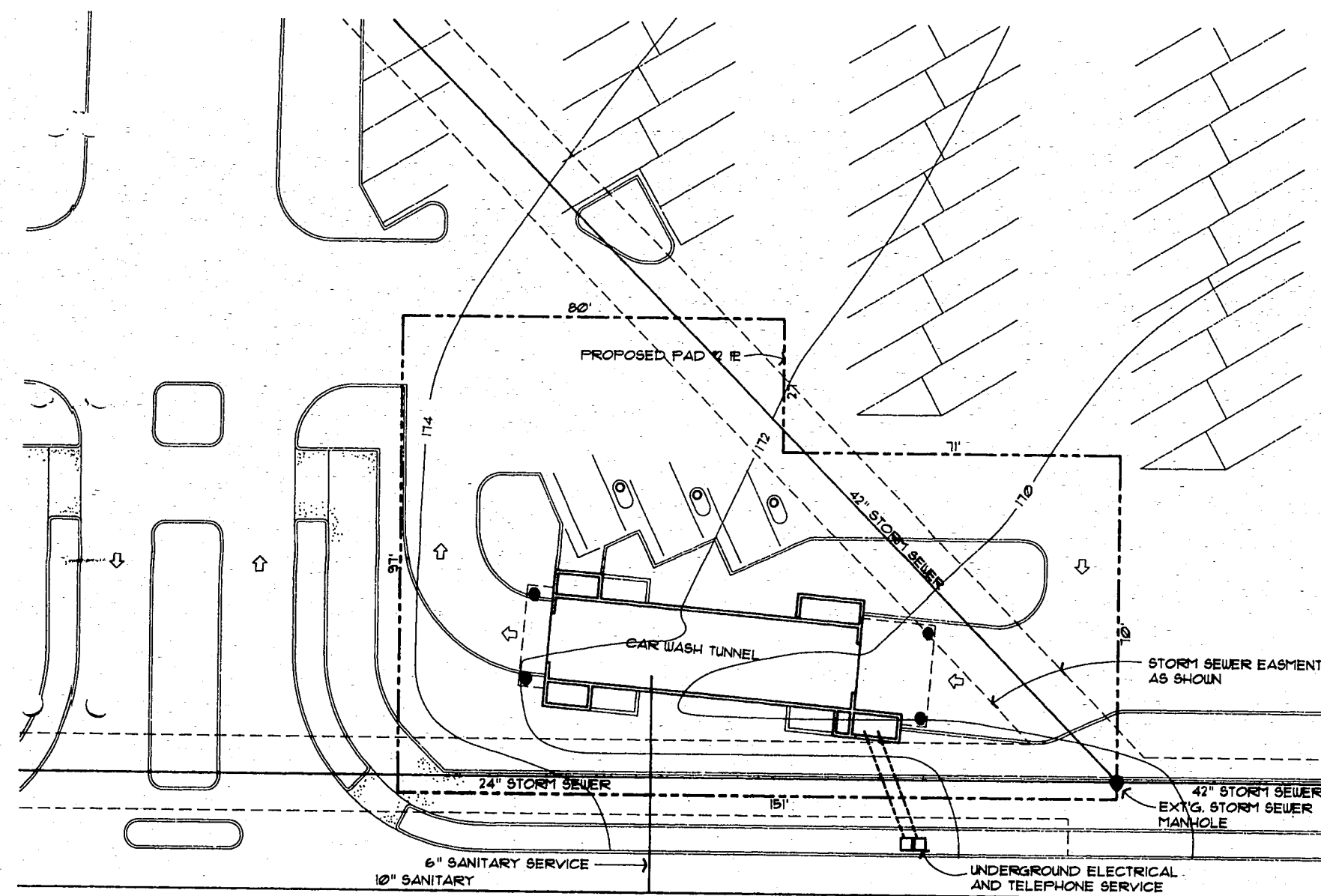
1/8" = 1'-0"

SITE DATA

	LOT COVERAGE IN SQ. FT.	LOT COVERAGE IN %
BUILDING AREA	15,000	12%
PARKING & DRIVES	8,293	65%
LANDSCAPING/OPEN SPACE	2,937	23%
TOTAL SITE AREA	12,730	100%



VICINITY MAP



WILSONVILLE RD.



PRELIMINARY SITE PLAN

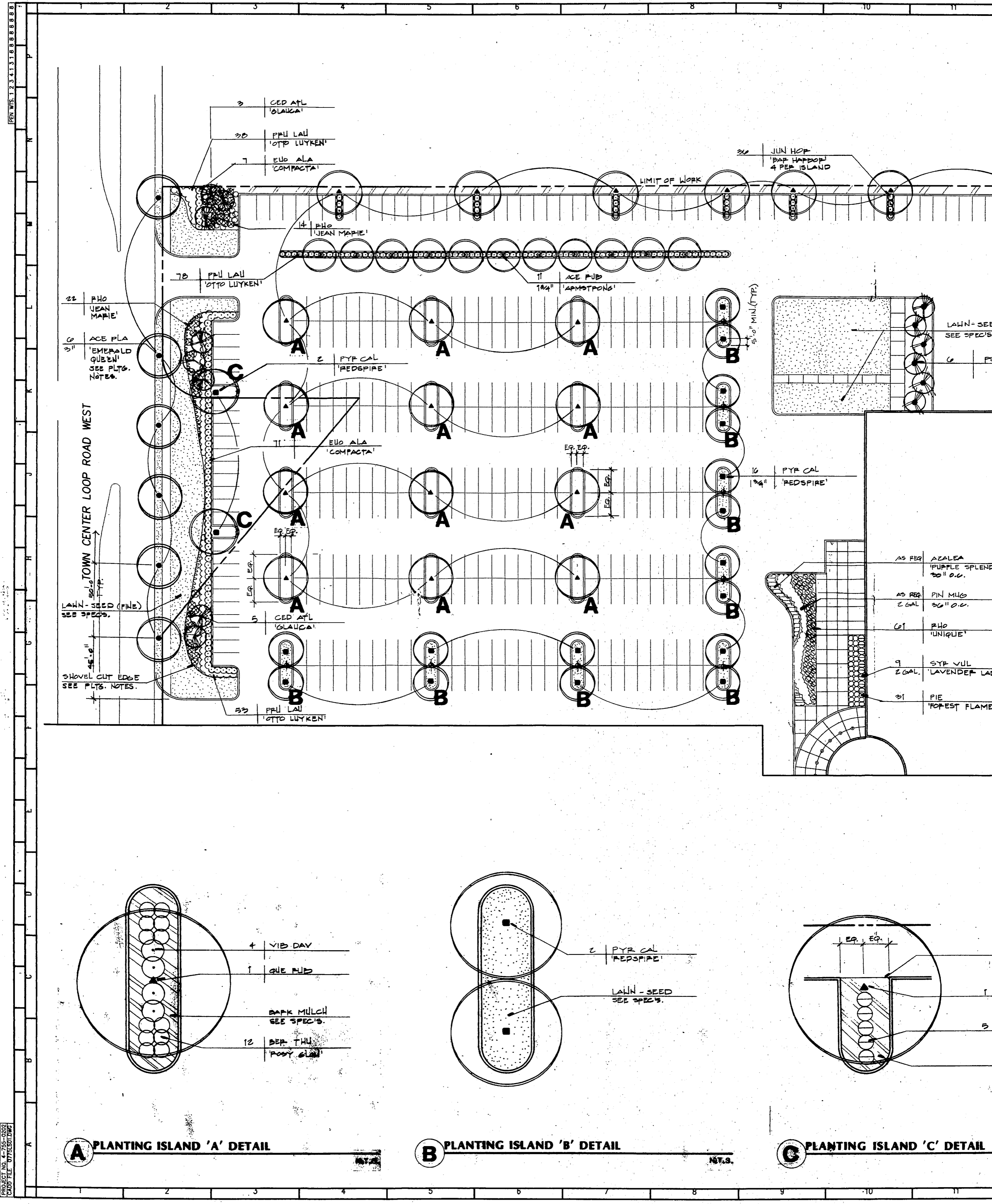
1" = 20'

CLIENT:
DENNIS THOMPSON

REVISIONS:

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

PER WS. 1, 2, 3, 4, 13, 18, 88, 88, 88, 88



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.

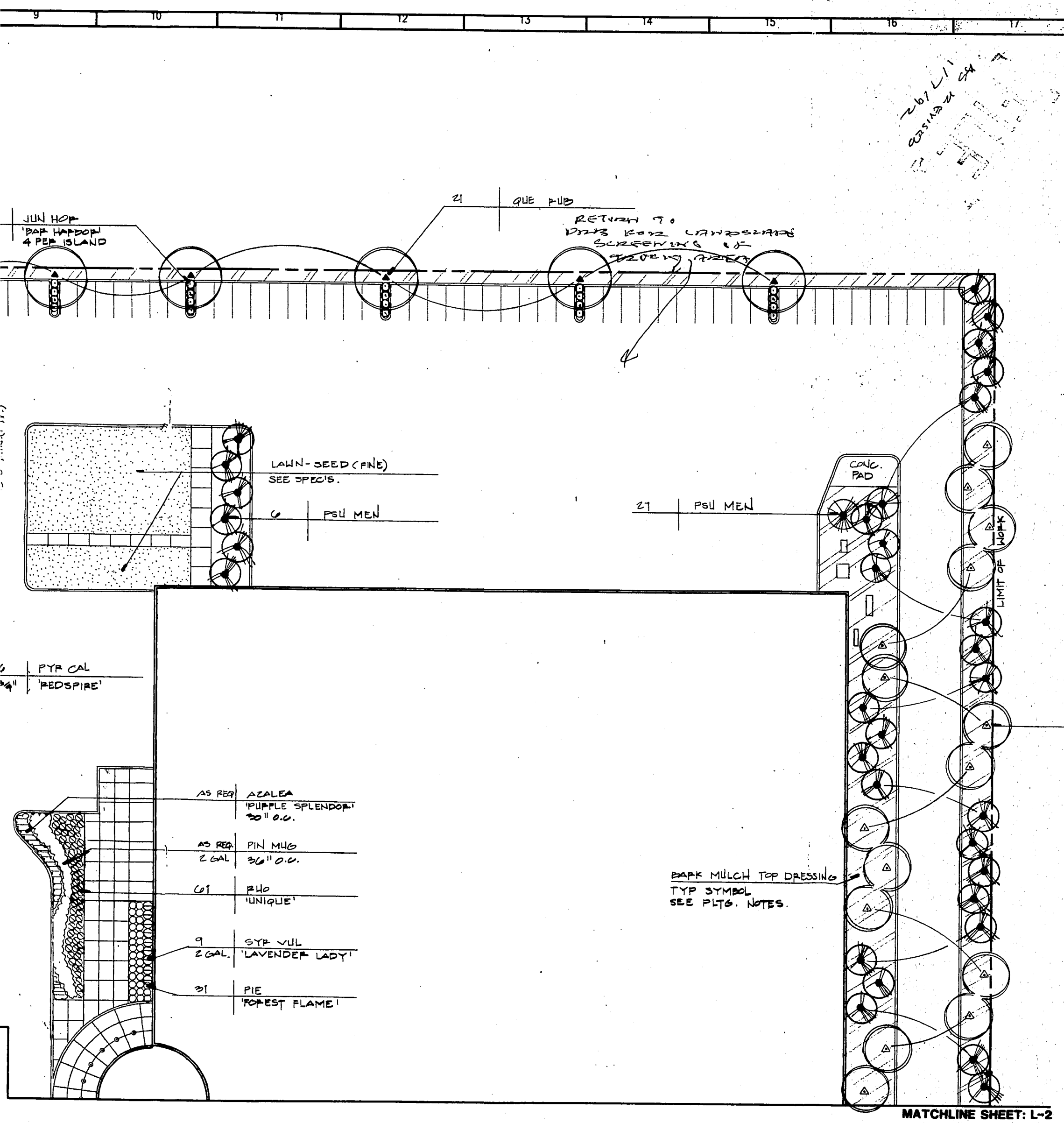
ALL SHRUB AND GROUNDCOVER PLANTING AREAS TO RECEIVE MINIMUM 2" DEPTH OF BARK MULCH. SEE SPECIFICATIONS 02950.

REFER TO CIVIL'S FOR FINISH GRADES IN PLANTING AREAS.

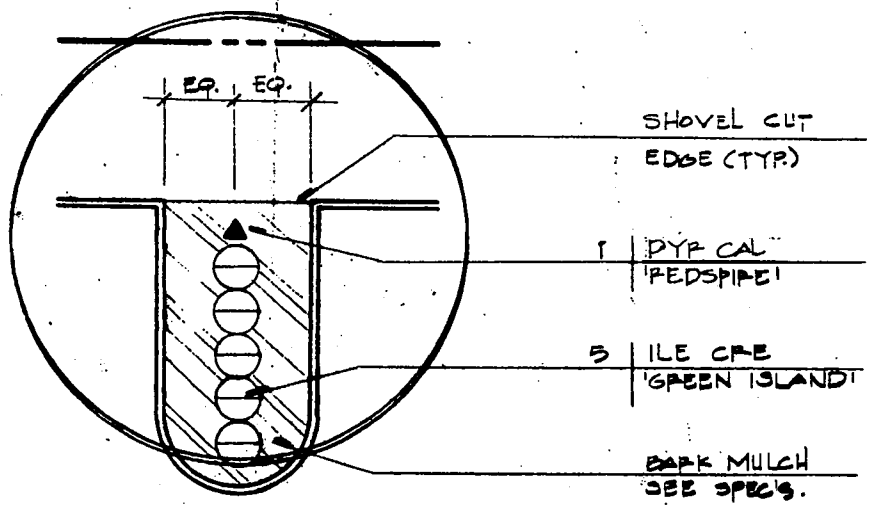
STREET TREES ON TOWN CENTER LOOP ROAD WEST SHALL BE PLANTED PER CITY OF WILSONVILLE STANDARD PLAN. IF NONE EXISTS, INSTALL PER DETAIL 1, L-2.0.

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.



- 15 REQ AZALEA 'PURPLE SPLENDOR' 20" O.C.
- 15 REQ PIN MUG 2 GAL 30" O.C.
- 01 RHO 'UNIQUE'
- 9 SYR VUL 2 GAL 'LAVENDER LADY'
- 01 PIE 'FOREST FLAME'



PLANTING ISLAND 'C' DETAIL

NOT FOR CONSTRUCTION

PRINTED
JAN 06 1992
W & H PACIFIC



No.	Revisions/Submissions	Date

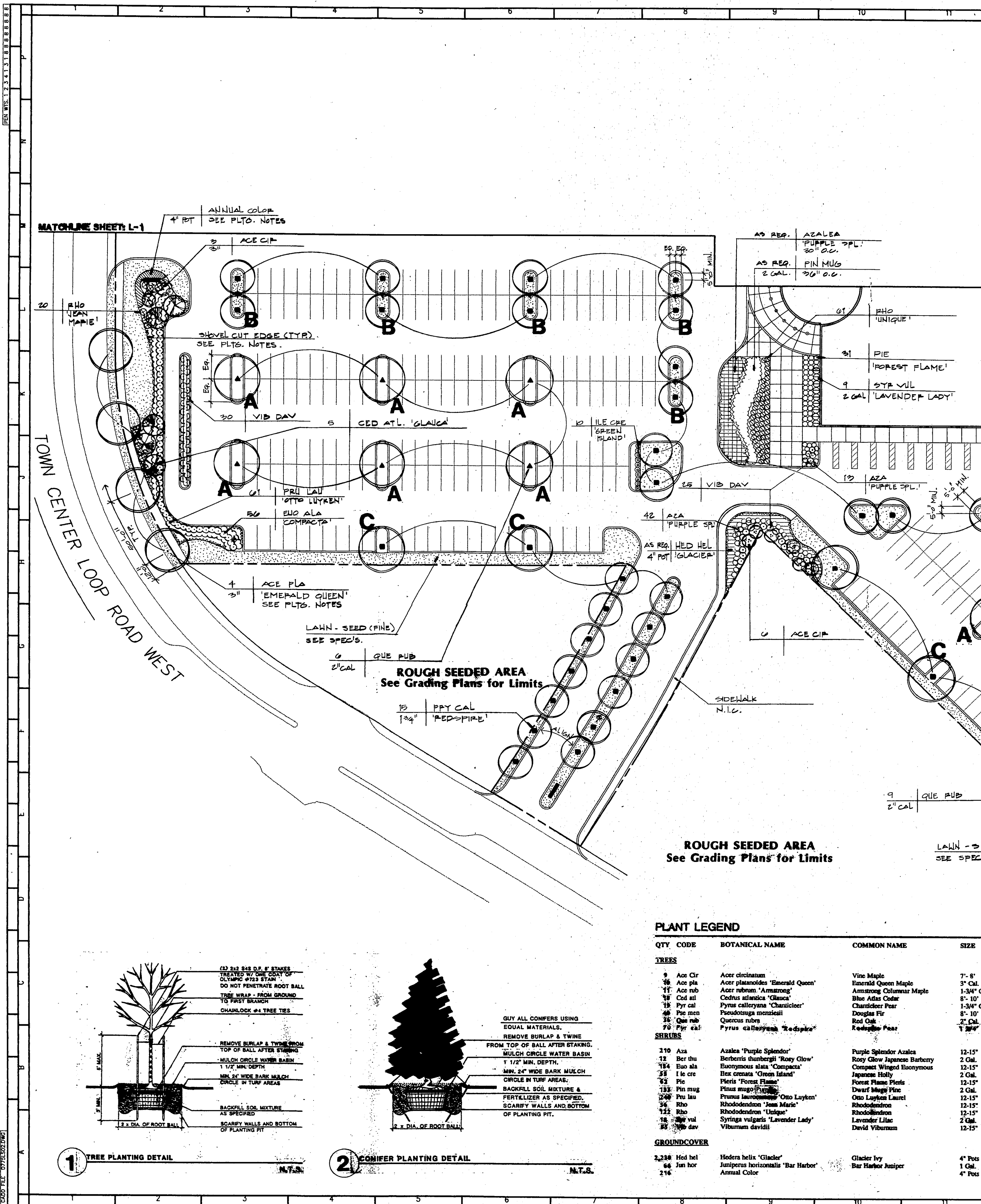
DesignForum ARCHITECTS

3484 For Hills Avenue, Dayton, Ohio 45428 Telephone: (513) 288-4400

Project Title: **PROJECT THUNDER**
WILSONVILLE, OREGON

Drawing Title: **LANDSCAPE PLAN**

Seal REGISTERED 2011 Matthew P. Simpson 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
© 1991 DESIGN FORUM ARCHITECTS		

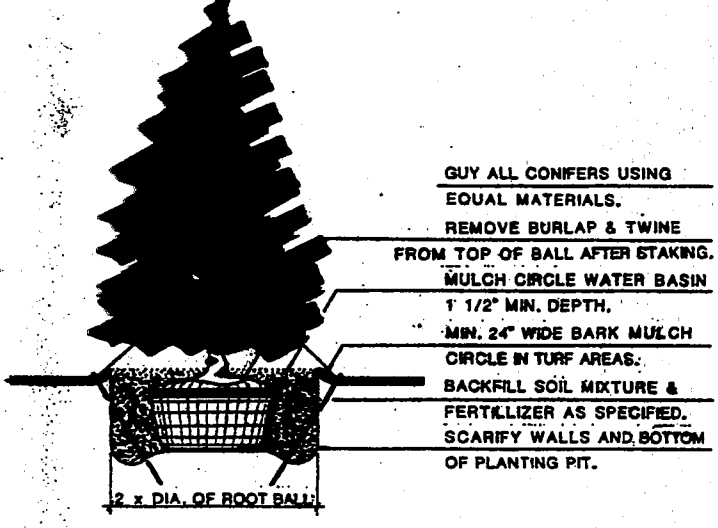
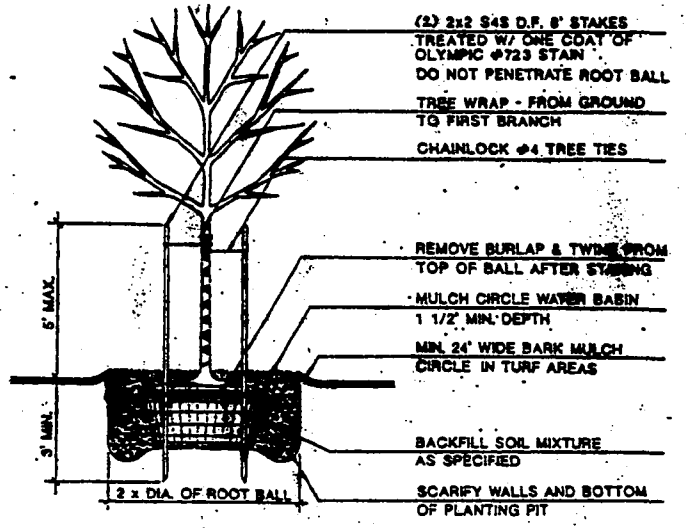


PLANT LEGEND

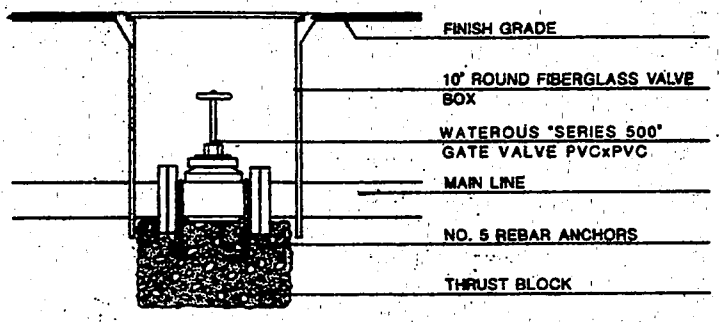
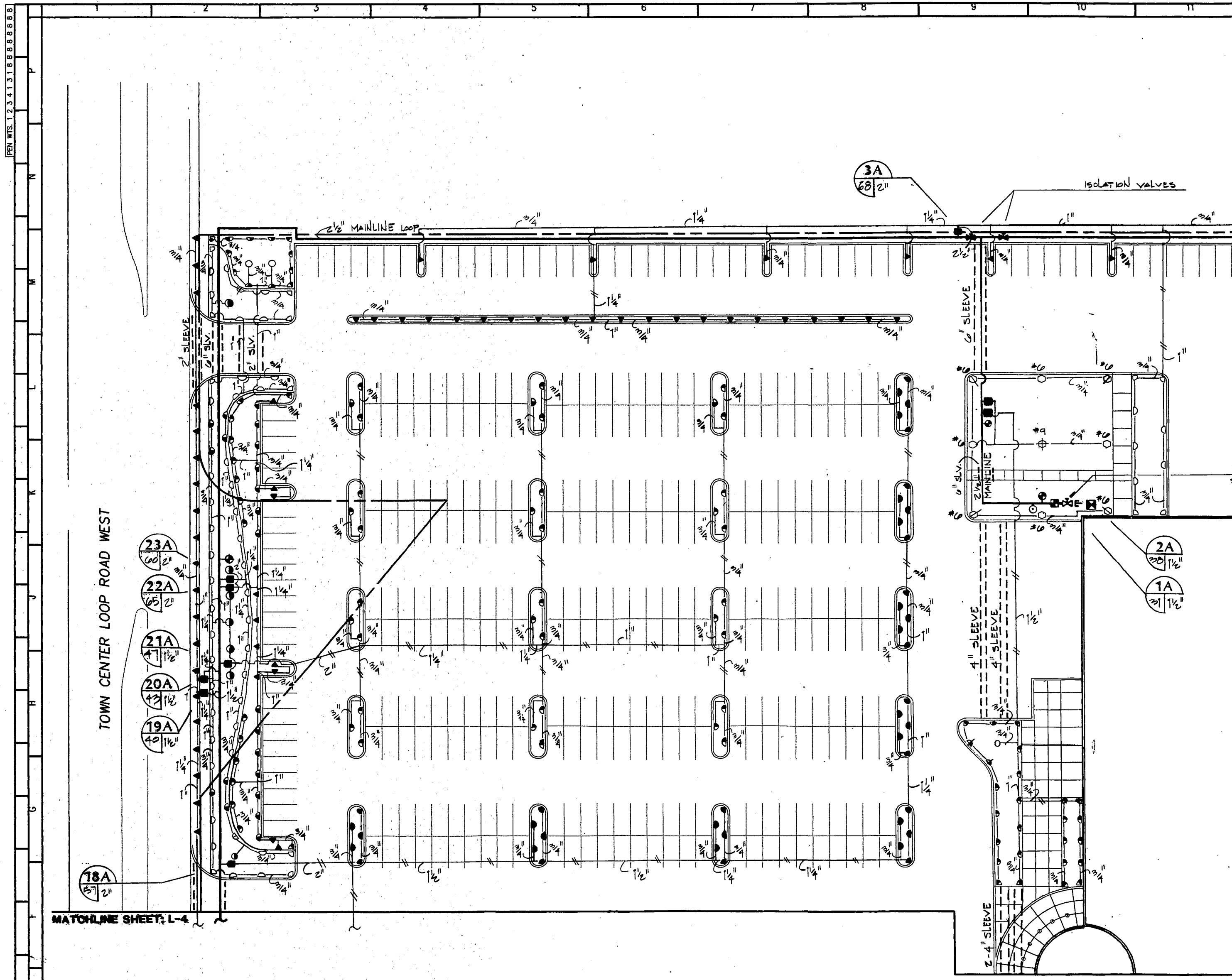
QTY	CODE	BOTANICAL NAME	COMMON NAME	SIZE
TREES				
9	Ace Cir	Acer circinatum	Vine Maple	7'-8'
10	Ace pla	Acer platanoides 'Emerald Queen'	Emerald Queen Maple	3" Cal.
11	Ace rub	Acer rubrum 'Armstrong'	Armstrong Columnar Maple	1-3/4" Cal.
12	Ced atl	Cedrus atlantica 'Glauc'	Blue Atlas Cedar	8'-10'
13	Pyr cal	Pyrus calleryana 'Chanticleer'	Chanticleer Pear	1-3/4" Cal.
14	Pse men	Pseudotsuga menziesii	Douglas Fir	8'-10'
15	Que rub	Quercus rubra	Red Oak	2" Cal.
16	Pyr cal	Pyrus calleryana 'Redspire'	Redspire Pear	1-3/4" Cal.
SHRUBS				
210	Aza	Azalea 'Purple Splendor'	Purple Splendor Azalea	12-15"
12	Ber thu	Berberis thunbergii 'Rosy Glow'	Rosy Glow Japanese Barberry	2 Gal.
184	Euo ala	Euonymus alata 'Compacta'	Compact Winged Euonymus	12-15"
35	I le cre	Ilex crenata 'Green Island'	Japanese Holly	2 Gal.
163	Pie	Pieris 'Forest Flame'	Forest Flame Pieris	12-15"
133	Pin mug	Pinus mugo	Dwarf Mugo Pine	2 Gal.
148	Pru lau	Prunus laurocerasus 'Otto Luyken'	Otto Luyken Laurel	12-15"
36	Rho	Rhododendron 'Ines Marie'	Rhododendron	12-15"
112	Rho	Rhododendron 'Unique'	Rhododendron	12-15"
18	Sty vil	Syringa vulgaris 'Lavender Lady'	Lavender Lilac	2 Gal.
33	Vib dav	Viburnum davidii	David Viburnum	12-15"
GROUND COVER				
2,230	Hed hel	Hedera helix 'Glacier'	Glacier Ivy	4" Pots
66	Jun hor	Juniperus horizontalis 'Bar Harbor'	Bar Harbor Juniper	1 Gal.
216	Annual Color		Annual Color	4" Pots

1 TREE PLANTING DETAIL

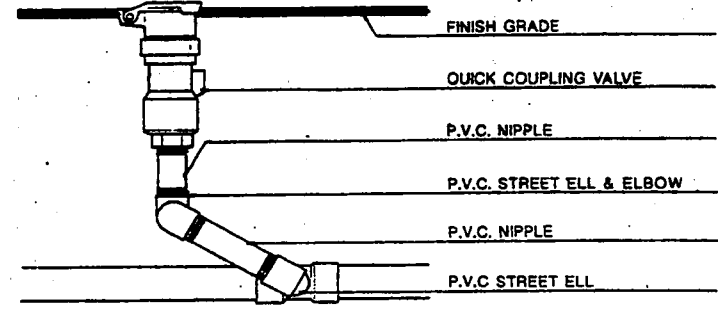
2 CONIFER PLANTING DETAIL



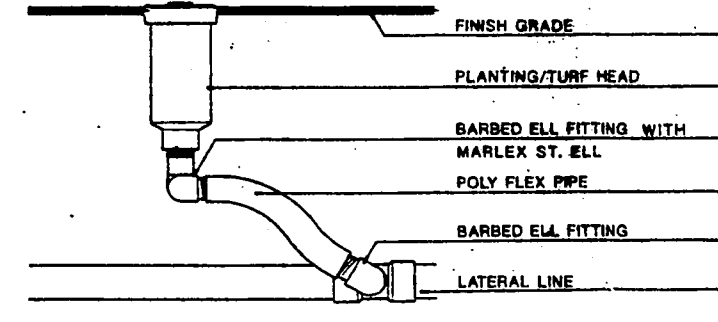
PROJECT NO. 4-755-0202
CAD FILE 07P502.DWG



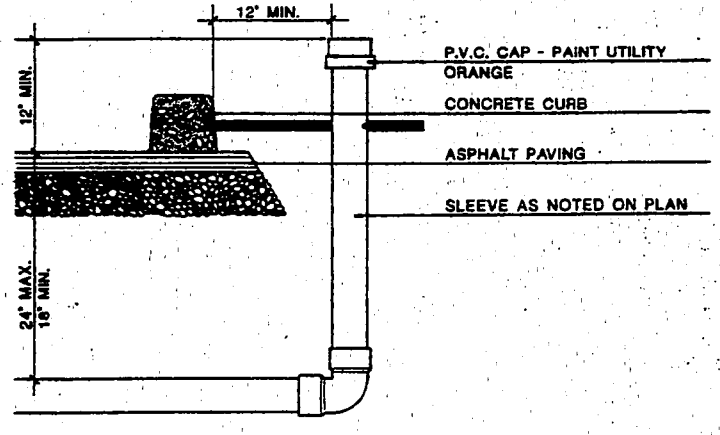
MAINLINE GATE VALVE



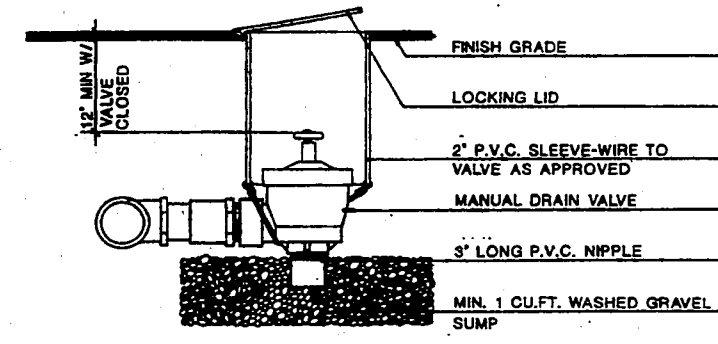
QUICK COUPLING VALVE DETAIL



POLY FLEX RISER DETAIL

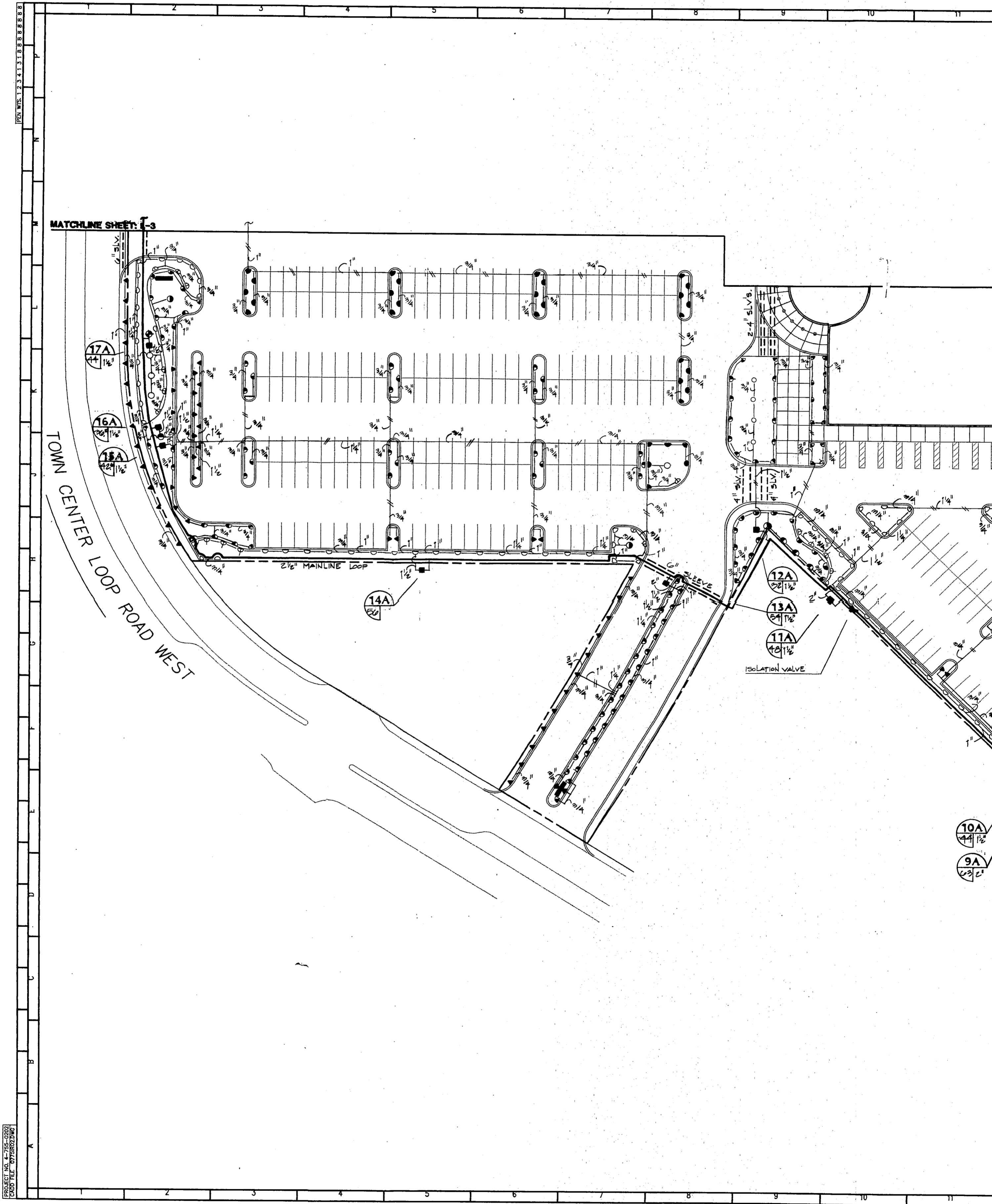


SLEEVING DETAIL

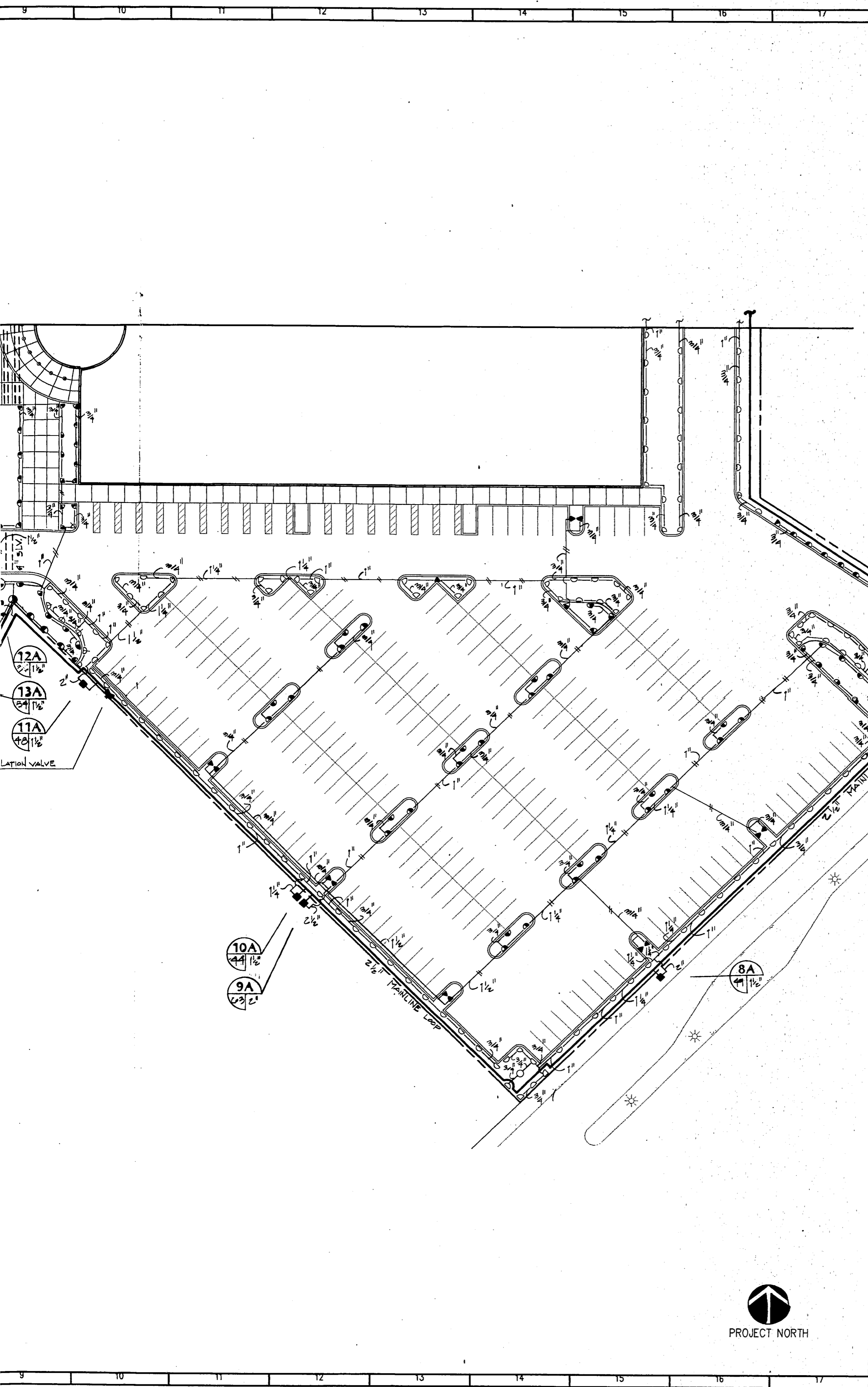


MANUAL DRAIN VALVE DETAIL

PROJECT NO. 7-15E-0002
CADD FILE: 07580000



PROJECT NO. 4-755-0202
CAD FILE: 07550202.DWG



SHEET NOTES

WH PACIFIC
 299 S.W. COLUMBIA STREET
 PORTLAND, OREGON 97201
 (503) 237-0405
 Planning • Engineering • Surveying • Landscape Architecture

No.	Revisions/Submissions	Date

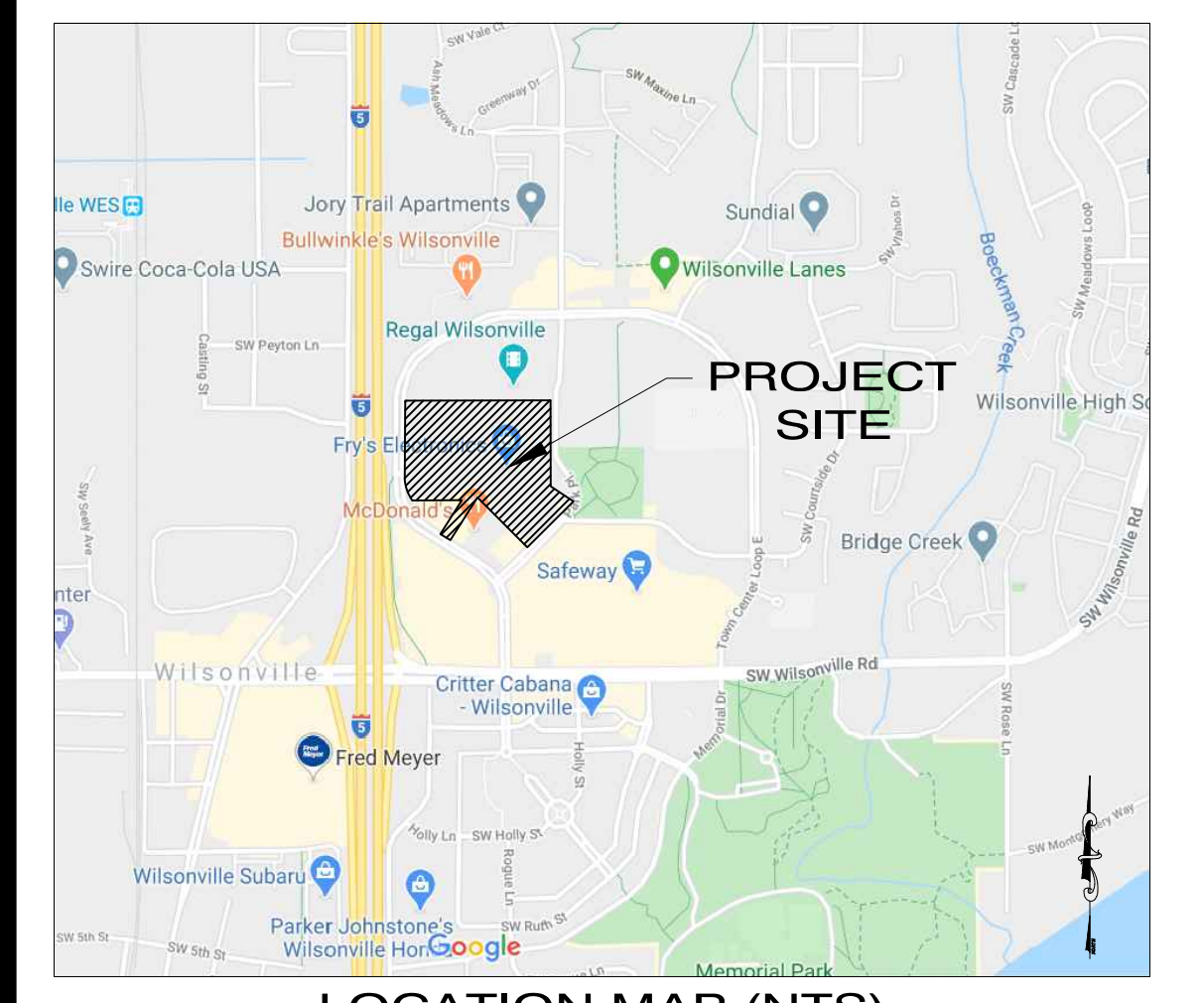
DesignForum
 ARCHITECTS
 3484 For Hills Avenue, Dayton, Ohio 45429 Telephone: (513) 298-4400

Project Title **PROJECT THUNDER**
 WILSONVILLE, OREGON

Drawing Title **IRRIGATION PLAN**

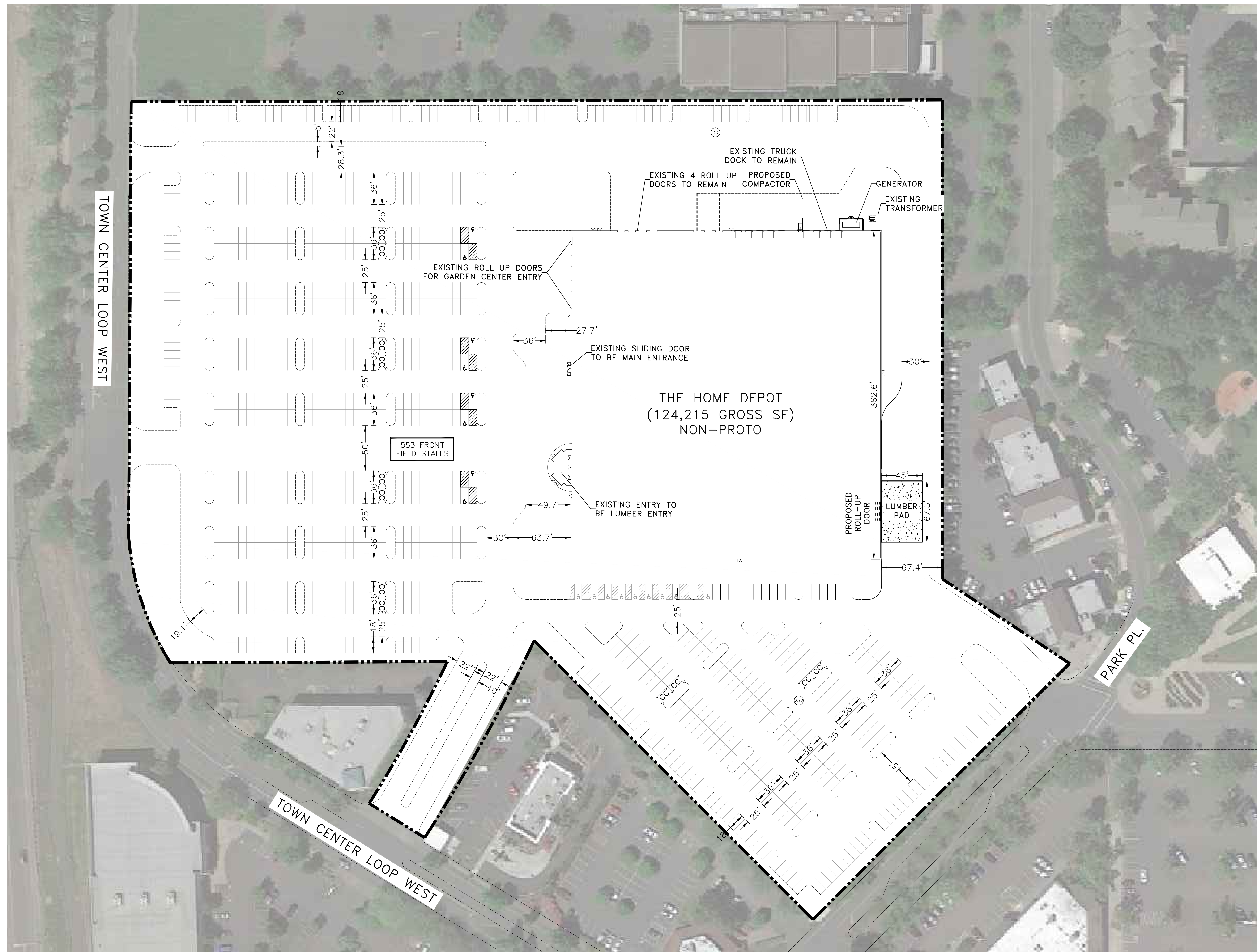
Seal REGISTERED MATTHEW P. SIMPSON OREGON LANDSCAPE ARCHITECT	Designed MDS MPS	Project No. 4-755-0202
	Drawn MDS	Scale 1" = 30'-0"
	Checked MPS	Drawing No. L4.0
	Reviewed MH	Date 12-27-91 c 1991 DESIGN FORUM ARCHITECTS



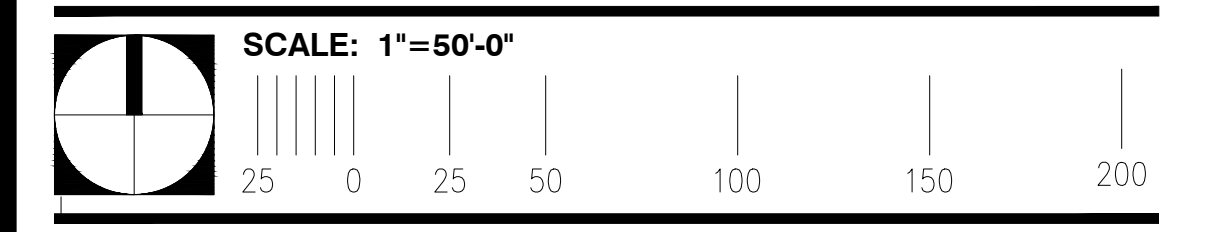


LOCATION MAP (NTS)

SITE AREA		
THE HOME DEPOT PARCEL	15.01 AC	653,836 SF
BUILDING AREA		
THE HOME DEPOT		124,215 SF
MEZZANINE		0 SF
SUBTOTAL		124,215 SF
TOTAL BUILDING AREA		124,215 SF
PARKING REQUIRED		
THE HOME DEPOT	4.1 / 1,000 SF	509 STALLS
TOTAL PARKING REQUIRED		509 STALLS
PARKING PROVIDED		
FRONT FIELD		553 STALLS
SIDE FIELD / REAR		282 STALLS
TOTAL PARKING PROVIDED		839 STALLS
INCLUDED IN PARKING PROVIDED		
ACCESSIBLE STALLS (17 REQ. @ 2%)		17 STALLS
NOT INCLUDED IN PARKING PROVIDED		
CART CORRALS		10 STALLS
ACCESSORY PARKING NOT INCLUDED		10 STALLS
TOTAL THD PARKING PROVIDED		839 STALLS
ZONING CLASSIFICATION		
JURISDICTION	CITY OF WILSONVILLE	
ZONING CLASSIFICATION	PLANNED DEVELOPMENT	
	COMMERCIAL TOWN CENTER (PDC-TC)	
THD USE PERMITTED BY RIGHT	YES	



NOTES
 1. PLAN BOUNDARY IS BASED OFF AVAILABLE APN MAPS; AN ALTA SHOULD BE COMPLETED FOR ACCURACY.



OR - SITE PLAN 10

THE HOME DEPOT
THE HOME DEPOT WILSONVILLE, OR
 29400 TOWN CENTER LOOP W
 WILSONVILLE, OR 97070

DRAWING ISSUE DATE 10.19.2023
 HD SITE SELECTION NUMBER SS-02804.2001



To: City of Wilsonville Development Review Board
Re: Resolution No. 429 [DB24-0002 Appeal of Administrative Decision]

Members of the Development Review Board,

The Home Building Association of Greater Portland represents thousands of businesses and individuals seeking to address our region’s biggest issues by building the housing, infrastructure, and jobs that make our region livable and economically vibrant. HBA is dedicated to maximizing housing choice for all who reside in our region by shaping an environment in which industry professionals can meet the diverse needs of all communities.

We are writing in support of the City’s determination which found that the property located at 29400 SW Town Center Loop West is a legally established, non-conforming use, structure, and site condition under current zoning code. We urge you to affirm the city’s decision.

After a robust, two-year community engagement effort, the Wilsonville Town Center Plan was adopted in 2019. The stated purpose of this plan is, “...attracting and retaining local businesses, employment opportunities, housing choices, and cultural and educational institutions. The Plan puts people first with walkable streetscapes and places to gather, shop, work, eat and recreate”.

Oregon is staring down a housing deficit of 140,000+ units, and will need 443,000 new homes built over the next 20 years. This means we must not only prioritize the development of new housing now, but also plan to encourage and manage growth for the future as well. At a time when our region is facing a worsening housing crisis, we believe that every opportunity should be pursued to generate new and diverse housing options.

The economic analysis of the area contained within this plan shows the potential to create close to 4,200 diverse dwelling unit types during a Governor-declared housing emergency. This should be priority number one. We urge you to reinforce the city’s determination of non-conforming use while exploring ways to encourage new housing development in this and other areas across the city.

Thank you for your consideration,

Preston Korst
 Director of Public Policy and Government Affairs
 Home Building Association of Greater Portland





Resolution No. 429: Appeal of Administration Decision



ADMN23-0029 Findings

- 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.**” Decision, at 2.
- 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.” Decision, at 3.
- “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.

1991 Decision Findings

(Case File Nos. 91PC43 and 91DR29)

Item 9.

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 Condition 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.

REPRESENTED BY

Schwabe

	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
4. Building Use					
a. Office	sq. ft.	9,117 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____
b. Warehouse	sq. ft.	39,330 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____
c. Manufacturing/SERVICE	sq. ft.	17,276 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____
d. Other/DETAIL	sq. ft.	63,914 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____

- “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.**” 1991 Decision, at 13.

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.

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.

The lawfully established nonconforming use at the subject property is a **commercial retail use** consistent with the 1991 Decision and the property's 1991 Planned Development — Commercial zoning designation.

Wilsonville is not Entitled to Deference in Interpreting the 1991 Decision

- ORS 197.829(1) generally does not require LUBA to affirm a local government's interpretation of a prior land use decision or conditions of approval attached to a prior land use decision. *Gould v. Deschutes County*, 79 Or LUBA 561 (2019) (*Gould VIII*), *aff'd without opinion*, 310 Or App 868, 484 P.3d 1073 (2021).

Requested Relief

- Home Depot respectfully requests that the Development Review Board find that the legally established nonconforming use at the subject property is a **commercial retail use** as approved in the 1991 Decision, not a “Fry’s Electronics” or “single-user electronics retail store.”

Future Development

TABLE 3.1 POTENTIAL FUTURE DEVELOPMENT BY LAND USE TYPE IN TOWN CENTER

	COMMERCIAL (SQ. FT.)	RETAIL (SQ. FT.)	OFFICE (SQ. FT.)	RESIDENTIAL (UNITS)
EXISTING	299,240	321,340	178,950	80
NET NEW DEVELOPMENT (20 YEAR)	130,230	31,860	297,440	880
NET NEW DEVELOPMENT (40 YEAR)	204,595	50,000	541,050	1,600
NET TOTAL	503,835	371,340	720,000	1,680
PROJECTED EMPLOYEES	1,000	740	2,880	n/a

Note: Commercial land uses includes a broad category of real estate. For this analysis, commercial land uses are typically larger types of development, such as grocery stores, restaurants, larger retail (non-main street type uses) and entertainment uses. Retail, as defined for Town Center, are typically smaller scale uses typical of a main street development pattern. Residential unit calculations assume units of approximately 750 square feet, although the expectation is that a variety of housing unit sizes (studio, one, two and three bedroom) would be constructed over time. Square footage and housing units were determined using GIS analysis, market feasibility, and proposed zoning district density allowances. Approximately 40 percent of the square footage of developable parcels was removed to accommodate for landscaping, new streets, off-street parking (including loading and circulation), public spaces, stormwater retention and treatment.

THE FUTURE TOWN CENTER

Town Center’s evolution will take time and there are many steps to reach the ultimate vision the Wilsonville community has developed. Land uses, transportation connections, and parks described in this chapter are all pieces in creating a walkable hub and heart of the community. The focus should always be on achieving the vision and goals of the Plan, while acknowledging that many of these transformational steps are incremental, both publicly and privately funded, and complex in nature.



Town Center Future Scenario



Aerial Right



Aerial Left



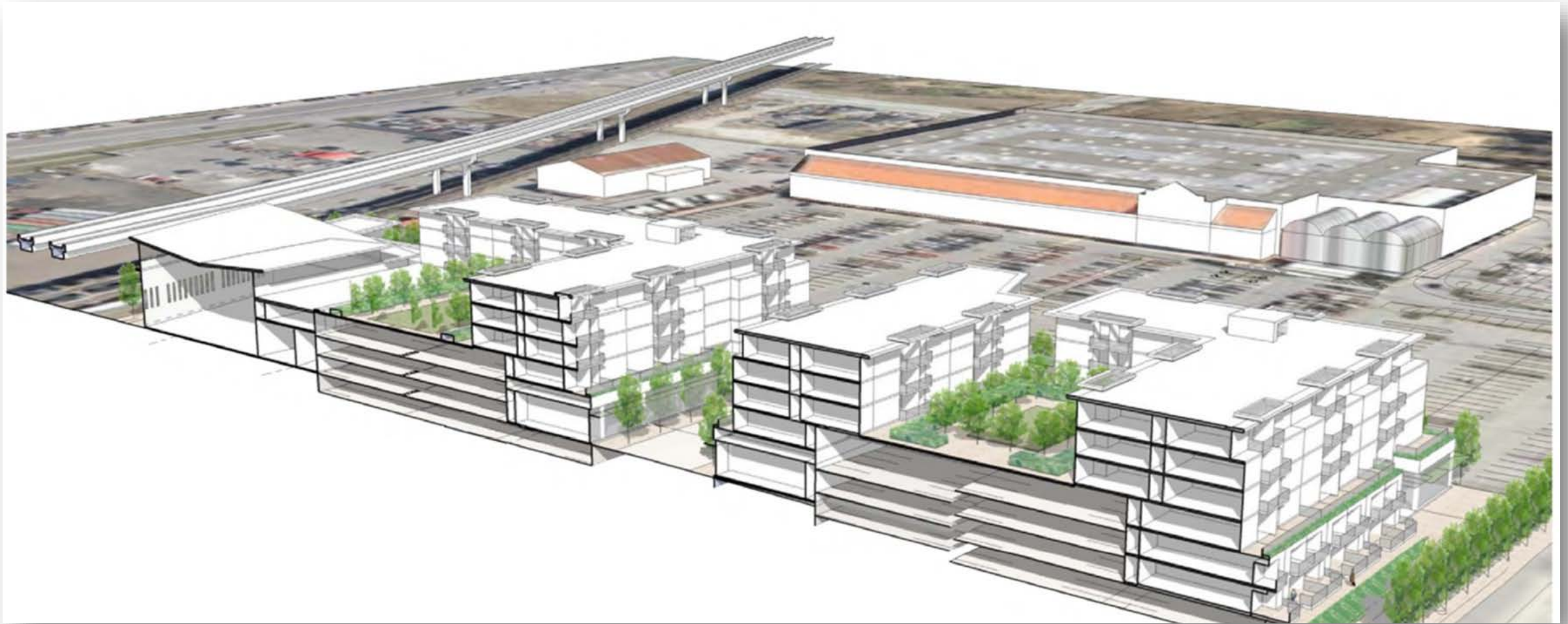
The Home Depot - Wilsonville Town Center
29400 Town Center Loop W
Wilsonville, OR 97158
City Council Record - Attachment 3
Page 655 of 660



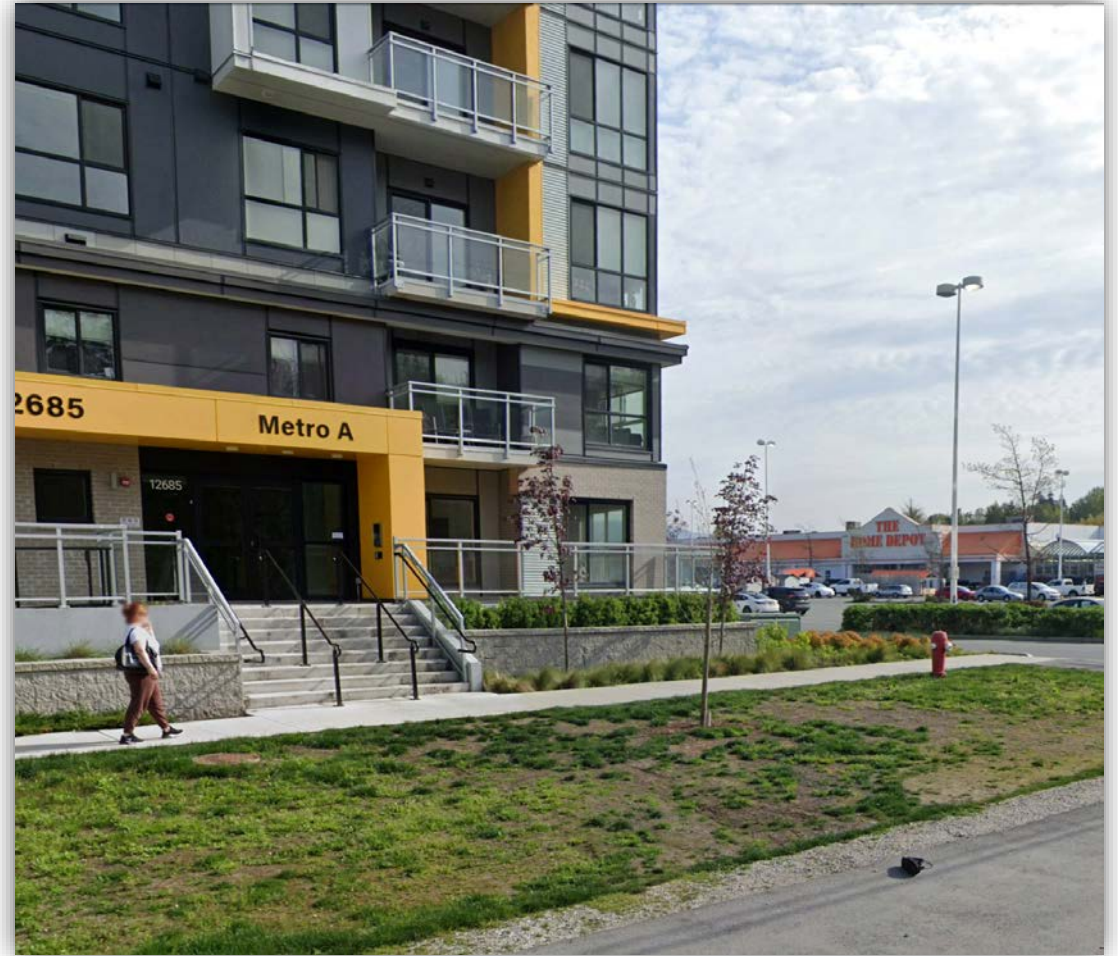
Atlanta, Georgia



N. Surrey, Canada



N. Surrey, Canada



Lynwood, Washington



Economic Impact: Oregon

OUR ECONOMIC IMPACT: OREGON
Our Core Values guide everything we do at The Home Depot, like working to grow the state's economy.

\$3.2B TOTAL IMPACT
Our **entrepreneurial spirit** drives the economy via:

- Job creation in stores, distribution centers and offices
- Vendor purchases and partner offerings
- **\$348.8M** direct contribution to GDP
- **\$285M** in total tax impact

35.6K JOBS SUPPORTED
Taking care of our people means:

- Investing in the safety, well-being and development of our **5.7K** associates
- Promoting **65K** associates, nationwide
- Each THD job supports **4+** additional jobs across the US

\$2.3B ENABLED IMPACT
...created by THD Home Services and the Pros that rely on our best-in-class interconnected retail offerings and **excellent customer service**

- **33.2K** projects provided to local Pros via THD Home Services

3.5M+ SQUARE FEET
...across **30+** brick-and-mortar stores, warehouses and/or offices help us **build strong relationships** within the community

- **27** stores

90+ LOCAL SUPPLIERS
We foster shared success and **create shareholder value** for both THD and our vendor partners – we do so by cultivating a supplier base that includes small and diverse businesses like local manufacturers and plant nurseries

28K VOLUNTEER HOURS
We **give back** to our communities and those who served our country through Team Depot service projects and THD Foundation initiatives

- Supported **210+** non-profits
- Contributed **\$1.7M** to veterans' causes

All numbers are rounded approximations and reflect FY2022 data unless otherwise indicated.
Calculated impact figures were determined using PwC's IMPLAN modeling system.
HD Supply included in all calculations except Pro project count and Supplier count.
Volunteer hours and THD Foundation figures are cumulative from 2011 through FY2022.



**DEVELOPMENT REVIEW BOARD PANEL B
VERBATIM MINUTES EXCERPT
Appeal of Administrative Decision ADMN23-0029
February 26, 2024 at 6:30 PM
City Hall Council Chambers & Remote Video Conferencing**

CALL TO ORDER

A regular meeting of the Development Review Board Panel B was held at City Hall beginning at 6:30 p.m. on Monday, February 26, 2024. Chair Rachele Barrett called the meeting to order at 6:32 p.m., followed by roll call.

CHAIR'S REMARKS

The Conduct of Hearing and Statement of Public Notice were read into the record.

ROLL CALL

Present for roll call were: Rachele Barrett, Alice Galloway, John Andrews, and Kamran Mesbah. Megan Chuinard was absent.

Staff present: Daniel Pauly, Stephanie Davidson, Amy Pepper, Kimberly Rybold, Amanda Guile-Hinman, Miranda Bateschell, Georgia McAlister, Cindy Luxhoj, and Shelley White

PUBLIC HEARINGS

- 3. **Resolution No. 429. Appeal of Administrative Decision.** The Applicant is appealing the Planning Director's Determination of non-conformance in Case File ADMN23-0029.

Case File:
DB24-0002 Appeal of Administrative Decision

Chair Barrett called the public hearing to order at 7:05 p.m. and read the conduct of hearing format into the record. Alice Galloway and John Andrews declared for the record that they had visited the site. No board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

Kamran Mesbah noted for the record that he was on the Planning Commission when the Town Center Plan was adopted.

Cindy Luxhoj, AICP, Associate Planner, announced that the criteria applicable to the application were stated starting on page 2 of the Staff report, which was entered into the record. Copies of the report were made available to the side of the room and on the City's website.

The following exhibit was entered into the record:

- Exhibit C1: Written comments received from the Home Building Association (HBA) after publication of the DRB B February 26, 2024 meeting packet.

Presentation references Staff's Appeal of Administrative Decision PowerPoint (Exhibit A2)

[Verbatim transcript begins 36:40]

Ms. Luxhoj: The property subject to the appeal is located at 29400 SW Town Center Loop West referred to as the "Location" in my presentation and outlined in red in the aerial photograph on the left of this slide. The existing development on the property is shown in the photograph on the right. The Comprehensive Plan designation is Town Center, and the property is zoned Town Center and located in three sub districts: Commercial Mixed-Use, Mixed-Use, and Main Street District. (Slide 2, Exhibit A2)

On October 30, 2023, the City received an application for Class 1 Review to confirm the status of an existing non-conforming use and structure at the Location, which was previously occupied by Fry's Electronics, an electronics retail store, and has been vacant since 2021. 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)A7 of the Development Code.

- On December 28th, 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. The Appellant submitted a notice of appeal of the Planning Director's decision on January 10th, 2024. The Planning director has the authority under Section 4.030(.01)A of the Development Code to deal with non-discretionary matters including Class 1 Review applications, and to process these applications as a ministerial action without public notice or public hearing.

Per Section 4.030(.01)A7, a determination that an existing use or structure is a non-conforming use or non-conforming structure is to be processed as a Class 1 Review, except, however, that the Planning Director may, in cases where there is any uncertainty as to the history of the property, choose to process such determinations as a Class 2 Review. Appeal of a decision on an administrative action by the Planning Director, such as the Class 1 review application in this case, is to be heard by the Development Review Board. Only the Applicant has standing to appeal a Class 1 decision.

The appeal of the Class 1 Review application ADMN23-0029 currently before the DRB is a de novo review under Subsection 4.022(.01) of the Development Code. De Novo is Latin for from the beginning. This means that that the DRB 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 DRB should base its decision on the testimony, evidence, and other materials submitted by the Applicant to the City in the Class 1 Review application, as stated in

Subsection 4.022(.07)B of the Development Code. Further, the DRB must, 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 in Case File Number ADMN23-00 29. For the purpose of applying the applicable 120-day time limit, a final decision on the Class 1 Review application, including any appeals must be rendered by March 28th, 2024. Staff notes that the City is currently processing a separate but related Class 2 Review application per Subsection 4.030(.01)B3 of the Development Code filed by the Applicant on December 15th, 2023. That case file number is AR23-0031. Any issues that are subject to the Class 2 Review, such as the scope of what non-conforming use may be continued at the location, are beyond the scope of this appeal proceeding.

Staff further notes that the findings related to General Submission Requirements on Pages 13 to 14 of the DRB staff report for tonight's public hearing include a list of documents and/or testimony contained within the Appellant's Exhibit B1 that are deemed rejected or excluded from the record. This is because the materials are beyond the scope of and/or not relevant to the Class 1 Review. Staff respectfully requests that the DRB keep this in mind during tonight's public hearing as testimony is presented. If this raises any questions related to the scope of review, please feel free to ask Staff what is relevant to tonight's proceedings.

The applicable legal standards related to non-conformance are discussed in detail in the DRB Staff report. However, Staff thought it would be helpful to briefly summarize some key points of case law as follows:

- Before 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. Non-conforming uses are not favored because by definition, they detract from the effectiveness of a comprehensive zoning plan. Accordingly, provisions for the continuation of non-conforming uses are strictly construed against continuation of the use, and conversely, provisions for limiting non-conforming uses are liberally construed to prevent the continuation or expansion of non-conforming uses as much as possible. Once the 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 non-conforming use is to determine what use existed on the date restrictive regulations were applied.

As stated in the DRB staff report, City Staff believed that the Applicant in the Class 1 Review application requests an answer to the following questions: One, is the location a non-conforming use? Two, does the location contain a non-conforming structure? And three, does the location contain non-conforming site conditions? Considering that tonight's public hearing is a de novo review of the Class 1 Review application, the DRB should address all three

questions listed on this slide. However, the Notice of Appeal does not challenge the Planning Director's decision on the second and third questions. Accordingly, City Staff believe that there is no disagreement between the Applicant and the City with respect to those points. The main point of disagreement between the Applicant and the City is the Planning Director's decision regarding the first question of non-conforming use. (Slide 8)

The 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. I'll briefly summarize this information. However, DRB has requested to refer to the detailed findings in the Staff report as the basis for tonight's deliberation and decision.

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. As stated earlier in this presentation, the Location is currently in the Town Center (TC) Zone. The ordinance implementing the Town Center zoning became effective on June 5th, 2019. Permitted uses include retail sales and service of retail products under a footprint of 30,000 sq ft per use, office, personal and professional services. The Commercial Mixed-Use subject strict of the TC zoning applies to roughly two-thirds of the Location, which also allows single-user commercial or retail such as a grocery store or retail establishment that may exceed 30,000 sq ft if located on more than one story of a multi-story building, provided the footprint of the building does not exceed 30,000 sq ft.

The existing structure at the location has a footprint of 124,215 sq ft in a single-story with a partial mezzanine, which exceeds the footprint of 30,000 sq ft per retail user and footprint limitation that is allowed in the TC Zone. As of June 5th, 2019, the actual use at the location was a Fry's Electronics store, an electronics retail store with a total interior square footage of 159,400 sq ft and a footprint of 124,215 sq ft. Therefore, the Planning Director's decision addressed the non-conforming use inquiry as follows: the use is a legally established non-conforming use in the TC Zone.

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, facade 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. The Planning Director's decision addressed the non-conforming structure inquiry as follows: the structure is a legally established non-conforming structure in the Town Center Zone.

The existing site conditions do not comply with at least two City Code sections including Subsection 4.132(.04)A, which requires that all development in the Town Center Zone be

consistent with the street network and multimodal network, and Subsection 4.132(.05)A, which requires that all development be consistent with the open space network. 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. The Planning Director's decision addressed the non-conforming site conditions inquiry as follows: the existing site conditions are legally established non-conforming site conditions in the TC Zone.

Staff recommends that the Development Review Board affirm the Planning Director Determination of non-conformance in ADMN23-0029, determining that there is a legally established non-conforming use at the location, specifically that the protected use is a 159,400 sq ft electronics related retail store. Two, there is — that there is a legally established non-conforming structure at the location and that there are legally established non-conforming site conditions at the location.

This concludes my presentation. Tonight, the Applicant is participating in the hearing and is prepared to make a presentation when invited by the Development Review Board. I'm happy to take the next few minutes to answer any questions you may have for Staff before moving on to the Applicant's presentation. Additional questions can be asked of Staff after the Applicant's presentation. Thank you.

Chair Barrett: Do we have any questions right now or should we wait?

John Andrews: No questions now.

Kamran Mesbah: None for me.

Chair Barrett: All right. We are going to – will the Applicant please come to the podium with the microphone or commence your presentation when unmuted on Zoom. State your name and address and present any testimony you'd like to present to the Development Review Board.

Daniel Pauly, Planning Manager: Something that'd be helpful if you would, for the record, is who all is here as part of the Applicant's team to be clear.

Presentation references the Appellant's Resolution No. 429 Appeal of Administrative Decision PowerPoint

Keenan Ordon-Bakalian, Schwabe Williamson & Wyatt: Absolutely. One second here guys, I'm sorry. There is a lot of things on this view point. Okay. Can everyone see that on their screens? Awesome. For the record, my name is Keenan Ordon-Bakalian with the law firm Schwabe Williamson and Wyatt. I'm here on behalf of the Applicant/Appellant, Home Depot. My corporate address is 1211 Southwest Fifth Avenue, Suite 1900, Portland, Oregon 97204. With me today is Barry Simmons, representing Home Depot, as well as another member of our project team, Dan Zoldak with Lars Anderson. If you'd like, they can provide their addresses as well.

Barry Simmons: Barry Simmons with Home Depot. Address is 2455, Paces Ferry Road, Atlanta, Georgia 30339.

Daniel Zoldak: Dan Zoldak, Lars Anderson Associates. Address is 4694 West Jacqueline, Fresno, California 93722.

Mr. Ordon-Bakalian: Before I get into the substance of our appeal, I'd just like to take a moment to thank you guys, members of the Development Review Board for your time tonight. It's very much appreciated. I'd also like to thank Cindy and the rest of Staff for their work on this project.

I was going to start off with a brief background here, but I did want to address one preliminary matter. Turns out that apparently a comment has been received after the Development Review packet was submitted. We haven't been provided that comment. I haven't been able to read it, so because of that, we'd request that the record be held open for written testimony after this hearing.

So, moving on to my presentation. First, I'm going to provide a brief background of the procedural history for this appeal. I'm also going to address the findings of the Planning Director's Determination.

Mr. Pauly: It was on the side of the room.

Mr. Ordon-Bakalian: Thank you. So, I'm not going to read this whole comment right now and develop thoughts to it. Again, my request to have the record remain open stands. Unfortunately, we weren't provided that via email. I understand it was in the room, but I wasn't aware. So, moving back to the procedural history, on October 30, 2023, Home Depot applied for a Class 1 Review to confirm the non-conforming use status of the existing use and structure at the property. Within this application, Home Depot indicated that its intention was to operate a Home Depot within the existing structure at the property once the property's non-conforming use status was confirmed.

On November 28, 2023, the City emailed the Appellant, Home Depot, stating that the Appellant's request for confirmation that Home Depot could continue operating at the property under the scope of the non-conforming use required an interpretation of the City's Development Code under the City's Class 2 procedures.

The City provided the Appellant with several options including an option where Staff proceeds with the Class 1 Review and in addition, Home Depot applies for a Class 2 Review, requesting a written interpretation regarding the classification and scope of the non-conforming use of the property. This email is in the record as well as your Staff packet, and Home Depot did choose to proceed with the option I just detailed to submit a Class 2 application. Home Depot submitted the Class 2 application on December 15th, 2023. The application was deemed complete on January 12th, 2024. On December 28th, 2023, the City issued its decision for the Class 1 decision—for the Class 1 application. That's the decision before you on appeal today.

So, there's a lot of text on this slide. (Slide 2, Applicant's/Appellant's Appellant's Resolution No. 429 Appeal of Administrative Decision PowerPoint) It's the only slide with a lot of text. I do apologize, but I wanted to capture the City's findings pretty accurately here. They're also contained in our notice of appeal. The City's decision for a Class 1 application approved the non-conforming use of the property, but it contained several findings that we take issue with. Some of these findings are that it is a 150,940 sq ft electronics retail store; a large format, single-story with partial mezzanine, single-user electronics retail store, or that it's a Fry's Electronics. In fact, the City's decision or Staff's decision is inconsistent, because at some points, it finds that the non-conforming use is a Fry's Electronics, where at other points, it finds that the non-conforming use is a single-user electronics retail store. Those are two very different things. Although Fry's Electronics is an electronics retail store, the scope of the use is much different for those two purposes. Regardless, we disagree with both of those conclusions within the Staff decision.

The City's findings around the nature of the non-conforming use of the property are entirely unsupported within their decision. They don't cite to any evidence for coming to these conclusions; they just effectively find that the non-conforming use is what they say it is. Moreover, Staff's packet for tonight's appeal hearing is also inconsistent because it contains a draft resolution that would have the DRB find that non-conforming use of the property as a 159,400 sq ft electronics related retail store, whereas the Staff report request the DRB affirm the Planning Director's decision, that the non-conforming use is a Fry's Electronics. Those again are two very different things.

What should be controlling in this appeal is what was determined in 1991, when the original use was approved of the subject property. The 1991 Decision is attached to our notice of appeal, as well as the application. It's certainly within the record, and it contains findings that conflict with Staff's findings in terms of the Planning Director Determination. The 1991 Decision was prepared on the basis of an anonymous company. Fry's Electronics is not within the decision whatsoever, so the fact that the non-conforming use could be a Fry's Electronics is inconsistent with the controlling document which approved the underlying use, the 1991 Decision.

Specifically, if you look at the request for the 1991 Decision, it is seeking approval of a 159,400 sq ft retail commercial building, not a single-user electronics retail store. The Staff report was adopted by a resolution as findings and conditions of approval for the 1991 Decision, so it is, in effect, the decision.

Throughout the decision—throughout Staff report for the decision, which was adopted as part of the City's approval, the use as being approved is repeatedly being stated as a commercial retail use and conclude a couple other findings for your review. Here, they detail the building use. (Slide 4) You have office, warehouse, manufacturing and service and retail. There is some comments in the Staff report that these relate to parking standards, but if you actually look at the decision itself, which is on page 3, there is no reference to parking standards whatsoever.

This is the use of the building, which is the use of the property. At this point, we're talking about a commercial retail use.

There are some other findings and comments within the Staff report, which again, were adopted as the decision, where it stated that the use is a commercial retail use. It is apparent the remaining undeveloped property has become very desirable as reflected by this application for a 159,400 sq ft commercial retail store. That's on page 3 of the 1991 Decision. It's also a conclusionary finding that it is a retail commercial center. There are other statements throughout the record and the application materials for the 1991 Decision talking about a retail anchor store—or a commercial retail anchor store. Sections 4.130 to 4.140 were the findings within the 1991 Decision related to zoning consistency, whether the use is allowed in underlying zone, which at the time was Planned Development Commercial, if I'm not mistaken. In this finding, there's a statement that the proposed commercial office units—uses are permitted in the overlay zones as part of the Town Center Master Plan. So, there's no reference to a single user electronic retail store. There's certainly no reference to Fry's Electronics. That's nowhere in the decision. So, this is really where we take issue with the Planning Director's Determination.

Moving forward, we obviously respectfully disagree with the Planning Director's Determination of the nature of the non-conforming use of the property. We believe it is a commercial retail use because as detailed, that is controlled by the 1991 Decision. Frankly, we were a little surprised that the Planning Director's Determination contained interpretations of use because we were under the impression, based on the November 28 email, that this would be addressed in the Class 2 proceeding. When we received the Class 1 Determination that found non-conforming use, but then went as far as to find what the nature and scope of the use was, we were effectively forced to appeal to preserve our rights here.

We believe the City's interpretation of the non-conforming use is wrong. It's neither a single-user electronics retail store or Fry's Electronics because that is an impermissibly narrow interpretation of what was approved in the 1991 Decision. It's also certainly not in accordance with any of the findings that were adopted.

In addition, I'd like to note, just for the record, that the City's interpretation of a prior decision is not afforded any deference were there to be an appeal to the Land Use Board of Appeals. The case regarding that is *Gould v. Deschutes County*. There are several of them. This is the one detailed on the screen here. (Slide 7) This is important because, generally, local jurisdictions may have deference in interpreting their land use code, but because this is a decision and not the land use code, it would be reviewed effectively as a clean slate before the Land Use Board of Appeals.

The DRB has the responsibility of reviewing the 1991 Decision in the first instance, as noted by this de novo hearing procedure. From the unambiguous request statement in the 1991 Decision, where it references a commercial retail use to the numerous references of the use

being reviewed and approved, it's absolutely clear that the use approved within the 1991 Decision is commercial retail. Due to the City's adoption of the Town Center Plan, which Commissioner Mesbah noted he was on the Planning Commission for, the commercial retail use has been rendered non-conforming. Staff did a very good job of detailing why those—why it conflicts with the current zoning designation for the subject property.

We're not disputing that there's a non-conforming use here, just effectively what the nature of that use is. We believe that the commercial retail use was lawfully established, and this is, again, why we've appealed the Planning Director's Determination narrowing the non-conforming use to a single user electronics retail store or even a Fry's Electronics.

In short, Staff may dislike the idea of a Home Depot at the subject property. We acknowledge that. We understand the Staff may believe a Home Depot is inconsistent with the City's Town Center Plan that was adopted in 2019; however, Staff's position is inconsistent with the legal authorization and non-conforming use law in the State of Oregon, and certainly, Home Depot has the right to continue its lawfully established commercial retail non-conforming use of the property.

That said, we're not talking about a traditional big box retail use of the property. Because of this, and the fact that the Home Depot's Class 2 application will likely be before the DRB in the near future, we briefly want to show Home Depot's vision at the site in which we believe is consistent with the vision and goals for the City's Town Center Plan.

With me tonight to do so is Mr. Barry Simmons with Home Depot. Barry, I will turn it over to you.

Mr. Simmons: Thank you. I appreciate the chance to speak to you guys tonight. As you see here, we did pull out—we have reviewed the Town Center Plan, and we actually believe, as we've said earlier, we're actually in alignment with the Plan, and we hope to further the Plan and with the – in partnership with the City of Wilsonville—town of Wilsonville.

So, in the Table 3.1 here, that was that was pulled from the Town Center Plan, the commercial square footage, the 300,000 existing square footage, clearly, this was adopted back in 2019. (Slide 9) Obviously, at the time, you guys had no way of knowing that Fry's would no longer be operating as of 2021. But, certainly, today Home Depot would like to reoccupy, re-energize, and make use of the existing 125,000 sq ft for our purpose.

We also have a vision that, again, that closely aligns with the Town Center Plan for multifamily use in the area. We believe, based off of the size of our out-parcels around that store, that we could put another 250 to 300 housing units around our store. So based off of this table, I think that, you know, the Home Depot use, again, that's a – we may be getting a little further down the road, but, at least, to communicate the vision that that Home Depot could bring back

125,000 sq ft of commercial retail as well as up to 300 housing units towards the—this future town home center or a future Town Center vision.

I will highlight there, in the right corner, that, one, this is over a 40-year plan. And the note, the first sentence there says that this will take time; there will be many steps. And we believe that this partnership or this future partnership with Wilsonville and Home Depot could be one of those steps to further that vision. Next slide.

Mr. Ordon-Bakalian: Sure.

Mr. Simmons: So, the Town Center Future Scenario. (Slide 10) As you can see on the left, is your Phase 1, directly from your Town Center Plan, that indicates the existing 125,000 sq ft building with the purple indicating some infill of new housing, new street-level retail, etcetera. On the right side of that plan is effectively our site plan, is what we envision, and within the four or five acres of out lots that we would—we would identify them as out lots. We believe that we can get those 200 to 300 additional housing units with multifamily housing and street-level retail. So, we have a couple of slides here, and, again, these are high level representations, I guess, or renderings, but we have a couple of pictures that we can show you what we think this might look like in the future.

Go ahead and go to the next slide. (Slide 11) These are just a couple of aerial shots of what we think that our store, kind of tucked in behind multifamily residences here in the Town Center, again, might look like within this 15-acre property. Click the next slide. (Slide 12) So, just a couple of pictures there to give that picture and image of how we can kind of walk along for this Town Center Plan together. Now, the question may be asked, you may be thinking like, “No one really wants to live next to a Home Depot.”

We don't believe that's true. In several places around the country, we have several examples that are exactly like this, where Home Depot's have found themselves in the middle of kind of play – live-play-work communities. And we can—we can show you a couple of examples of those. This is Atlanta, Georgia. This is the Buckhead store. (Slide 13) This is a very high performing store for us. As you can see, there's multifamily—large complex and multifamily both in front and behind the store. In front of the store, before you get to the main road, there's some street-level retail. Again, we fit right in with this community. Again, this is a high performing store for Home Depot.

The next one is Surrey, Canada. (Slide 14) Now, this is a rendering of residential in front of our store. The next slide, and this is what it looks like in real life. (Slide 15) These are Google Earth images of a Home Depot store tucked in behind as a part of a larger development of multifamily housing units. And the last I have is Lynnwood Washington, which is not too far up the road here, where you see a couple of shots here. (Slide 16) The Atlanta store was—I think that was built in 2006, and the housing was finished about 2008. The Lynnwood Washington site here was built in 2021 and finished—and the housing was finished in about 2022. So these are

relatively recent developments that Home Depot was involved in, that included multifamily, street-level retail, all the things that we believe closely align with what you guys are expecting with your Town Center Plan.

So again, I appreciate you having us here, allowing us to, kind of, share our thoughts with you guys. But we do believe that there's a benefit, potentially, for everyone to, kind of, walk hand-in-hand with this Town Center Plan, and I think we're—like I said, I think we're more in alignment than opposed to it. Thank you.

Mr. Ordon-Bakalian: Thank you, Barry. I'm just going to move back to one slide here. So, just kind of put the requested relief up here in terms of what we're looking for. (Slide 8) To wrap up, again, this appeal proceeding is only necessary because of the Planning Director Determination, which we think impermissibly narrowed the scope of the approval in the 1991 Decision, which is controlling for the property.

Like Barry noted, we want to be a collaborative partner with the City. We don't intend for this to be an adversarial process. At the same time, based on the findings of the decision, we were obligated to file this appeal. We certainly disagree with the scope and nature of the non-conforming use determination within the Director's Determination.

We respectfully request the DRB find that the legally established non-conforming use of the subject property is a commercial retail use as approved in the '91 Decision, not a Fry's Electronics, not a single-user electronics retail store. And again, I'd like to request the record remain open, not only so we can respond to the comment, which was received earlier tonight, but also to provide additional written testimony. We'd also like to thank you again for your time and request that we have the opportunity to provide rebuttal or final argument should Staff have any additional testimony. At this point, happy to take any questions or wait till the end.

Chair Barrett: Well, do we have any questions?

John Andrews: 1991 seems like a long time ago. The community here has changed a lot, and Fry's has kind of abandoned ship. So why should—why do we need to continue with that?

Mr. Ordon-Bakalian: Very good question, Commissioner Andrews. So, we can certainly detail this more in writing in our written response as well, but Oregon non-conforming use law allows certain uses that may no longer be consistent with the underlying zoning of a property to continue. The 1991 Decision approved a commercial retail use. So, although Fry's may be gone and bankrupt, a commercial retail use is still allowed at the subject property. We believe, based on what Barry detailed, that Home Depot would be a willing and able partner to achieve both the City's vision under the Town Center Plan while also providing an anchor commercial retail use at the property stepping into Fry's shoes.

Mr. Andrews: One more thing. So, the proposal for all the residential things around that, I mean, that just kind of came up. Is there—I mean, has there been any formal proposal or anything like that

that involves that? Or is that something that may happen later if you decide to do that, instead of layout more parking?

Mr. Simmons: We have not marketed those spots yet. Yeah, I mean, we can't go that far yet. We haven't even built a store yet. But certainly, it's our plan, as we have done at other locations, is to market the excess property or what we would consider excess property; those out parcels—out lots to multifamily home builders to get that work done. So yes, we would—if it is in alignment with the vision of the Town Center Plan, we could more specifically look at targeting that type of use for that land if we were to get a store at this location.

Mr. Ordon-Bakalian: Just to follow on Barry's comments here, I mean, again, Home Depot is trying to approach this as a collaborative partner with the City. We've had some initial discussions with, kind of, what our vision is for the site. That said, I think it's everyone's understanding at this point that until we sort out the issue with the non-conforming use, those discussions are kind of on hold. From a certainty perspective, both for the City and also for Home Depot, trying to pull the cart before the horse, if you will, doesn't really benefit anyone here. So again, we are willing and open to have those discussions. I think we just need to kind of get alignment together as partners.

Mr. Andrews: Okay, thank you.

Chair Barrett: I have a question, but maybe I don't know who can answer it. It might be any lawyer in the room. What is an effective date for non-conforming use, like, when does that go into effect?

Mr. Ordon-Bakalian: I'm happy to answer first unless—so, effectively, a use becomes non-conforming when it is prohibited by the underlying zoning district. This may be a kind of oversimplification of the Oregon case law at this point. But, the use only became non-conforming when the Town Center Zone was adopted for the subject property, which has that 30,000 sq ft maximum and several other standards that, in full disclosure, the subject property nor the structure do not comply with. However, uses that were lawfully established prior to the change of the zoning are allowed to continue. And so in this case, it is our position the commercial retail use that was approved in 1991 was lawfully established. It was approved by the City. It has never been abandoned. Your Code actually has provision for abandonment, which we detail in our application, and I think both the City and us believe is met. I don't want to speak for them, however.

So, because the use was established in 1991, it may continue. The effective date for its non-conformance was when the zoning designation changed, and I believe that was in 2019 with the adoption of the Town Center Plan.

Stephanie Davidson, Assistant City Attorney: City Staff agree with that. The effective date of that zoning regulation was June 5th of 2019.

Mr. Ordon-Bakalian: Thank you, Stephanie.

Chair Barrett: So, what was the use? It was the Fry's retail store in 2019.

Ms. Davidson: The legal standard, this is outlined in the Staff report, one of the key cases here is the Nehoda LUBA case. I'm going to read from it right now. "The purpose of the local government proceeding to determine the existence of a non-conforming use is to determine what use existed on the date the restrictive regulations were applied." So, essentially, the question is, what was the actual use of the property as of June of 2019?

Mr. Ordon-Bakalian: And in our position, the use was commercial retail. In the Planning Director Determination, they've narrowed it to a Fry's Electronics; in some instances, maybe a single-user electronic retail store. Again, the stuff I showed you on the presentation is directly pulled from the 1991 Decision. It is clear in 1991, the use approved was a commercial retail use. Electronic stores, including Fry's, fall within that subset of uses, but I don't think the '91 Decision intended to narrow such a use to that level.

Chair Barrett: Okay. One last question. Fry's went out of business—sorry, the retail store went out of business in 2021. So, how is it being used since?

Mr. Ordon-Bakalian: So that's actually a very good question and kind of a unique facet of Wilsonville's Code here. So, the property itself has been vacant since Fry's went out of business. But for the purposes of the City's non-conforming use standards, the use has continued. It has not been abandoned. I can, again, respond more detailed—in more detail in writing. However, I believe the standards for continuance of a non-conforming use include continuing to pay utilities, taxes, and other facets of continuing to employ the site. The current owner of the site has done so. There's no evidence that they have stopped doing any of those things. So, it is our position, and, again, I believe Staff's position as well, just based on the findings in the Planning Director Determination, that there is a non-conforming use there. It has not been abandoned. The question just is what is the nature of that use.

Chief Barrett: Thank you. Any other questions? Yeah, okay.

Mr. Mesbah: You mentioned in your presentation that you were essentially forced to appeal the decision of the Planning Director. Could you explain why that is?

Mr. Ordon-Bakalian: I think "compelled" might be a better word than forced. Certainly, we could have chosen not to appeal the decision. However, again, this all kind of goes back to the November 28th email, which is in the record for this appeal proceeding. We requested confirmation there was a non-conforming use of the property. Within that, we did state our intention to operate a Home Depot at the site. In response, Staff responded and stated that that second part of our request required a Planning Director interpretation, which should be processed under a Class 2 application. So, we believed the Class 1 would just be, effectively, a stamp that said, this is

either a non-conforming use or it's not; it's non-conforming structure, it's not. However, when we received the Planning Director Determination, the Director determined that the non-conforming use, the nature of the use, was a Fry's Electronics or a single-user electronic retail store. That would mean if that decision was not appealed, that would be the only use allowed at the site under its non-conforming use rights. We're not denying Home Depot is not a single-user electronic retail store or a Fry's, so we were obligated to appeal because we believe that '91 Decision, again, approved a commercial retail use; not something as narrow as was in the determination.

Mr. Mesbah: So, I guess my second question is if a Class 2 Review, which is going to be coming in front of us, is going to be dealing with that specific question?

Mr. Ordon-Bakalian: Yes.

Mr. Mesbah: What's the difference?

Mr. Ordon-Bakalian: The difference is if we hadn't appealed the decision within the allotted appeal timeline, the decision would become final. And the decision in the Class 1 Determination which, again, we think may be outside the scope of what should have been decided, is that the use is a Fry's Electronics or a commercial—or a single-user electronic retail store. So, in effect, the Class 2 decision had already been made, even though it wasn't our understanding that was supposed to occur. If we let that decision stand, there's a decision that hangs out there that says the non-conforming use is a Fry's Electronics. And so, the Class 2 process effectively would be moot. There's no reason for us to proceed at that point.

Mr. Mesbah: As a person who needs to figure out the complexity of this, I don't feel there is enough information, other than your say so, for me to determine whether or not this is conforming or not. In other words, there's a continuation of use or not. I'd rather wait until a Class 2 Review with a thorough kind of evaluation of that, and so I don't know if there's an option of withdrawing your application for Class 1 so that we can go forward with Class 2 with an open slate or something like that, instead of prejudicing it, as you're worried it will happen. That's the nature of my questioning is—

Mr. Ordon-Bakalian: It makes perfect sense. I think that's very astute observation there. I think, you know, again, we are open to discussing potential solutions with the City in terms of what we can do to kind of focus this process before the DRB, so we don't have two different processes proceeding at once. That said, like you noted, we were, maybe not, forced to, but we were obligated to appeal based on the substance of the determination in the Class 1 decision. You know—

Ms. Davidson: Yeah, I'd just like to chime in here. There have been negotiations with the Applicant. Even late on Friday afternoon, there was some talk about potentially withdrawing the Class 1 application, but the Applicant has to agree. I think the document that I saw circulated said—one of the resolutions within that document said that, you know, as part of this withdrawal, the Planning Director would modify her letter dated December 28th of 2023, to say that no determination of non-conformance is made. So that's something that the Applicant would have to agree to, but City Staff agree that the record is a little confused between the Class 1 and the Class 2 applications proceeding at the same time.

Mr. Mesbah: So, it is—it is possible—

Ms. Davidson: It is possible.

Mr. Mesbah: —to have a clean slate for a Class 2?

Ms. Davidson: But the Applicant has to agree.

Mr. Mesbah: Yes.

Mr. Ordon-Bakalian: Yeah, and I think just to kind of flush that out a little bit more. I also saw the same correspondence, and I believe we also corresponded with Amanda this morning on that. We would have to have an agreement between the City and us, Home Depot, that the DRB would adopt a new resolution, effectively cleaning the slate from the Planning Director's Determination before we dismissed our appeal. Because if we dismiss or appeal prior to that, we would have a decision which is inconsistent with what we agree with, so we would need some certainty there. I think that, maybe, there's a benefit to having the open record period here because we may be allowed to continue to have these discussions proceeding from this. I mean, I don't know if you're interested in kind of exploring that option a little bit more, but I do understand the DRB's concerns here.

Ms. Davidson: Absolutely. And we have heard your request to keep the record open, so that is going to happen.

Mr. Mesbah: Do we have another DRB meeting – do we need to have another DRB meeting if you continue this kind of negotiation and leaving the record open? DRB, essentially at the end, will need to adopt some resolution, right?

Mr. Ordon-Bakalian: Yes.

Ms. Davidson: Yes.

Mr. Pauly: And we may have to do a special meeting to do that, so—

Mr. Mesbah: Because March 28th is before the next meeting or after the next meeting or what?

Mr. Pauly: No, but there's also—Stephanie, do you want to cover it?

Ms. Davidson: I think we —

Mr. Mesbah: The deadline, I understand, is March 28th.

Ms. Davidson: Given the timelines at play here, I think we need to discuss your availability on March 5th, but also March 21st.

Mr. Mesbah: I'm not here on the 21st, I can tell you that.

Ms. Davidson: Okay.

Mr. Mesbah: But there's others. I mean, you can have a quorum.

Alice Galloway: I'm not here on the 5th.

Ms. Davidson: Chair Barrett?

Chair Barrett: I am here all of those days.

Paula Pinyerd, Scribe, ABC Transcription Services, LLC: Mr. Andrews? Can you speak into the mic so we can record that?

Mr. Andrews: Oh, I just said I will be here. My current plans are to be here both those days, and the rest was nonsense.

Ms. Galloway: Sorry—

Ms. Pinyerd: —for clarity of the record.

Ms. Galloway: I am going to be here on the 5th. It's the end of the month that I'm not going to be here. I'm here on March 5th.

Miranda Bateschell, Planning Director: Good evening, Board. Miranda Bateschell, Planning Director for the City of Wilsonville. I'm just coming up because I want to try to do a raise of hands inventory for each of the days that week. So first of all, just given that we're going to leave the record open for seven days. Please show me your hands if you're available on March 5.

Mr. Pauly: We did talk that Chair Barrett isn't available till later, till 7:30—

Ms. Bateschell: 7 p.m. or later.

Mr. Pauly: And, I have the same conflict.

Ms. Bateschell: That's fine. We can have it as—whatever time is needed. Okay, so we have at least three on the 5th. So now, I'm going to go through the whole week of March 18th, one by one. So, Monday, March 18th?

[Multiple responses off-mic]

Ms. Bateschell: Yeah, okay, so four on the 18th. How about the 19th? Four? Okay. 20th? Four. 21st? Three. Okay. Thank you very much.

Chair Barrett: Do we have to have a motion to continue that?

Ms. Davidson: I think that should come later.

Chair Barrett: Later?

Ms. Davidson: Yes.

Chair Barrett: Okay.

Mr. Pauly: We'd still—I mean, we do have a public hearing still open so we'd—

Chair Barrett: So let's gather as much as we can.

Mr. Pauly:—still want to take testimony from others that may be here as well.

Chair Barrett: Okay. I have one further question just for clarity. What is the difference between a Class 1 and a Class 2 Review?

Mr. Pauly: I can take that one for starters. So for the record, Class 1—both of them are administrative decisions by the Planning Director or the designee. Class 1 is a—what we call a ministerial or administrative decision where there's no discretion. It's—and there's no notice to surrounding property owners. The only person noticed of the application is the applicant. A Class 2 is also administrative with the difference being is that the DRB receives notice where they can call it up as well as surrounding properties receive notice of a Class 2. And, as well as a—the Planning Director can actually refer a Class 2 to the Development Review Board. So more notice, more process for a Class 2; where the Class 1 —essentially some Class 1s we essentially issue over the counter.

Chair Barrett: Are the questions different?

Mr. Pauly: There's more discretion, really, allowed under a Class 2.

Kimberly Rybold, Senior Planner: And are you speaking specifically to as it pertains to the two applications that are in from this Applicant in terms of the questions that they have posed?

Chair Barrett: Would the question they would pose be different for a Class 1 versus a Class 2?

Ms. Rybold: Yes. So, the Class 1 application that they submitted is the determination of non-conforming status related to the Location, so that would be the use site conditions and structure. The Class 2 is a Planning Director's interpretation of essentially, the question that is posed is related to the two, the Fry's Electronics and the Home Depot, and whether or not that is a continuation of use. So that really gets to the bigger question about, you know, use and, you know, whether or not in our Code, that would be a continuation, and so that is what requires an interpretation of the standards within the Development Code.

Chair Barrett: And who interprets?

Ms. Rybold: So that would be a Planning Director's interpretation. So, that's the nature of the difference. They're both decisions issued by the Planning Director. It's just that one really is just a determination of status, versus the second piece, which is making an interpretation as to whether or not those two retail users would constitute a continuation of use. And so, again, that's why in Cindy's presentation tonight, as she's highlighted, really any testimony, any conversation related to the proposed user in this case is tied more to the Class 2 Review than it is the current Class 1 Review.

Mr. Ordon-Bakalian: Respectfully, I would just like to add one thing. Although we agree in premise with what Ms. Rybold just said, ORS 197.979 - excuse me, ORS 197.797 says that, "For a quasi-judicial hearing, to the extent there's argument or evidence that the Appellant believes is relevant, we are allowed to offer that." So, I think like you noted, because these two proceedings have gotten so intertwined, there are things that we feel obligated we must raise during this hearing to preserve them going forward. Whether or not they are deemed relevant is effectively up to you guys, not the City and not us.

Chair Barrett: Okay. Lots of testimony, but I think we need to give an opportunity for the public to continue.

[Break in verbatim transcript]

Chair Barrett called for public testimony regarding the application and confirmed with Staff that no one was present at City Hall to testify and no one on Zoom indicated they wanted to testify.

[Verbatim transcript resumes]

Chair Barrett: Okay. Well, that was simpler than I expected. Does the Applicant have any rebuttal or responsive testimony that the Applicant wishes to present?

Mr. Ordon-Bakalian: Point of clarification, will we also be able to respond any Staff testimony?

Amanda Guile-Hinman, City Attorney: You need to come before the microphone.

Mr. Ordon-Bakalian: Oh, excuse me. For the record, Keenan Ordon-Bakalian on behalf of the Applicant. Would we have the opportunity to rebut any Staff testimony that comes after us, or is this our final time to speak?

Chair Barrett: We will just be asking questions now, so you can stay there and answer.

Mr. Ordon-Bakalian: Absolutely. And if you'll permit me, I do have an answer to Commissioner Mesbah's earlier question about non-conforming use standards for whether a use is continued. That was detailed in our application because that was application criteria. That's Exhibit 429 of the City's Staff report and packet. Wilsonville Development Code (WDC) 4.189(.01) says, "A non-conforming use may be continued subject to the requirements of this Section." One of the requirements of this section is to determine whether the use has been abandoned, that is WDC 4.189(.03). That says, "If a non-conforming use is abandoned for a period of 18 consecutive months, the use shall not be reestablished without fully complying with the use requirements of the zone." That would be the TC Zone. "Mere vacancy of a site or building while it is being marketed, or other plans for its use are being readied, does not constitute abandonment. In order for it to be considered abandoned, a site must not be receiving city utilities, must not be actively marketed for rent, lease, or sale. These standards concerning abandonment do not affect the City's process for abating nuisances..." That part is, in our opinion, likely not relevant to this proceeding. However, what is relevant is whether the property was receiving City utilities, whether it was marketed for rent, lease, or sale. Both of those are true. There's evidence in the record demonstrating as much. That is the City's standard for abandonment. We believe the use has not been abandoned because the City—the site is receiving utilities, and it was currently being—is currently being marketed for rent, sale, or lease.

So again, we believe the use, the commercial retail use that was approved in 1991 has not been abandoned and has continued. To our knowledge, based on the Planning Director's Determination, the Staff report for this appeal, the City does not appear to dispute that, but again, I do not want to speak for the City on that point.

Mr. Mesbah: To be clear, the kind of line of questions that I had for you was not that I was confused about your position. I was very clear about what you're saying. I read the Staff analysis and your submittal. It was that the Staff doesn't necessarily agree with all of what your positions are, and my understanding is that during a Class 2 Review, because we are expanding the scope of analysis and all of that, that may become clearer to those of us who are sitting on this side of the dais, and I was, I guess, kind of raising that into — beg the question, if this becomes clearer later, why do we rush it now? I think we got to that answer is that yeah, really there isn't any reason to rush it now, if there is some understanding that can be engineered here.

Mr. Ordon-Bakalian: Absolutely.

Chair Barrett: All right. Do we have any further questions of Staff or Applicant or the other members of the audience?

Mr. Andrews: I guess I have one question. The 2019 date that you mentioned, is that really the effective date for when the use of the property becomes defined?

Ms. Davidson: Well, June 5th 2019, that is the date that the Town Center Plan became effective, and based on the content of the Town Center Plan, the proposed use would not be allowed. So that's the date of the more restrictive land use regulation.

Mr. Pauly: Because, yeah, per current City Code, even though it's Planned Unit Development, that that is now non-conforming Planned Unit Development because the zoning did change.

Ms. Galloway: So, we're here this evening to affirm or reject a Planning Director's decision, and I think that's our focus for this evening. So, I don't know if this is the right time to do this, but I'd like to move to reject from the record certain information from the Applicant.

Ms. Davidson: Oh, Alice?

Ms. Galloway: Uh-huh?

Ms. Davidson: Because the Applicant has requested to keep the record open for seven days, we will not do anything with the record tonight. We'll just leave it open, and we will talk about when you will reconvene to make a decision on this application.

Ms. Galloway: All right. Thank you.

Ms. Davidson: Thank you.

Mr. Ordon-Bakalian: Respectfully, we would formally object, based ORS 197.797 and the standards that allow us to make argument in evidence in a quasi-judicial setting, so just for the record.

Mr. Davidson: I'm sorry, what are you objecting to?

Mr. Ordon-Bakalian: The future excludence of testimony and evidence in the record that was intimidated by Commissioner Galloway.

Ms. Davidson: Okay. And I want to add something before the public hearing is closed tonight. So, the plan would be to close the public hearing tonight, but leave the record open for seven days. So, before we close the public hearing, I just wanted to comment on the legal standard that was presented by the Applicant. I think the slide that this information was on was Slide Number 7. So, I just want to add into the record that City Staff reviewed the case that was cited, which is *Gould v. Deschutes County* 79 or LUBA 561. It's a 2019 case. That case does not cite – does not cite the statute ORS 197.829, which is what the slide says it does. I just want to encourage that the legal standard is outlined in the Staff report, which you've reviewed.

Chief Barrett: Can I get that ORS standard one more time?

Mr. Ordon-Bakalian: Which one?

Chief Barrett: The one you cited?

Mr. Ordon-Bakalian: Yes. So, ORS 197.797 sub 9.

Chief Barrett: Hold on, 197?

Mr. Ordon-Bakalian: 797.

Chief Barrett: 797, thank you.

Mr. Ordon-Bakalian: Sub 9. And that is the procedure for local quasi-judicial land use proceedings or hearings. It details both hearing process as well as notice requirements. Subsection 9 of that — statute says that arguing evidence constitutes — and I mean, I can read through the entire thing here, "Argument means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed to be relevant by a proponent to a decision. Evidence means facts, documents, data or other information offered to demonstrate compliance or non-compliance with the standards believed to be relevant by the proponent."

In this case, we believe that all the information we've entered into the record is relevant for the decision before the DRB.

Chief Barrett: Okay. And that was in Gould?

Mr. Ordon-Bakalian: No, that was not in Gould. That was the other standard.

Chief Barrett: I'm sorry. I'm trying to make sure I get it all straight.

Mr. Ordon-Bakalian: So, again, we can follow up more in writing because the record will be open on this. However, the Gould decision, what we believe it stands for is that a local government's interpretation of a prior land use decision, in this case, the 1991 Decision, is not afforded the same level of deference before the Land Use Board of Appeals that the City would be afforded if they were interpreting their Development Code. That's called Sapporan deference and the City is generally afforded deference when it's interpreting its own code. But in this case, because you are interpreting the 1991 Decision, and the nature of the use that is allowed to continue at the property, that would not be afforded any sort of special deference. It's more of just some context for the decision before the Board here.

Chair Barrett: Thank you. Oh, I see testimony.

Ms. Guile-Hinman: Thank you, Chair. Amanda Guile-Hinman, City Attorney. I just want to keep the record very clear about it because there was something left out of that definition. It ends with "argument does not include facts." And then "Evidence means facts, documents, data or other information offered to demonstrate compliance or non-compliance with the standards believed

by the proponent to be relevant to the decision." So, I just want to make sure that we're clear about that argument and evidence are different and they're discussed differently in ORS 197.797.

Mr. Ordon-Bakalian: I would agree with that, Sub A and Sub B.

Chair Barrett: Okay, argument versus evidence. Okay, do we have all of the evidence and testimony that we want submitted in this record?

Ms. Rybold: I would add one clarification just as it pertains to uses and the new zoning and what's applying. I just want to clarify that from our perspective of how-----when the Planning Director is making determinations or interpretations, I just want to be clear that our standards from—for the uses that are allowed are agnostic of a specific business or user. So, just to be clear that there are no preferences being expressed in terms of a specific business, either being preferred or not preferred by Staff. Staff in making these determinations is doing so based on uses and interpretations of uses and looking at things like prior decisions or legal case law to determine how to define those uses, not businesses.

Chair Barrett: Does a business name have to go into a use?

Ms. Davidson: The DRB has discretion to decide the nature and the extent of the use in the Class 2 proceedings.

Chair Barrett: Thank you. Okay. Do we have any other testimony? Any other questions? What kind of motion should we make in order to make sure that we maintain the record?

Mr. Pauly: First, we'd want to close the hearing

Chair Barrett: Okay. Hearing no further discussion, I'm prepared to close the hearing. Once the hearing is closed, there cannot be any other discussion, comment, or questions except among board members. The Board may ask Staff specific procedural questions confirming there's no additional discussion at this point and no further questions of Staff or any party. Okay. I declare this public hearing closed at 8:18 p.m.

Ms. Bateschell: So, before I give you additional instruction, I know we talked about a few dates that might work for you all for reconvening. I think all of you were available March 18th, March 19th, and March 20th. Are there any preferences? Shall we shoot for March 18th?

Chair Barrett: That would be my preference.

Ms. Bateschell: March 18th?

Chair Barrett: March 18th.

Ms. Bateschell: Do you have a time preference? 6:30?

Chair Barrett: Yeah.

Ms. Rybold: I believe that is during a City Council meeting.

Mr. Pauly: So we'd have to—

Ms. Bateschell: Yeah, if I may, I think what we're going to have to do is get back to you on the specific day. And at this point hold March 5th and March 19th. We have to work internally on determining what other meetings are happening in this building and how we can shift people around. And then also, we'll determine if the seven days—the seven days maybe all we need for the additional argument. But if for some reason somebody who else who has been on the record submits anything, then the Applicant has an opportunity for additional time in order to respond to that.

So, I think the plan would be hopefully to move forward with this next week. But if additional information is submitted, they are granted additional time to respond to that other argument, in which case, we would then be looking at March 19th. So, Staff will confirm once we're able to confirm with the rest of the calendars in the building. Unfortunately, many boards and commissions meet in this room.

Mr. Mesbah: Amanda, day and time you're going to confirm, so we're keeping the whole day open?

Ms. Bateschell: Most of our meetings of this nature are held in the evening, in order to provide—

Mr. Mesbah: So, six-ish?

Ms. Bateschell: Most likely, yes. And so, we will confirm the time but at this point in time, I would say hold the evenings. And if you, for example, are only available after a certain point on one of those evenings that we've discussed, please communicate that as soon as possible to Mr. Pauly.

Ms. Davidson: So, in the meantime, you should—someone should move to keep the written record open for seven days until March 4th, 2024 at 5:00 p.m. That's the date that the record will close and we will have to separately determine the date of the—date when you reconvene. So that's a motion to keep the written record open for seven days until March 4th, 2024 at 5:00p.m.

Mr. Andrews: So moved.

Ms. Galloway: So, I move that we keep the record written record open until 7:00 p.m. on March 4th, 2024 at 5:00 p.m.

Mr. Pauly: Seven or five? You said both. Five?

Ms. Galloway: That's what she said, 5:00 p.m.

Ms. Davidson: 5:00 p.m. Yeah.

Mr. Pauly: Just making sure the record is clear on that.

Chair Barrett: So, the motion was for March 4th, 2024 at 5:00p.m.

Ms. Galloway: Right.

Mr. Ordon-Bakalian: Understood.

Chair Barrett: Do I hear a second?

Mr. Mesbah: Second.

Chair Barrett: Okay. All in favor of leaving the written record open until March 4th, 2024 until 5pm?

ALL: Aye.

Chair Barrett: Okay. The motion carries, four to zero.

[End of Verbatim Excerpt]

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, LLC. for
Shelley White, Planning Administrative Assistant



**DEVELOPMENT REVIEW BOARD PANEL B – SPECIAL MEETING
VERBATIM MINUTES EXCERPT
Appeal of Administrative Decision ADMN23-0029
March 14, 2024 at 4:30 PM
City Hall Council Chambers & Remote Video Conferencing**

CALL TO ORDER

A special meeting of the Development Review Board Panel B was held at City Hall beginning at 4:30 p.m. on Thursday March 14, 2024. Chair Rachelle Barrett called the meeting to order at 4:31 p.m.

ROLL CALL

Present for roll call were: Rachelle Barrett, Alice Galloway, John Andrews, and Kamran Mesbah. Megan Chuinard was absent.

Staff present: Daniel Pauly, Stephanie Davidson, Kimberly Rybold, Amanda Guile-Hinman, Miranda Bateschell, and Mandi Simmons

CONTINUING BUSINESS

Resolution No. 429. Appeal of Administrative Decision. The applicant is appealing the Planning Director's determination of non-conformance in Case File ADMN23-0029.

Case File:
DB24-0002 Appeal of Administrative Decision

On February 26, 2024, the Development Review Board closed the public hearing and moved to keep the record open until March 4, 2024. This item will be for deliberation and decision only based on the evidence in the record. No further testimony or written comments will be accepted.

[Verbatim transcript begins 0:19]

Chair Barrett: With the public hearing and record closed, it is time for the Board to entertain a motion to deliberate and make a decision on the application before us. As part of these proceedings, the Board will also need to establish the record. I will begin by calling for a motion regarding the record, then the Staff report, and finally the Resolution.

So that paper we have is the Resolution, just so everyone's clear.

Roll Call was taken at this time.

Chair Barrett: Okay. So, I'm starting with the record. If there's been evidence provided that is outside of the scope of the appeal before the Board, a Board member can make a motion to reject such evidence from the record. If no motion or action is taken on the record, all information, exhibits, materials, and

testimony by all parties placed before the Board during the public hearing will become part of the record.

Do I have a motion regarding any of the evidence submitted on this appeal?

Alice Galloway: 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.

Chair Barrett: Do I have a second?

John Andrews: I'll second that.

Chair Barrett: Do we need to have some discussion on that motion?

Alice Galloway: No discussion.

Chair Barrett: I would like to clarify that we are not removing the original 1991 application, just the parking from the record.

Stephanie Davidson: Okay, that's correct.

Chair Barrett: All right. Any other discussion that we need to have?

All right. I will call to vote. All in favor of this motion, say 'Aye'.

Voices Heard: Aye. Aye. Aye. Aye.

Chair Barrett: The motion carries 4 to 0.

Okay, next I will call for a motion to adopt the Staff report, including all findings and exhibits, except those listed before, and enter it into the record. If a Board member wishes to amend the Staff report in any way, including adding a new condition, removing a condition, or modifying a condition, it should be included in the motion.

Do I have a motion on the Staff report?

Alice Galloway: I move to adopt the Staff report as presented.

Kamran Mesbah: Second.

Chair Barrett: Did you hear the second? Okay. Is there discussion that needs to happen on the Staff report?

Alice Galloway: No.

John Andrews: No

Kamran Mesbah: No.

Chair Barrett: No. Okay. I'm going to call the vote for adopting the Staff report into the record. All in favor?

Voices Heard: Aye. Aye. Aye.

Chair Barrett: Aye. The motion carries 4 to 0.

It is moved and seconded that the Staff report was entered into the record. Do we need to have any further discussion on making a different motion to adopt the Resolution before us?

Okay. Do I hear a motion on the Resolution before us today? On Resolution No. 429.

Kamran Mesbah: I move that we adopt Resolution No. 429.

John Andrews: I'll second it.

Chair Barrett: Okay. It has been moved and seconded that we adopt Resolution 429. Any discussion now?

Alice Galloway: No.

John Andrews: No.

Kamran Mesbah: None.

Chair Barrett: Can I have that?

Kamran Mesbah: Absolutely.

Chair Barrett: I want to specifically call out that on No. 1 of this Resolution, down at the bottom, the second page, last paragraph, it says, “Now, therefore, it be resolved that the Development Review Board of the City of Wilsonville does hereby affirm the Planning Director's determination of nonconformance dated December 28th, 2023, attached hereto with findings and recommendations contained therein, determining 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.”

I just wanted to clarify that it says that and not Fry's, so that we have that clear in our record. So are we—that's all the discussion I wanted to have. Any further discussion?

Alice Galloway: No.

Kamran Mesbah: No.

Chair Barrett: Okay. Hearing no further discussion, I will call it to a vote. All in favor of adopting the Resolution and the Staff report on Resolution 429?

Alice Galloway: Aye.

John Andrews: Aye.

Chair Barrett: Aye.

Kamran Mesbah: Aye.

Chair Barrett: The motion carries 4 to 0.

If you desire to appeal this decision to the City Council, you must file an application stating the grounds for the appeal to the City Council and submit any applicable fee within 14 days of mailing of the decision of notice.

[End of Verbatim Transcription 9:25]

STAFF COMMUNICATION

Development Review Board Panel B – Special Meeting
March 14, 2024

Page 4 of 5

Daniel Pauly, Planning Manager, confirmed that Chair Barrett, John Andrews, and Kamran Mesbah were available to attend the DRB Panel B meeting, which was rescheduled to the 2nd Monday next month, on April 8th. DRB Panel A would meet on the 4th Monday of April.

ADJOURNMENT

The meeting adjourned at 4:42 p.m.

APPELLANT'S MATERIALS

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.



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, pdforbes@aol.com

CITY OF WILSONVILLE • COMMUNITY DEVELOPMENT DEPT.

Phone 503-682-4960
Fax 503-682-7025

29799 SW Town Center Loop East
Wilsonville, OR 97070

www.ci.wilsonville.or.us
info@ci.wilsonville.or.us

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

RESOLUTION NO. 429

PAGE 1 OF 2

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
<i>Special Meeting Date:</i>	<i>March 14, 2024</i>
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:	<u>Affirm</u> the Planning Director Determination of Non-Conformance (ADMN23-0029).

Applicable Review Criteria:

DB24-0002 Appeal of Administrative Decision	
<u>Development Code:</u>	
Section 4.022	Appeal and Call-up Procedures
ADMN23-0029 Class 1 Review Request	
<u>Development Code:</u>	
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
<u>Other Planning Documents:</u>	
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.

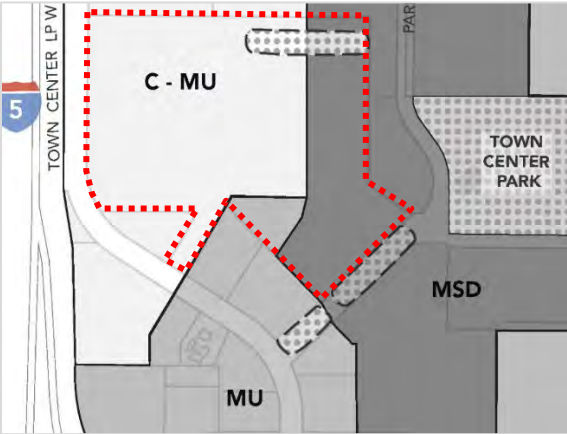
To summarize the legal standard articulated above, the Development Review Board should answer the following questions:

- 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.

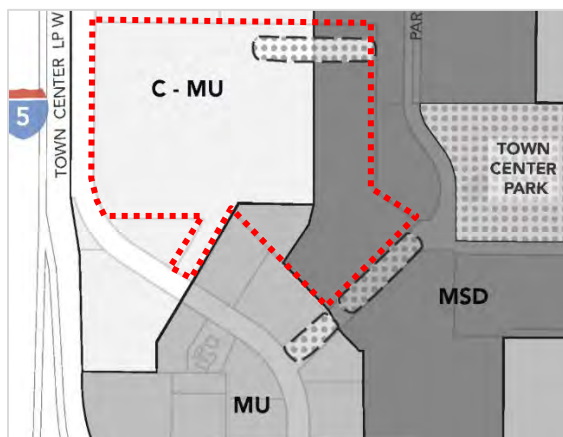
Request: ADMN23-0029 Class 1 Review Request

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.



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:

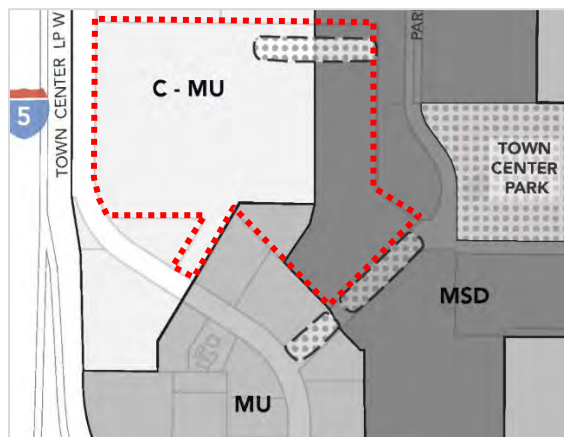
The City received your application on October 30, 2023, for Class 1 Review to confirm the status of the existing use and structure at 29400 SW Town Center Loop West. On November 28, 2023, City staff contacted you by email providing options for proceeding with your application and requesting that you 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 \(pauly@ci.wilsonville.or.us\)](mailto:Daniel.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](https://www.facebook.com/CityofWilsonville)



29799 SW Town Center Loop East, Wilsonville, OR 97070

Disclosure Notice: Messages to and from this e-mail address may be subject to the Oregon Public Records Law.

BEFORE THE PLANNING DIRECTOR FOR THE CITY OF WILSONVILLE

In the Matter of an application to confirm the legality of a nonconforming use at 29400 Town Center Loop W, Wilsonville, OR 97070

APPLICANT’S NARRATIVE AND EXHIBITS DEMONSTRATING COMPLIANCE WITH THE RELEVANT APPROVAL CRITERIA

SUBJECT PROPERTY: 29400 Town Center Loop W,
Wilsonville, OR 97070
TL ID: 31W14D 00220

APPLICANT: Lars Andersen & Associates, Inc.
4694 W. Jacquelyn Ave.,
Fresno, CA 93722
Attn: Dan Zoldak
Phone: 559-276-0850
E-Mail: dzoldak@larsandersen.com

APPLICANT REPRESENTATIVE: J. Kenneth Katzaroff
Keenan Ordon-Bakalian
Schwabe, Williamson & Wyatt, P.C.
1211 SW 5th Avenue, Suite 1900
Portland, Oregon 97204
Phone: 206-405-1985
E-Mail: KKatzaroff@SCHWABE.com
E-Mail: Kordon-bakalian@schwabe.com

PROPERTY OWNER: Lumberjack LP
600 E Brokaw Rd.
San Jose, CA 95112

REQUEST: A Class I review and determination verifying the status of an existing non-conforming office, warehouse, manufacturing, service and retail use.

I. APPLICABLE STANDARDS AND CRITERIA

The applicant has identified the following code provisions that the City of Wilsonville (hereinafter, the “City”) may apply to its review of this application:

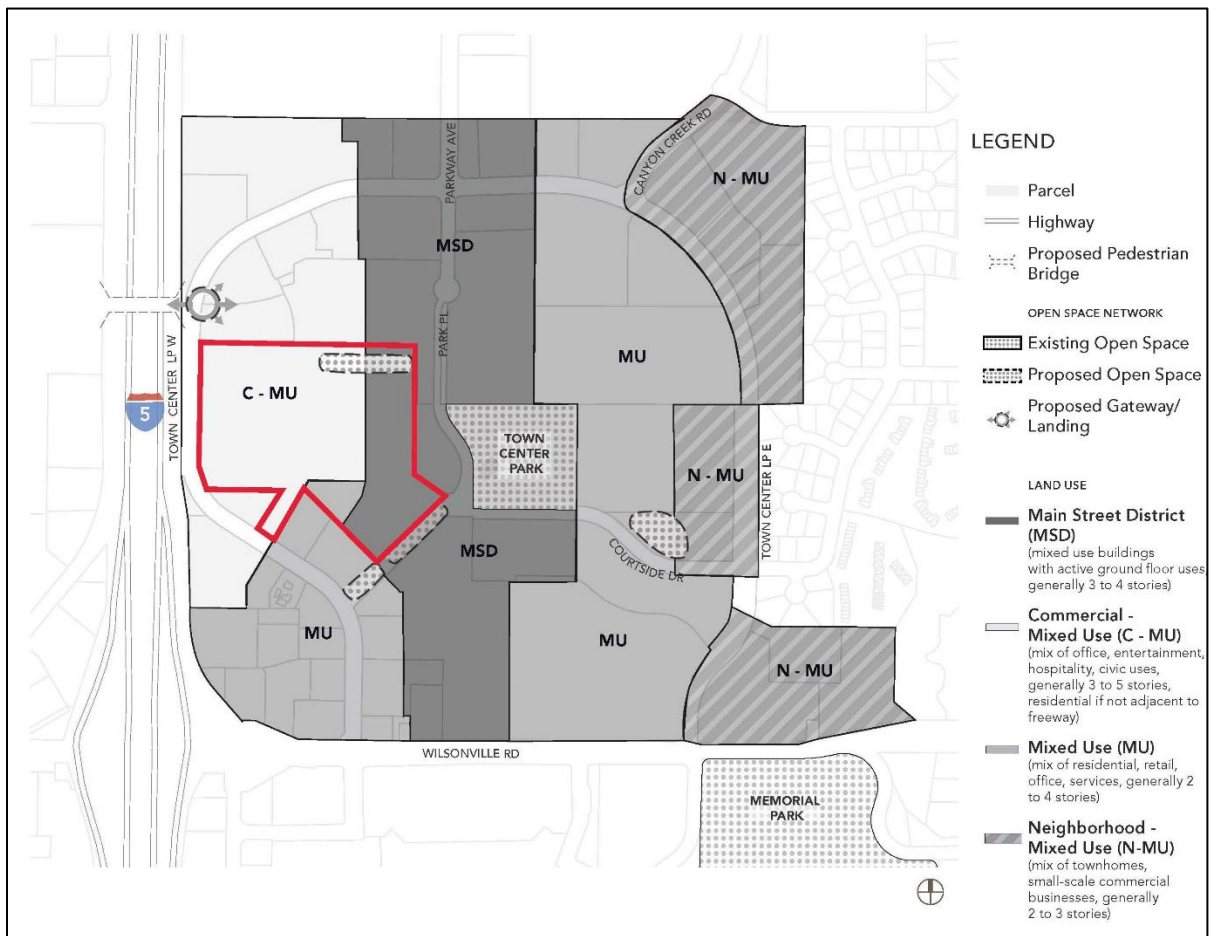
Title 4 – the Wilsonville Development Code (“WDC”)

Section 4.000-4.035 – Administration
Section 4.001 – Definitions

Section 4.030 – Jurisdiction and Powers of Planning Director and Community Development Director
Section 4.132 – Town Center Zone
Section 4.189-4.192 – Non-Conforming Uses, Structures, Site Conditions, and Lots

II. INTRODUCTION AND BACKGROUND

Lars Andersen & Associates, Inc. (the “**applicant**”) is seeking a Class I review to confirm the status of the existing non-conforming office, warehouse, manufacturing, service and retail use (the “**subject use**”) at 29400 SW Town Center Loop W, Wilsonville, OR 97070¹ (the “**property**”). The 15.01-acre property is located within the City of Wilsonville (the “**City**”) and is zoned Planned Development Commercial – Town Center (“**TC**”). The property is designated with three Town Center Sub-Districts – Commercial-Mixed Use (“**C-MU**”), Mixed Use (“**MU**”), and Main Street District (“**MSD**”).



¹ TL 31W14D 00220.

As pictured below, the property is located in a relatively flat, developed commercial area within the City's Town Center District. There is an existing structure at the property that was operated as a Fry's Electronics ("Fry's") from 1991 to 2021.



In 1991 the City approved a Modification to the Stage I Wilsonville Town Center Master Plan and Stage II Phase II Site Development Plan (the "**1991 Decision**") to allow the development of a 159,400 square foot ("**SF**") retail, office, warehouse, manufacturing, and service store at the property. *See attached, Exhibit A.* The property was zoned Planned Development Commercial ("**PDC**") and designated commercial in the City's Comprehensive Plan when the City approved the subject use of the property. *Id.*, at 14. Subsequent to the City's land use approval, Fry's began operating a retail, office, warehouse, manufacturing, and service store at the property.

Fry's was a large electronics warehouse store that retailed software, consumer electronics, household appliances, cosmetics, tools, toys, accessories, magazines, technical books, snack foods, electronic components, and computer hardware. Fry's also had in-store computer repair and custom computer building services, and offered technical support to customers. The Fry's model was unique for electronics retail outlets of the time, in that Fry's was an electronics warehouse that offered customers a variety of retail, manufacturing and service offerings that exceeded the offerings of Fry's competitors. Because Fry's stocked a wide range of electronics products, they were popular with electronics and computer hobbyists, as well as professionals.



Image Credit: Alamy, <https://www.alamy.com/las-vegas-sep-7-2020-interior-view-of-the-frys-electronics-image375519870.html?imageid=595679EA-E5D6-4FAA-8BDE-4437A0B5DF19&p=283543&pn=1&searchId=9fd62e6ba47e6193d28e3b42e316bc4e&searchtype=0> (last accessed Oct. 20, 2023).



Image Credit: PC Magazine, <https://www.pcmag.com/opinions/to-all-the-frys-i-loved-before-an-elegy-for-the-best-electronics-chain> (last accessed Oct. 20, 2023).

In February 2021, Fry's suddenly went out of business, closing all 31 stores across the United States including the Wilsonville Fry's that was operating at the property.² Since the closure of the Fry's in 2021, the owner of the property has been actively marketing the site and making other plans for its use. The owner has also continued to make utility payments for city services. *See attached, Exhibit B.*

The Home Depot, Inc. ("HD") 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. *See attached, Exhibit C.* HD operates home improvement warehouse stores that retail tools, construction products, appliances, and services, including transportation and equipment rentals. HD's Home Services division also offers technical expertise for home improvement projects, and both onsite and offsite install, repair, and

² *Fry's Electronics suddenly went out of business*, CNN, <https://www.cnn.com/2021/02/24/business/frys-electronics-closure/index.html> (last accessed Oct. 9, 2023); *Fry's Electronics closes, leaving Wilsonville store barren*, Portland Tribune, https://www.portlandtribune.com/news/frys-electronics-closes-leaving-wilsonville-store-barren/article_cde50d46-de09-5ce3-a647-9f54ce7d4bb1.html (last accessed Oct. 9, 2023).

remodel services. Although the vast majority of HD customers are private individuals, contractors and other professionals account for close to half of HD’s annual sales.³

Fry’s and HD stores are retail, office, warehouse, manufacturing, and service uses allowed at the subject property pursuant to the 1991 Decision and the property’s historic PDC zoning. Both Fry’s and HD stores are [were] organized warehouse-style, stock a large range of supplies available for retail, cater to retail consumers and professionals, and offer onsite services and technical support. As both Fry’s and HD are warehouse retailers that fall within the subject use approved in the 1991 Decision, the applicant is seeking a non-conforming use determination to verify the status of the property’s existing non-conforming use rights.

The applicant requests that the Planning Director process this application through the City’s Class I review procedures because there no uncertainty as to the history of the property due to the existence of the 1991 Decision. WDC 4.030.01(A)(7); *see also* Exhibit A.

III. APPROVAL CRITERIA

WDC 4.189.01 – Continuation of Use

A. A non-conforming use may be continued subject to the requirements of this Section.

RESPONSE: In compliance with WDC 4.189.03, the lawfully established non-conforming subject use at the property has not been discontinued or abandoned. The ongoing non-conforming use complies with the criteria of WDC 4.189 and is therefore permitted to continue.

WDC 4.189.02 – Change of Use

A. A non-conforming use may not be changed unless the change or replacement is to a use that is determined by the Planning Director to be no less conforming to the regulations for the zone district in which the use is located than the existing use.

RESPONSE: The purpose of this provision is to consider the impacts of potential changes in use for lawfully established non-conforming uses. In this case, the applicant is not proposing to change the established non-conforming use of the property. Rather, the applicant is seeking a non-conforming use determination to confirm the status of the existing non-conforming use of the property. Therefore, this criterion is not applicable.

WDC 4.189.03 – Abandoned Use.

If a non-conforming use is abandoned for a period of 18 consecutive months, the use shall not be re-established without fully complying with the use requirements of the zone. Mere vacancy of a site or building while it is being marketed or other plans for its use are being

³ *Home Depot CEO Says Contractor Spend Remains Strongest Business Line*, PYMNTS, <https://www.pymnts.com/earnings/2023/home-depot-ceo-says-contractor-spend-remains-strongest-business-line/> (last accessed Oct. 25, 2023).

readied, does not constitute abandonment. In order to be considered abandoned, a site must not be receiving City utilities and must not actively be marketed for rent, lease, or sale. These standards concerning abandonment do not in any way affect the City's processes for the abatement of nuisances as delineated in Chapter 6 of the Wilsonville Code.

RESPONSE: The existing non-conforming subject use at the property has not been abandoned. For a non-conforming use to be abandoned, “a site must not be receiving City utilities and must not actively be marketed for rent, lease, or sale.” WDC 4.189.03. Here, the subject property is actively being marketed for rent, lease, or sale, and is currently receiving, and paying for, City utilities. *See Exhibit B.* Therefore, the non-conforming use of the property has not been abandoned. This criterion is met.

WDC 4.190.02 – Non-Conforming Structures

If a non-conforming structure is abandoned, as defined herein, for a period of 18 months, it may not again be used unless brought into conformity with the requirements of this ordinance. Except, however, that an abandoned non-conforming structure may be re-occupied if a Variance is approved per the requirements of Section 4.196.

RESPONSE: The existing structure at the property is not non-conforming per the definition set forth in WDC 4.001.195 because it conforms to the standards for structures within the TC zone. Therefore this criterion is not applicable.

WDC 4.190.05 – Non-Conforming Structures

A non-conforming structure may be expanded or enlarged, provided that the portion of the structure being enlarged meets zoning requirements in terms of setbacks, height, and lot coverage.

RESPONSE: The existing structure at the property is not non-conforming because it meets the setback, height, and lot coverage requirements for the TC zone. The applicant’s plans involve alterations to the Fry’s building and the subsequent operation of a Home Depot at the property. *See attached, Exhibit C.* The proposed project would consist of up to 124,215 SF of building area, previously occupied by Fry’s. The reduction in square footage will result from interior renovations, specifically the removal of the existing mezzanine within the structure. **Exhibit C.** Exterior alterations include changes to the parking lot, including curbs and the approach to the building. The concept plan demonstrates that the applicant’s proposed alterations are not an expansion. Therefore, this criterion is not applicable.

IV. CONCLUSION

For the reasons stated above, the Planning Director can find that all applicable criteria are met and approve the subject application.

Enclosed with this application are the following exhibits:

- A. 1991 Decision
- B. Proof of Utility Payments
- C. Concept Plan

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 of Approval #8 of 90PC15

Action: Approved with conditions

Project Expiration Date:

<u>Property Description:</u> 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 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 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.

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.

Attest:



Judge Emison, Planning Secretary



Chairman, Planning Commission

91PC43

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 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 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 Condition 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, redesignate 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"

NA = NOT APPLICABLE
DRB = DESIGN REVIEW BOARD

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

	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
4. Building Use					
a. Office	sq. ft.	9,117 SF	<input checked="" type="radio"/>	<input type="radio"/>	
b. Warehouse	sq. ft.	39,330 SF	<input checked="" type="radio"/>	<input type="radio"/>	
c. Manufacturing/SERVICE	sq. ft.	17,276 SF	<input checked="" type="radio"/>	<input type="radio"/>	
d. Other/DETAIL	sq. ft.	63,914 SF	<input checked="" type="radio"/>	<input type="radio"/>	
5. Building Specifications					
a. Building Height		35'	<input checked="" type="radio"/>	<input type="radio"/>	44
b. (Sun Exposure Plane)		NA	<input type="radio"/>	<input type="radio"/>	NA.
c. Gross Floor area of Building		NO LIMIT 150,400 SF	<input checked="" type="radio"/>	<input type="radio"/>	
6. Number of Off-Street Parking					
a. Standard 9' X 18'		472 850	<input checked="" type="radio"/>	<input type="radio"/>	48
b. Compact 8 1/2' X 17' (30% 10 allowed)		OPTIONAL NOT SHOWN	<input checked="" type="radio"/>	<input type="radio"/>	
c. Handicapped 12' X 18' (1 to 50 required)		11 16	<input checked="" type="radio"/>	<input type="radio"/>	UBC TABLE 31-A
Total		483 872	<input checked="" type="radio"/>	<input type="radio"/>	46 to 48
d. Truck load berths		2 26	<input checked="" type="radio"/>	<input type="radio"/>	
7. Access/Egress					
a. Direct access to street		- 3	<input type="radio"/>	<input checked="" type="radio"/>	17, 18
b. Access provided by easement		NA	<input type="radio"/>	<input type="radio"/>	NA
c. Rail Access		NA	<input type="radio"/>	<input type="radio"/>	NA.
8. Open Space Slope Protection					
a. Existing vegetation protected		NA	<input type="radio"/>	<input type="radio"/>	NA
b. Slopes over 20% to 30% impervious coverage		NA	<input type="radio"/>	<input type="radio"/>	NA
c. River and stream corridors protected		NA	<input type="radio"/>	<input type="radio"/>	NA
d. Adequate erosion control provided			<input checked="" type="radio"/>	<input type="radio"/>	EXHIBIT G4
e. Within greenway		NA	<input type="radio"/>	<input type="radio"/>	NA

	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
C. <u>Other Planning Considerations</u>					
1. Outside storage area provided/ screening	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
2. Adequate screenage of mechanical equipment	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
3. Safety/crime prevention					
a. Location of addressing	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u> ↓ ↓ ↓
b. Natural surveillance	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	
c. Type of exterior lighting	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	

D. <u>Bike Paths, Pedestrian Trails, & Equestrian Trails</u>					
1. Pathway Standards					
a. Pathways are provided consistent with pathway master plan and design standards (Section 4.168 W.C.)	<u>REQ'd</u>	<u>HOT SHOW</u>	<input type="radio"/>	<input checked="" type="radio"/>	<u>201031</u>

E. <u>Previous Approval actions and applicable conditions or approvals</u>					
1. City Council	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>DRB 55</u>
2. DRB	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>90215 Agre 50</u>
3. P.C.	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>_____</u>
4. Other	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>_____</u>
Inter-agency review comments					
Yes	<u>No</u>		See Exhibit No.		<u>_____</u>
Inter-agency review comments (Written Only)					
City Engineer	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>D</u>
Parks & Recreat.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>
Traffic Safety	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>
Building Dept.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>E</u>
Tualatin Fire Dept.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>
Sheriff	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>_____</u>

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	<u>22.79 acres</u>	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)
<u>Phase III</u>	<u>22.08 acres (Undeveloped property)</u>
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 separately 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 development.

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 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, reclassified 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 orients 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 rooms, 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
<u>Storage</u>	<u>$39,336 / 4000 = 10$ spaces</u>

Minimum 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.

91PC43

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 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 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

91PC43

Item 9.

City of

WILSONVILLE
in OREGON



30000 SW Town Center
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

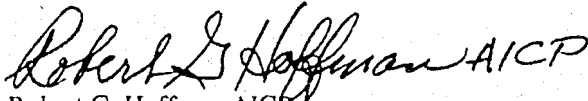
4. Type of Permitted Use:
Commercial (Planned Development)

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



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
Manager of Current Planning

Attachment: Decision and Conditions of Approval
98PC43
91DR29

RGH:sh

Bob

Item 9.

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.

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 Portland. Many who watch insurance activities nationally agree. The change reflects nilar strategies by nationwide carriers. tna wants to consolidate offices, re ce overhead and gain efficiencies in : increasingly competitive health insurance 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 icago Corp., a Chicago-based invest- ent bank that tracks insurance compa- nies. "Insurance companies, especially the big guys, have a big expense burden. They tend to be big and clumsy."

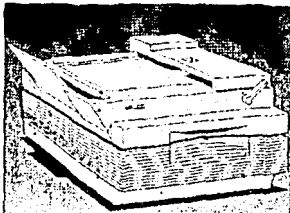
In Aetna's case, said Poll, the national carrier's life and health business has been its strongest asset. Hartford, Conn.-based Aetna is the third-largest U.S.-based property and casualty insurer, according to Value Line's December 1993 investment survey. Aetna, a public company traded on the New York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

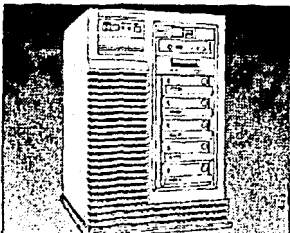
Aetna handles about 4.9 million Medicare claims representing some \$250 million annually out of the Portland office.

comes to working, DI onnected!



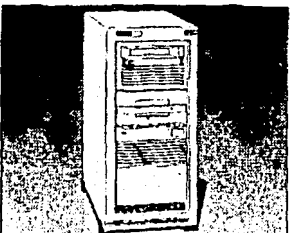
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Blaise
Pam
Sally

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.



Trust JBL&K

File
9.1pc 43

Item 9.

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 Kisheloff / Wayne Lorenson
SUBJECT: Project Thunder

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

COMMENTS: _____



City of
WILSONVILLE
in OREGON

September 29, 1993

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

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

91PC 43

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



City of
WILSONVILLE
 in OREGON

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

Info —
 Pam ✓
 Blaise ✓
 Sally ✓
 file ✓ 910643

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:

Mr. Wayne Kittelson
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 2

"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

Mr. Wayne Kittelso...
 Re: Incredible Universe Traffic Issues
 December 4, 1992 - Page 4

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

Mr. Wayne Kittelson
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 5

- 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."

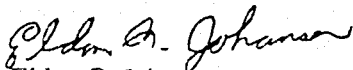
Your letter very eloquently describes your position with regard to the impact of the Incredible Universe on traffic. I have come to a somewhat different conclusion from reading the applicable reports. Although I would be very happy to meet with you to discuss this issue, it appears that this may be one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

Mr. Wayne Kittels
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 6

Item 9.

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 ✓
 Blaise ✓
 Sally ✓

Project file
 9/1/92 4/3

OCT 29 1992

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.

Mr. Wayne Sorensen
October 27, 1992
Page 2

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 hour 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.

Mr. Wayne Sorensen
October 27, 1992
Page 3

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

Mr. Wayne Sorensen
October 27, 1992
Page 4

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

Mr. Wayne Sorensen
October 27, 1992
Page 5

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, 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

LETTER OF TRANSMISSION

Item 9.

(503) 682-1011

TO _____

DATE 10/3/92	JOB NO.
ATTENTION Arlene Lohle	
RE Trane, Inc. Universal	
Copy of Approval Decision, and attachment	
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 _____

Wynne



City of
WILSONVILLE
in OREGON

3000 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.

Mr. Rich Hollander & Ms. Kim Beach
May 28, 1992

Page 2

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.

Mr. Rich Hollander & Ms. Kim Beach
May 28, 1992

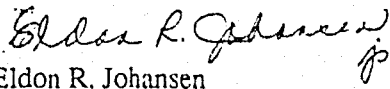
Page 3

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.

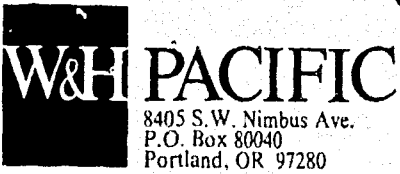
As you no doubt realize, I did not begin work in Wilsonville until April 6, 1992, after this project was well under way. My concern is that if we do not keep our attentions focused on resolving all outstanding issues, we will reach a point where the building will have been completed and you will have 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
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



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

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

- Planning
- Surveying
- Engineering
- Landscape Architecture
- Environmental Services

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
- X 682-7025

These Are Transmitted:

- For Your Info/File
- As Requested
- For Review And Comment

Copied To:

KUM BEACH w/o ENCL
FAK 223-0200

Copies	Description
<u>1</u>	<u>ADD'L Storm CACCS.</u>

margo 5/19
Orig to Elson
Thunder file
Copy to Wayne myself
Eden

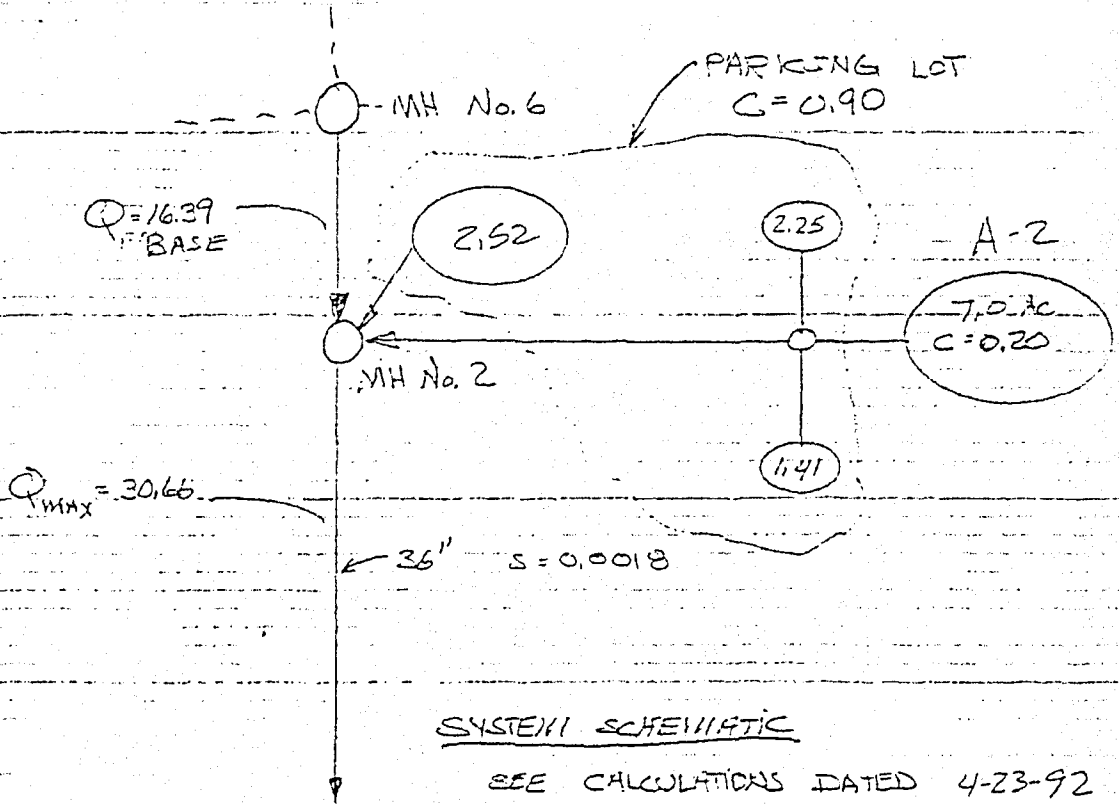
Comments

ELSON,
Jimi LEHMANET HAS PREPARED ADD'L STORM RUNOFF
CACCS 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

Jack Martin

DETENTION REQUIREMENTS FOR A-2 IN MN 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 500 FEET OVERLAND TRAVEL FROM A-2
 1st 200 FEET = 20 MINUTES
 REMAINING 300' = 4 MINUTES. (SLOPE = 1%)
 (IN CHANNEL)
 $t_c = 24$ MINUTES

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
- Engineering
- Surveying
- Landscape Architecture
- Environmental Services

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:

KIM BEACH W/ ENCL
FAX 223-0200

Copies	Description
1	ADD'L Storm Cages.

Comments

ELDON,

Jim LEMKERT HAS PREPARED ADD'L STORM RUNOFF
CAVES 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 PH III OR EITHER PROPERTY NORTH
OF TANDY.

Eric Hansen

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

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

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

13.57 CFS.

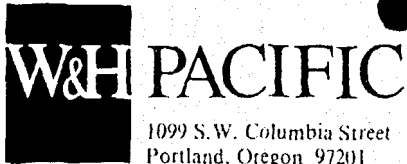
$$Q_{ALLOWABLE \text{ IN PIPE}} = Q_{MAX} - Q_{BASE} = 30,66 - 16,39$$

$$Q_{ALLOWABLE} = \underline{14,27 \text{ CFS.}}$$

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

NO DETENTION IS REQUIRED

NOTE! THIS CALCULATION IS FOR UNDEVELOPED CONDITIONS ONLY.



1099 S.W. Columbia Street
Portland, Oregon 97201

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

• Planning • Surveying
• Engineering • Landscape Architecture

• Environmental Services

Item 9.

To: William L. Parks
DIVISION OF STATE LANDS
1100 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:

- Attached
- Facsimile
- Number Of Pages Including Cover
-

These Are Transmitted:

- For Your Info/File
- As Requested
- For Review And Comment

Copied To: _____

Copies	Description
1	VICINITY MAP 8 1/2 x 11
1	SITE MAP 11 x 17
<p>X NO Jurisdiction 10 YR 3/4 A/C Hydrology - Ann Detail by Flowing</p>	

Comments

Bill,

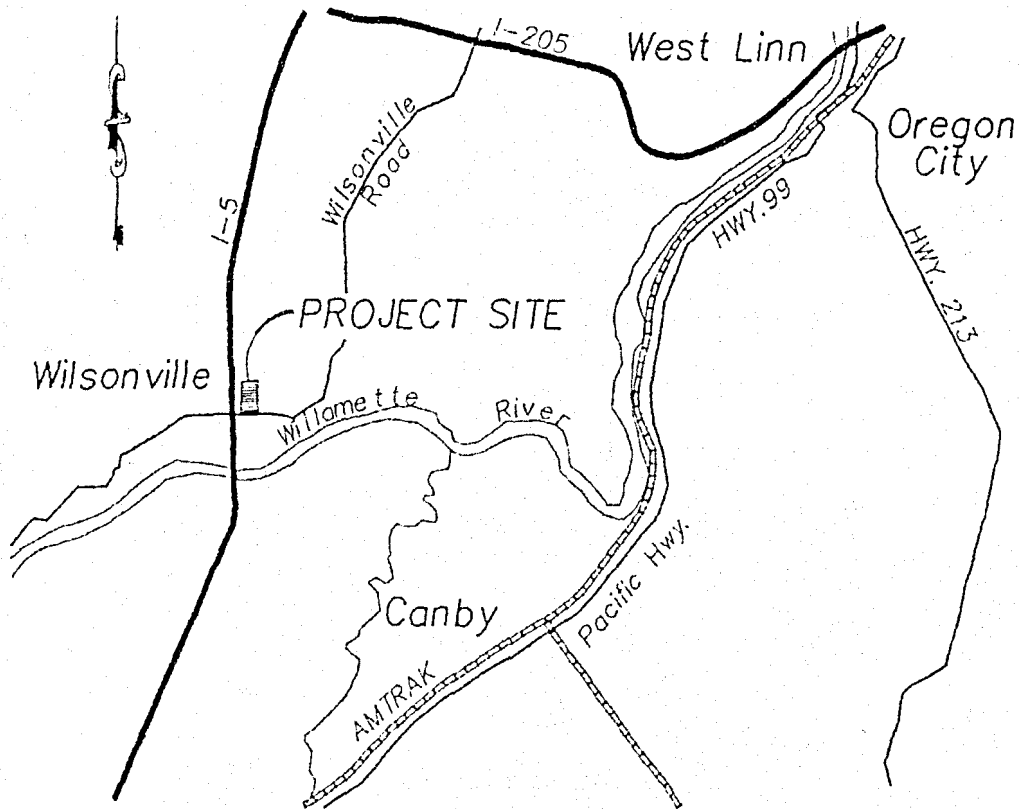
Please make a determination whether or not the existing detention pond is a "wetland" as defined by DSL.

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.



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 building 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,

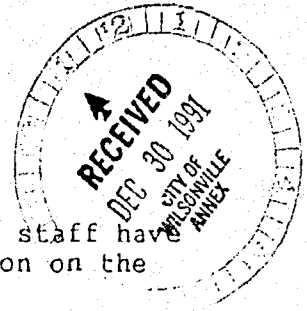
A handwritten signature in cursive script that reads "Kim Beach".

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

Item 9.



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 @ W. Wilsonville TR left @ Centerloop R west 1/4 mile
T 35 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 of Site Plan Map
- City of Wilsonville Planning Department
- _____, Corps of Engineers
- DSL file copy
- Reading file copy - TO LORNA no Turs.

City of
WILSONVILLE
 in OREGON

30000 SW Town Center Loop E • ~~PO Box 226~~
 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.

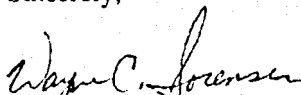
Enclosed is a copy of my notes which generally outline the basic issues we discussed at the December 23rd meeting. I am also enclosing material to provide additional insight into our planning process for the Town Center:

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
 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

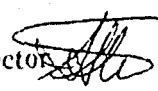
good example of something coming to Council's attention so late in the planning process that you have not had any meaningful input and yet now the City will be asked to make a substantial financial commitment. If the land is to be dedicated the developers justifiably want to know that the property will 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 onsite 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.

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 Wilsonville'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 visibility 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 Park

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:

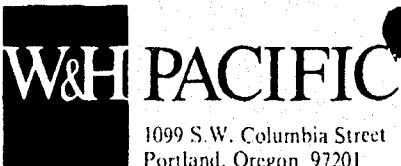
November - December, 1991	Surge basin, stilling basin and water quality swale design
January - February, 1992	Complete design
March	Construction bidding
April	Award construction contract
May	Begin construction
September	Complete construction

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



1099 S.W. Columbia Street
Portland, Oregon 97201

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

• Planning • Surveying
• Engineering • 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:

Attached

For Your Info/File

KIM BEACH

Facsimile

As Requested

LOGAN CRAVEN

Number Of Pages Including Cover

For Review And Comment

Copies	Description
10	FOLDED FULL SIZE REVERSED MASTER PLAN (SHT. #1)
1	PMT (8 1/2" x 11") OF ABOVE
1	ORIGINAL (8 1/2" x 11"): ALTERNATIVE OPEN SPACE CONCEPT.

Comments

Blaise:

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

s. again for all your help !!!

1 Jones

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:

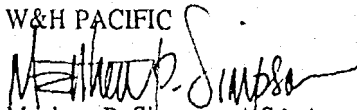
Thank you again for taking time this morning to discuss Project Thunder. As per our discussion, the following items were discussed and agreed upon:

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
210
39,330

SERVICE
4700
900
1020
640
1932
5016
2040
1008
17,270

RETAIL
47,874
2,240
5,880
7,920
63,914

RENT
572
1024
4500
6096

OFFICE
1856
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 (1) (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 maxims, *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 maxims 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

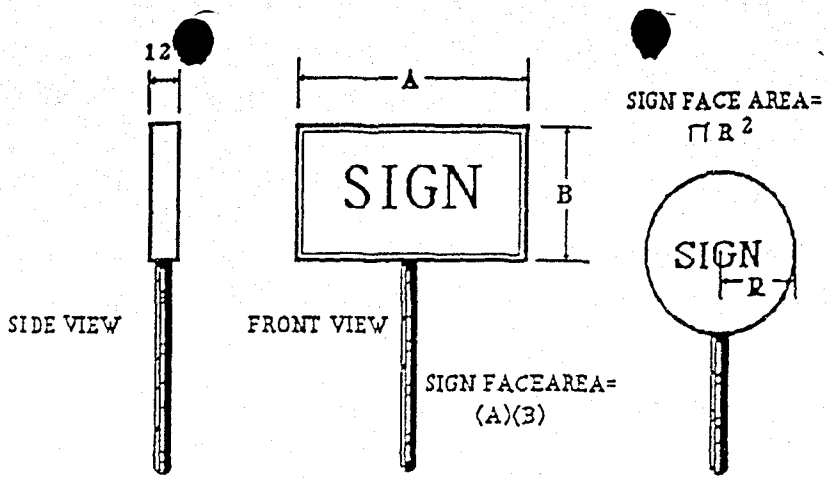
coordinated signage program which is both functional and aesthetic and to provide a method of administration through a Design Review Board for Town Center development. Clearly, this is in keeping with the multiple and often interrelated purposes set forth in 4.440 of the City's Code for Design Review 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 Citv v. Hartke, 240 Or 35, 400 Ord. 255.(1965); Naegele Outdoor Advertising v. City of Wavnesville, 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.

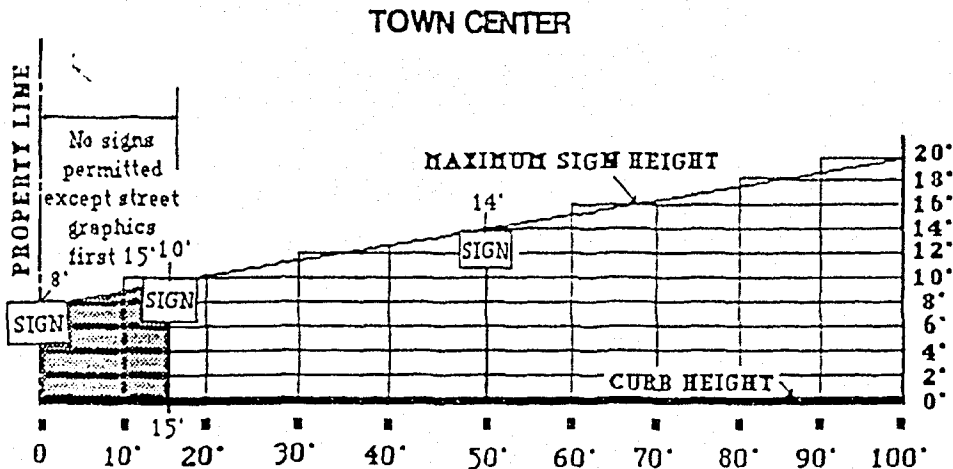
On the other hand, such necessity has not risen to the same level of need to regulate the use of homes as signs. The business entrepreneurs who are willing to advertise their commercial product by virtue of using gross advertising structures in commercial areas have not historically turned their private 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 (1)(a), bulletin boards, 4.151 (1)(b); real estate signs advertising individual lots, 4.151 (1)(c); subdivision signage, 4.151 (1)(d) and home occupation signage, 4.151 (1)(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



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, whichever is less.

MAXIMUM SIGN HEIGHT

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

FIG. 2

CHAPTER 4, ZONING CODE
 TOWN CENTER SIGNAGE CODE

City of Wilsonville

COMMUNITY DEVELOPMENT DEPARTMENT

Memorandum

November 7, 1991

TO: Blaise Edmonds, Planning
FROM: *MB* 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.

/sf

EXHIBIT E

DEFECTS IN

ORIGINAL

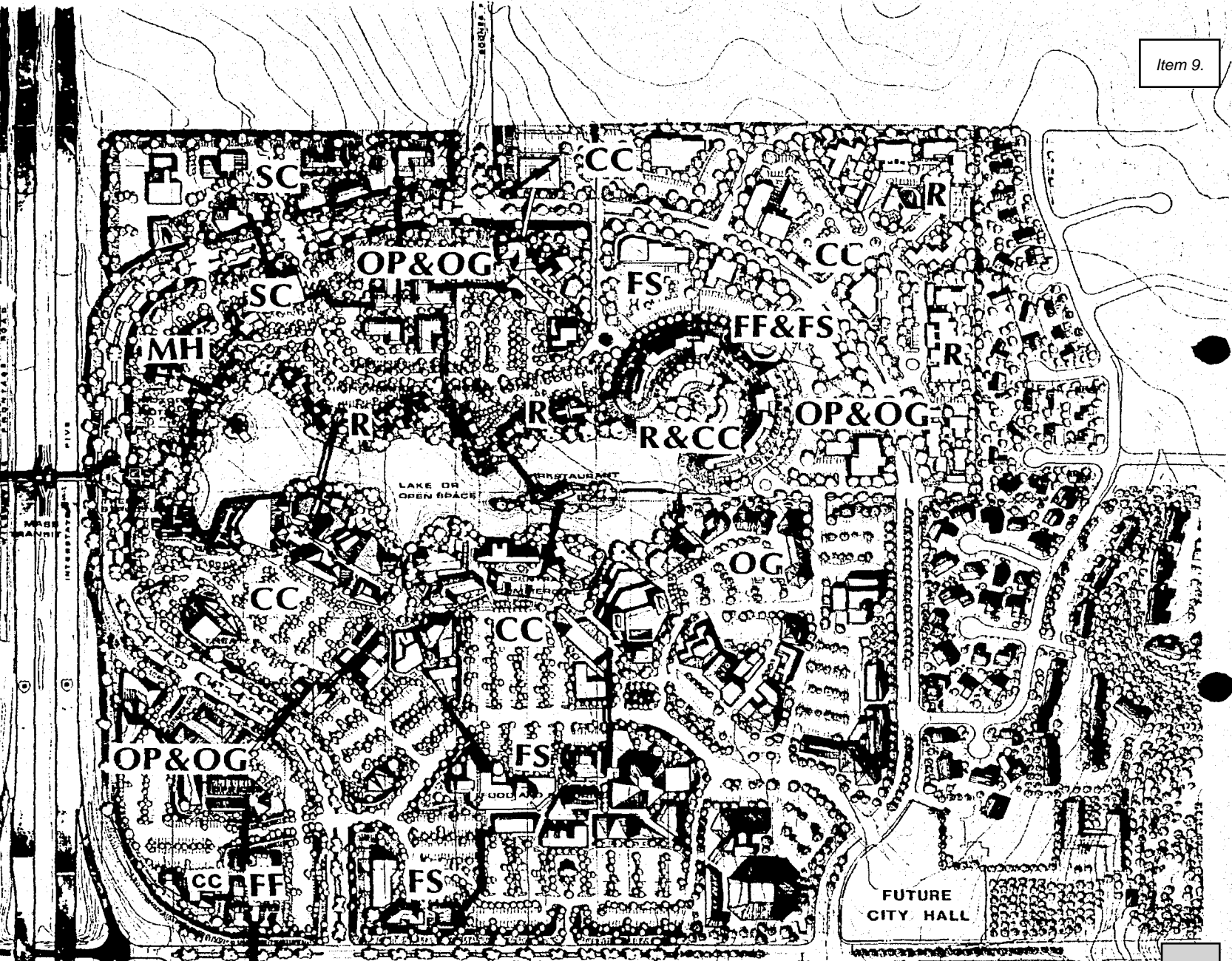
DOCUMENT

LEGEND

Item 9.

- 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





KITTELSON & ASSOCIATES, INC.
TRANSPORTATION PLANNING/TRAFFIC ENGINEERING

610 SW ALDER, SUITE 700 • PORTLAND, OREGON 97205 • (503) 228-5230 • FAX (503) 273-8169

Item 9.

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

Ms. Kim Beach
October 16, 1991
Page 2

- 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.

Ms. Kim Beach
 October 16, 1991
 Page 3

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.

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

Ms. Kim Beach
 October 16, 1991
 Page 4

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.

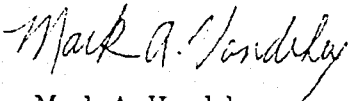
Based on these results, and given that background traffic volumes on Wilsonville Road are likely to continue to increase somewhat, it is recommended that a traffic signal be installed at the Wilsonville Road/Town Center Loop West intersection coinciding with the completion of the current Phase II development 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.

Ms. Kim Beach
 October 16, 1991
 Page 5

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

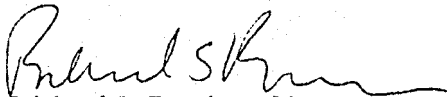
On behalf of the Owner, Capital Realty Corp., we request a reconsideration of Condition No. 8 of Planning Commission Resolution No. 90PC15 to provide the opportunity for Capital Realty to work with the City to accomplish the following:

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:\BCRSB\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

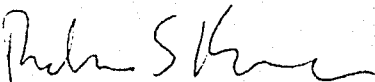
EXHIBIT
6-90

Wilsonville Town Center
Stage I Re-submittal
October 18, 1991

Page 2

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

Alternative Open Space Concept

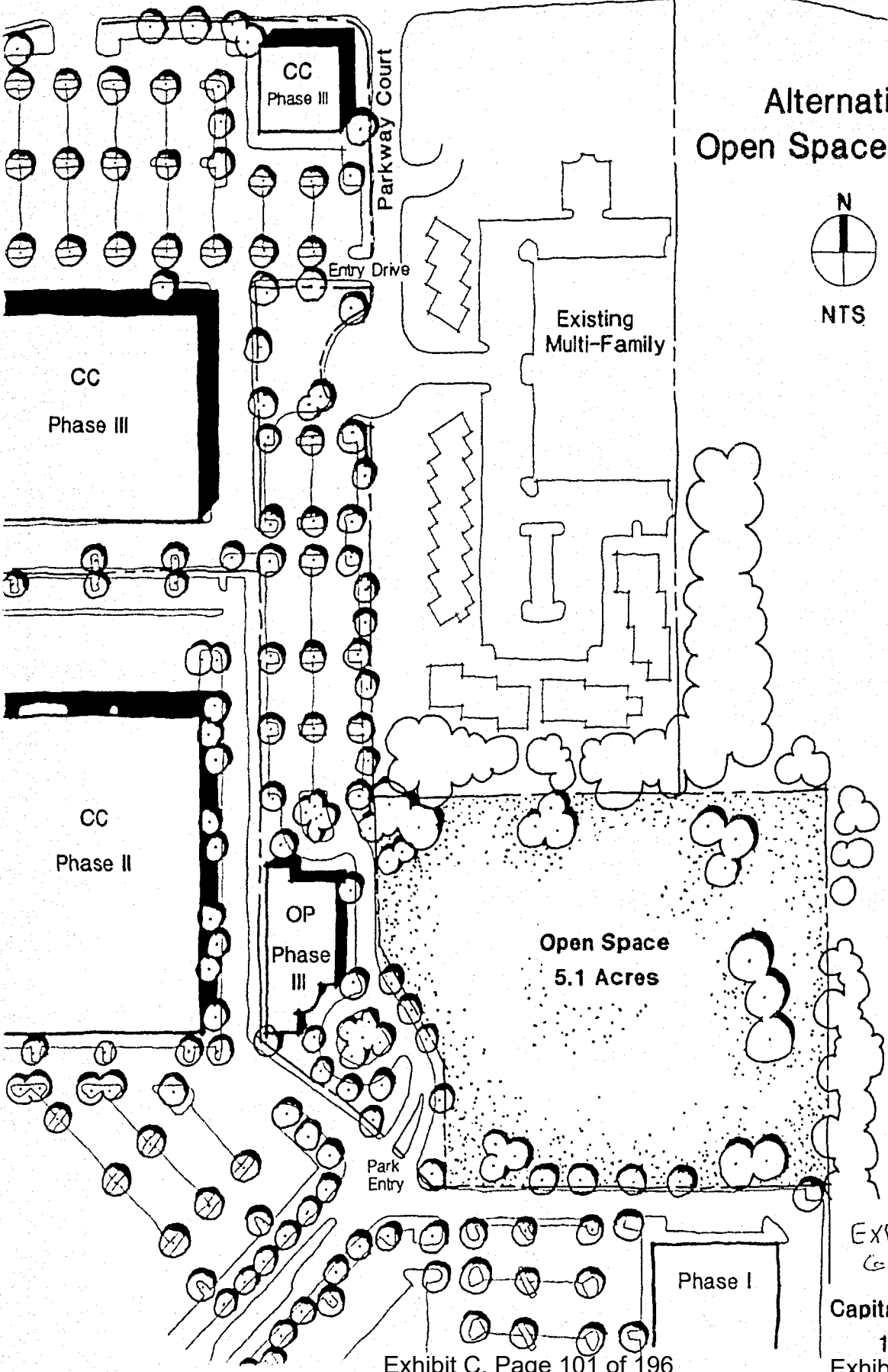
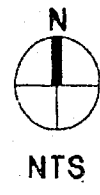


EXHIBIT
G-11

Capital Realty Corp.

11/26/9

Exhibit A

867

AS REVISED
1/7/92

DesignForum

ARCHITECTS

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 accessory 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.

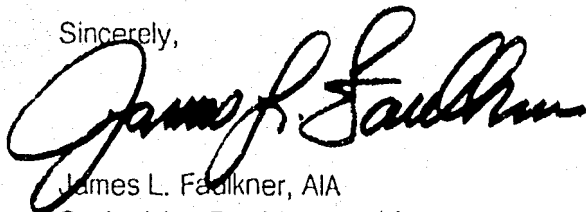
As per phone conversations with Blaise Edmonds, Associate Planner, the materials and colors sample board will be presented at the evening of the actual meeting. It will not be forgotten. We will provide a sample board of wall elements, as requested, as soon as we receive material samples from the manufacturers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

DesignForum

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.

DesignForum

ARCHITECTS

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.

DesignForum

ARCHITECTS

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

4R

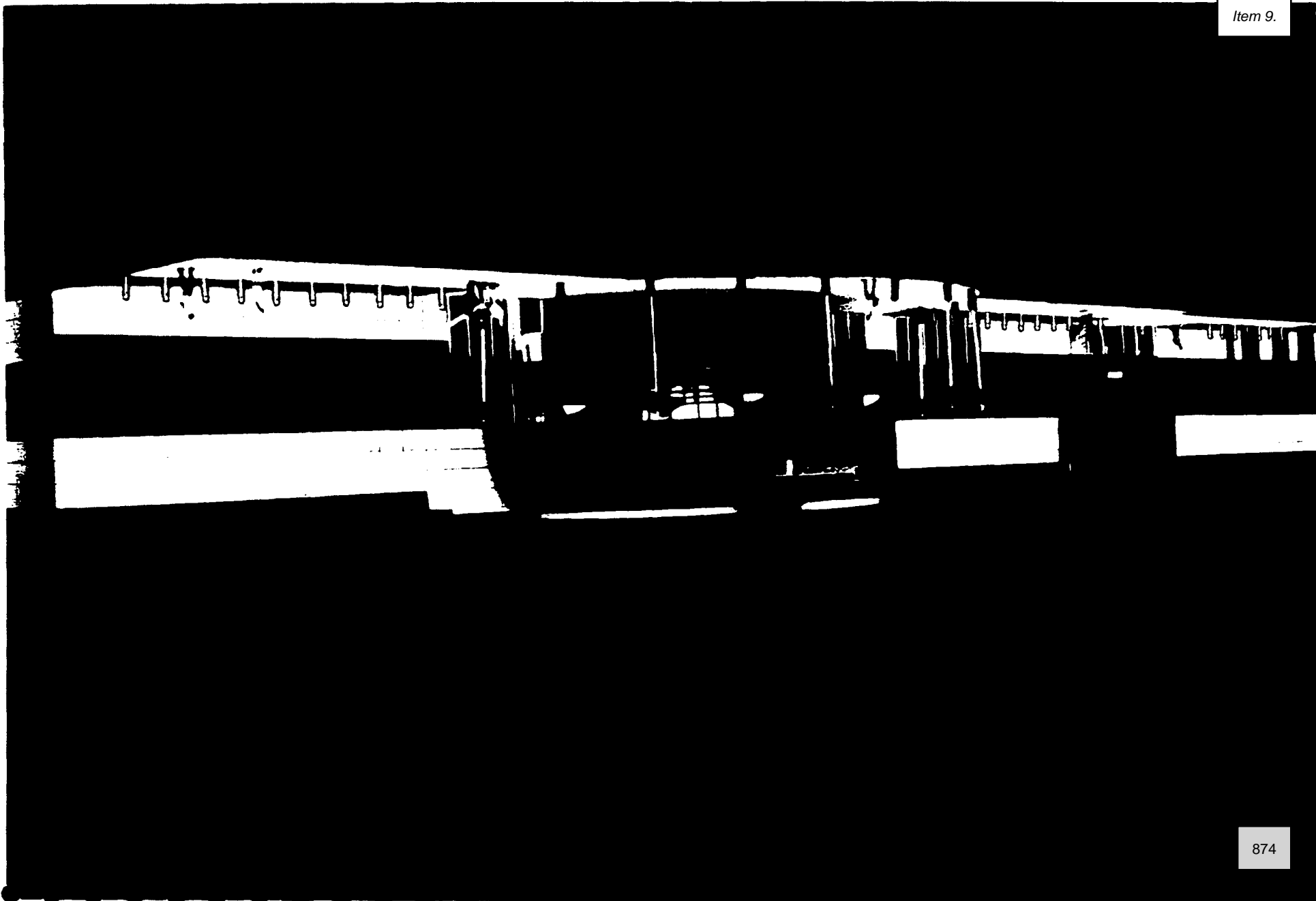
We request the consideration of the Design Review Board for a deviation from the Phase I, Wilsonville Town Center Signage program, as follows:

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

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

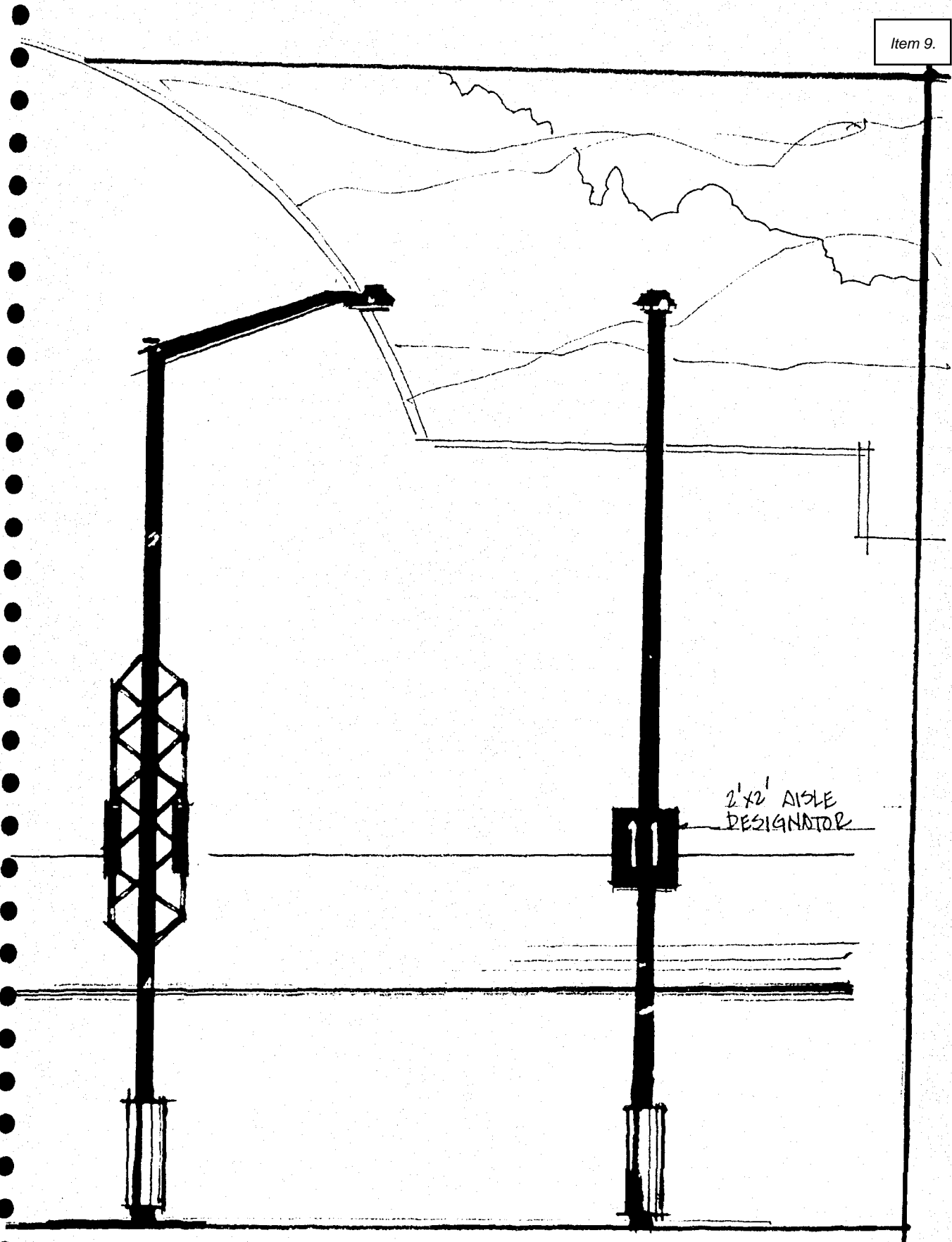
We request this deviation from the approved program for the purpose of changing the method of construction for the 3 fascia signs (aggregate area approximate 81 SF) to be consistent with our design idiom. We feel our approach of a fascia panel type sign, back lit, cutout individual letters, appearing 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.

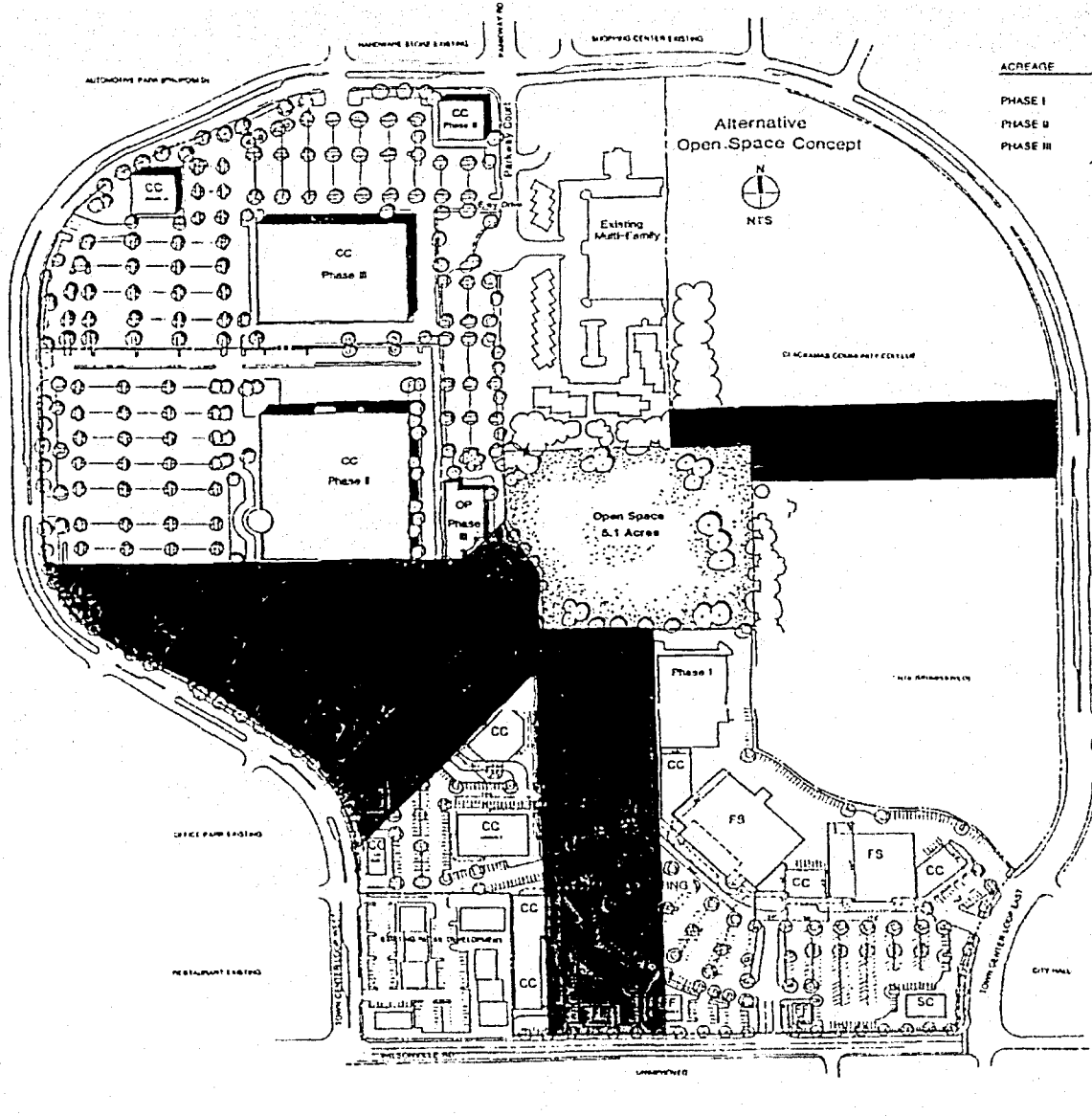
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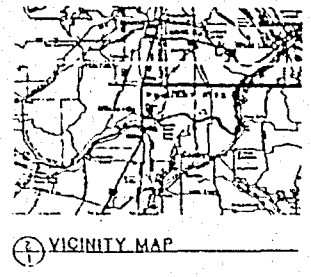
Item 9.







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



NOTES

1. THE SITE IS LOCATED AT THE INTERSECTION OF THE 15TH AVENUE AND 15TH STREET, WILSONVILLE, OREGON.

2. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE WILSONVILLE TOWN CENTER COMPREHENSIVE ZONING ORDINANCE.

3. THE DEVELOPMENT WILL PROVIDE A MIXED-USE COMMUNITY CENTER WITH OFFICE, RETAIL, AND RESIDENTIAL COMPONENTS.

4. THE PROPOSED DEVELOPMENT WILL BE PHASED INTO THREE PHASES: PHASE I, PHASE II, AND PHASE III.

5. THE PROPOSED DEVELOPMENT WILL PROVIDE 1,500 CAR SPACES AND 500 BICYCLE SPACES.

6. THE PROPOSED DEVELOPMENT WILL PROVIDE 100,000 SQUARE FEET OF OFFICE SPACE, 50,000 SQUARE FEET OF RETAIL SPACE, AND 100 UNITS OF RESIDENTIAL SPACE.

7. THE PROPOSED DEVELOPMENT WILL PROVIDE 5.1 ACRES OF OPEN SPACE.

8. THE PROPOSED DEVELOPMENT WILL PROVIDE 100,000 GALLONS OF WATER STORAGE CAPACITY.

9. THE PROPOSED DEVELOPMENT WILL PROVIDE 100,000 GALLONS OF WASTEWATER TREATMENT CAPACITY.

10. THE PROPOSED DEVELOPMENT WILL PROVIDE 100,000 GALLONS OF GAS STORAGE CAPACITY.

11. THE PROPOSED DEVELOPMENT WILL PROVIDE 100,000 GALLONS OF OIL STORAGE CAPACITY.

12. THE PROPOSED DEVELOPMENT WILL PROVIDE 100,000 GALLONS OF FUEL OIL STORAGE CAPACITY.

13. THE PROPOSED DEVELOPMENT WILL PROVIDE 100,000 GALLONS OF DIESEL OIL STORAGE CAPACITY.

14. THE PROPOSED DEVELOPMENT WILL PROVIDE 100,000 GALLONS OF LUBRICATING OIL STORAGE CAPACITY.

15. THE PROPOSED DEVELOPMENT WILL PROVIDE 100,000 GALLONS OF ANTIFREEZE STORAGE CAPACITY.

16. THE PROPOSED DEVELOPMENT WILL PROVIDE 100,000 GALLONS OF COOLANT STORAGE CAPACITY.

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SITE MASTER PLAN: PHASE I, II, & III
VIEW CORRIDOR CONCEPT

1-6-92

JKS
JKS Architects PC
 625 SW 2nd Street, Suite 200 • Portland, Oregon 97204
 503.277.1000 • FAX 503.277.1001

WILSONVILLE TOWN CENTER
 WILSONVILLE, OREGON

DATE	1-6-92
BY	JKS
CHECKED	JKS
SCALE	AS SHOWN
PROJECT NO.	92-001
SHEET NO.	1

LETTER OF TRANSMITTAL

From: William F. Bergman, AIA To: Mr. Blaise Edmonds
Design Forum Associate Planner
3484 Far Hills Avenue City of Wilsonville
Dayton, OH 45429 8445 S.W. Elligsen Road
Wilsonville, OR 97070

We are sending you: Copy of letter Photography Keylines
 Prints Estimates Samples Specifications Layouts
 Plans Shop Drawings Comps Prototypes

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

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

Remarks: _____

Signed: William F. Bergman Date: 10/28/91
 William F. Bergman, AIA
 Project Architect

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.

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.

*Blair -
I understand
W&H says 150 cfs
for Town Center to go into
48" culvert - is there
more from other properties -
if so how does that affect
park drainage - if you
know & if not I'd be probably
need to make sure all
info is available - before
abandoning on site retention -
could be a plus as a water
feature for Town Center
Mike,
cc. Steve Stamer*

PLEASE MAIL
TO
LESLIE
DO NOT
WAYNE
SAID THAT
YOU HAVE
HLS
ADMITTED.

MEMORANDUM

TO: Development Review Team

DATE:

FROM: Blaise Edmonds, Associate Planner, City

B

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City of Wilsonville

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

DATE: October 18, 1991

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Wilsonville Town Center



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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.

Creative Solutions ... Superior Service

WH PACIFIC

1099 S.W. Columbia Street
Portland, Oregon 97201

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

• Planning • Surveying
• Engineering • Landscape Architecture

• Environmental Services

To: Blaise Edmunds Date: 10/16/91
Pam Edmunds Project Number: 407-0301
City of Wilsonville, Annex Project Name: PROJECT THUNDER
30000 SW TOWN CENTER LOOP EAST Regarding:
Wilsonville, OR, 97070

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 ea	Minutes of 10/14/91 Meeting

Comments

Blaise & Pam

We'll see you 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

Tan Stines

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.

October 15, 1991
Page 2

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 submittal 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.



1099 S.W. Columbia Street
Portland, Oregon 97201

Creative Solutions ... Superior Service

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

- Planning
- Engineering

- Surveying
- Landscape Architecture

- Environmental Services

FAXED
10/17/91

Item 9.

To: Blaise Edmunds Date: 10/16/91
Pam Emmons Project Number: 467-0301
City of Wilsonville, Annex Project Name: PROJECT THUNDER
30000 SW TOWN CENTER LOOP EXT. Regarding:
WILSONVILLE, OR. 97070

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

We Are Sending: Attached Facsimile 682-7025
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1es.	Minutes of 10/14/91 Meeting

Comments

Blaise & Pam

We'll see you 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 Tan Jones

DesignForum

A R C H I T E C T S

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.

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 excavation, 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.

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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

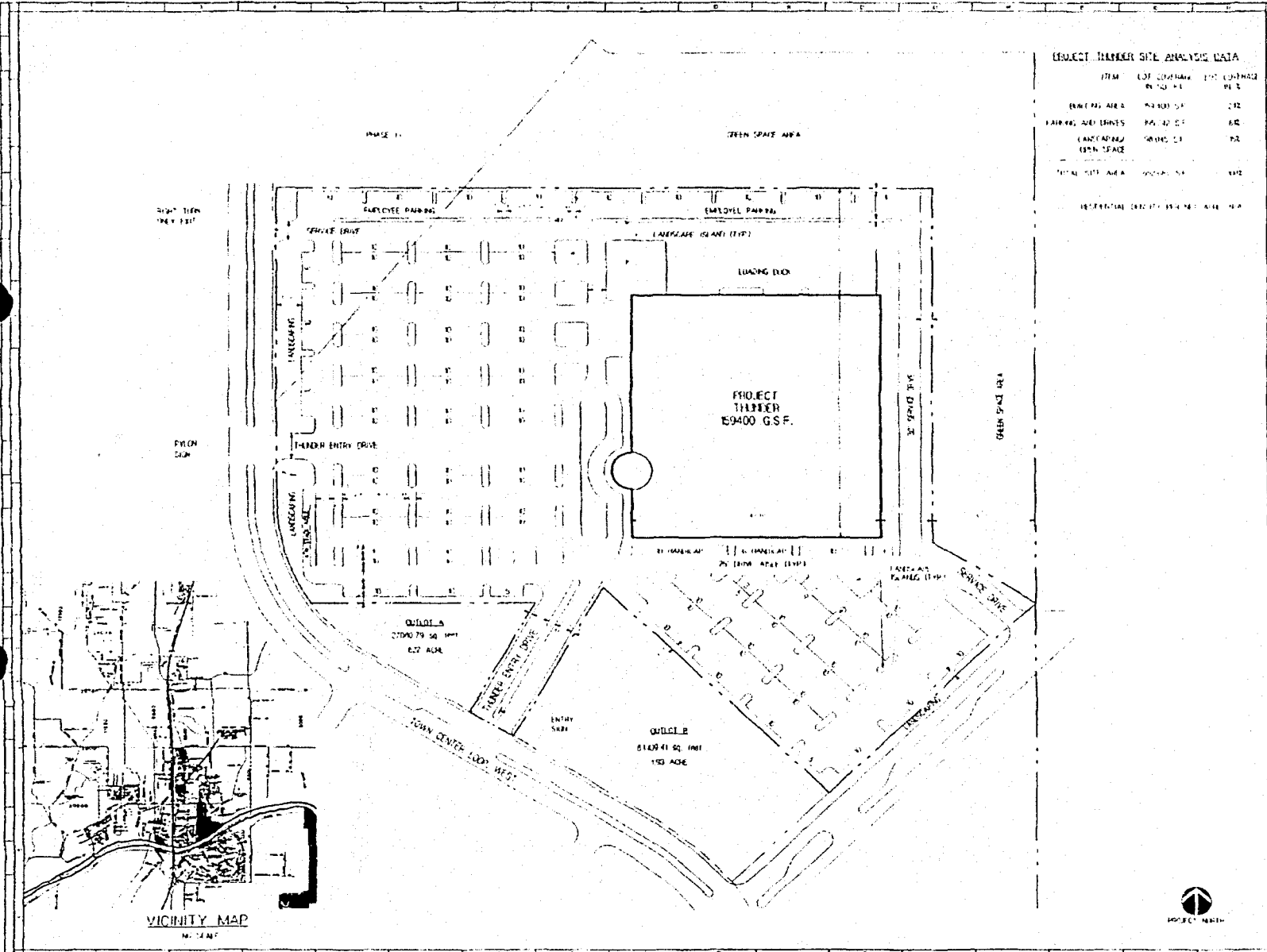
The meeting notes represent comments that have been paraphrased as accurately as possible. The notes will be held as an accurate and true account as to intent unless notice to the contrary is set forth within 10 days of the date above.

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	EST. QUANTITY	EST. COST/UNIT
EMPAVED AREA	142,800 SF	2.82
PARKING AND DRIVEWAYS	142,800 SF	6.02
LANDSCAPING OPEN SPACE	30,000 SF	10.2
TOTAL EST. AREA	305,600 SF	6.02
EST. TOTAL COST (\$)	1,840,320	6.02

SHEET NOTES

- OWNER'S STATEMENT OF WORK
- PROJECT THUNDER WILL BE THE FIRST OF TWO PHASES TO BE CONSTRUCTED. THE SECOND PHASE WILL BE THE CONSTRUCTION OF THE SECOND PHASE OF THE PROJECT. THE PROJECT WILL BE CONSTRUCTED IN TWO PHASES. THE FIRST PHASE WILL BE THE CONSTRUCTION OF THE PROJECT THUNDER BUILDING AND THE SECOND PHASE WILL BE THE CONSTRUCTION OF THE SECOND PHASE OF THE PROJECT. THE PROJECT WILL BE CONSTRUCTED IN TWO PHASES. THE FIRST PHASE WILL BE THE CONSTRUCTION OF THE PROJECT THUNDER BUILDING AND THE SECOND PHASE WILL BE THE CONSTRUCTION OF THE SECOND PHASE OF THE PROJECT.

GENERAL NOTES

PROJECT THUNDER SITE
 DRAWN BY: [Name]
 DATE: [Date]

PAVING REQUIREMENTS
 75% TOTAL OF WHICH
 6 ARE HANDICAPPED

SHOWN
 1/8" HATCH ASSY-1
 856 STANDARD
 812 TOTAL

DesignForum ARCHITECTS

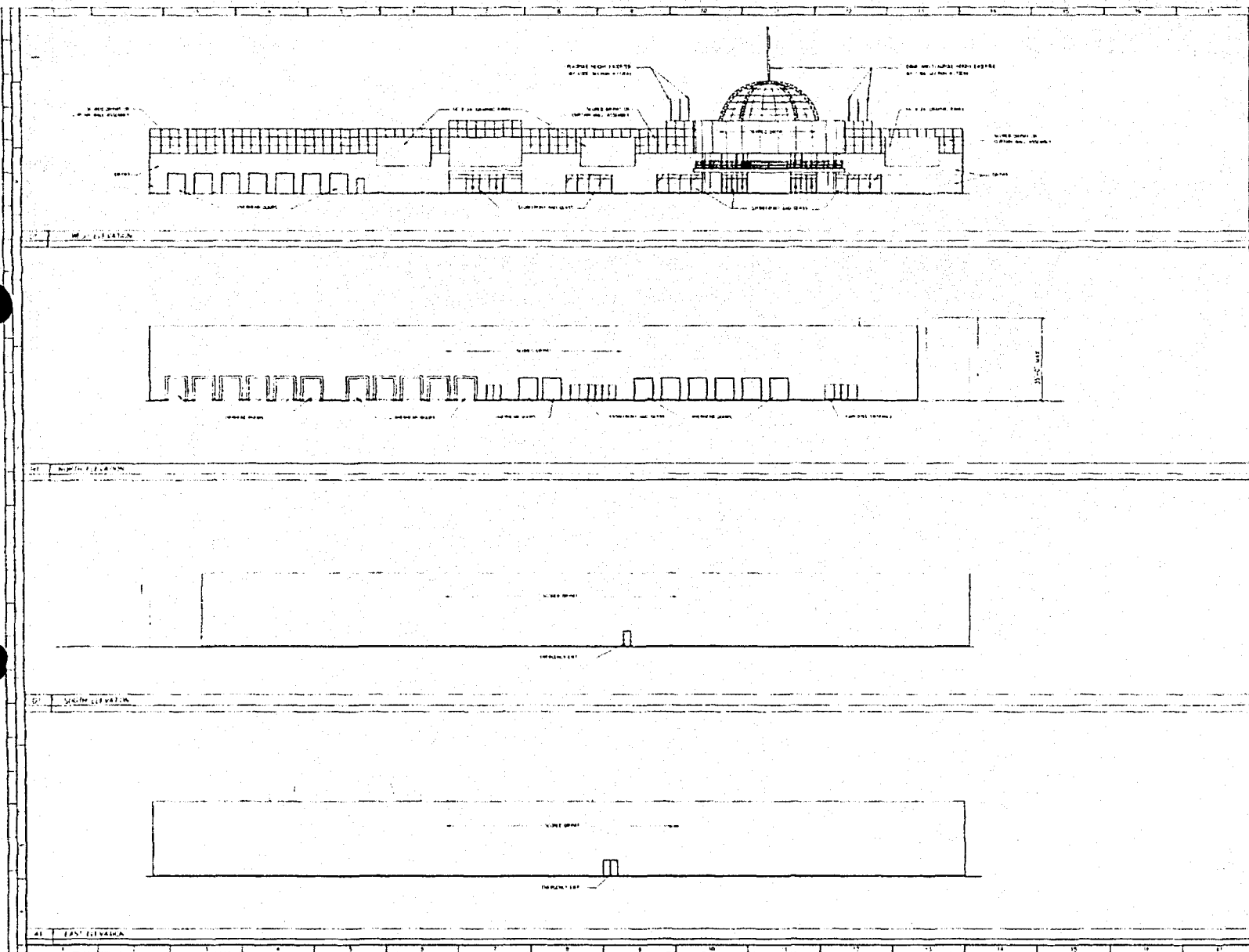
PROJECT THUNDER
 159400 G.S.F.

SITE PLAN

PROJECT NORTH

Exhibit C, Page 125 of 196

Exhibit A
 Page 117 of 161



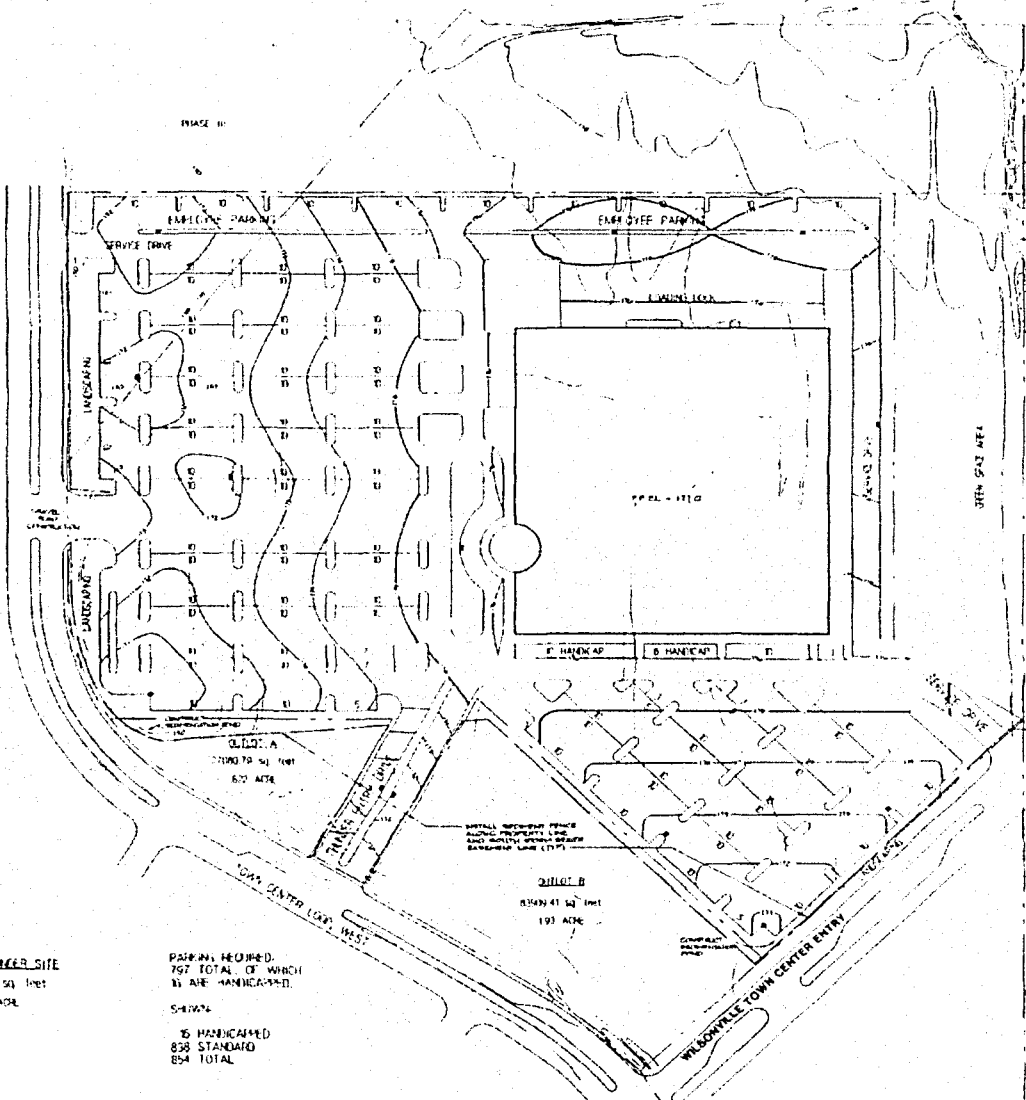
EXTERIOR ELEVATIONS

DESIGN FORUM ARCHITECTS

PROJECT THUNDER
WESLEYVILLE, MICHIGAN

EXTERIOR ELEVATIONS

Drawn by	WFB	Checked by	WFB
Date	1/10/11	Project No.	11-002-11
Scale	1/8" = 1'-0"	Sheet No.	118-11
Client	WFB	Architect	WFB



PROJECT THUNDER SITE
 82541 SQ. FEET
 1.88 ACRES

PARKING REQUIRED:
 767 TOTAL OF WHICH
 15 ARE HANDICAPPED.
 548764
 15 HANDICAPPED
 838 STANDARD
 854 TOTAL

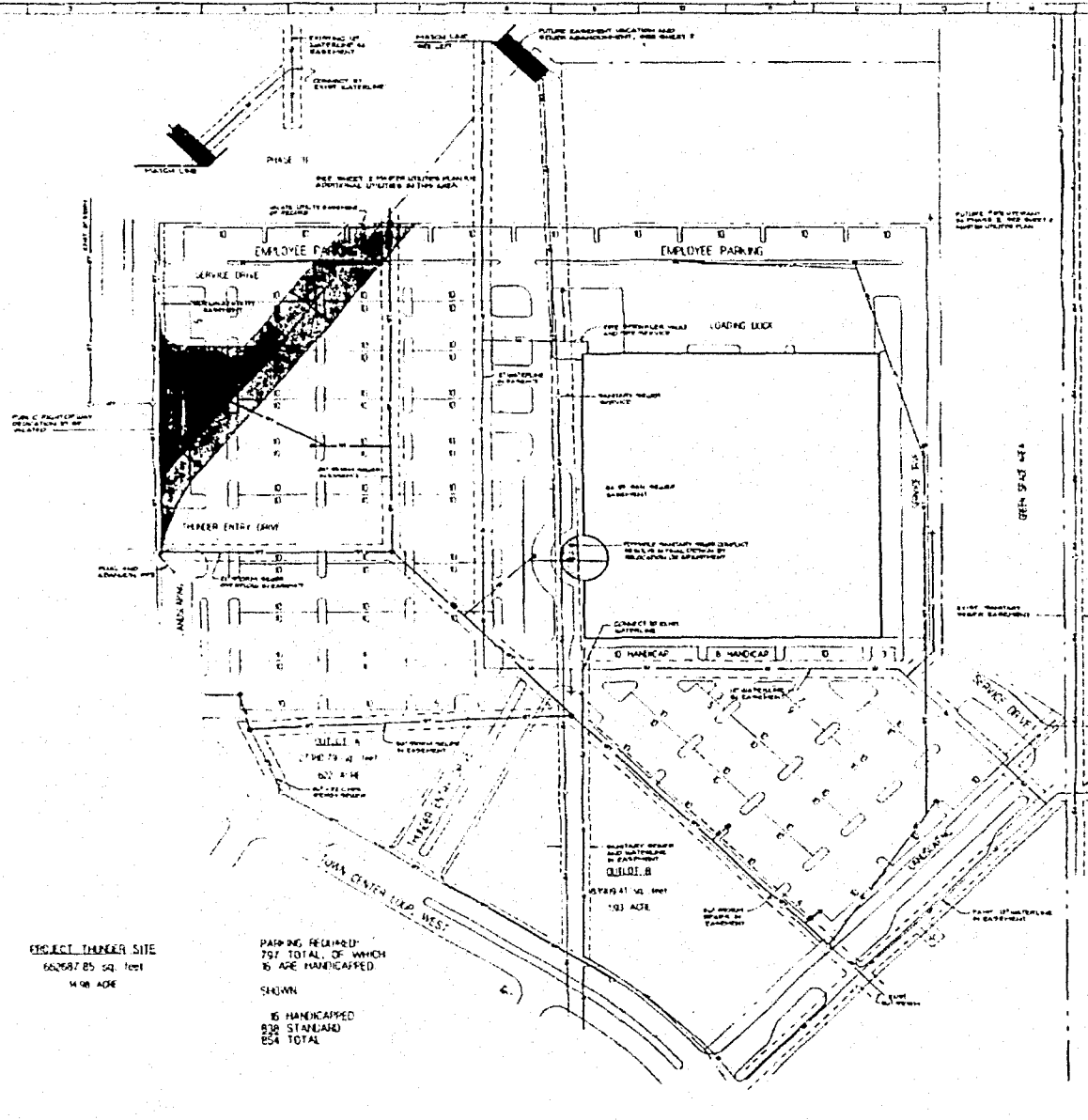
- NOTES
- 1) RECALCULATION OF ALL SQUARE FOOTAGES, VOLUMES, WEIGHTS AND PERCENTS TO BE SUBMITTED TO THE LOCAL GOVERNMENT SHALL BE THE RESPONSIBILITY OF THE CLIENT. THE DESIGNER SHALL NOT BE RESPONSIBLE FOR ANY MISTAKES OR OMISSIONS BY THE CLIENT.
 - 2) ALL WORK SHALL BE ACCORDING TO THE LATEST EDITIONS OF THE STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, AS APPLICABLE TO THE PROJECT.
 - 3) ALL WORK SHALL BE ACCORDING TO THE LATEST EDITIONS OF THE STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, AS APPLICABLE TO THE PROJECT.

- LEGEND
- EXISTING CONTOUR
 - PROPOSED CONTOUR
 - PROPOSED CURB
 - PROPOSED PAVEMENT
 - PROPOSED FENCE

DesignForum
 ARCHITECTS
 100 N. Main Street, Suite 200, Wilsonville, OR 97158

PROJECT THUNDER
 WILSONVILLE, OREGON
 PHASE II GRADING/EROSION
 CONTROL PLAN

DATE	11/11/11
SCALE	1" = 50'
DRAWN BY	J.M.P.
CHECKED BY	J.M.P.
APPROVED BY	J.M.P.



PROJECT THUNDER SITE
66,268.785 sq. feet
14.98 ACRE

PARKING REQUIRED:
757 TOTAL, OF WHICH
16 ARE HANDICAPPED
SHOWN
16 HANDICAPPED
830 STANDARD
854 TOTAL

LEGEND

SYMBOL	DESCRIPTION
(Symbol)	MASS SHED
(Symbol)	WATER TOWER
(Symbol)	WATER LINE
(Symbol)	SEWER LINE
(Symbol)	EMERGENCY LINE
(Symbol)	STAIRWELL
(Symbol)	ELECTRICAL
(Symbol)	PIPE UTILITY
(Symbol)	SAFETY EQUIPMENT



GENERAL NOTES

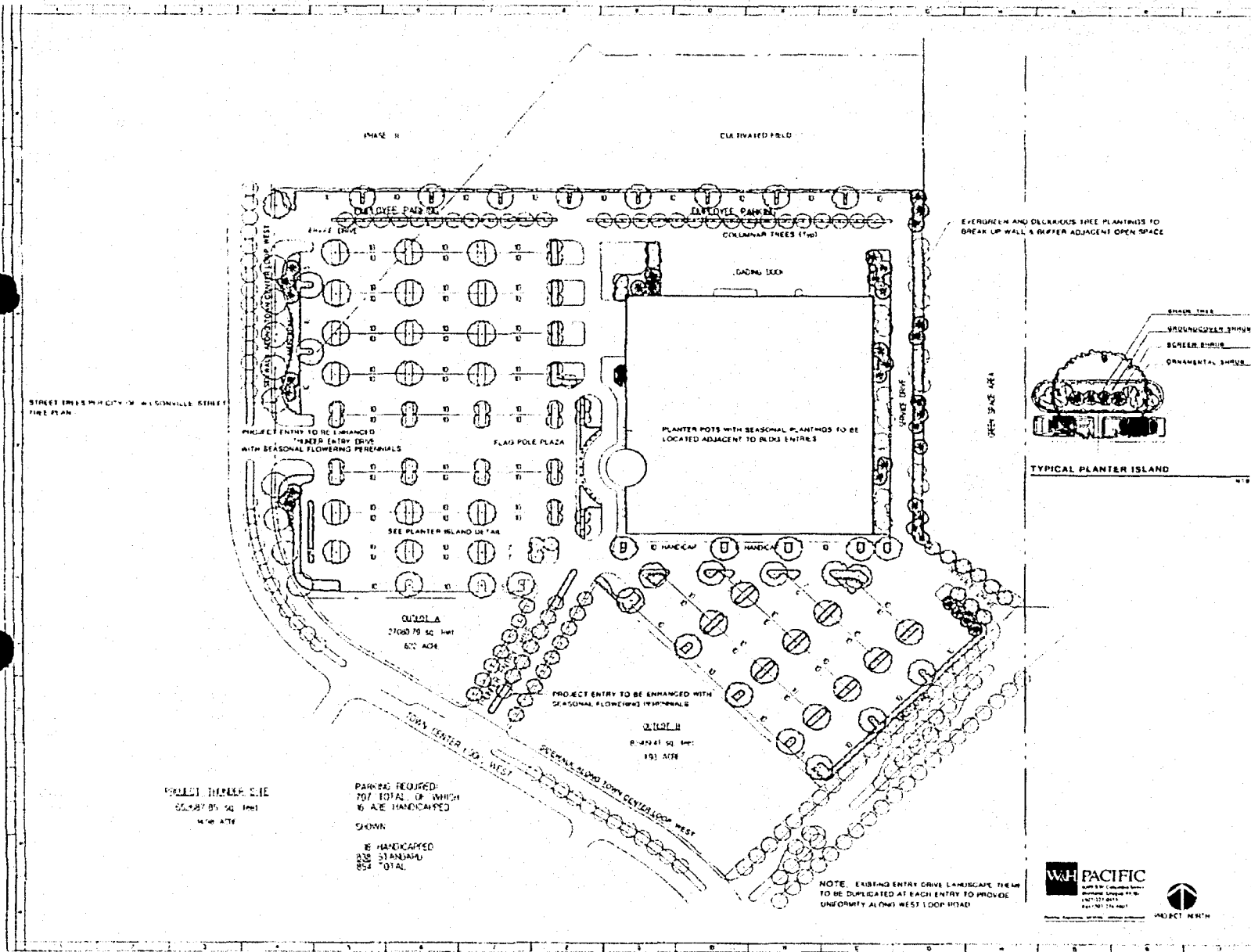
Key Plan

DesignForum
ARCHITECTS

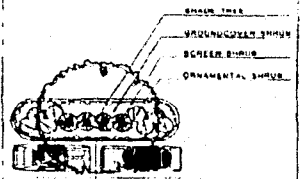
PROJECT THUNDER
WILSONVILLE, OREGON

PHASE II UTILITIES PLAN

Scale	1" = 50'
Date	
Drawn by	
Checked by	
Approved by	



- LEGEND**
- SHADE TREES
 - FLOWERING TREES
 - EVERGREEN CONIFER TREES
 - ORNAMENTAL LANDSCAPE SHRUBS & GROUNDCOVER
 - LAWN
 - EXISTING STREET TREES



TYPICAL PLANTER ISLAND

GENERAL NOTES
 * AUTOMATIC IRRIGATION SYSTEM WILL BE PROVIDED

PROJECT NUMBER: 05-287 05 54 1001
 1/16/07

PARKING REQUIRED:
 707 TOTAL (48 HANICAPPED)
 6 ARE HANICAPPED
 SHOWN
 6 HANICAPPED
 236 STANDARD
 854 TOTAL

NOTE: EXISTING ENTRY DRIVE LANDSCAPE THEM TO BE DUPLICATED AT EACH ENTRY TO PROVIDE UNIFORMITY ALONG WEST LOOP ROAD



DesignForum ARCHITECTS

PROJECT: THUNDER
 WASHINGTON, DC 20001

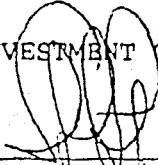
PHASE II LANDSCAPE PLAN

DATE	BY
12/18/07	...

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.

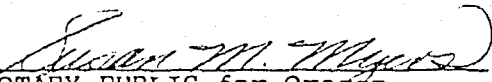
February 1, 1990,

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

Parcel III

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-13D, 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 500, MAP 3-1W-13D 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 6391 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.

~~tion.~~ The Option to purchase Phase 2 in its entire 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 before November 2, 1992, at the purchase price of _____ and 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

Sherilyn J. Young
SHERILYNN J. YOUNG

By [Signature]
SFS President
Steven F. Styles

David S. Young
DAVID S. YOUNG

SFS INVESTMENT CORP.

Marlene A. Young
by [Signature], attorney in fact
MARLENE A. YOUNG

By [Signature]
SFS OFFICER

ESTATE OF HAROLD J. LASWELL
DECEASED

GRANTEES

By Emma D. Laswell
Emma D. Laswell
Personal Representative

By Eugene L. Doffler
Eugene L. Doffler
Personal Representative

Fred A. Anderson
FRED A. ANDERSON

GRANTORS

ST IES PROPERTIES LTD.
by [Signature]

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, together 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 & 405, Clackamas County MAP 3-1W-14B and a triangle of land approximately 6,391 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, 1969 and August 23, 1969, 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 entirety per 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. (F)
S. X. Z.

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, 1990 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 14 day of November, 1989.

Jack L. Lozo
JACK L. LOZO

SFS INVESTMENT CORP.

ANN S. LOZO, Trustee for
CLAUDE F. SMITH TRUST *2.2.2.*
SF

By *[Signature]*
SFS President
Steven F. Stiles

GRANTORS

SFS INVESTMENT CORP.

By *[Signature]*
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 $00^{\circ}03'01''$ 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 $45^{\circ}03'00''$ West 400.00 feet; thence North $44^{\circ}57'00''$ 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 $65^{\circ}07'50''$ West) through a central angle of $07^{\circ}23'12''$ an arc distance of 257.84 feet (the long chord bears South $28^{\circ}33'46''$ 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 $57^{\circ}44'38''$ 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 $05^{\circ}32'12''$ an arc distance of 186.31 feet (the long chord bears North $29^{\circ}29'16''$ East 186.23 feet); thence South $89^{\circ}52'55''$ 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 $56^{\circ}01'43''$ East) through a central angle of $33^{\circ}55'55''$ an arc distance of 158.81 feet (the long chord bears North $17^{\circ}00'19''$ West 156.50 feet) to a point of tangency; thence continuing along said right-of-way line North $00^{\circ}02'22''$ 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 $38^{\circ}37'19''$ East 215.39 feet to the northerly line of said tract per fee 86-44959; thence tracing said northerly line South $89^{\circ}58'19''$ 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 $89^{\circ}59'19''$ an arc distance of 47.12 feet (the long chord bears North $45^{\circ}02'02''$ 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 $00^{\circ}02'22''$ 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

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Pat Marquis

OREGON
JANUARY 20, 1989
PAT MARQUIS
2382

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

Lindy - Transfer 170⁺ ^{thou} footprint
Electronics +

Driveway / TC (E) + (W)

Driveway → Open Space

Submit Stage I + II Simultaneously

Blaise
What else?

* Gave Stage I + II + application x 2
250' radius map owners

Topo - 1' intervals - (map has readings)

~~Blaise 52' top down~~
Phase

100 - 1

CITY

100 - 120 DWELING UNITS.

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

- CONTOUR SURVEY - 720' / 0

[TREE SURVEY
 > 6" CALIBER]

MAJOR DRAINAGEWAY.

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

CALC. VALUE ~~120~~

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 by 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.

<u>Item</u>	<u>Lot Coverage</u> <u>in sq. ft.</u>	<u>Lot Coverage</u> <u>in %</u>
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 !

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 the 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.

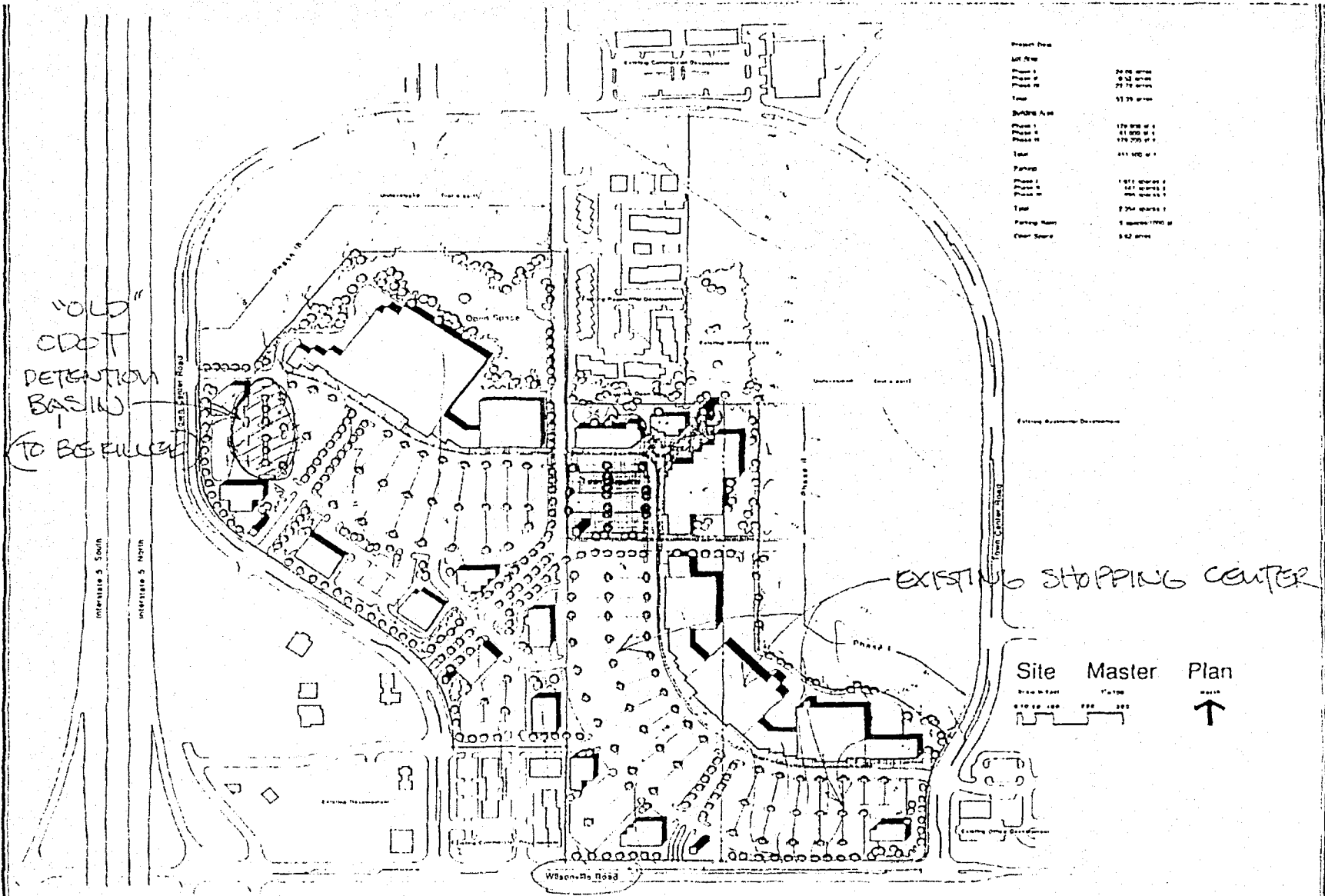
Second, the study assumed that 40 percent of the flow into the Incredible Universe would be "drop-in" traffic — that is, traffic already on the streets for other reasons. But the store has become a regional draw, and "drop-in" traffic is a tiny percentage of traffic it attracts. Finally, the traffic 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."

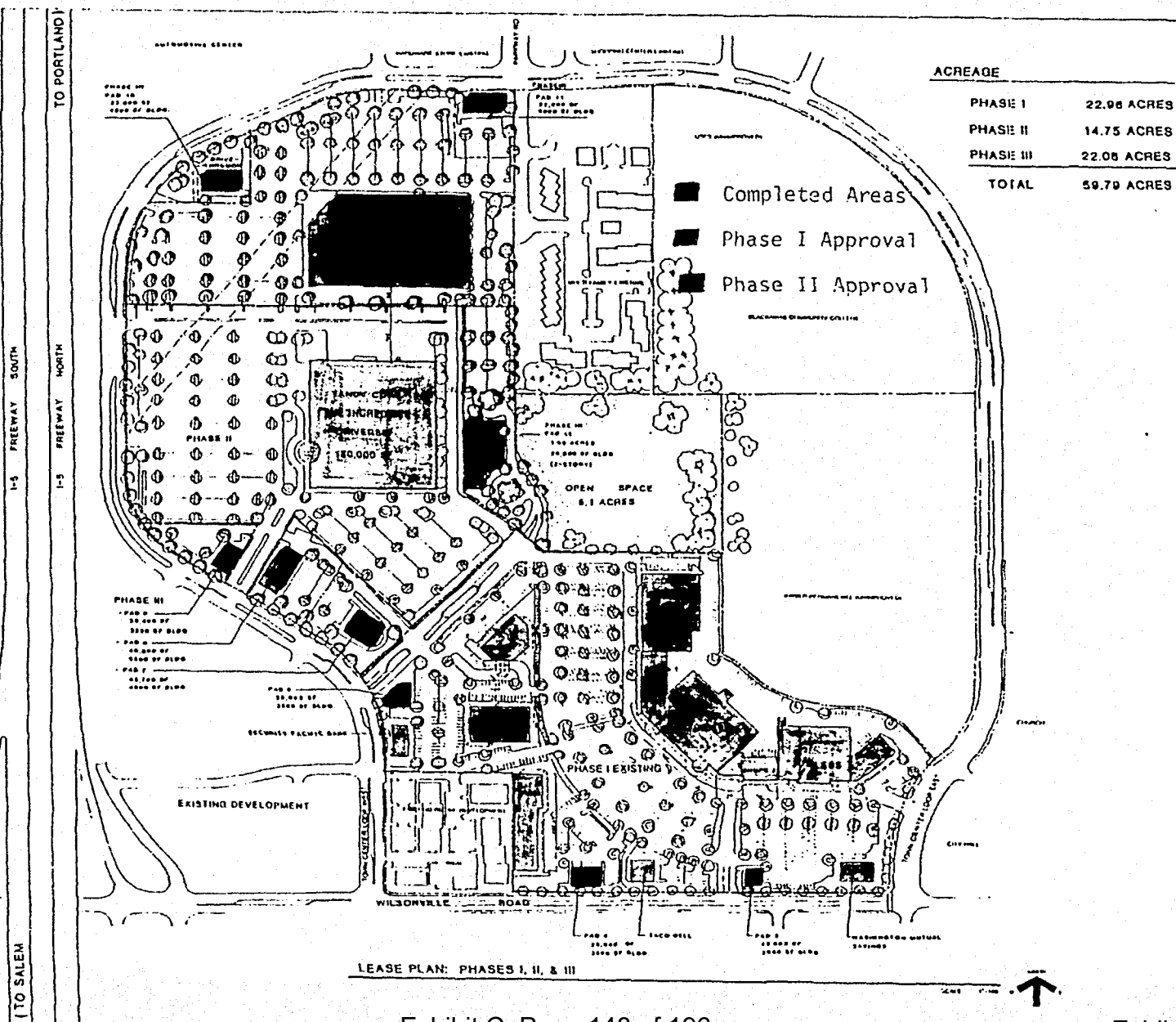
Sorensen, however, later said there are no plans to tinker with the engineering manual — he called it "the bible" — that predicts how many new trips will be generated by a particular use.

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

cc: Bill, JAVLS

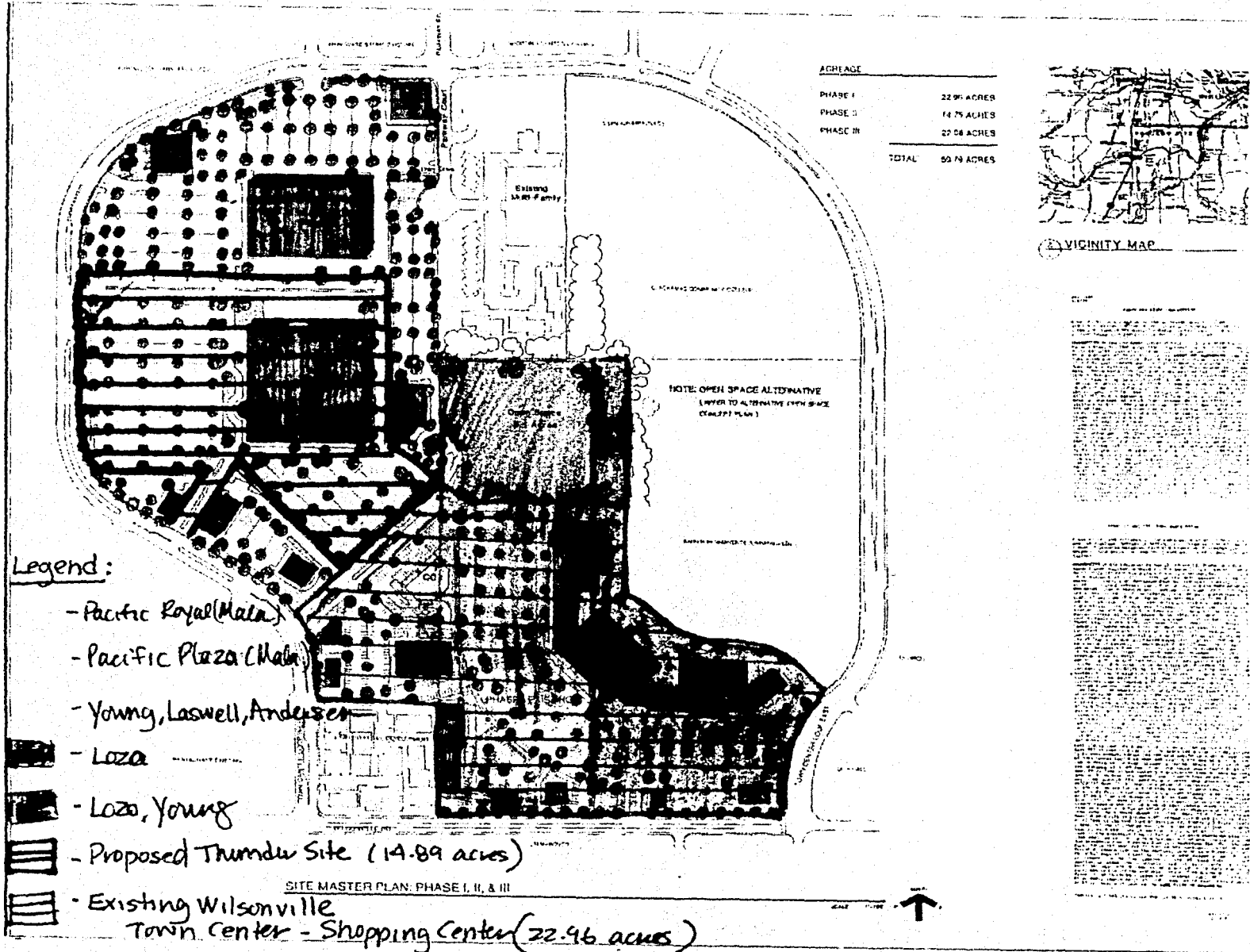


Project Area	170,000 sq. ft.
Lot Area	2,000,000 sq. ft.
Site Area	1,800,000 sq. ft.
Phase I Area	1,000,000 sq. ft.
Phase II Area	800,000 sq. ft.
Phase III Area	0 sq. ft.
Phase IV Area	0 sq. ft.
Phase V Area	0 sq. ft.
Phase VI Area	0 sq. ft.
Phase VII Area	0 sq. ft.
Phase VIII Area	0 sq. ft.
Phase IX Area	0 sq. ft.
Phase X Area	0 sq. ft.
Phase XI Area	0 sq. ft.
Phase XII Area	0 sq. ft.
Phase XIII Area	0 sq. ft.
Phase XIV Area	0 sq. ft.
Phase XV Area	0 sq. ft.
Phase XVI Area	0 sq. ft.
Phase XVII Area	0 sq. ft.
Phase XVIII Area	0 sq. ft.
Phase XIX Area	0 sq. ft.
Phase XX Area	0 sq. ft.
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Phase XXIII Area	0 sq. ft.
Phase XXIV Area	0 sq. ft.
Phase XXV Area	0 sq. ft.
Phase XXVI Area	0 sq. ft.
Phase XXVII Area	0 sq. ft.
Phase XXVIII Area	0 sq. ft.
Phase XXIX Area	0 sq. ft.
Phase XXX Area	0 sq. ft.
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Phase XXXVI Area	0 sq. ft.
Phase XXXVII Area	0 sq. ft.
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Phase XXXIX Area	0 sq. ft.
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Phase LXXXXVIII Area	0 sq. ft.
Phase LXXXXIX Area	0 sq. ft.
Phase LXXXXX Area	0 sq. ft.

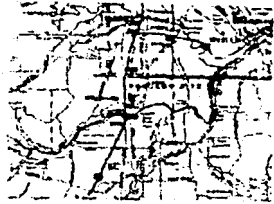


JKS Architects PC
 433 W. Taylor Street, Suite 200 • Portland, Oregon 97204
 503.255.1411 • Fax: 503.255.1412

WILSONVILLE TOWN CENTER
 WILSONVILLE, OREGON



ACREAGE	
PHASE I	22.96 ACRES
PHASE II	14.75 ACRES
PHASE III	22.58 ACRES
TOTAL	59.79 ACRES



VICINITY MAP

Wilsonville Town Center
 Wilsonville, Oregon

Legend:

- Pacific Royal (Mala)
- Pacific Plaza (Mala)
- 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
 22 SW 3rd Ave, Suite 200, Wilsonville, Oregon 97158
 503.738.1111

WILSONVILLE TOWN CENTER
 WILSONVILLE, OREGON

DEFECTS IN

ORIGINAL

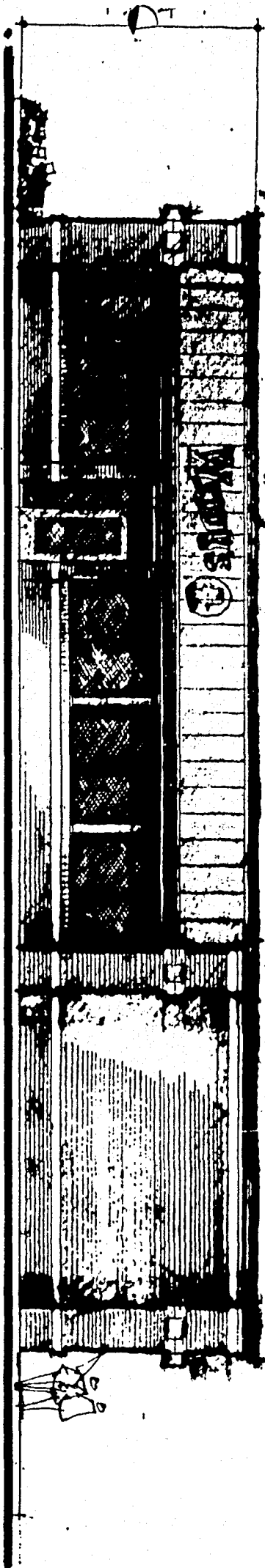
DOCUMENT

EXHIBIT F

Item 9.

1/8" = 1'-0"

NORTH ELEVATION



1/8" = 1'-0"

SOUTH ELEVATION

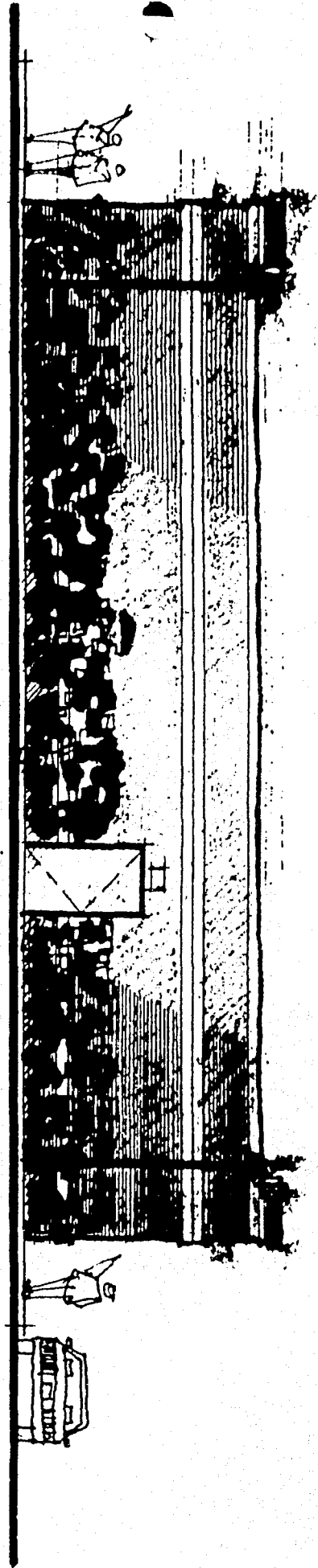


DRAWING NO: 1	PROJECT NAME: Wendy's Restaurant	DATE: 2/5/93
	DRAWING TITLE: Elevations	REVISION:



1/8" = 1'-0"

WEST ELEVATION



1/8" = 1'-0"

EAST ELEVATION



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



CITY OF WILSONVILLE

PLANNING DEPARTMENT SITE DEVELOPMENT APPLICATION AND

Item 9.

3445 S.W. Elsworth Road
P.O. Box 220 Wilsonville, OR 97150-0220
503-662-3445

File No. 91 PC 43 1/4 Sec.
Final action on application or other change is required within 120 days in accordance with provisions of ORS 227.185
A pre-application conference normally is required prior to submission of an application. Please contact the Planning Department at (503) 662-3445 for an appointment.

Pie-App. No. Day Yr

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 Kimberly Beach, Vice President Capital Realty Corp

Property Description: 101 S.W. Main Suite 1500, Portland, OR 97204
Map 13 & 14-D Tax class 200, 201, 101
102, 300

Request: STAGE I MASTER PLAN REVISION
STAGE II PHASE II WILSONVILLE Town Center
SITE PLAN - MOBILITY CONDITION #8 OF 90PC15

Please attach a plat 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 12/19/91

Staff Signature Brian Edwards

Class I Class II Class III

- | | | |
|---|--|---|
| <input type="checkbox"/> PLAN AMENDMENT | <input type="checkbox"/> MAJOR PARTITION | <input type="checkbox"/> DESIGN REVIEW |
| <input type="checkbox"/> ZONE CHANGE | <input type="checkbox"/> MINOR PARTITION | <input type="checkbox"/> TEXT AMENDMENT |
| <input type="checkbox"/> PRELIMINARY PLAT | <input type="checkbox"/> CONDITIONAL USE | <input type="checkbox"/> SIGN REVIEW |
| <input type="checkbox"/> FINAL PLAT | <input type="checkbox"/> VARIANCE | <input type="checkbox"/> TEMPORARY USE |
| <input checked="" type="checkbox"/> PLANNED DEVELOPMENT | <input checked="" type="checkbox"/> OTHER RECONSIDERED CONDITION OF 90PC15 | |

SITE FINDINGS

- Zoning: PC & TOWN CENTERS, Building Area _____
- Area of Lot: SEE FILE
- Building or Sign Height: TOWN CENTER LOOP WEST
(Max) _____
- Zoning Code Minimum Set-backs:
Front _____
Side _____
Rear _____
- Access to Property _____
- 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 or called into view. Any change of plans or incorrect information submitted may result in revocation of permit. This decision may be appealed in accordance with the provisions of the Wilsonville Code and ORS 227.185.

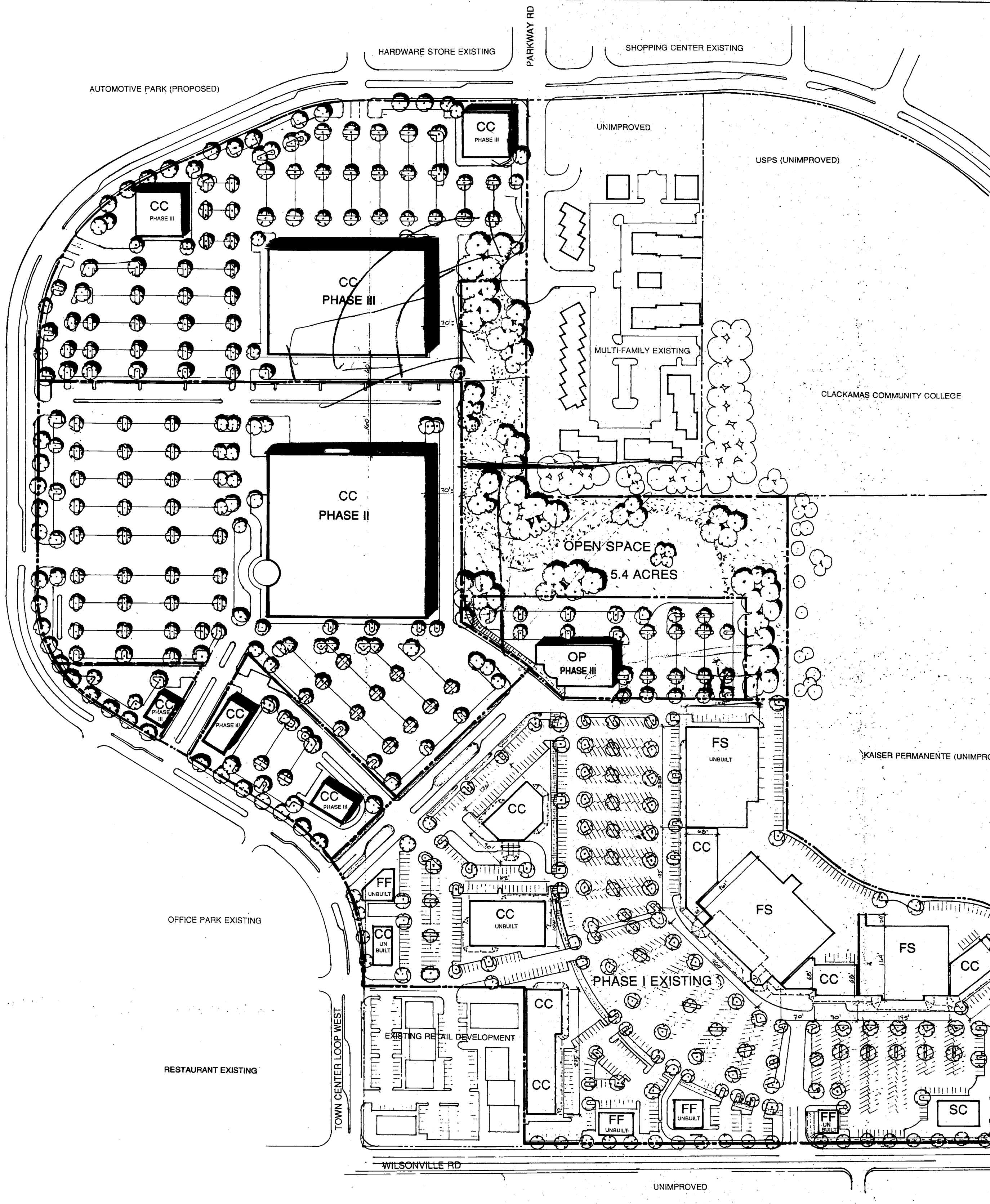
Fee Amount Paid \$1315.00 Check No. SEE FILE Cash 1206 Fee \$500.00 Fee - I
1206 Fee \$825.00
1207 Fee \$250.00 - cash

Permit Approval: Planner's Signature _____

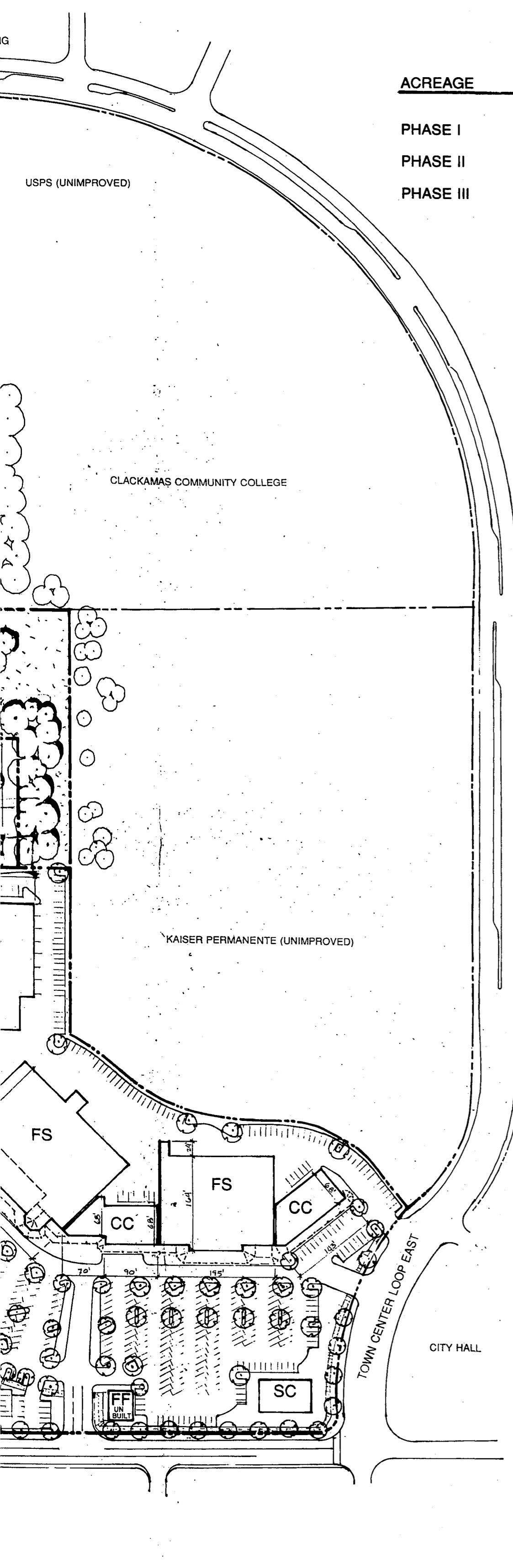
City Council or Planning Commission Approval Yes No

Order: Resolution _____

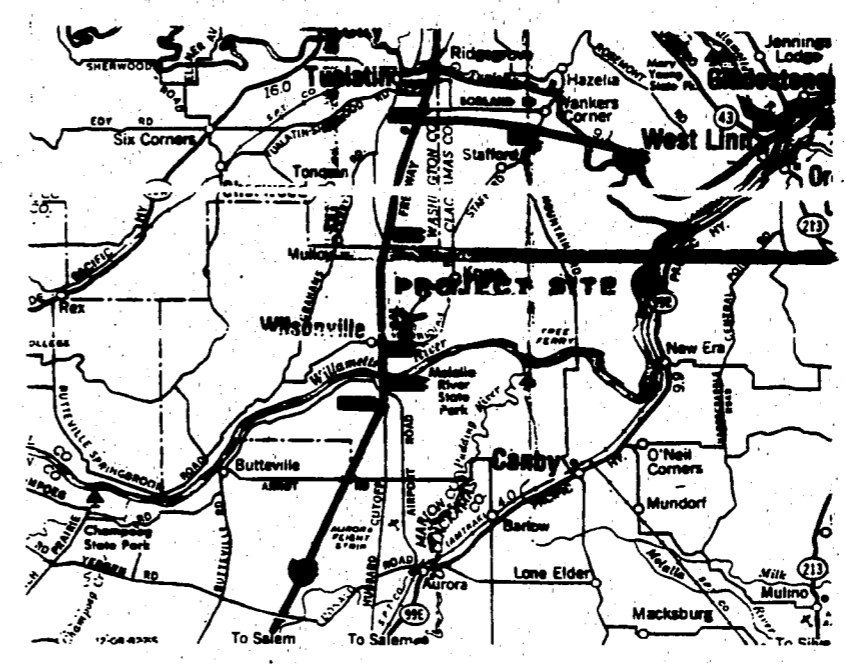
921



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 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°03'21" East along the section line between Sections 13 and 14 a distance of 44.00 feet to the **POINT OF BEGINNING**; thence continuing North 02°03'00" East along said section line a distance of 339.50 feet; thence South 89°55'30" 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 46.55 feet to a point of curvature; thence 247.91 feet along the arc of a 265.34 foot radius curve to the left through a central angle of 37°15'11" and whose chord bears North 15°39'27" West a distance of 243.55 feet to a point on a curve; thence North 45°03'00" East a distance of 554.11 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 285.58 feet to the intersection with a non-tangent curve; thence 33.82 feet along the arc of a 317.35 foot radius curve to the right through a central angle of 16°59'21" and whose chord bears South 55°30'50" East a distance of 93.45 feet to a point of reverse curvature; thence 348.26 feet along the arc of a 338.67 foot radius curve to the left through a central angle of 42°03'30" and whose chord bears South 89°02'49" East a distance of 51.65 feet to a point of curvature; thence 74.68 feet along the arc of a 200.00 foot radius curve to the right through a central angle of 5°27'30" and whose chord bears South 89°01'32" East a distance of 69.15 feet to a point of tangency; thence South 29°00'15" East a distance of 87.50 feet to a point on a non-tangent curve; thence 325.11 feet along the arc of a 422 foot radius curve to the left through a central angle of 37°14'18" and whose chord bears South 29°40'08" West a distance of 331.74 feet to a point of tangency; thence South 00°03'01" West a distance of 88.17 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 89°16'20" and whose chord bears South 89°42'00" West a distance of 48.17 feet to a point of tangency; thence South 22°22'25" West a distance of 375.4 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 4,077.07 feet to the most westerly northwest corner of Parcel 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 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 360.84 foot radius curve to the left the radial center of which bears South 52°40'44" West) through a central angle of 20°25'22" an arc distance of 135.64 feet (the long chord bears North 47°11'56" West 134.32 feet) to a point of tangency; thence North 57°44'38" West 463.50 feet to a point of curvature; thence tracing the arc of a 268.16 foot radius curve to the right through a central angle of 57°27'16" 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 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 as deeded to the City of Wilsonville in deed recorded November 12, 1986 in recorder's fee 86-44959 North 38°37'13" East 215.39 feet to the northerly line of said tract per fee 84-4353; 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°58'19" 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 arc curvilinearly along the right-of-way line of said Town Center Loop Road West along the following courses and distances: North 02°02'21" West 230.00 feet to a point of curvature; thence tracing the arc of a 265.34 foot radius curve to the right through a central angle of 44°13'44" an arc distance of 285.91 feet (the long chord bears North 32°24'30" East 244.25 feet) to a point of tangency; thence North 68°37'00" East 285.04 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 150.41 feet (the long chord bears North 70°22'24" East 178.36 feet) to a point of tangency; thence North 69°43'25" 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 15.46 feet (the long chord bears South 23°27'42" West 15.90 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 1 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°28'52" East 849.20 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 1,604,249 square feet or 36.83 acres more or less.

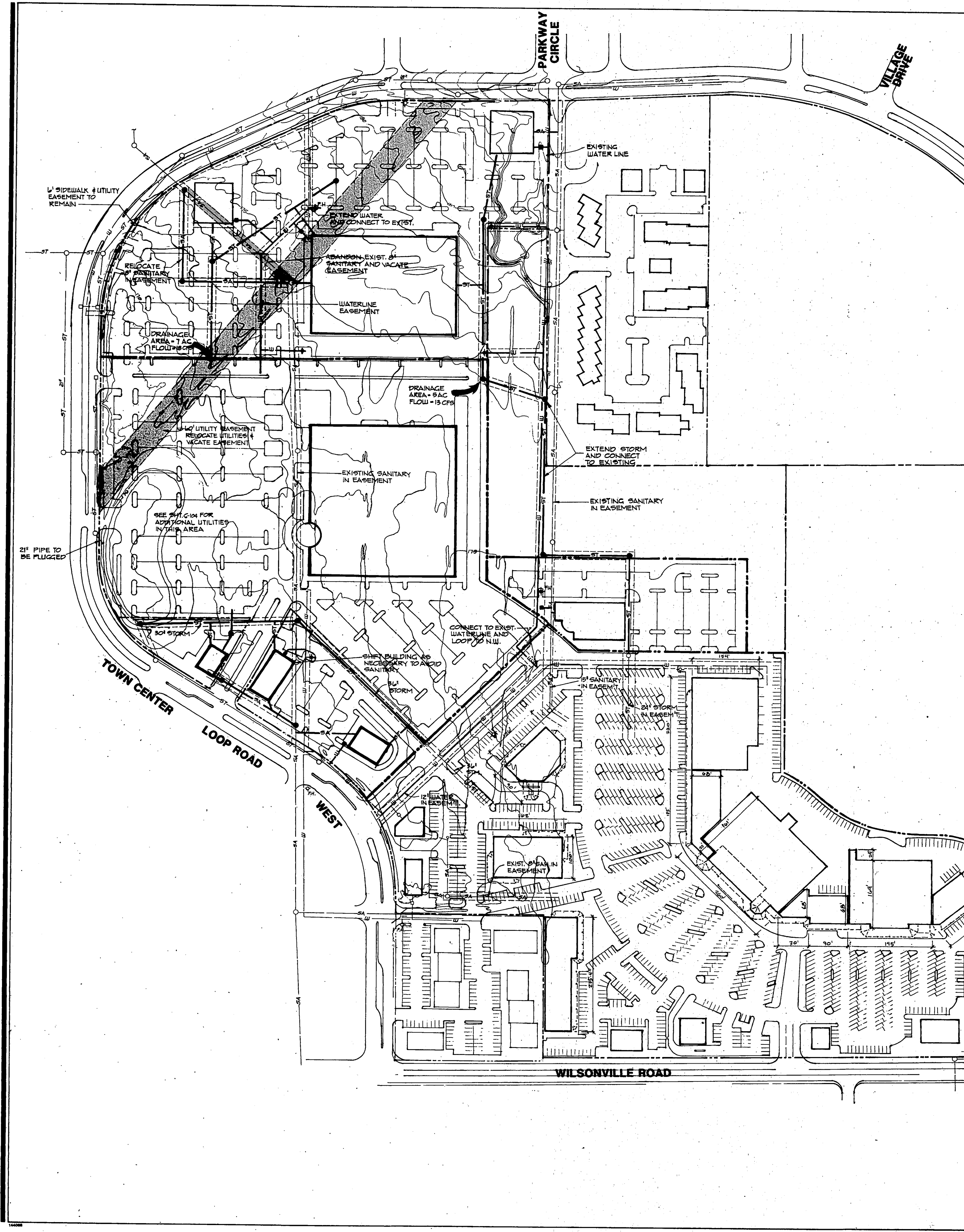
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10/16/91

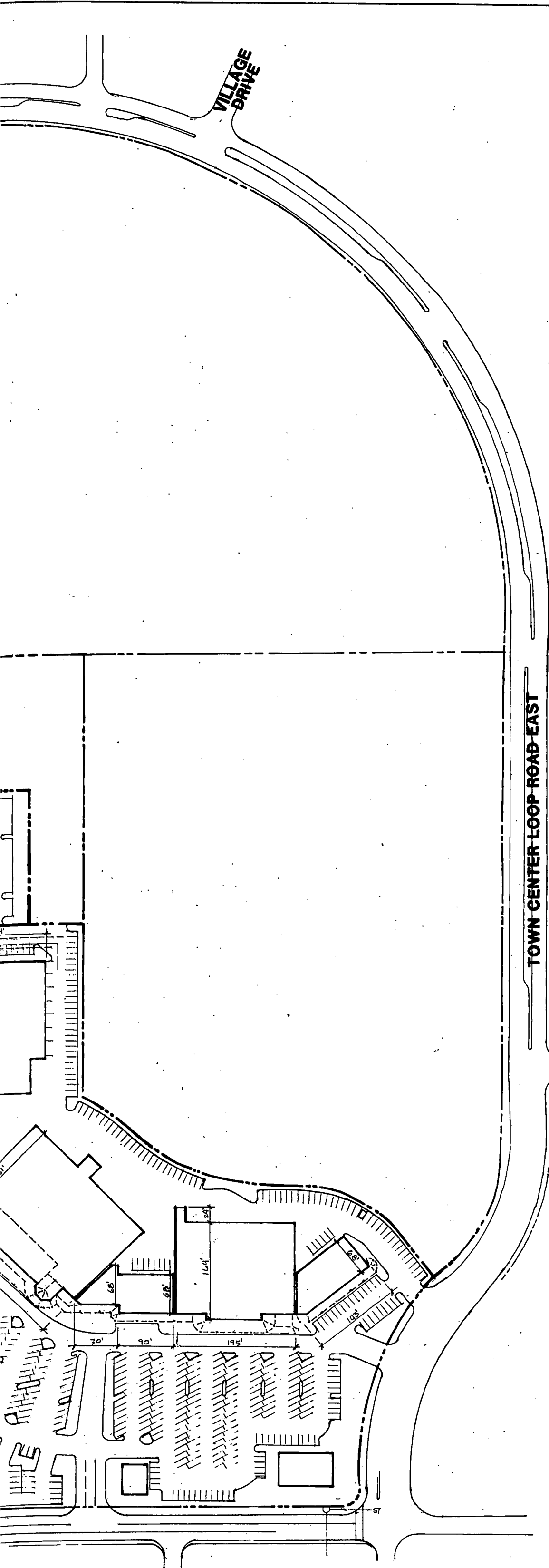
JKS Architects PC
1620 S.W. Taylor Street • Suite 200 • Portland, Oregon 97205
503-227-5616 • FAX 503-227-3590

WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON

Revisions	
KJD Drawn By	RBB Checked By
8963	10/18/91
Job No.	Date
SITE MASTER PLAN	

Sheet Title
Sheet No.
1
of





COURTSIDE DRIVE

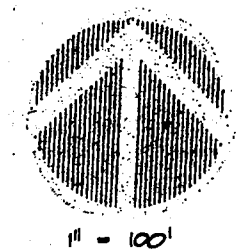
TOWN CENTER LOOP ROAD EAST

VILLAGE DRIVE

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	



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

WILLIAMS PACIFIC
 1099 S.W. Columbia Street
 Portland, Oregon 97201
 Fax (503) 224-4407
 Planning • Lighting • Surveying • Landscape Architecture

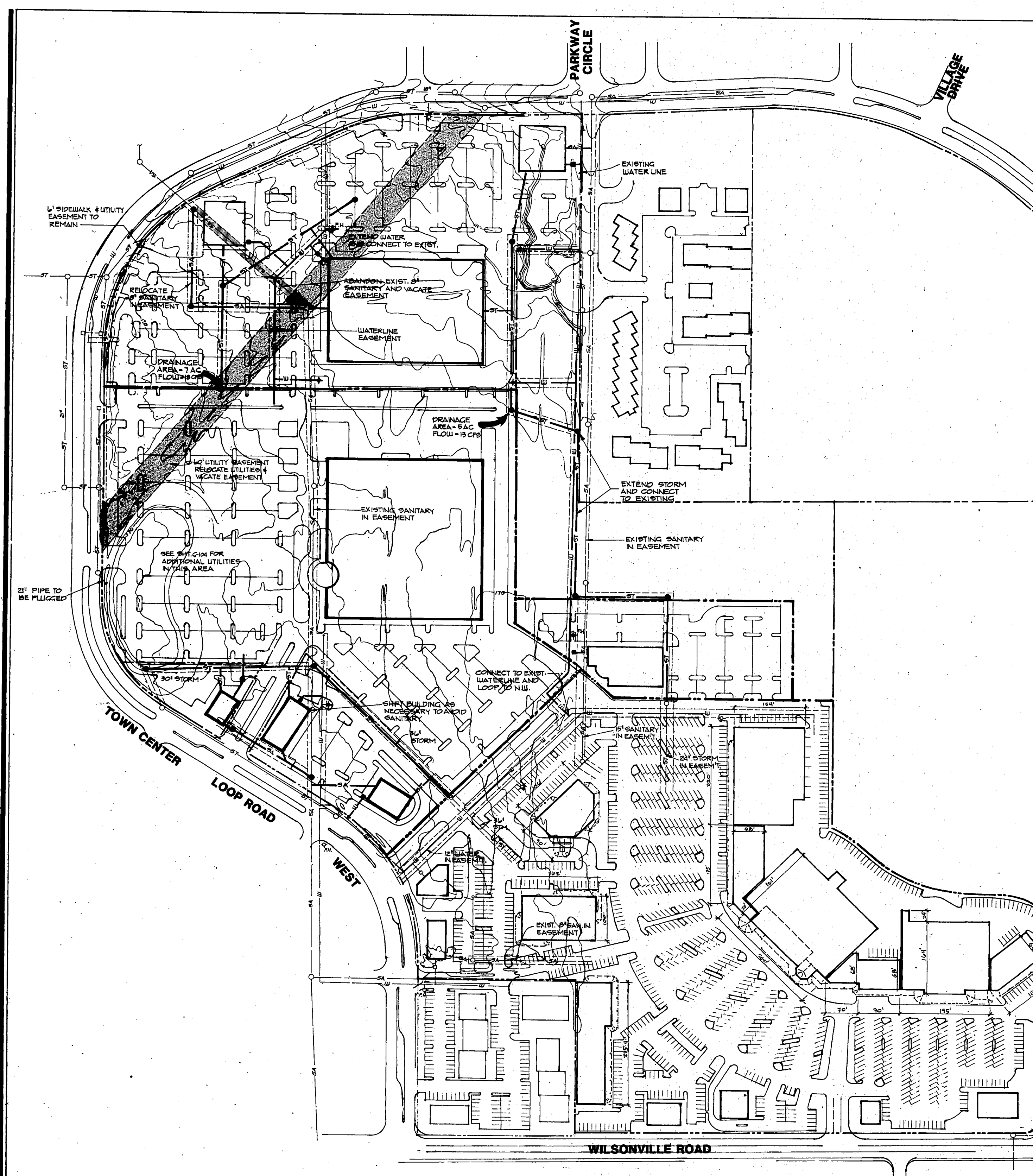
WILSONVILLE TOWN CENTER
 Wilsonville, Oregon

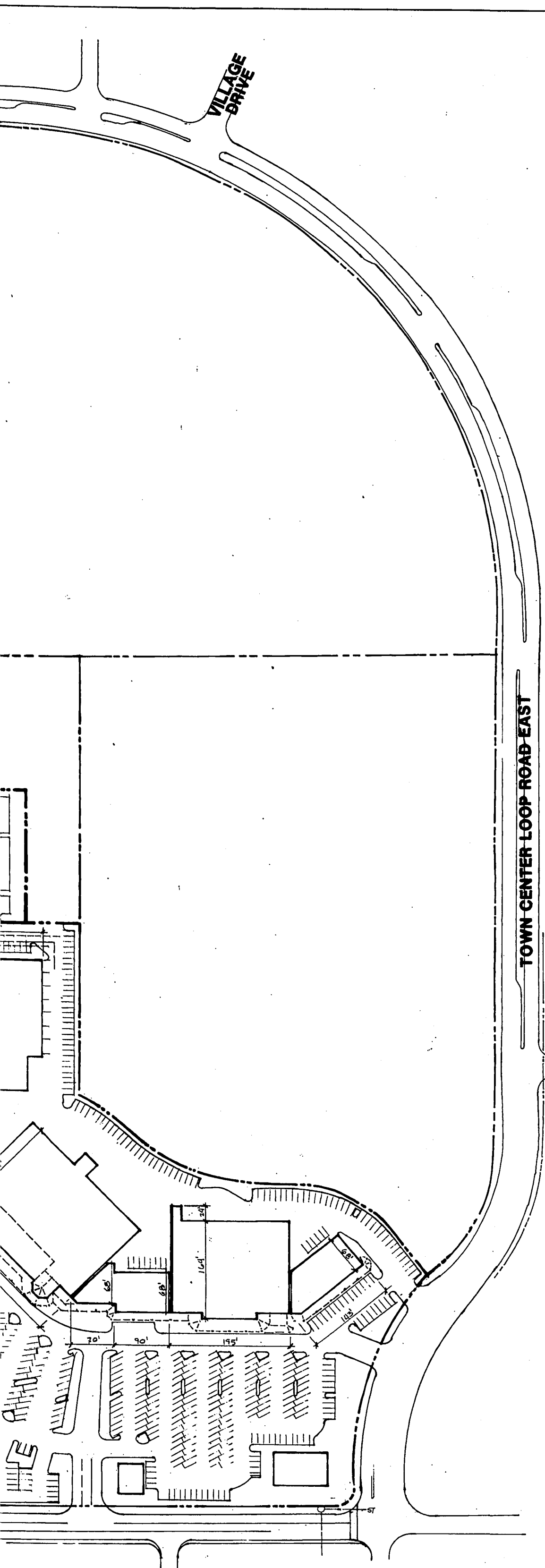
Revisions

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Drawn By _____ Checked By _____
 Job No. 4-467-0301 Date 10-18-11
MASTER UTILITIES PLAN
 Sheet Title

Sheet No.
2
 of





COURTSIDE DRIVE

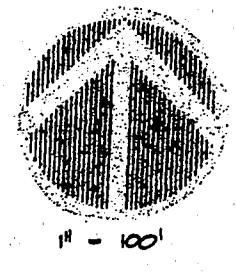
TOWN CENTER LOOP ROAD EAST

VILLAGE DRIVE

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	



APPROVED *ALLES*
Release Sheet No. 1020181

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

WILL PACIFIC
 1000 S.W. Columbia Street
 Portland, Oregon 97205
 (503) 327-0435
 Fax (503) 274-4607
 Planning • Engineering • Surveying • Landscape Architecture

WILSONVILLE TOWN CENTER
 Wilsonville, Oregon

Revisions

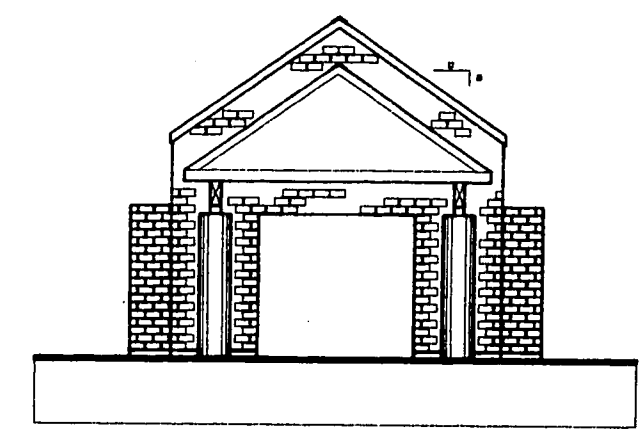
Drawn By	Checked By
----------	------------

Job No. 4-467-0301 Date 10-18-91
MASTER UTILITIES PLAN
 Sheet Title

Sheet No.
2

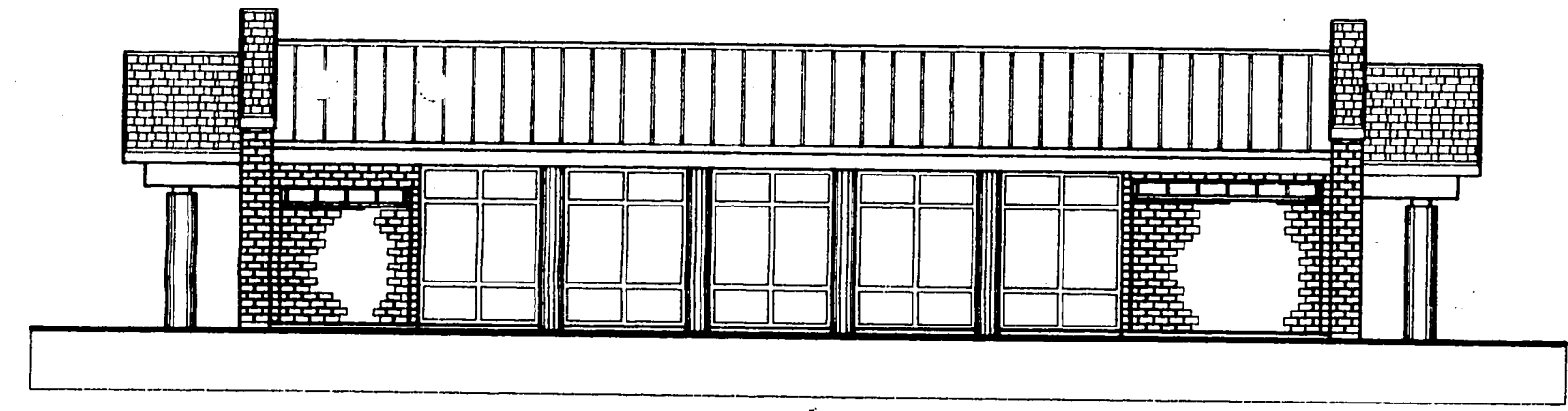
**WILSONVILLE TOWN CENTER
 PROPOSED CAR WASH**

WILSONVILLE, OREGON



END ELEVATION

1/8" = 1'-0"

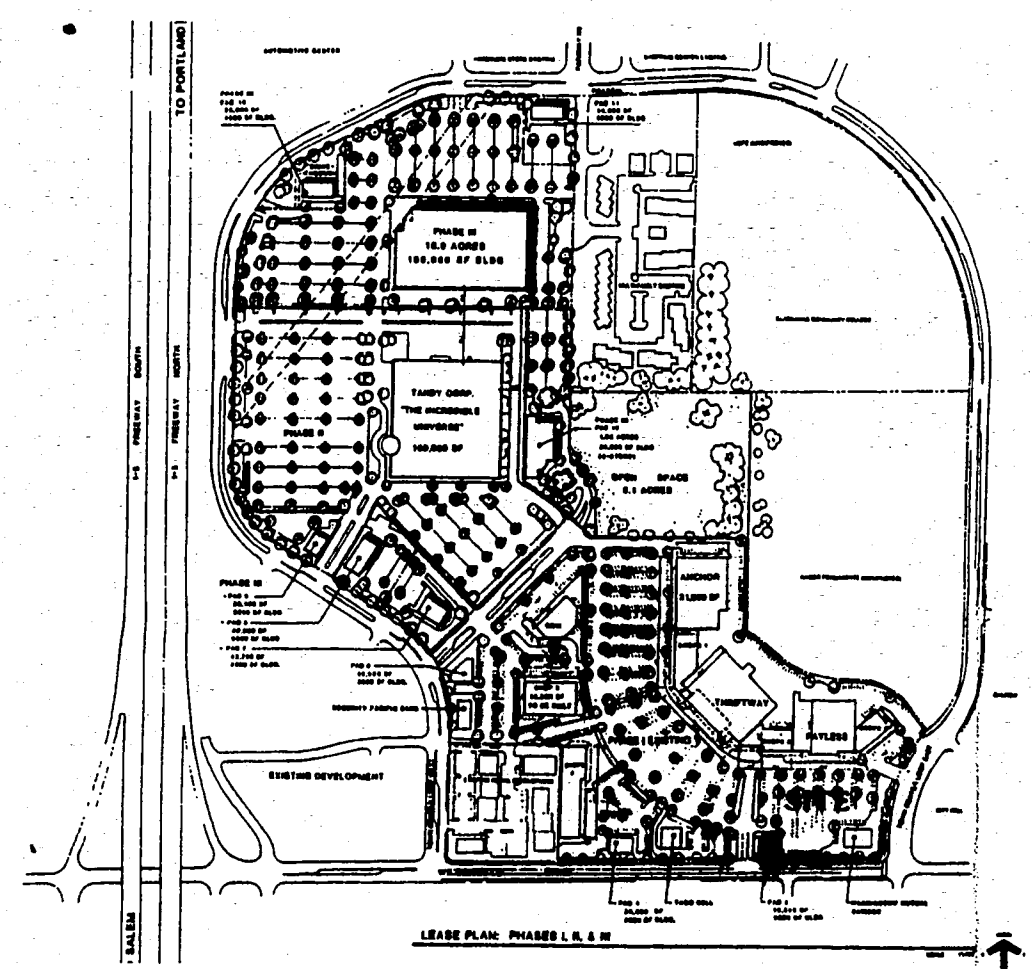


FRONT ELEVATION

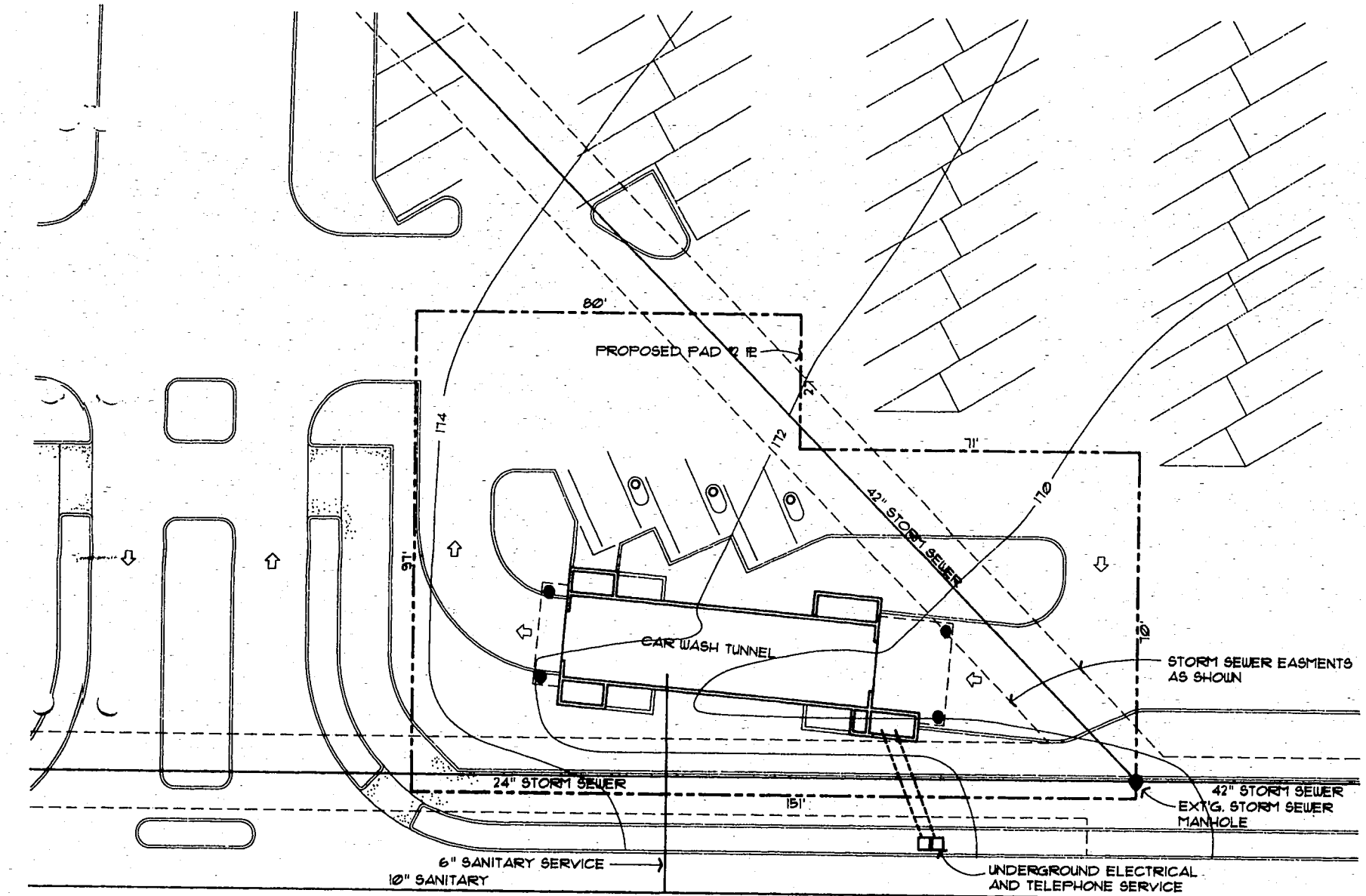
1/8" = 1'-0"

SITE DATA

	LOT COVERAGE IN SQ. FT.	LOT COVERAGE IN %
BUILDING AREA	15,000	12%
PARKING & DRIVES	8,293	65%
LANDSCAPING/OPEN SPACE	2,937	23%
TOTAL SITE AREA	12,730	100%



VICINITY MAP



WILSONVILLE RD.



PRELIMINARY SITE PLAN

1" = 20'

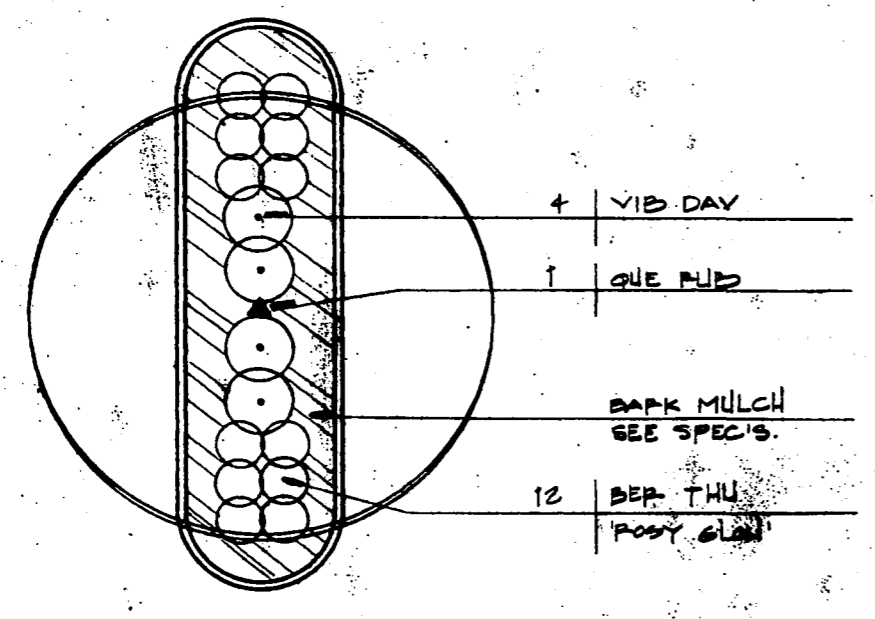
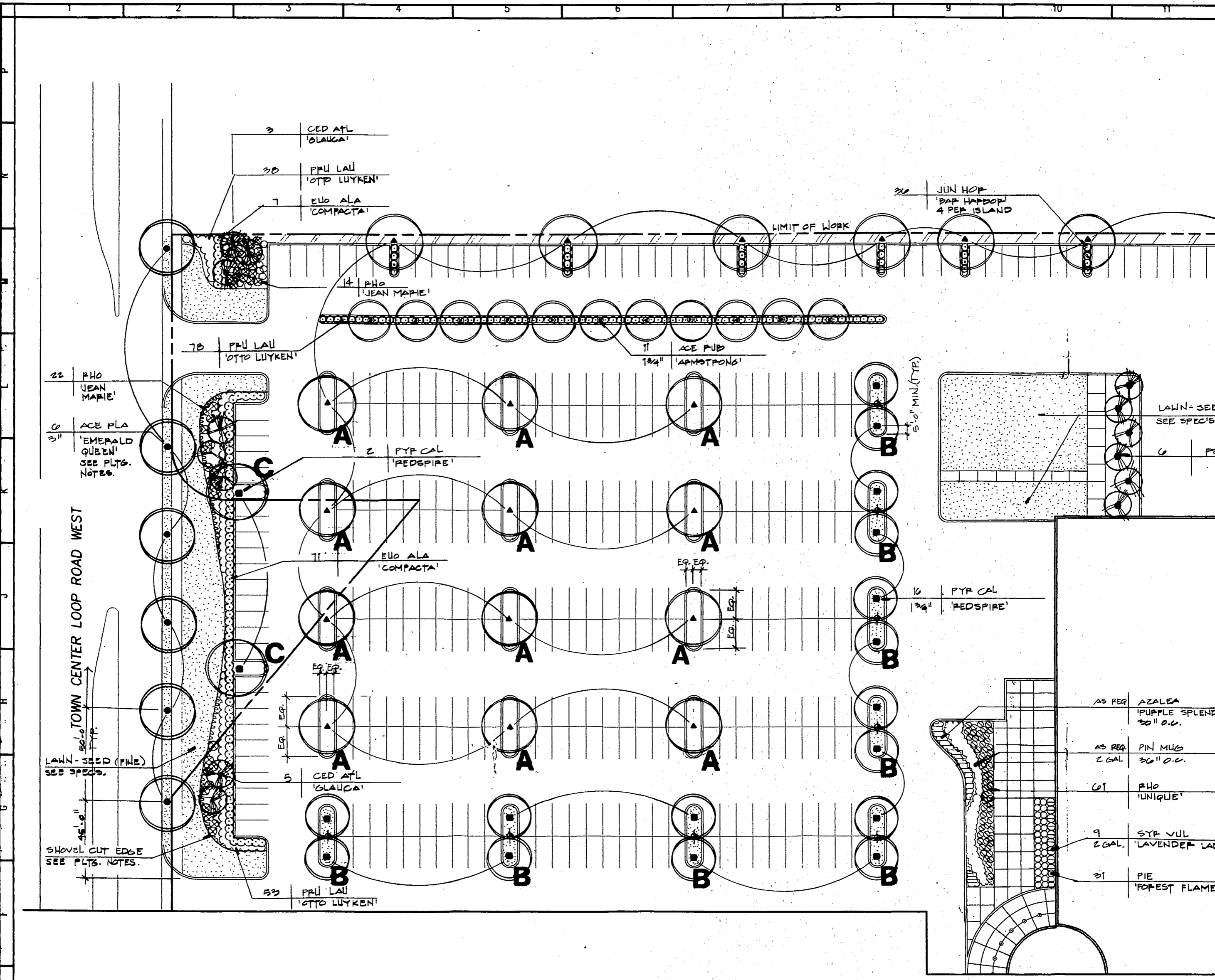
CLIENT:
DENNIS THOMPSON

REVISIONS:

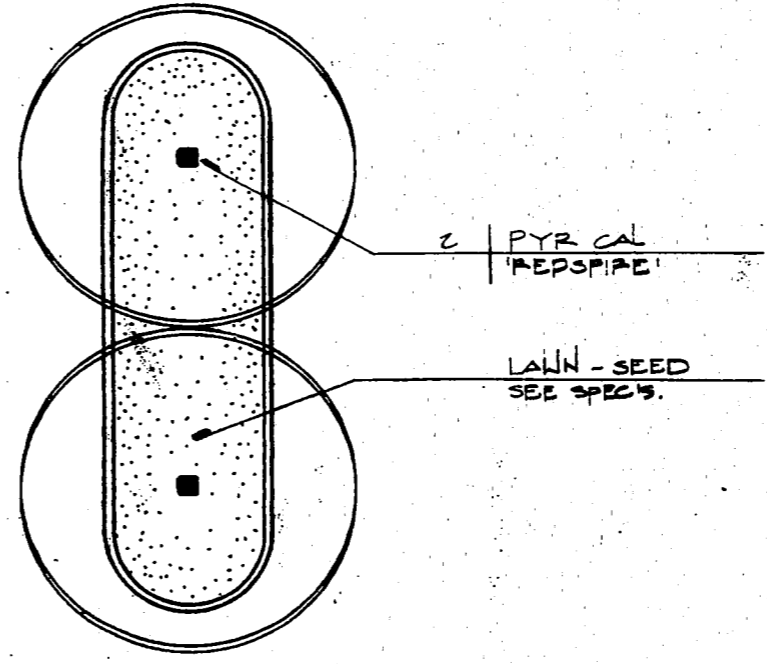
Date: 11-20-92
 Scale: AS SHOWN
 Drawn by: SET
 Checked by: JDA
 Job No.: 2023
 Drawing No.: 2023TITL

PER WS. 1, 2, 3, 4, 13, 18, 88, 88, 88, 88

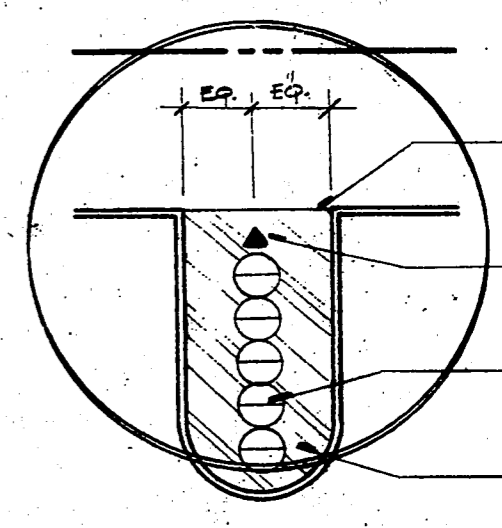
PROJECT NO. 4-755-0329
CADD FILE: 07/25/01.DWG



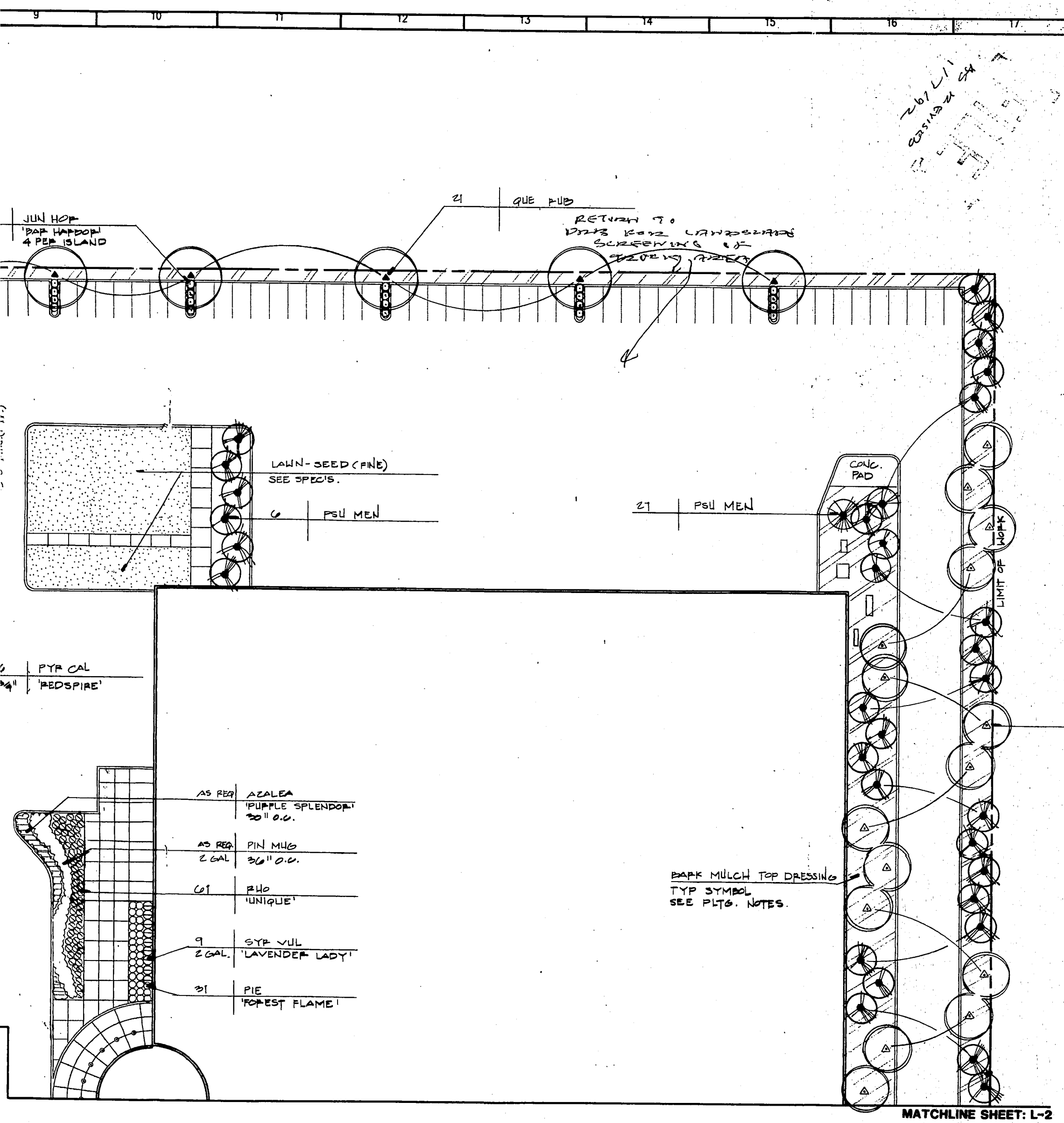
A PLANTING ISLAND 'A' DETAIL



B PLANTING ISLAND 'B' DETAIL



C PLANTING ISLAND 'C' DETAIL



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.

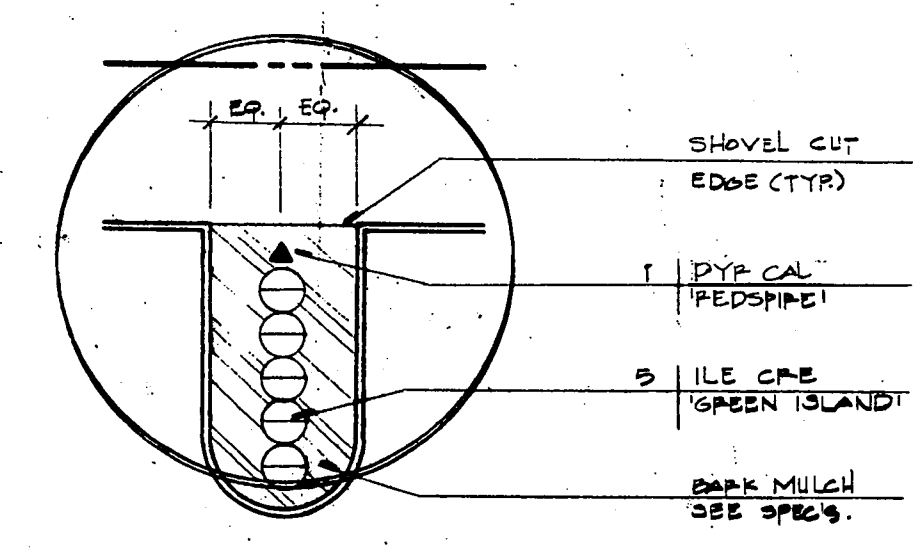
ALL SHRUB AND GROUNDCOVER PLANTING AREAS TO RECEIVE MINIMUM 2" DEPTH OF BARK MULCH. SEE SPECIFICATIONS 02950.

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.

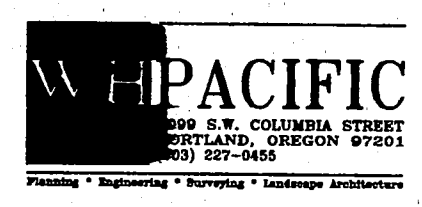
CONTRACTOR SHALL SUPPLY AND INSTALL ANNUAL COLOR, 4" POT SIZE AT 10" O.C. COLOR MATERIALS TO BE SELECTED BY CONTRACTOR AND APPROVED BY OWNER'S REPRESENTATIVE PRIOR TO PLANTING. ANNUAL COLOR MATERIAL SHALL BE IN SEASON (FULL BLOOM) AT TIME OF INSTALLATION.



PLANTING ISLAND 'C' DETAIL

NOT FOR CONSTRUCTION

PRINTED
JAN 06 1992
W & H PACIFIC



No.	Revisions/Submissions	Date

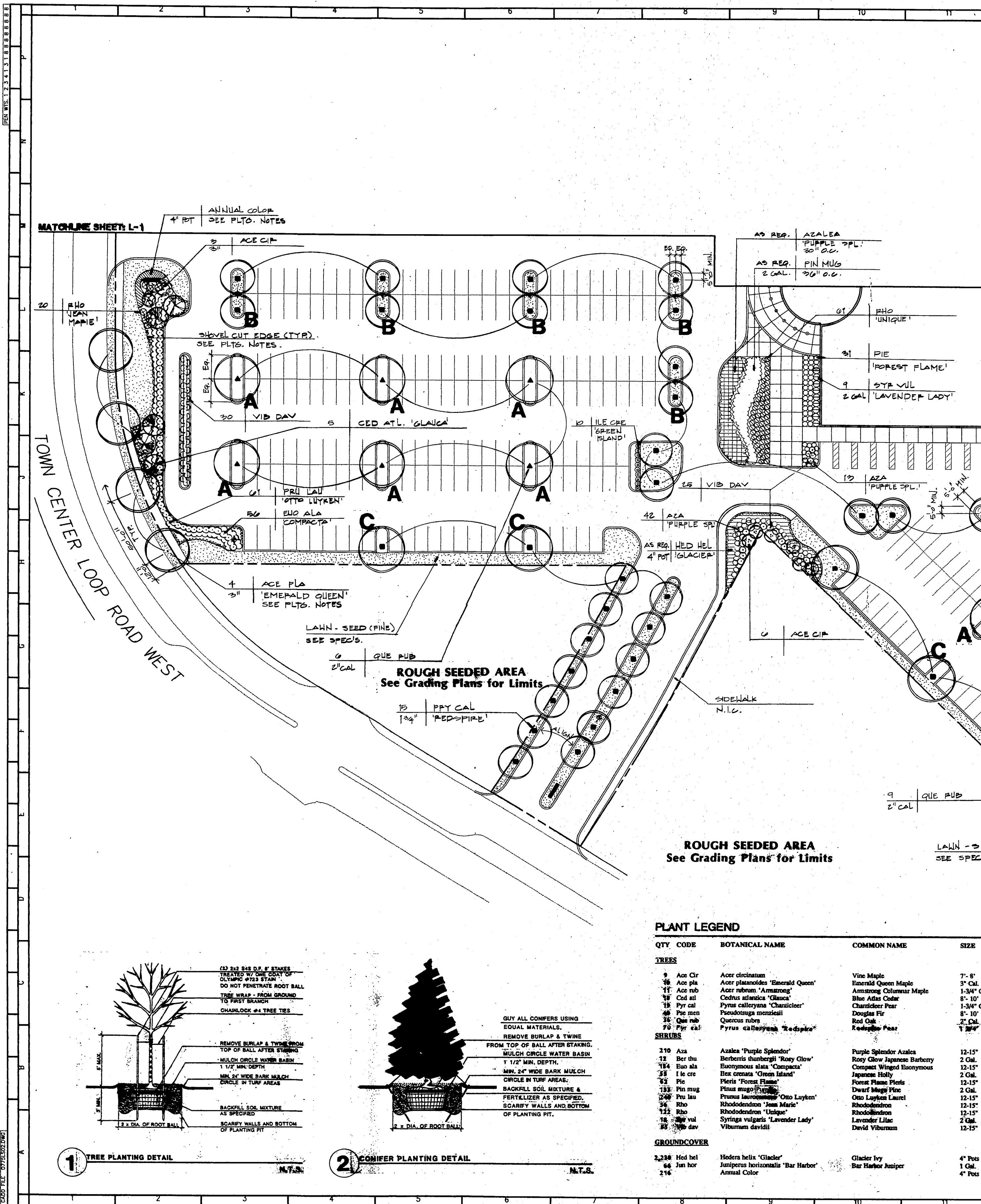
DesignForum ARCHITECTS

3484 For Hills Avenue, Dayton, Ohio 45428 Telephone: (513) 288-4400

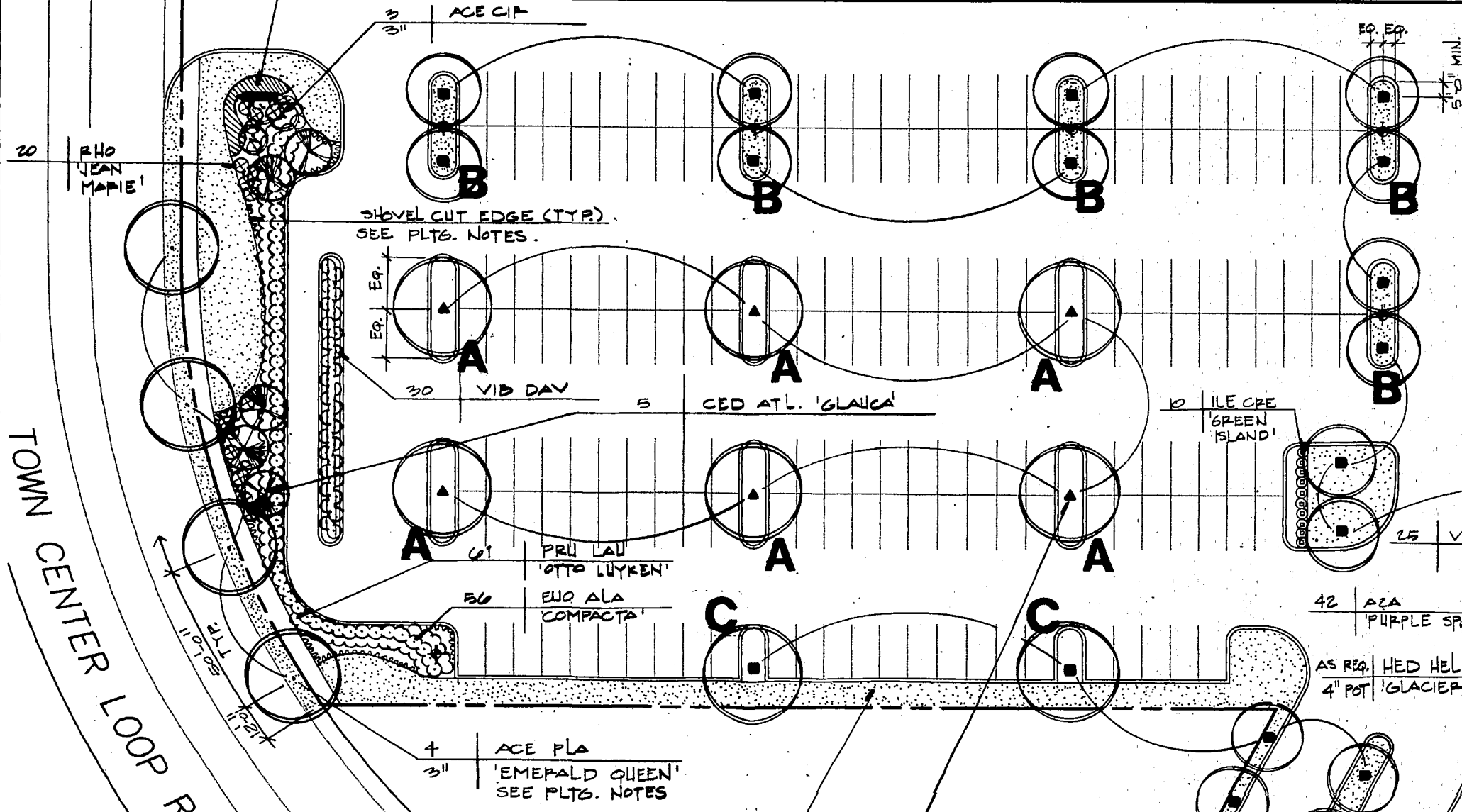
Project Title: **PROJECT THUNDER**
WILSONVILLE, OREGON

Drawing Title: **LANDSCAPE PLAN**

Seal REGISTERED 2011 Matthew P. Simpson 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
© 1991 DESIGN FORUM ARCHITECTS		



MATCHLINE SHEET: L-1
 4" POT ANNUAL COLOR
 SEE PLTS. NOTES

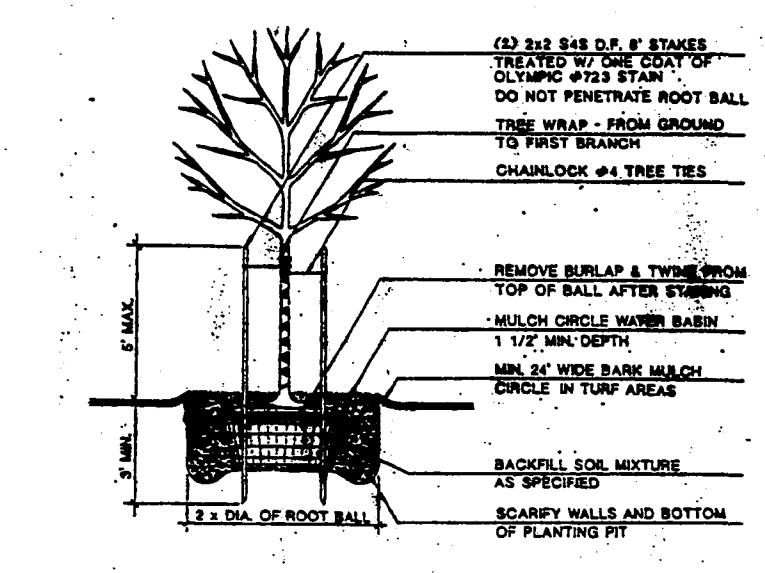


TOWN CENTER LOOP ROAD WEST

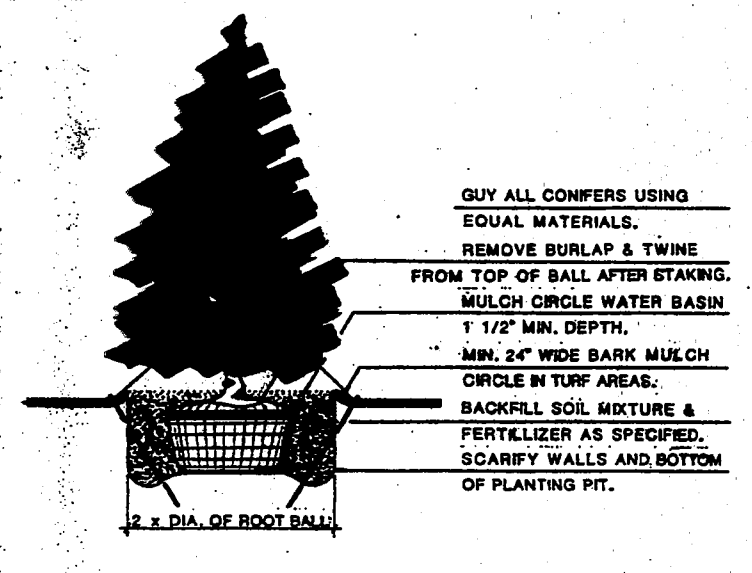
ROUGH SEEDED AREA
 See Grading Plans for Limits

ROUGH SEEDED AREA
 See Grading Plans for Limits

LAWN - SE
 SEE SPEC



1 TREE PLANTING DETAIL N.T.S.



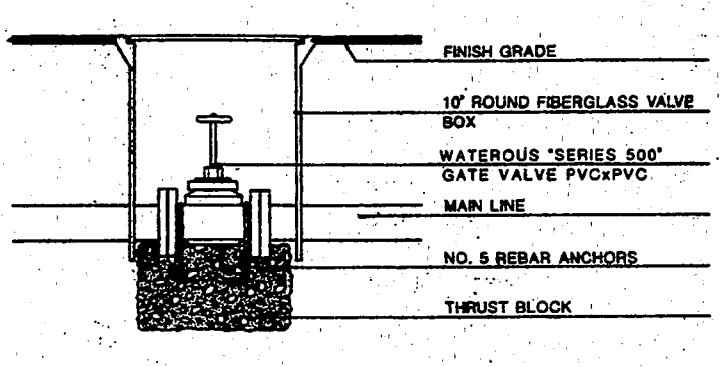
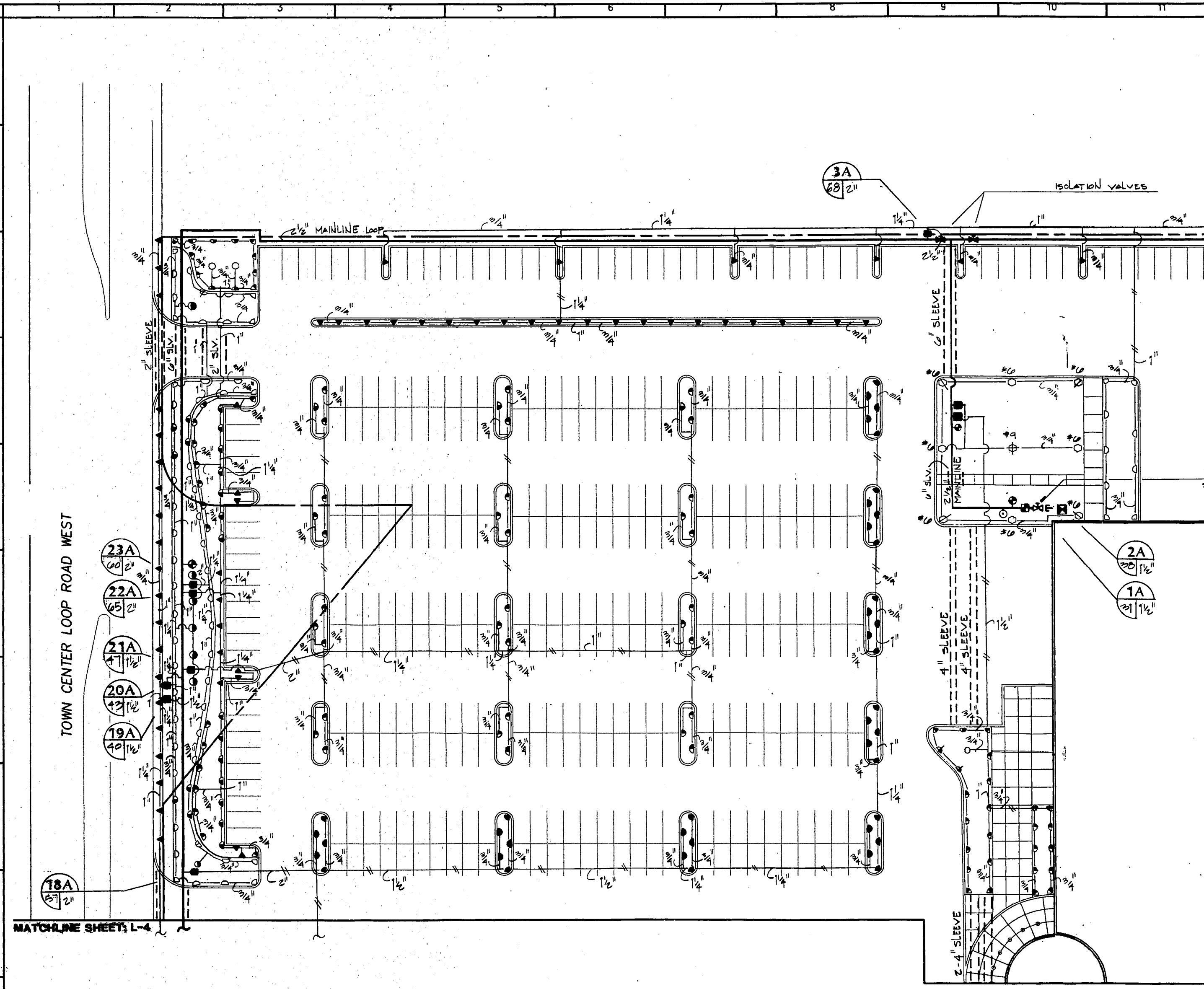
2 CONIFER PLANTING DETAIL N.T.S.

PLANT LEGEND

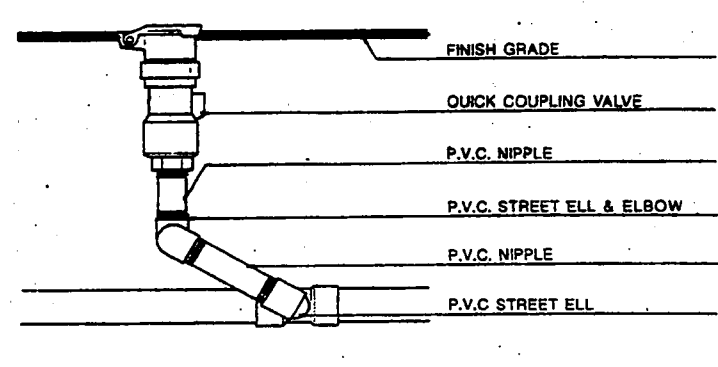
QTY	CODE	BOTANICAL NAME	COMMON NAME	SIZE
TREES				
9	Ace Cir	Acer circinatum	Vine Maple	7'-8'
4	Ace pla	Acer platanoides 'Emerald Queen'	Emerald Queen Maple	3" Cal.
11	Ace rub	Acer rubrum 'Armstrong'	Armstrong Columnar Maple	1-3/4" Cal.
18	Ced atl	Cedrus atlantica 'Glauca'	Blue Atlas Cedar	8'-10'
18	Pyr cal	Pyrus calleryana 'Chanticleer'	Chanticleer Pear	1-3/4" Cal.
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	Berberis thunbergii 'Rosy Glow'	Rosy Glow Japanese Barberry	2 Gal.
184	Euo ala	Euonymus alata 'Compacta'	Compact Winged Euonymus	12-15"
35	I le cre	Ilex crenata 'Green Island'	Japanese Holly	2 Gal.
63	Pie	Pieris 'Forest Flame'	Forest Flame Pieris	12-15"
133	Pin mug	Pinus mugo	Dwarf Mugo Pine	2 Gal.
140	Pru lau	Prunus laurocerasus 'Otto Luyken'	Otto Luyken Laurel	12-15"
56	Rho	Rhododendron 'Jesse Marie'	Rhododendron	12-15"
112	Rho	Rhododendron 'Unique'	Rhododendron	12-15"
18	Syr vul	Syringa vulgaris 'Lavender Lady'	Lavender Lilac	2 Gal.
33	Vib dav	Viburnum davidii	David Viburnum	12-15"
GROUND COVER				
2,230	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

PER WIS. 1233.1318888888

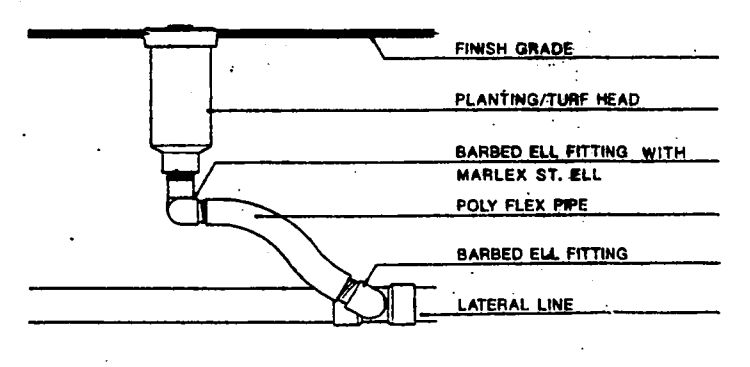
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CADD FILE: 07580000



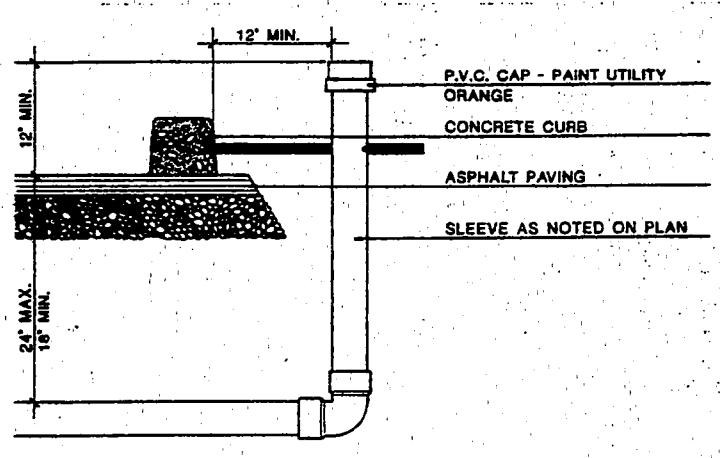
MAINLINE GATE VALVE



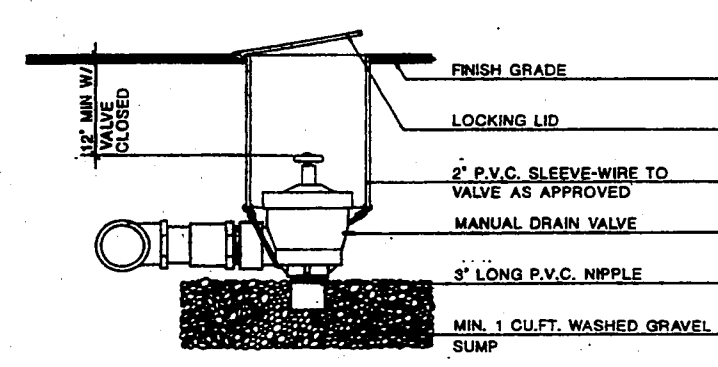
QUICK COUPLING VALVE DETAIL



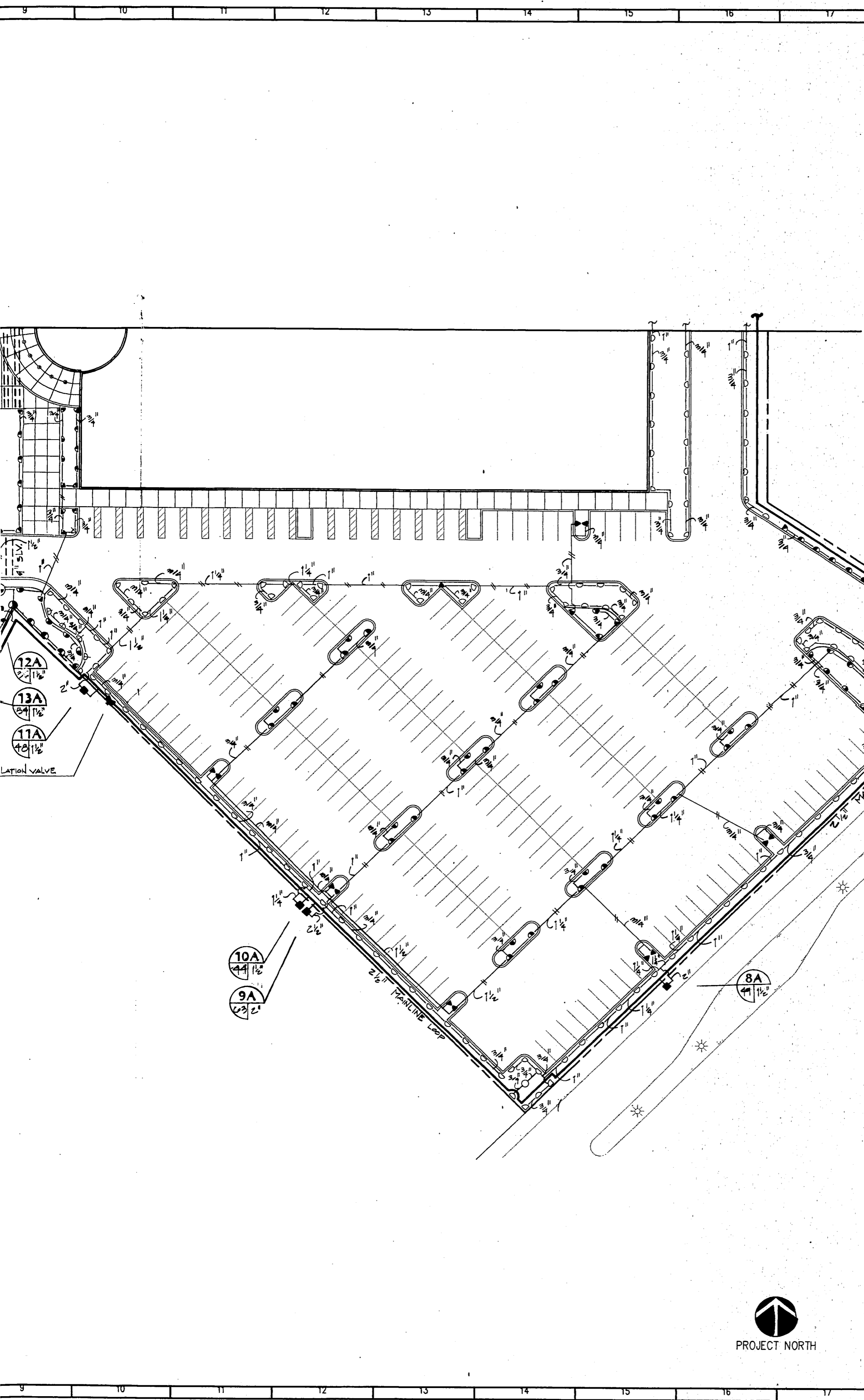
POLY FLEX RISER DETAIL



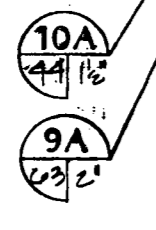
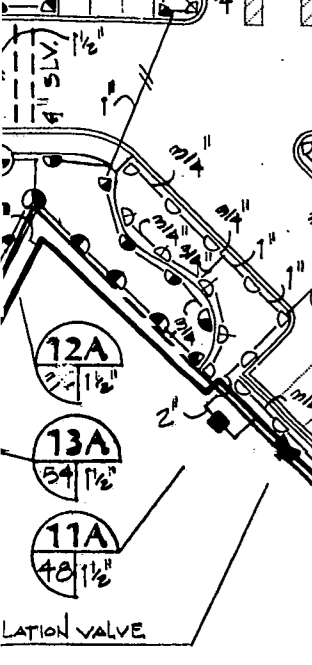
SLEEVING DETAIL



MANUAL DRAIN VALVE DETAIL



SHEET NOTES



WH PACIFIC
 699 S.W. COLUMBIA STREET
 PORTLAND, OREGON 97201
 (503) 237-0405
 Planning • Engineering • Surveying • Landscape Architecture

No.	Revisions/Submissions	Date

DesignForum
 ARCHITECTS

3484 For Hills Avenue, Dayton, Ohio 45429 Telephone: (513) 298-4400

Project Title **PROJECT THUNDER**
 WILSONVILLE, OREGON

Drawing Title **IRRIGATION PLAN**

Seal REGISTERED LANDSCAPE ARCHITECT MATTHEW P. SIMPSON OREGON	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 c 1991 DESIGN FORUM ARCHITECTS



CITY OF WILSONVILLE
29799 SW TOWN CENTER LP E
WILSONVILLE OR 97070
Billing Inquiries: (503) 570-1610

Account Information

Item 9.

Customer Number 1202894206524
 Bill Number 91999
 Bill Date 9/8/2023
 Due Date 9/30/2023
 Amount Due \$4,553.00

Balance Summary

Last Payment Date 8/15/2023
 Payments \$4,553.00
 Previous Balance \$4,553.00
 Current Charges \$4,553.00
 Adjustments \$0.00
 Amount Due \$4,553.00
 Projected penalty for late payments \$34.16

Messages

As the fall season approaches, please don't rake or blow leaves into the street. Help yourself and the community by keeping storm drains clear of debris.

Meter Information

	Size	Meter #	Read Dates	Prior	Current	Usage
Water	3	04567906	7/31-8/31	1255	1255	0
Irrigation	1.5	64955200	7/31-8/31	3959	3959	0

Billing Details

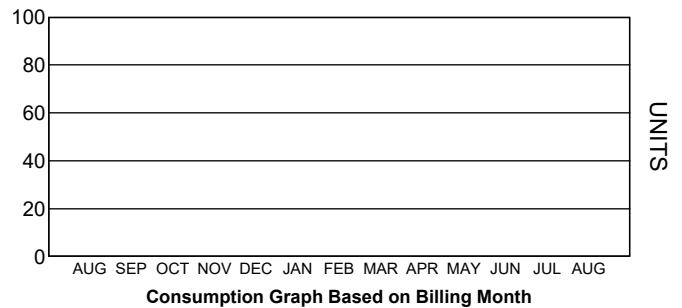
Service Address: 29400 SW TOWN CENTER LOOP W
 (Base fees are calculated on a monthly cycle)

Water Commercial \$46.43
Irrigation \$25.68
Sewer Commercial \$201.25
Stormwater Commercial \$2,118.20
Street Light Cobra Head \$2.08
Road Maintenance Commerical \$2,159.36

Total Current Charges \$4,553.00

Total Usage: 0

1 Unit = 100 Cubic Feet or 748 gallons



RETURN THIS PORTION WITH PAYMENT. MAKE CHECK PAYABLE TO: CITY OF WILSONVILLE.



CITY OF WILSONVILLE
 29799 SW TOWN CENTER LP E
 WILSONVILLE OR 97070

BILL NUMBER 91999
 CUSTOMER NUMBER 1202894206524
 SERVICE ADDRESS 29400 SW TOWN CENTER LOOP W

TOTAL DUE: \$4,553.00

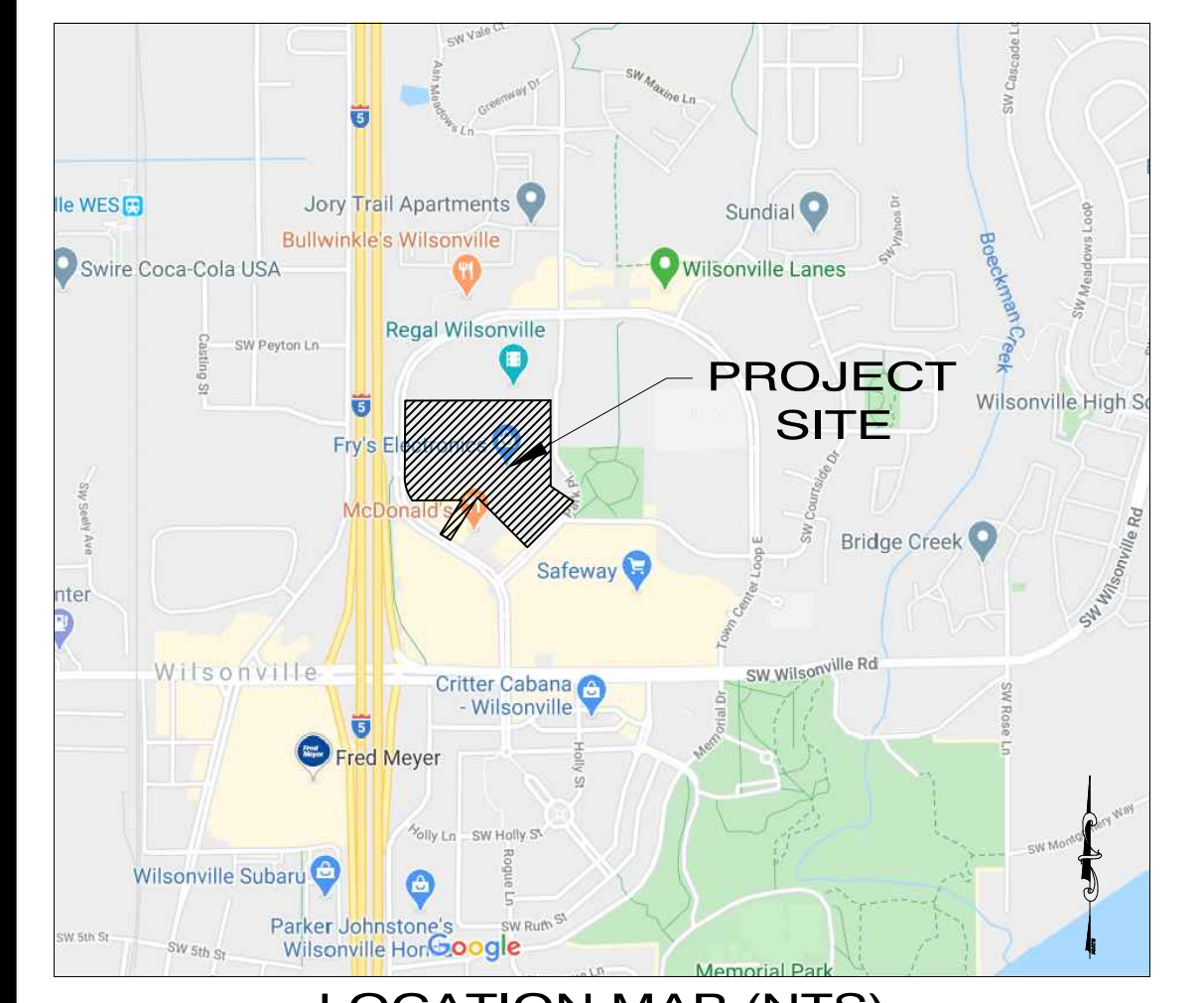
Payment Enclosed \$

2584 1 MB 0.561 7/83 002699 0001:0001

LUMBERJACK, LP
 C/O TAW L.P.
 PO BOX 612530
 SAN JOSE CA 95161-2530



CITY OF WILSONVILLE
 PO BOX 5310
 PORTLAND OR 97228-5310



SITE AREA

THE HOME DEPOT PARCEL	15.01 AC	653,836 SF
-----------------------	----------	------------

BUILDING AREA

THE HOME DEPOT	124,215 SF
MEZZANINE	0 SF
SUBTOTAL	124,215 SF
TOTAL BUILDING AREA	124,215 SF

PARKING REQUIRED

THE HOME DEPOT	4.1 / 1,000 SF	509 STALLS
TOTAL PARKING REQUIRED		509 STALLS

PARKING PROVIDED

FRONT FIELD	553 STALLS
SIDE FIELD / REAR	282 STALLS
TOTAL PARKING PROVIDED	839 STALLS

INCLUDED IN PARKING PROVIDED

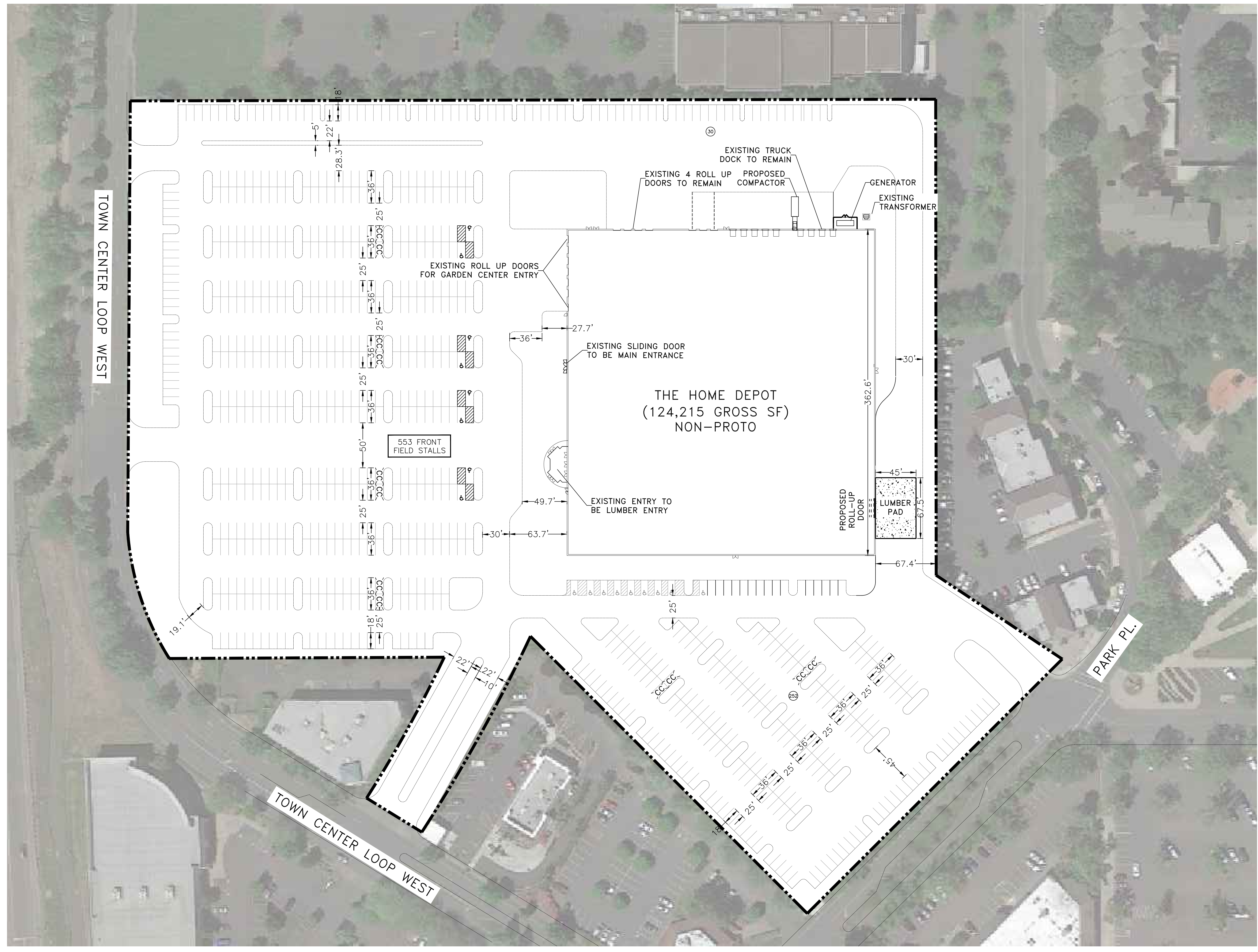
ACCESSIBLE STALLS (17 REQ. @ 2%)	17 STALLS
----------------------------------	-----------

NOT INCLUDED IN PARKING PROVIDED

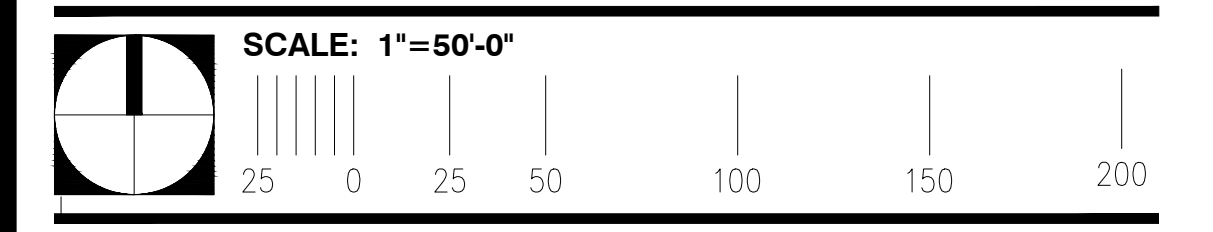
CART CORRALS	10 STALLS
ACCESSORY PARKING NOT INCLUDED	10 STALLS
TOTAL THD PARKING PROVIDED	839 STALLS

ZONING CLASSIFICATION

JURISDICTION	CITY OF WILSONVILLE
ZONING CLASSIFICATION	PLANNED DEVELOPMENT
	COMMERCIAL TOWN CENTER (PDC-TC)
THD USE PERMITTED BY RIGHT	YES



NOTES
 1. PLAN BOUNDARY IS BASED OFF AVAILABLE APN MAPS; AN ALTA SHOULD BE COMPLETED FOR ACCURACY.



OR - SITE PLAN 10

THE HOME DEPOT
THE HOME DEPOT WILSONVILLE, OR
 29400 TOWN CENTER LOOP W
 WILSONVILLE, OR 97070

DRAWING ISSUE DATE 10.19.2023
 HD SITE SELECTION NUMBER SS-02804.2001

March 4, 2024

Keenan Ordon-Bakalian
Admitted in Oregon and
Washington
D: 503-796-2470
kordon-bakalian@schwabe.com

VIA EMAIL

Kenneth Katzaroff
Admitted in Washington and
Oregon
D: 206-405-1985
C: 206-755-2011
KKatzaroff@schwabe.com

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: ***In the Matter of an appeal of Planning Director Determination ADMN23-0029 (DB24-0002/APPL24-0001)***

Dear Members of the Development Review Board:

This firm represents The Home Depot, Inc. (“**Home Depot**”) in the above-referenced casefiles (the “**Appeal**”). On February 26, 2024, the Development Review Board (the “**DRB**”) held a public hearing on the Appeal. Home Depot testified orally during the hearing. At the conclusion of the hearing, the DRB closed the record to further oral testimony but allowed the written record to remain open until 5:00 PM on March 4th for any party to submit any evidence or testimony. Home Depot is also entitled to at least seven days after the record is closed to all other parties (March 11, 2024) to submit final written argument, pursuant to ORS 197.797(6)(e).

This letter addressees several themes and questions that were raised during the February 26 public hearing. It is timely submitted prior to the close of the open record period. This letter does not contain significant legal argument, but rather summarizes Home Depot’s responsive evidence and testimony, which is enclosed.

I. Summary of Enclosures and Testimony

A. Home Depot’s Operations at the Subject Property will be Less Significant than Fry’s Electronics Prior Impacts

During the February 27 public hearing, members of the DRB raised questions regarding the scope of Home Depot’s impact on the subject property and surrounding area – in relation to that of Fry’s Electronics. City Staff has also suggested that operating a Home Depot at the subject property may constitute an expansion of a lawfully established nonconforming use. In response,

City of Wilsonville Development Review Board B
March 4, 2024

Home Depot provides analysis from Lars Anderson & Associates that details the potential development impacts of Home Depot, in relation to Fry's Electronics. **Exhibit A.**

This letter also encloses a Trip Generation Memorandum for Home Depot's use of the subject property, prepared by Transportation Engineering Northwest ("TENW"). **Exhibit B.** 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.

B. The Decision Effects a Taking on Home Depot

It is clear from the facts of this Appeal that the City's desire to prevent any development of the subject property that is inconsistent with the City's adopted Town Center Plan¹ led the Planning Director to intentionally make a nonconforming use determination of such limited scope so as to prevent any valid nonconforming use of the subject property.

The Decision has effected a compensable regulatory "taking" under Article I, section 18, of the Oregon Constitution,² and the Fifth and Fourteenth Amendments to the United States Constitution.³ Here, the City's arbitrarily narrow determination that the nonconforming use at the subject property is a "Fry's Electronics" denies Home Depot (or any other party) any economic use of the lawfully established nonconforming use at the property. Looking past the impracticality of the forthcoming hypothetical, we note that Fry's Electronics is no longer in business,⁴ therefore, it would be impossible for Home Depot to operate a Fry's Electronics at the property even if Home Depot had such an interest – which it does not. Moreover, the restriction

¹ Wilsonville Town Center Plan (May 6, 2019). Adopted Ord. No. 835; Amended October 18, 2021 per Ord. No. 850.

² Article I, section 18, of the Oregon Constitution provides, in part: "Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation[.]"

³ The Takings Clause of the Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, *see Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979 (1897), provides that "private property" shall not "be taken for public use, without just compensation."

⁴ *Fry's Electronics suddenly went out of business*, CNN, <https://www.cnn.com/2021/02/24/business/frys-electronics-closure/index.html> (last accessed Oct. 9, 2023); *Fry's Electronics closes, leaving Wilsonville store barren*, Portland Tribune, https://www.portlandtribune.com/news/frys-electronics-closes-leaving-wilsonville-store-barren/article_cde50d46-de09-5ce3-a647-9f54ce7d4bb1.html (last accessed Oct. 9, 2023).

City of Wilsonville Development Review Board B
March 4, 2024

essentially precludes use of the structure as the current zoning limits retail uses to less than 30,000 square feet. As such, the City's decision has deprived Home Depot of all economically productive use of the subject property or the existing structure.

As will be discussed further in Home Depot's final written argument, the Appellant respectfully requests that the DRB modify the Decision to find that the lawfully established nonconforming use at the subject property is a commercial retail use, not a "Fry's Electronics" or "single-user electronics retail store." Alternatively, the DRB may reverse the Decision, or remand the Decision back to the Planning Director to make a decision consistent with Oregon's nonconforming use caselaw. Otherwise, the City risks effecting a regulatory taking on Home Depot.

C. *Gould* Citation Correction

Home Depot would like to correct the record regarding the citation to *Gould v. Deschutes County*, 79 Or LUBA 561 (2019) (*Gould VIII*), *aff'd without opinion*, 310 Or App 868, 484 P.3d 1073 (2021) that was contained on slide 7 of the Appellant's PowerPoint presentation. Home Depot cited *Gould VIII* for the proposition that the City is not entitled to deference in interpreting the 1991 Decision, pursuant to ORS 197.829(1). Home Depot intended to cite *Gould v. Deschutes County*, ___ Or LUBA ___, ___ (LUBA No. 2020-095).

As stated on the record during the hearing for this matter, ORS 197.829(1) generally⁵ does not require LUBA to affirm a local government's interpretation of a prior land use decision or conditions of approval attached to a prior land use decision. *Gould v. Deschutes County*, ___ Or LUBA ___, ___ (LUBA No. 2020-095, at 17, Jun. 11, 2021); *see also M & T Partners, Inc. v. City of Salem*, ___ Or LUBA ___, ___ (LUBA No 2018-143, Aug. 14, 2019) (slip op at 14), *aff'd sub nom M & T Partners, Inc. v. Miller*, 302 Or App 159, 170, 460 P3d 117 (2020). In the event this appeal proceeds to LUBA, the City's interpretation of the 1991 Decision will not be entitled to deference. Therefore, the City's interpretation that the 1991 Decision approved a "Fry's Electronics" will be reviewed by LUBA for legal error. ORS 197.835(9)(a)(D); *Gould v. Deschutes County*, ___ Or LUBA ___, ___ (LUBA No. 2020-095, at 17).

⁵ To a "limited extent," LUBA will defer to plausible interpretations of county land use regulations that the governing body made in the course of interpreting a condition of approval. *Kuhn v. Deschutes County*, 74 Or LUBA 190, 194 (2016). It is Home Depot's position that this exception to the general rule that LUBA does not defer to local government interpretations of prior land use decisions is *not relevant* to the subject appeal.

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Seeing as the words “Fry’s Electronics” are not contained anywhere within the 1991 Decision, the City’s nonconforming use Decision is likely to be reversed or remanded by LUBA. As such, Home Depot requests that the DRB to find that the 1991 Decision approved a commercial retail use, which is consistent with Oregon nonconforming use caselaw. Such a finding will prevent the unnecessary expenditure of time and resources on the part of both Home Depot and the City that will inevitably result from a LUBA appeal.

D. Objection to City’s Attempted Exclusion of Home Depot’s Documents and Testimony

Home Depot formally objects to the City’s attempt to exclude from the record certain documents and testimony submitted by Home Depot as part of its Class I application. *See* Staff Report for APPL24-0001, Exhibit A1, at 13. The documents and testimony submitted by Home Depot as part of its application are within the record before the DRB on appeal. The documents and testimony that the City seeks 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 City cannot exclude certain documents and testimony within Home Depot’s Class I application because the documents and testimony that the City seeks to exclude are “argument” and “evidence” that the Appellant believes to be relevant to the satisfaction of the applicable approval criteria for the subject application, as well as Home Depot’s appeal of the Decision. ORS 197.797(9). In addition, the City’s attempt to omit certain documents and testimony that were submitted by Home Depot 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 City from excluding portions of Home Depot’s Class I application materials from the record.

Furthermore, Home Depot 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 public hearing. Home Depot believes that all of the argument and evidence that

City of Wilsonville Development Review Board B
March 4, 2024

Home Depot 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).

II. Conclusion

As noted above and will be discussed further in Home Depot's final written argument, Home Depot's operations at the subject property will not be an expansion of the lawfully established commercial retail nonconforming use at the subject property. Moreover, the Decision's conclusion that the nonconforming use at the property is a "Fry's Electronics" effects a regulatory taking on Home Depot.

Thank you for your consideration of this letter. We look forward to providing additional testimony in Home Depot's final written argument.

Sincerely,



KOB:jmhi
Enclosures

cc: Client
Miranda Bateschell, bateschell@ci.wilsonville.or.us
Amanda Guile-Hinman, guile@ci.wilsonville.or.us
Shelley White, swhite@ci.wilsonville.or.us



LARS ANDERSEN & ASSOCIATES, INC.

CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS
ADA COMPLIANCE • LEED ACCREDITED • STORM WATER QUALITY
4694 W JACQUELYN AVENUE
FRESNO, CA 93722
PH (559) 276-2790 FX (559) 276-0850
TEXAS REGISTERED ENGINEERING FIRM F-18450

SCOTT A. MOMMER, PE, Q
PRESIDENT

Item 9.

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

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

Weekday Time Period	Net New Trips Generated		
	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.

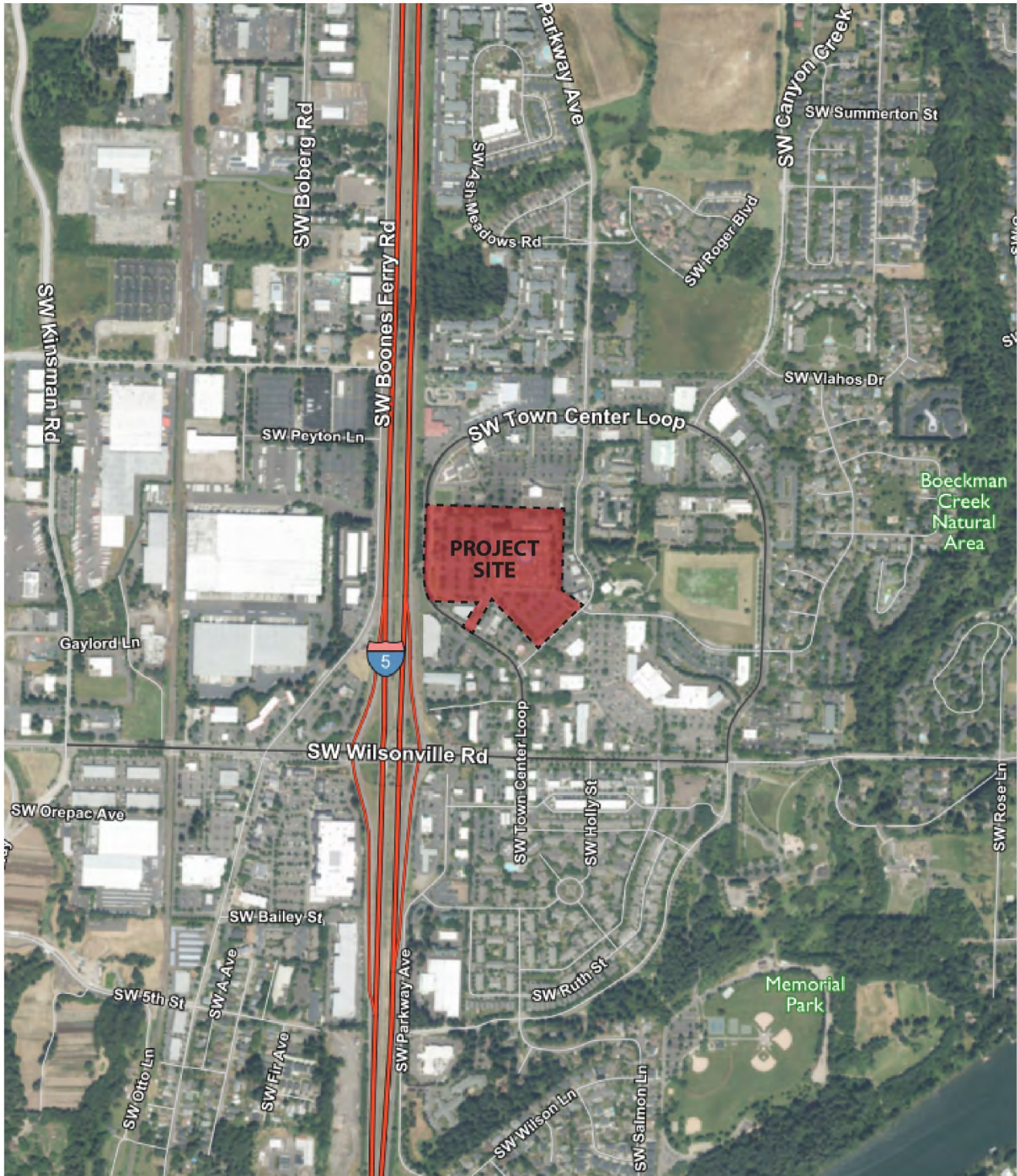
If you have any questions regarding the information presented in this memo, please contact me at (425) 466-7072 or amy@tenw.com.

cc: Dan Zoldak, Lars Andersen & Associates

Attachments: A. Project Site Vicinity
B. Preliminary Site Plan
C. Trip Generation Calculations

ATTACHMENT A

Project Site Vicinity

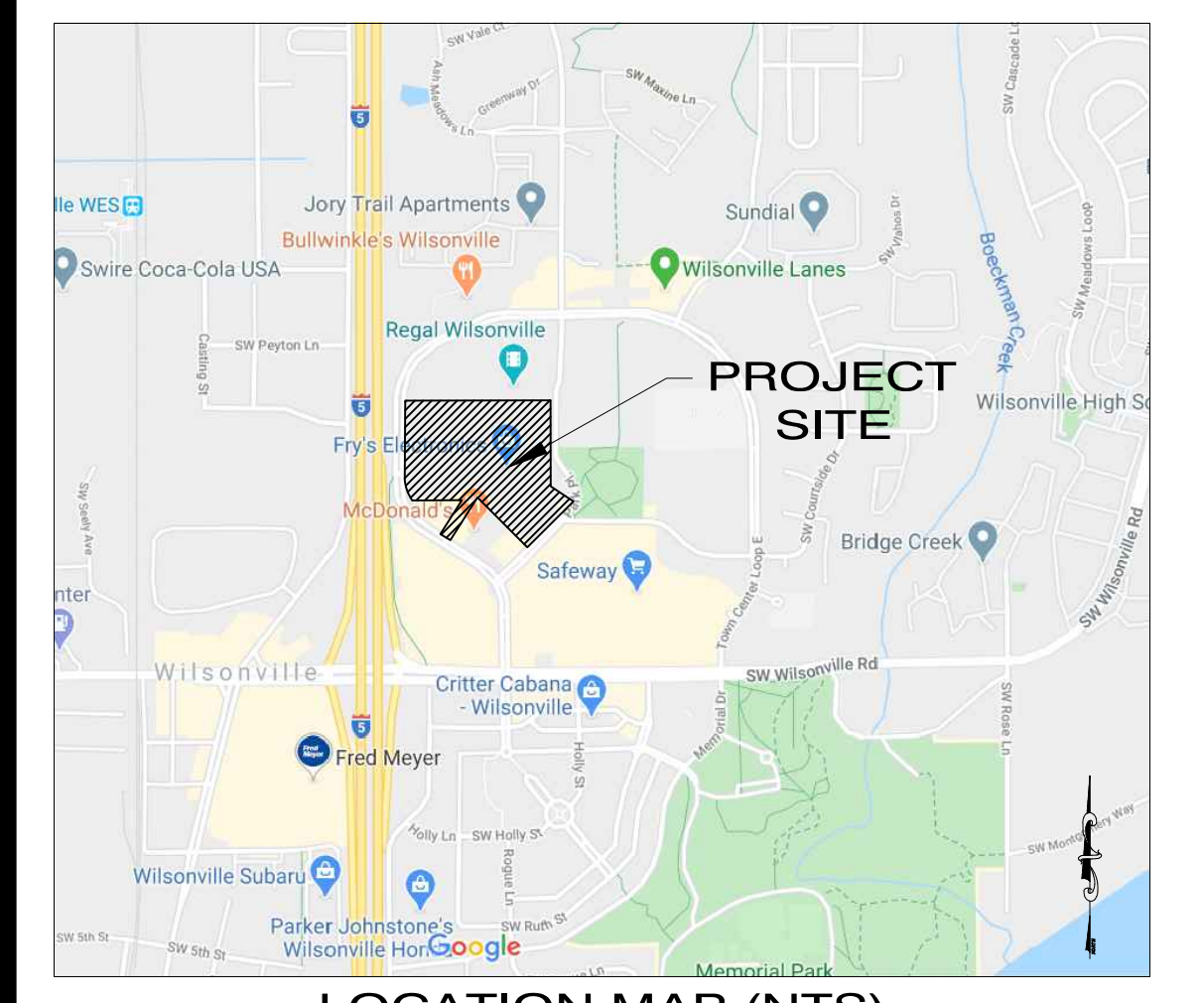


Attachment A: Project Site Vicinity



ATTACHMENT B

Site Plan



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

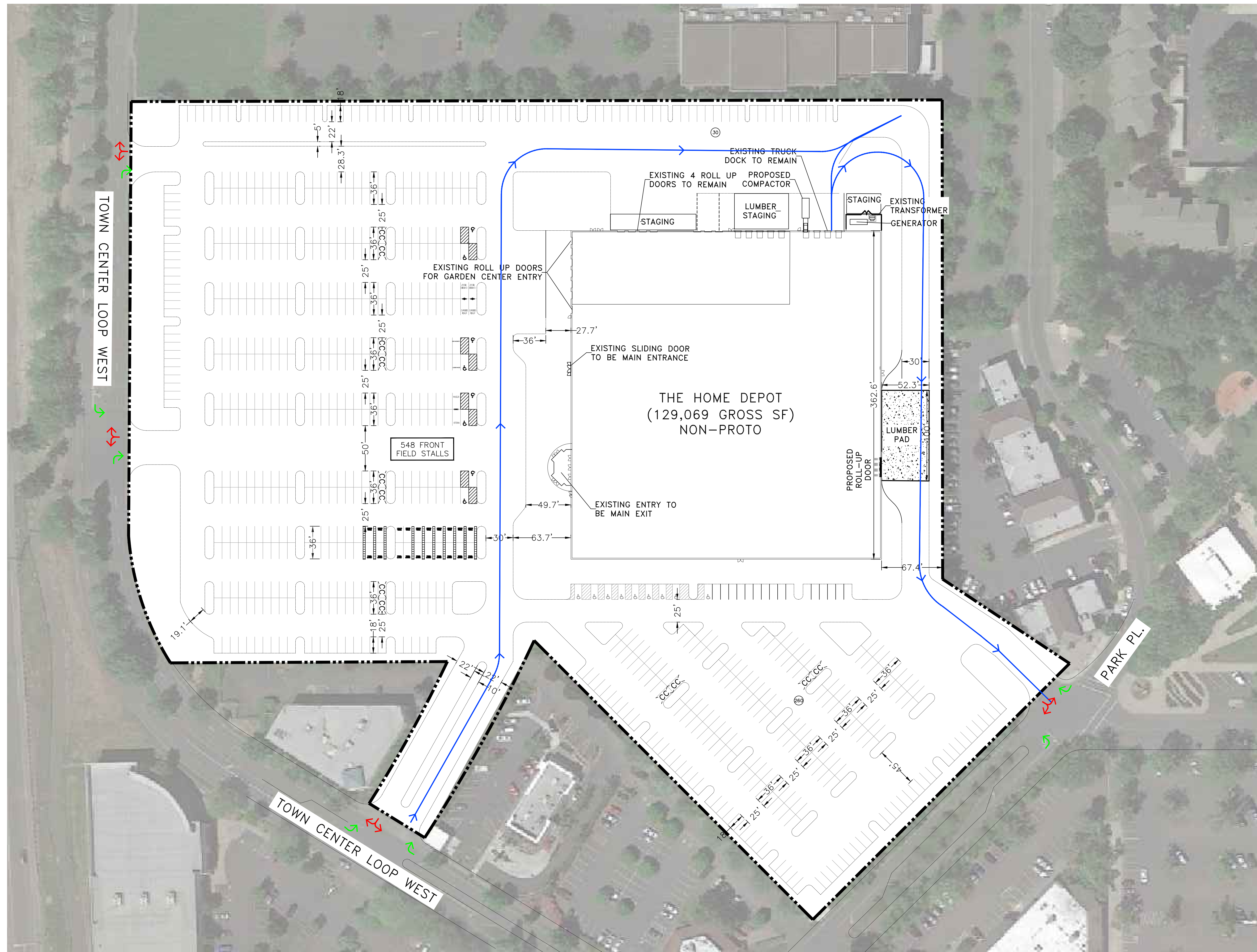
ACCESSIBLE STALLS (17 REQ. @ 2%)	17 STALLS
----------------------------------	-----------

NOT INCLUDED IN PARKING PROVIDED

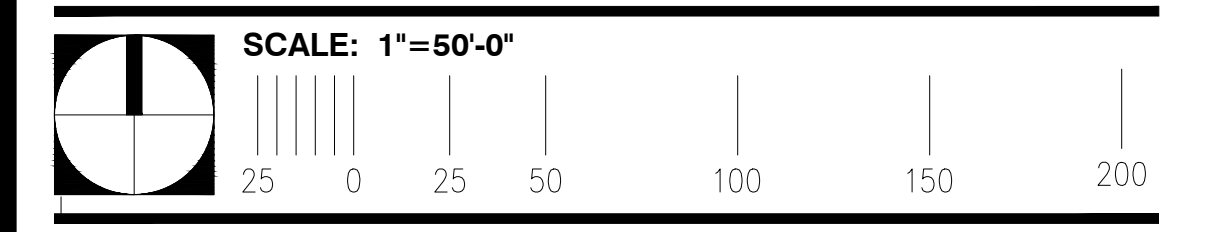
CART CORRALS	12 STALLS
ACCESSORY PARKING NOT INCLUDED	12 STALLS
TOTAL THD PARKING PROVIDED	838 STALLS

ZONING CLASSIFICATION

JURISDICTION	CITY OF WILSONVILLE
ZONING CLASSIFICATION	PLANNED DEVELOPMENT
	COMMERCIAL TOWN CENTER (PDC-TC)
THD USE PERMITTED BY RIGHT	YES



NOTES
 1. PLAN BOUNDARY IS BASED OFF AVAILABLE APN MAPS; AN ALTA SHOULD BE COMPLETED FOR ACCURACY.



OR - SITE PLAN 10

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

ATTACHMENT C

Trip Generation Calculations

**Home Depot Wilsonville
Weekday Daily Trip Generation Summary**

	Units ¹	ITE LUC ²	Directional Distribution ²		Trip Rate or Equation ²	Trips Generated		
			In	Out		In	Out	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		Trip Rate or Equation ²	Trips Generated		
			In	Out		In	Out	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		Trip Rate or Equation ²	Trips Generated		
			In	Out		In	Out	Total
WEEKDAY PM PEAK HOUR								
<u>Proposed:</u>								
Home Improvement Superstore	129,100 SF	862	49%	51%	2.29	145	151	296
<i>Passby Trips</i> ³	42%					-61	-63	-124
					Subtotal (less passby) =	84	88	172
<u>Less Existing:</u>								
Electronics Superstore	166,495 SF	863	50%	50%	4.25	354	354	708
<i>Passby Trips</i> 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.



March 11, 2024

Keenan Ordon-Bakalian
Admitted in Oregon and
Washington
D: 503-796-2470
kordon-bakalian@schwabe.com

J. Kenneth Katzaroff
Admitted in Oregon and
Washington
D: 206-405-1985
kkatzaroff@schwabe.com

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 Final Written Argument for ADMN23-0029 (DB24-0002/APPL24-0001)***

Dear Members of the Development Review Board:

This office represents Home Depot, Inc. (“**Home Depot**” or the “**Applicant**”). On February 26, 2024, the Development Review Board (the “**DRB**”) held a public hearing on the Appeal. Home Depot testified orally during the hearing. At the conclusion of the hearing, the DRB closed the record to further oral testimony but allowed the written record to remain open until 5:00 PM on March 4th for any party to submit any evidence or testimony. Home Depot is also entitled to at least seven days after the record is closed to all other parties (March 11, 2024) to submit final written argument, pursuant to ORS 197.797(6)(e).

This letter constitutes Home Depot’s final written argument in this matter, and is respectfully submitted prior to the end of the final written argument period at 5:00 p.m. on Monday, March 11, 2024. The Applicant has also attached as **Exhibit A** a redline version of the Class I Planning Director Determination ADMN20-0029 (the “**Decision**”) that is presently on appeal. The Applicant believes that Exhibit A will assist the DRB in understanding the portions of the Decision that the Home Depot takes issue with, as well as Home Depot’s recommended changes.¹

Home Depot respectfully requests that the DRB modify the Decision to find that the lawfully established nonconforming use at the subject property is a commercial retail use, not a “Fry’s Electronics” or “single-user electronics retail store.” Alternatively, the DRB may reverse the

¹ Within Exhibit A, the Applicant has also included a clean copy of the Decision with Home Depot’s recommended changes incorporated.

Development Review Board Panel B
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Decision, or remand the Decision back to the Planning Director to make a decision consistent with Oregon’s nonconforming use caselaw.

I. INTRODUCTION AND OVERVIEW

The Applicant proposes to operate a Home Depot within the existing structure at 29400 SW Town Center Loop West (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 a 1991 development approval² (the “**1991 Decision**”) remained a lawfully established non-conforming use at the subject property. The Applicant’s Class I application was submitted on October 30, 2023, and deemed complete by the City of Wilsonville (the “**City**”) on November 29, 2023. *See attached*, DB24-0002 Staff Report, at 4 (**Exhibit B**).

As detailed in Home Depot’s Notice of Appeal, the City requested that the Applicant bifurcate its request to confirm the legality of a nonconforming use at the subject property and Applicant’s request for a determination to establish the scope of use at the property. To this end, the City required the Home Depot 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 extent of use at the subject property. Home Depot’s Class II application was submitted to the City on December 15, 2023 and remains under review. However, based on many of the findings contained within the City’s Decision for the Class I application, the City appears to have prejudged Applicant’s Class II application for a use determination. Moreover, the current Class I decision makes specific findings regarding the scope of use, as described below. This is the reason that the Applicant appealed; to request the DRB to remove these scope-of-use findings that the City itself was purporting to avoid by requesting Applicant to submit its Class II application.

On December 28, 2023, the City issued its Notice of Decision for Home Depot’s Class I application, finding that “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”. *See attached*, **Exhibit C**, at 4. However, the City’s Decision for the Class I contains contradictory findings that “[t]he 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*” but also that “the primary use of the site was considered *commercial retail or retail store*.” **Exhibit C**, at 3-4 (emphasis added). Furthermore, the Decision contains a finding that “nothing in this Class 1 decision shall be construed to

² Case File Nos. 91PC43 and 91DR29.

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provide a determination one way or another with regard to the interpretation requested in the subsequent Class 2 Review (re: Home Depot, Inc.)” Exhibit C, at 4.

From the outset, it has been extremely difficult for the Applicant to discern *what* lawfully established nonconforming use the Planning Director has determined is present at the subject property, due to the City’s internally inconsistent Decision. Home Depot’s position on the matter has been clear from the beginning – the lawfully established nonconforming use at the subject property is the *commercial retail use* that was originally approved by the 1991 Decision. *See attached, Exhibit D.* The 1991 Decision is rife with findings and references to the commercial retail use that the decision was approving, including the plain language used by the City to describe the request subject to review – “Stage II Phase II Site Development review for a 159,400 square foot *retail commercial building*.” Exhibit D, at 9. The 1991 Decision also contains the following findings demonstrating that the 1991 Decision approved a commercial retail use at the subject property:

- “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*.”
- “application for Stage II Phase II site development of Thunder Project, a 159,400 square foot *retail commercial building*.”
- “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.”
- “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.”

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March 11, 2024

4. Building Use	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
a. Office	sq. ft.	9,117 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____
b. Warehouse	sq. ft.	39,330 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____
c. Manufacturing/SERVICE	sq. ft.	17,276 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____
d. Other/DETAIL	sq. ft.	63,914 SF	<input checked="" type="radio"/>	<input type="radio"/>	_____

Exhibit D, at 9, 12-13, 18, 24 (emphasis added).

In contrast, the City’s Decision simply refers to a generalized analysis of “the application materials, prior land use approvals, existing site conditions, and the applicable zoning ordinances and regulations” as the basis for the determination that Fry’s Electronics is a legally established nonconforming use. Exhibit C, at 3. The Decision does not address the scope of the 1991 Decision in any detail, lacks specificity and clarity, and is unsupported by the evidence in the record. Similarly, the Staff Report for this appeal merely refers to generalized principles of Oregon nonconforming use caselaw, without applying the principals of the cited cases to the appeal before the DRB. Moreover, the Staff Report’s recommendation that the DRB affirm the Planning Director’s Decision that “[t]here 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’”³ is inconsistent with the Class I Decision itself because the Planning Director found that Fry’s Electronics was the nonconforming use at the subject property.

II. ARGUMENT

A. Standard of review.

The DRB’s decision must be supported by substantial evidence in the whole record. ORS 197.835(9)(a)(C). Substantial evidence is evidence a reasonable person would rely upon to reach a conclusion, notwithstanding that different reasonable people could draw different conclusions from the evidence. *Adler v. City of Portland*, 25 Or LUBA 546 (1993) In making its decision, the

³ Exhibit D, at 11.

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DRB must also take care not to improperly construe applicable law, which includes Oregon’s nonconforming use caselaw. *See* ORS 197.835(9)(a)(D).

B. The nonconforming use at the subject property is the commercial retail use that was approved within 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 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* Wilsonville Development Code (“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”).

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 Home Depot’s application materials and throughout this appeal proceeding, 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 3.⁴ Specifically, the 1991 Decision approved a 159,400 retail commercial building and associated commercial retail activities on the 14.75 acre subject property. Exhibit 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 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.

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. Exhibit D, at 3.

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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 nonconforming, the 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 City’s determination that the nonconforming use allowed to continue at the subject property is a “Fry’s Electronics” or “single-user electronics 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. 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. As such, the Decision must be reversed or modified to reject the limitation of the use approved by the 1991 Decision to either a “Fry’s Electronics” or “single-user electronics retail store.”

C. The identity of Fry’s Electronics is not relevant to the DRB’s determination of the nature and extent of the nonconforming use at the subject property.

The Decision’s determination that the nonconforming use at the subject property is a “Fry’s Electronics” violates a key tenet of Oregon nonconforming use law. 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). City staff recognize this principle within the Staff Report for this appeal (but not within the Class I Decision), stating that “[t]he identity of the party that engaged in the use is irrelevant to this inquiry.” Exhibit B, at 7. Nonetheless, the Decision found that *Fry’s Electronics* is a legally established nonconforming use at the subject property, even though Fry’s Electronics was not the use approved by the 1991 Decision. Exhibit C, at 3-4.

The Class I Decision erroneously focuses on the identity of the entity performing the nonconforming use at the property – Fry’s Electronics – instead of the *nature and extent* of the nonconforming activities themselves. See *City of Mosier*, 36 Or LUBA, at 678. In this case, Fry’s Electronics (operating under the anonymous name “Project Thunder”) achieved land use approval for a commercial retail use at the subject property. Exhibit D. 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.” The 1991 Decision is the controlling substantial evidence for determining the nature and extent of the legally established nonconforming use at

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the subject property, and the 1991 Decision didn't approve "Fry's Electronics" as a use, but rather the commercial retail use mentioned throughout the Decision.⁵ The Decision's arbitrarily narrow nonconforming use determination is inconsistent with *City of Mosier* and must be reversed or modified.

D. The Applicant may continue the commercial retail use approved by the 1991 Decision.

In this case, Home Depot is proposing 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 D, 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

⁵ The Applicant notes that the City's 1991 zoning code does not list "Fry's Electronics" as an allowed use in the PDC zone – the subject property's zoning designation at the time the 1991 Decision was made.

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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. The City’s nonconforming use determination for this matter misapplies the well-established nonconforming use principles in *City of Mosier*, *Vanspeybroeck*, and *Hendgen* and is nothing more than a thinly veiled attempt to prevent any development of the subject property that is inconsistent with the City’s adopted Town Center Plan. The City’s arbitrarily narrow determination that the nonconforming use at the property is a “Fry’s Electronics” or “single-user electronics retail store” must be reversed or modified.

E. The Decision effects a taking on Home Depot.

As explained in the Applicant’s open record submittal, the Decision has effected 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 City’s overly-restrictive “use” determination is unsupported by the City’s own code and Oregon law. If left to stand, the Decision will deny Home Depot (or any other party) any economic use of the lawfully established nonconforming use at the property. This is because the determination that “Fry’s Electronics” is the lawfully established nonconforming “use” for the property essentially precludes use of the structure as the current zoning limits retail uses to less than 30,000 square feet. As such, the City’s decision has deprived Home Depot of all economically productive use of the subject property or the existing structure.

For the foregoing reasons in this section and above, the DRB should reverse or modify the Decision to avoid effecting a regulatory taking on Home Depot.

III. CONCLUSION

Home Depot requests that the DRB impose the relief requested by the Appellant in the above argument. Specifically, the Applicant respectfully requests that the DRB adopt the Decision as modified by Home Depot and submitted within Exhibit A. In the alternative, the Applicant requests that the DRB take all necessary steps to modify Decision to find that the legally established nonconforming use at the subject property is the use approved in the 1991 Decision,

Development Review Board Panel B
March 11, 2024

a 159,400 square foot (“SF”) retail, office, warehouse, manufacturing, and service store (a commercial retail use); not a “Fry’s Electronics” or “single-user electronics 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.

Sincerely,



Keenan Ordon-Bakalian

KOB:

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 of Approval #8 of 90PC15

Action: Approved with conditions

Project Expiration Date:

<u>Property Description:</u> 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 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

Exhibit D-2

**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.

Attest:



Judge Emison, Planning Secretary



Chairman, Planning Commission

91PC43

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 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 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 Condition 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, redesignate 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"

NA = NOT APPLICABLE
DRB = DESIGN REVIEW BOARD

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

	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
4. Building Use					
a. Office	sq. ft.	9,117 SF	<input checked="" type="radio"/>	<input type="radio"/>	
b. Warehouse	sq. ft.	39,330 SF	<input checked="" type="radio"/>	<input type="radio"/>	
c. Manufacturing/SERVICE	sq. ft.	17,276 SF	<input checked="" type="radio"/>	<input type="radio"/>	
d. Other/RETAIL	sq. ft.	63,914 SF	<input checked="" type="radio"/>	<input type="radio"/>	
5. Building Specifications					
a. Building Height	35'	-	<input checked="" type="radio"/>	<input type="radio"/>	44
b. (Sun Exposure Plane)	NA		<input type="radio"/>	<input type="radio"/>	NA.
c. Gross Floor area of Building	NO LIMIT	150,400 SF	<input checked="" type="radio"/>	<input type="radio"/>	
6. Number of Off-Street Parking					
a. Standard 9' X 18'	472	850	<input checked="" type="radio"/>	<input type="radio"/>	48
b. Compact 8 1/2' X 17' (30% 10 allowed)	OPTIONAL	NOT SHOWN	<input checked="" type="radio"/>	<input type="radio"/>	
c. Handicapped 12' X 18' (1 to 50 required)	11	16	<input checked="" type="radio"/>	<input type="radio"/>	UBC TABLE 31-A
Total	483	872	<input checked="" type="radio"/>	<input type="radio"/>	46 to 48
d. Truck load berths	2	26	<input checked="" type="radio"/>	<input type="radio"/>	
7. Access/Egress					
a. Direct access to street	-	3	<input type="radio"/>	<input checked="" type="radio"/>	17, 18
b. Access provided by easement	NA		<input type="radio"/>	<input type="radio"/>	NA
c. Rail Access	NA		<input type="radio"/>	<input type="radio"/>	NA.
8. Open Space Slope Protection					
a. Existing vegetation protected	NA		<input type="radio"/>	<input type="radio"/>	NA
b. Slopes over 20% to 30% impervious coverage	NA		<input type="radio"/>	<input type="radio"/>	NA
c. River and stream corridors protected	NA		<input type="radio"/>	<input type="radio"/>	NA
d. Adequate erosion control provided			<input checked="" type="radio"/>	<input type="radio"/>	EXHIBIT G4
e. Within greenway	NA		<input type="radio"/>	<input type="radio"/>	NA

	Code Std.	Proposed	Code Compliance		Additional Findings
			Yes	No	
C. <u>Other Planning Considerations</u>					
1. Outside storage area provided/ screening	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
2. Adequate screenage of mechanical equipment	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u>
3. Safety/crime prevention					
a. Location of addressing	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	<u>DRB</u> ↓ ↓ ↓
b. Natural surveillance	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	
c. Type of exterior lighting	<u>-</u>	<u>-</u>	<input type="radio"/>	<input type="radio"/>	

D. <u>Bike Paths, Pedestrian Trails, & Equestrian Trails</u>					
1. Pathway Standards					
a. Pathways are provided consistent with pathway master plan and design standards (Section 4.168 W.C.)	<u>REQ'D</u>	<u>HOT SHOW</u>	<input type="radio"/>	<input checked="" type="radio"/>	<u>201031</u>

E. <u>Previous Approval actions and applicable conditions or approvals</u>					
1. City Council	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>DRB 55</u>
2. DRB	<u>Yes</u>	<u>No</u>	File No.	See finding	<u>40215 89R 50</u>
3. P.C.	<u>Yes</u>	<u>No</u>	File No.	See finding	<u> </u>
4. Other	<u>Yes</u>	<u>No</u>	File No.	See finding	<u> </u>
Inter-agency review comments					
Yes	<u>No</u>	See Exhibit No.			<u> </u>
Inter-agency review comments (Written Only)					
City Engineer	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>D</u>
Parks & Recreat.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u> </u>
Traffic Safety	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u> </u>
Building Dept.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u>E</u>
Tualatin Fire Dept.	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u> </u>
Sheriff	<u>Yes</u>	<u>No</u>	See Exhibit No.		<u> </u>

**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	<u>22.79 acres</u>	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)
<u>Phase III</u>	<u>22.08 acres (Undeveloped property)</u>
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 separately 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 development.

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 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, reclassified 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 orients 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 rooms, 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
<u>Storage</u>	<u>$39,336 / 4000 = 10$ spaces</u>

Minimum 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.

91PC43

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 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 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

City of

WILSONVILLE
in OREGON



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

91PC43

Item 9.

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

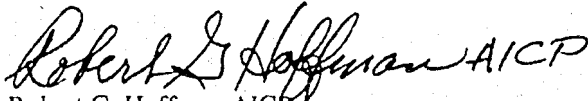
4. Type of Permitted Use:
Commercial (Planned Development)

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



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
Manager of Current Planning

Attachment: Decision and Conditions of Approval
98PC43
91DR29

RGH:sh

Bob

Item 9.

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.

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 Portland. Many who watch insurance activities nationally agree. The change reflects nular strategies by nationwide carriers. tna wants to consolidate offices, re ce overhead and gain efficiencies in : increasingly competitive health insurance 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 icago Corp., a Chicago-based invest- ent bank that tracks insurance compa- nies. "Insurance companies, especially the big guys, have a big expense burden. They tend to be big and clumsy."

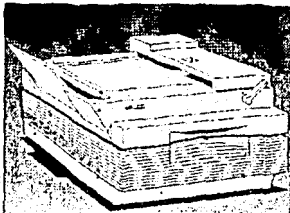
In Aetna's case, said Poll, the national carrier's life and health business has been its strongest asset. Hartford, Conn.-based Aetna is the third-largest U.S.-based property and casualty insurer, according to Value Line's December 1993 investment survey. Aetna, a public company traded on the New York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

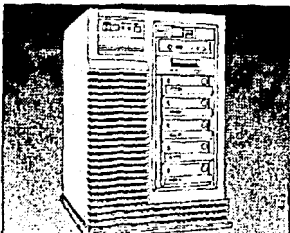
Aetna handles about 4.9 million Medicare claims representing some \$250 million annually out of the Portland office.

comes to working, DI onnected!



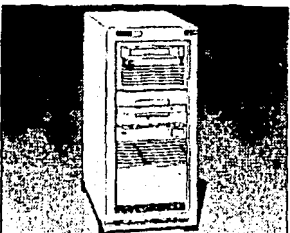
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Blaise
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Sally

Incredible Universe building sold, leased

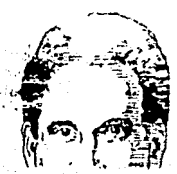
Tandy Corp. has sold off its Incredible Universe building in Wilsonville and leased back the facility from the new owner.

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.



Trust JBL&K

File
9.1pc 43

Item 9.

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 Kisheloff / Wayne Lorenson
SUBJECT: Project Thunder

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

COMMENTS: _____



City of
WILSONVILLE
in OREGON

September 29, 1993

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

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

Re: Systems Development Credit - Wilsonville Incredible Universe

91PC 43

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



City of
WILSONVILLE
 in OREGON

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

Info —

Pam *[initials]*

Blaise *[initials]*

Sally *[initials]*

file *[initials]* 910643

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:

Mr. Wayne Kittelson
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 2

"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

Mr. Wayne Kittelso...
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 4

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

Mr. Wayne Kittelson
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 5

- 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."

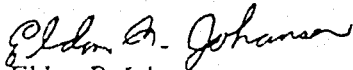
Your letter very eloquently describes your position with regard to the impact of the Incredible Universe on traffic. I have come to a somewhat different conclusion from reading the applicable reports. Although I would be very happy to meet with you to discuss this issue, it appears that this may be one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

Mr. Wayne Kittels
Re: Incredible Universe Traffic Issues
December 4, 1992 - Page 6

Item 9.

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



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STAFF
 Pam ✓

Blaise

Sally

Project file
 9/10/93

OCT 29 1992

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.

Mr. Wayne Sorensen
October 27, 1992
Page 2

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 hour 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.

Mr. Wayne Sorensen
October 27, 1992
Page 3

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

Mr. Wayne Sorensen
October 27, 1992
Page 4

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

Mr. Wayne Sorensen
October 27, 1992
Page 5

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, 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

LETTER OF TRANSMISSION

Item 9.

(503) 682-1011

TO _____

DATE 10/3/92	JOB NO.
ATTENTION Arlene Lohle	
RE Inver Hills University	
Copy of Notice of Decision, and attachment	
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 Cooper Exhibit D

1012



City of
WILSONVILLE
in OREGON

3000 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.

Mr. Rich Hollander & Ms. Kim Beach
May 28, 1992

Page 2

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.

Mr. Rich Hollander & Ms. Kim Beach
May 28, 1992

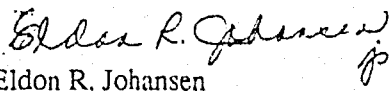
Page 3

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.

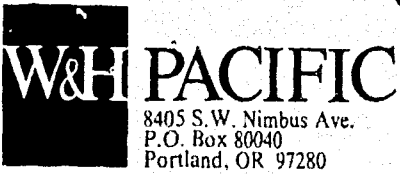
As you no doubt realize, I did not begin work in Wilsonville until April 6, 1992, after this project was well under way. My concern is that if we do not keep our attentions focused on resolving all outstanding issues, we will reach a point where the building will have been completed and you will have 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
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



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

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

- Planning
- Surveying
- Engineering
- Landscape Architecture
- Environmental Services

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
- X 682-7025

These Are Transmitted:

- For Your Info/File
- As Requested
- For Review And Comment

Copied To:

KUM BEACH w/o ENCL
FAK 223-0200

Copies	Description
<u>1</u>	<u>ADD'L Storm CACCS.</u>

margo 5/19
Orig to Elson
Thunder file
Copy to Wayne myself
Eden

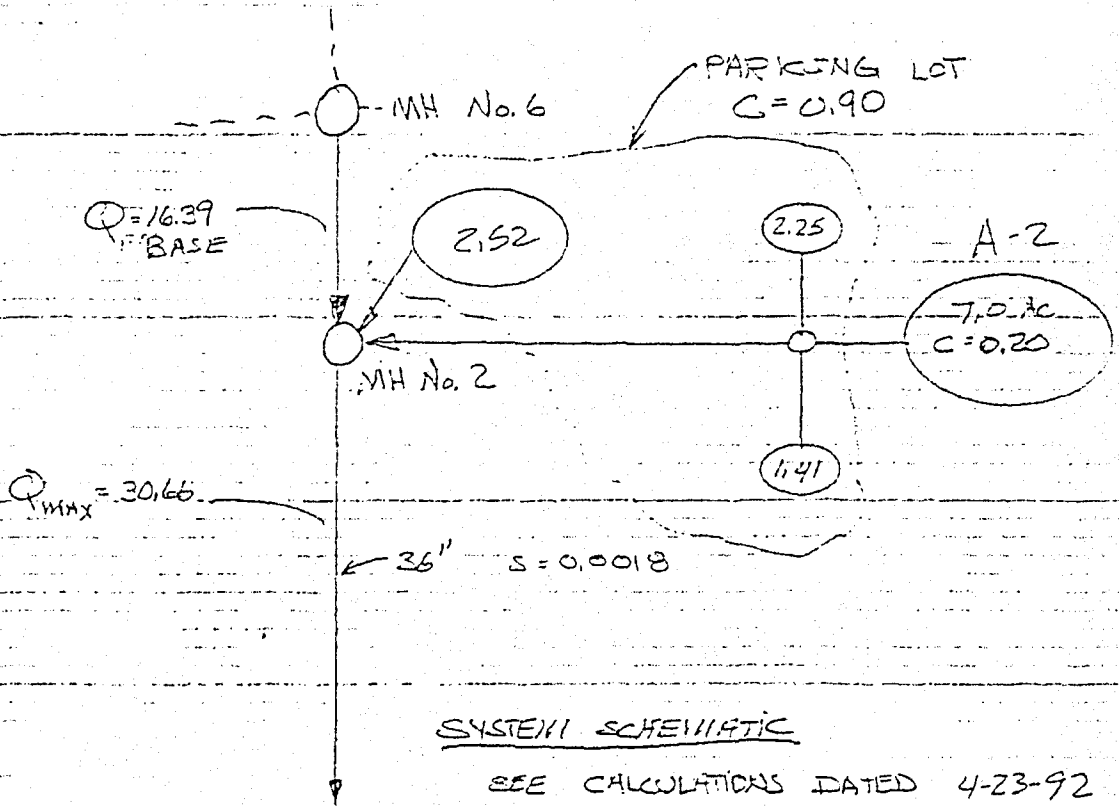
Comments

ELSON,
Jimi LEWART HAS PREPARED ADD'L STORM RUNOFF
CACCS 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

Jack Martin

DETENTION REQUIREMENTS FOR A-2 IN MN UNDEVELOPED CONDITION.



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 500 FEET OVERLAND TRAVEL FROM A-2
 1st 200 FEET = 20 MINUTES
 REMAINING 300' = 4 MINUTES. (SLOPE = 1%)
 (IN CHANNEL)
 $t_c = 24$ MINUTES

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
- Engineering
- Surveying
- Landscape Architecture
- Environmental Services

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
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These Are Transmitted:

- For Your Info/File
- As Requested
- For Review And Comment
-

Copied To:

KIM BEACH W/ ENCL
FAX 223-0200

Copies	Description
1	ADD'L Storm Cages.

Comments

ELDON,

Jim LEMBERT HAS PREPARED ADD'L STORM RUNOFF
CAVES 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 PH III OR EITHER PROPERTY NORTH
OF TANDY.

Eric Martin

Signed

Exhibit D

Page 56 of 161

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

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

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

13.57 CFS.

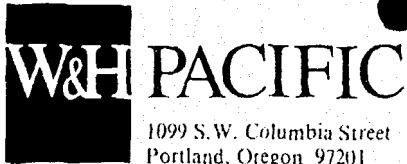
$$Q_{ALLOWABLE \text{ IN PIPE}} = Q_{MAX} - Q_{BASE} = 30,66 - 16,39$$

$$Q_{ALLOWABLE} = \underline{14,27 \text{ CFS.}}$$

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

NO DETENTION IS REQUIRED

NOTE! THIS CALCULATION IS FOR UNDEVELOPED
 CONDITIONS ONLY.



1099 S.W. Columbia Street
Portland, Oregon 97201

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• Engineering • Landscape Architecture

• Environmental Services

Item 9.

To: William L. Parks
DIVISION OF STATE LANDS
1100 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:

- Attached
- Facsimile
- Number Of Pages Including Cover
-

These Are Transmitted:

- For Your Info/File
- As Requested
- For Review And Comment

Copied To: _____

Copies	Description
1	VICINITY MAP 8 1/2 x 11
1	SITE MAP 11 x 17

X NO Jurisdiction 10 YR 3/4
A/C Hydrology - Ann Detail
by Flowing

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.

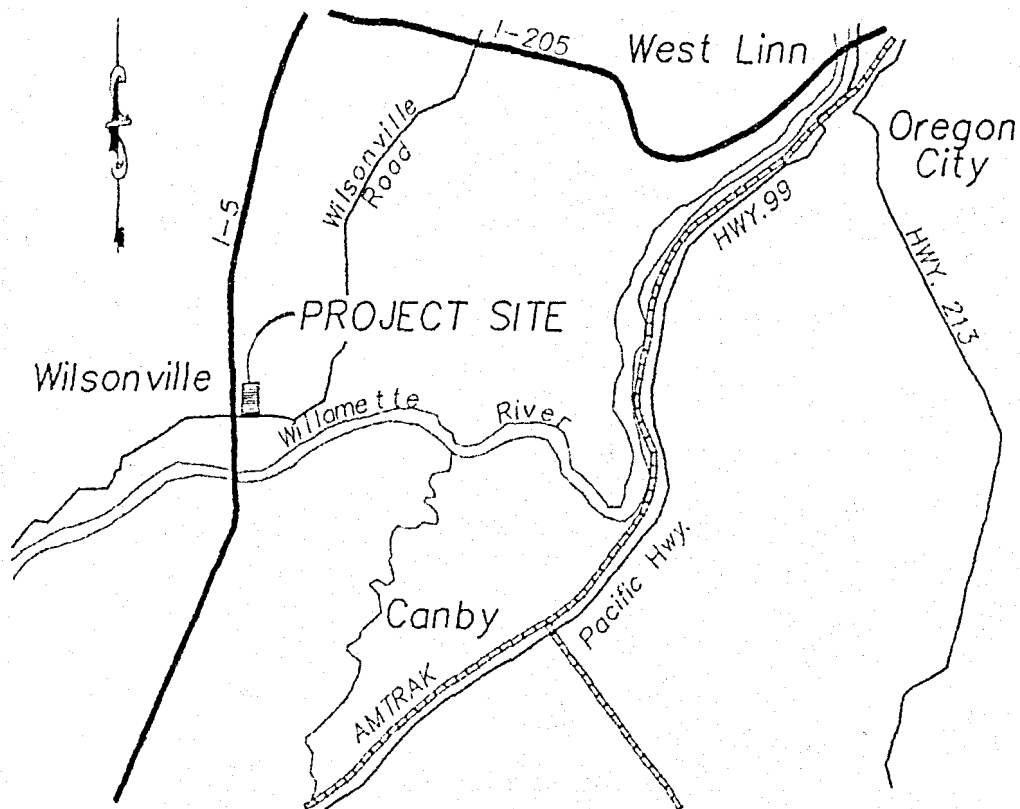
Signed

thanks, Rick Martin

Exhibit D

Page 58 of 161

1020



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.



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 building 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,

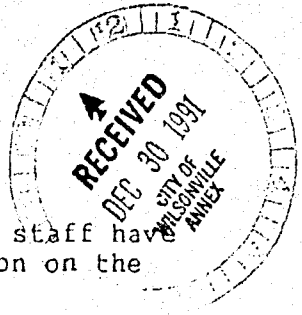
A handwritten signature in cursive script that reads "Kim Beach".

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

Item 9.



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 @ W. Wilsonville TR left @ Centerloop R west 1/4 mile
T 35 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 of Site Plan Map
 City of Wilsonville Planning Department
 _____, Corps of Engineers
 DSL file copy
 Reading file copy - TO LORNA no Turs.

City of
WILSONVILLE
 in OREGON

30000 SW Town Center Loop E • ~~PO Box 226~~
 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.

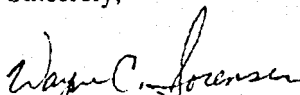
Enclosed is a copy of my notes which generally outline the basic issues we discussed at the December 23rd meeting. I am also enclosing material to provide additional insight into our planning process for the Town Center:

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
 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

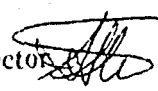
good example of something coming to Council's attention so late in the planning process that you have not had any meaningful input and yet now the City will be asked to make a substantial financial commitment. If the land is to be dedicated the developers justifiably want to know that the property will 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 onsite 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.

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 Wilsonville'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 visibility 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 Park

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:

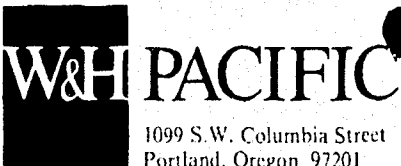
November - December, 1991	Surge basin, stilling basin and water quality swale design
January - February, 1992	Complete design
March	Construction bidding
April	Award construction contract
May	Begin construction
September	Complete construction

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



1099 S.W. Columbia Street
Portland, Oregon 97201

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

• Planning • Surveying
• Engineering • 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:

Attached

For Your Info/File

KIM BEACH

Facsimile

As Requested

LOGAN CRAVEN

Number Of Pages Including Cover

For Review And Comment

Copies	Description
10	FOLDED FULL SIZE REVERSED MASTER PLAN (SHT. #1)
1	PMT (8 1/2" x 11") OF ABOVE
1	ORIGINAL (8 1/2" x 11"): ALTERNATIVE OPEN SPACE CONCEPT.

Comments

Blaise:

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

s. - again for all your help !!!

1 Blues

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**

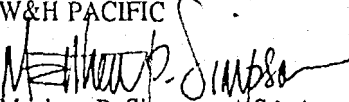
Dear Blaise:

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
210
39,330

SERVICE
4700
900
1020
640
1932
5016
2040
1008
17,270

RETAIL
47,874
2,240
5,880
7,920
63,914

RENT
572
1024
4500
6096

OFFICE
1850
200
50
5,294
280
912
240
149
120
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 (1) (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 maxims, *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 maxims 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

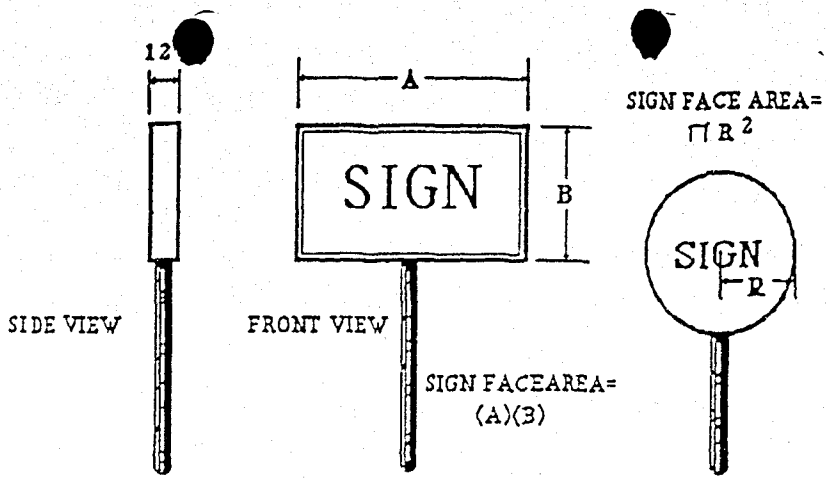
coordinated signage program which is both functional and aesthetic and to provide a method of administration through a Design Review Board for Town Center development. Clearly, this is in keeping with the multiple and often interrelated purposes set forth in 4.440 of the City's Code for Design Review 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 Citv v. Hartke, 240 Or 35, 400 Ord. 255.(1965); Naegele Outdoor Advertising v. City of Wavnesville, 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.

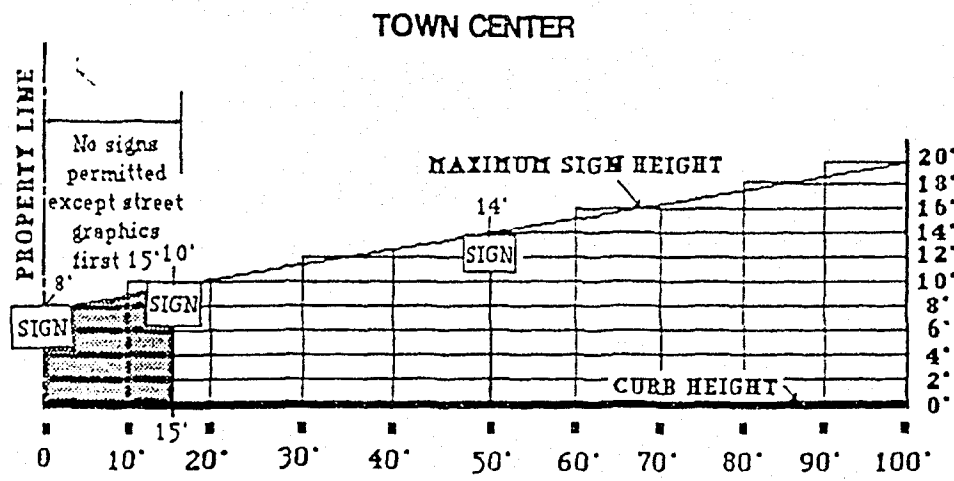
On the other hand, such necessity has not risen to the same level of need to regulate the use of homes as signs. The business entrepreneurs who are willing to advertise their commercial product by virtue of using gross advertising structures in commercial areas have not historically turned their private 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 (1)(a), bulletin boards, 4.151 (1)(b); real estate signs advertising individual lots, 4.151 (1)(c); subdivision signage, 4.151 (1)(d) and home occupation signage, 4.151 (1)(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



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, whichever is less.

MAXIMUM SIGN HEIGHT

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

FIG. 2

CHAPTER 4, ZONING CODE
 TOWN CENTER SIGNAGE CODE
 EXHIBIT D

City of Wilsonville

COMMUNITY DEVELOPMENT DEPARTMENT

Memorandum

November 7, 1991

TO: Blaise Edmonds, Planning
FROM: *MB* 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.

/sf

EXHIBIT E

DEFECTS IN

ORIGINAL

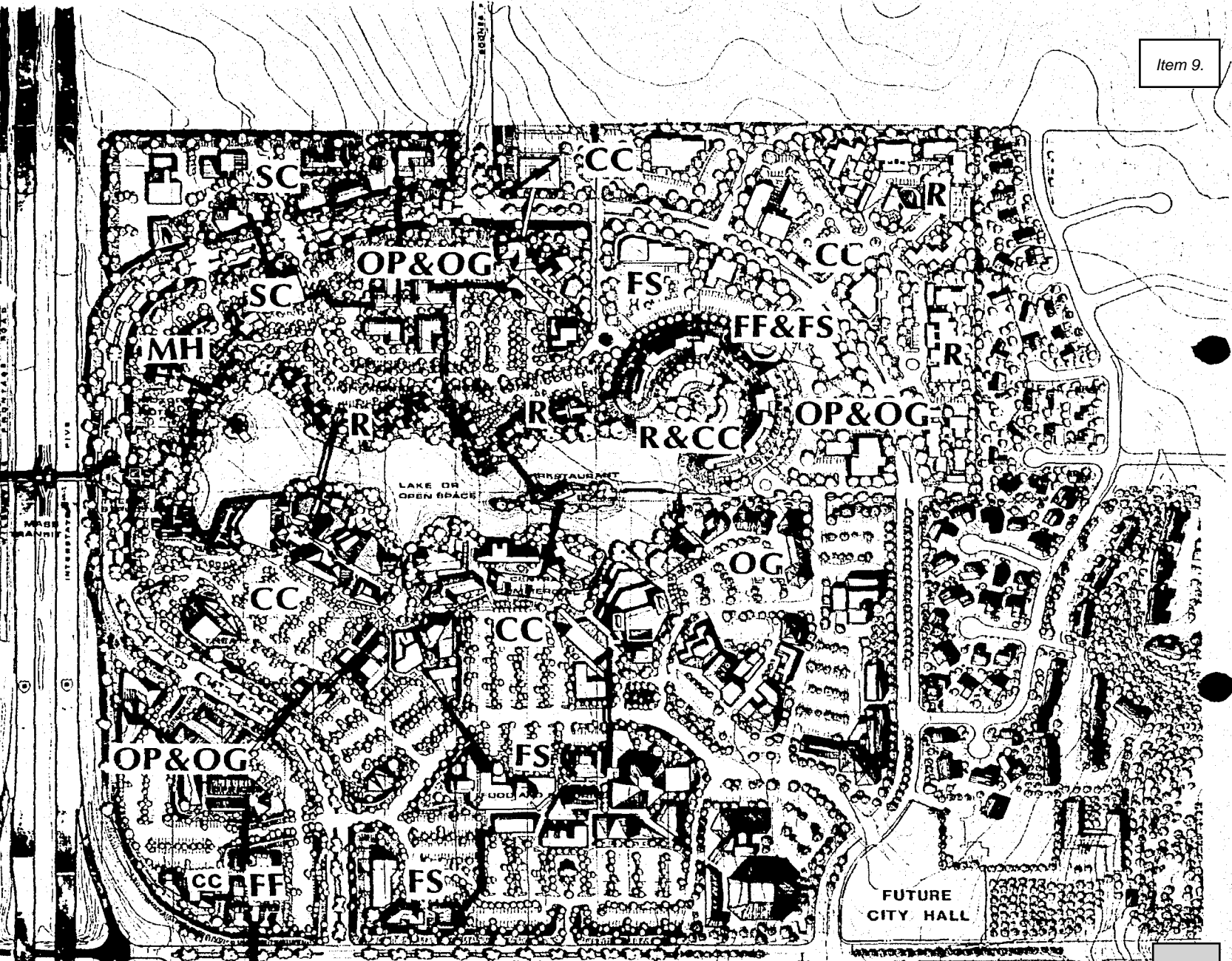
DOCUMENT

LEGEND

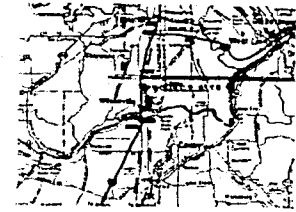
Item 9.

- 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



Wilsonville City Center Plan



VICINITY MAP

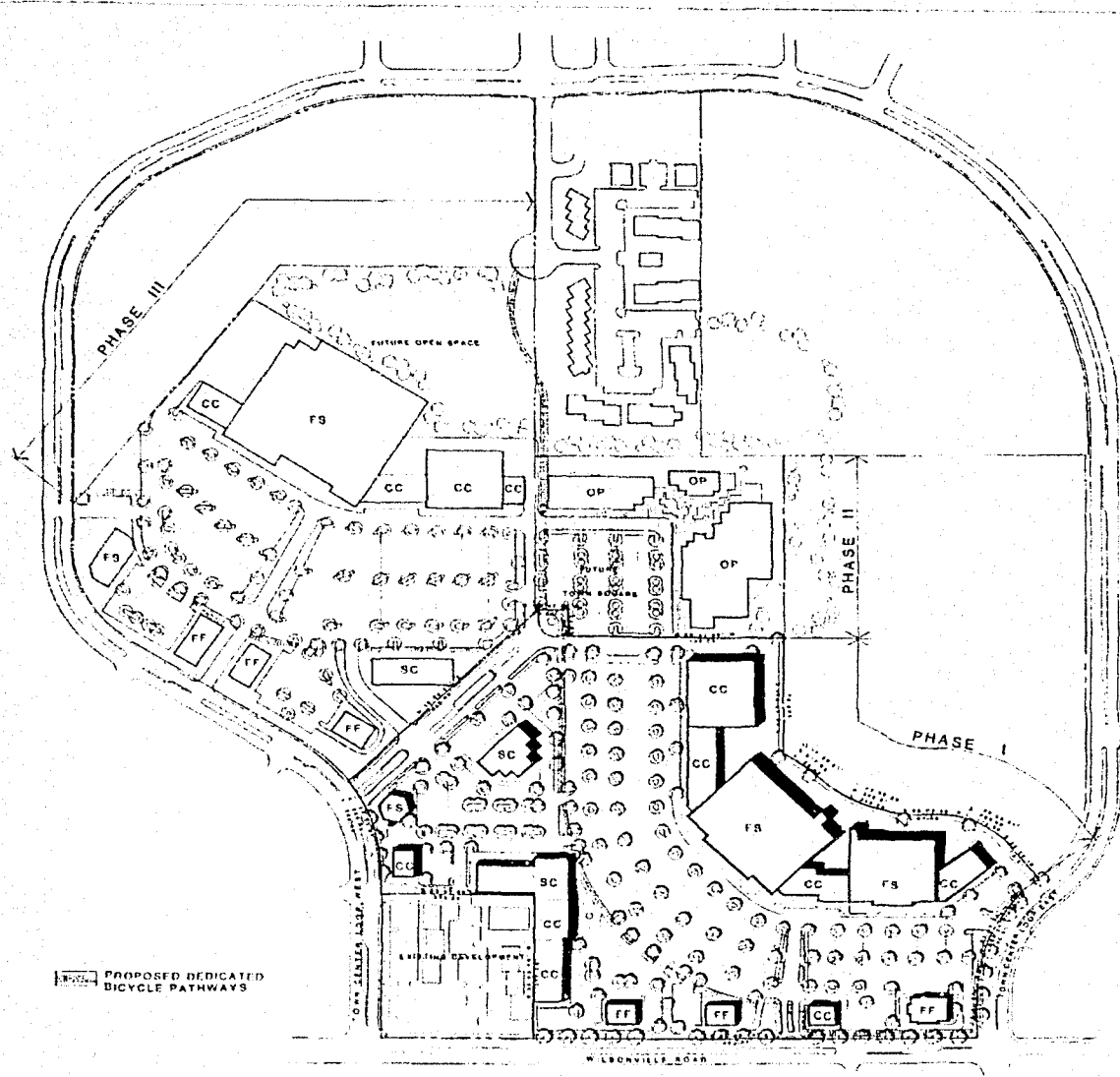
ACREAGE	
PHASE I	22.17 ACRES
PHASE II	5.41 ACRES
PHASE III	22.02 ACRES
TOTAL	49.60 ACRES

PHASE ONE ZONING DESCRIPTION

A parcel of land situated in the southeast corner of Section 10, Township 36 North, Range 12 East, County of Clatsop, Oregon, hereinafter referred to as the "Site", is shown on the attached map. The parcel is bounded on the north by the Clatsop River, on the east by the Clatsop River, on the south by the Clatsop River, and on the west by the Clatsop River. The parcel is approximately 100 feet wide and 100 feet deep. The parcel is currently zoned as "Rural Residential" and is being proposed for rezoning to "Community Center".

The rezoning is necessary to allow for the development of a community center on the Site. The community center will provide a variety of services to the community, including a library, a community room, and a meeting room. The community center will also provide a place for the community to gather and socialize. The rezoning is also necessary to allow for the development of a parking lot for the community center.

The rezoning is consistent with the Comprehensive Zoning Ordinance of the City of Wilsonville. The Comprehensive Zoning Ordinance allows for the development of community centers in the "Community Center" zone. The rezoning is also consistent with the Comprehensive Zoning Ordinance of the County of Clatsop. The Comprehensive Zoning Ordinance allows for the development of community centers in the "Community Center" zone.



MASTER PLAN: PHASE I, II, & III

EXHIBIT H



KITTELSON & ASSOCIATES, INC.
TRANSPORTATION PLANNING/TRAFFIC ENGINEERING

610 SW ALDER, SUITE 700 • PORTLAND, OREGON 97205 • (503) 228-5230 • FAX (503) 273-8169

Item 9.

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
SUMMARY EXHIBIT D.

Ms. Kim Beach
October 16, 1991
Page 2

- 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.

Ms. Kim Beach
 October 16, 1991
 Page 3

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.

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

Ms. Kim Beach
 October 16, 1991
 Page 4

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.

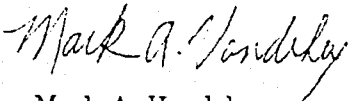
Based on these results, and given that background traffic volumes on Wilsonville Road are likely to continue to increase somewhat, it is recommended that a traffic signal be installed at the Wilsonville Road/Town Center Loop West intersection coinciding with the completion of the current Phase II development 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.

Ms. Kim Beach
 October 16, 1991
 Page 5

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

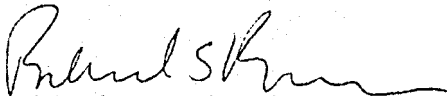
On behalf of the Owner, Capital Realty Corp., we request a reconsideration of Condition No. 8 of Planning Commission Resolution No. 90PC15 to provide the opportunity for Capital Realty to work with the City to accomplish the following:

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:\BCRSB\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

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

Page 2

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

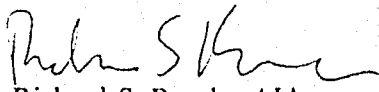
EXHIBIT
 6-90

Wilsonville Town Center
Stage I Re-submittal
October 18, 1991

Page 2

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

Alternative Open Space Concept

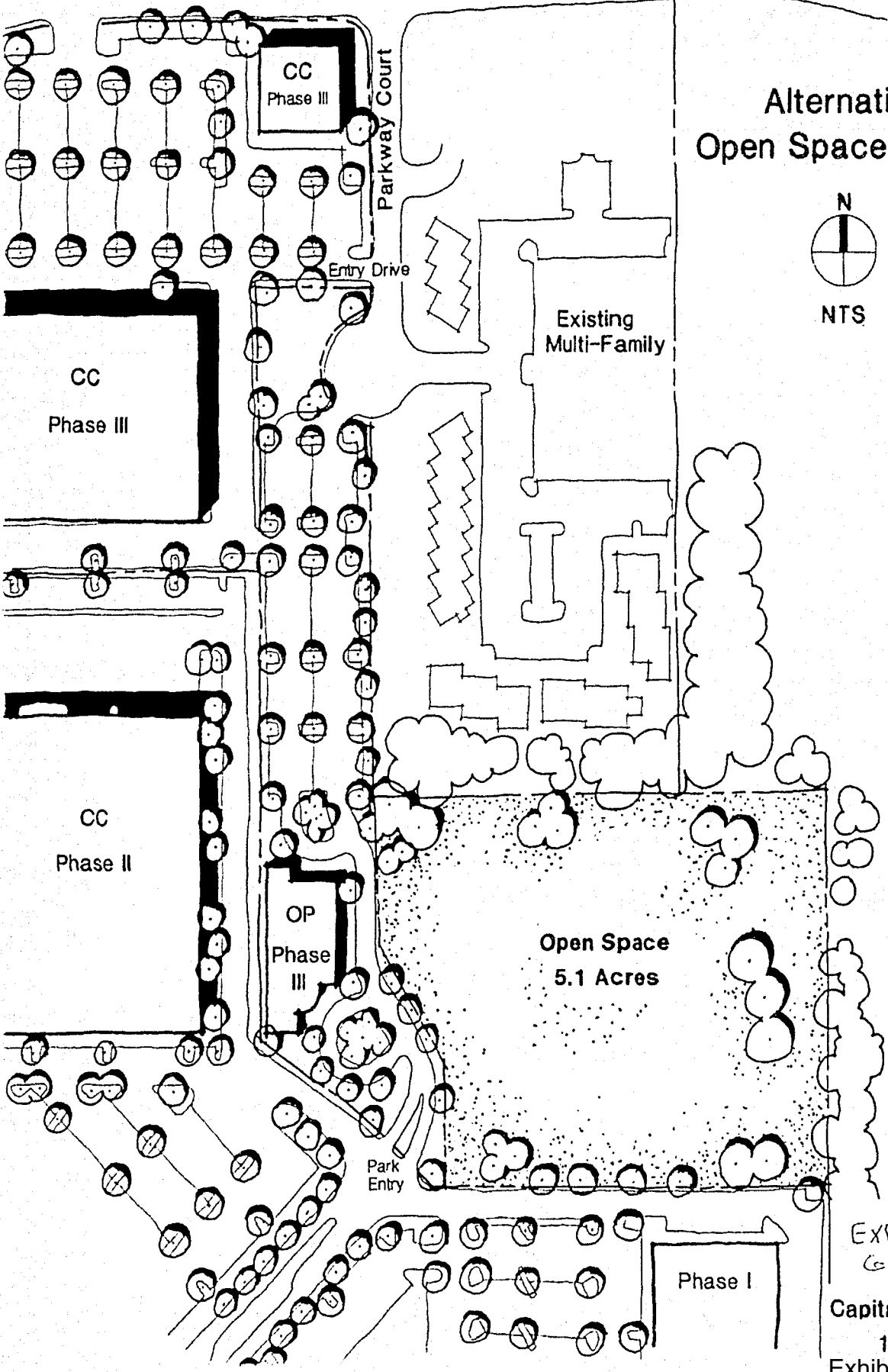
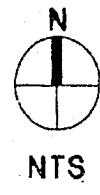


EXHIBIT
G-11

Capital Realty Corp.

11/26/

Exhibit D

1055

AS REVISED
1/7/92

DesignForum

ARCHITECTS

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 accessory 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.

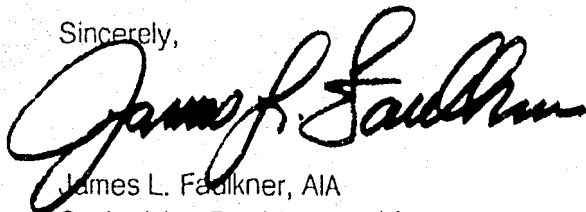
As per phone conversations with Blaise Edmonds, Associate Planner, the materials and colors sample board will be presented at the evening of the actual meeting. It will not be forgotten. We will provide a sample board of wall elements, as requested, as soon as we receive material samples from the manufacturers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

DesignForum

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

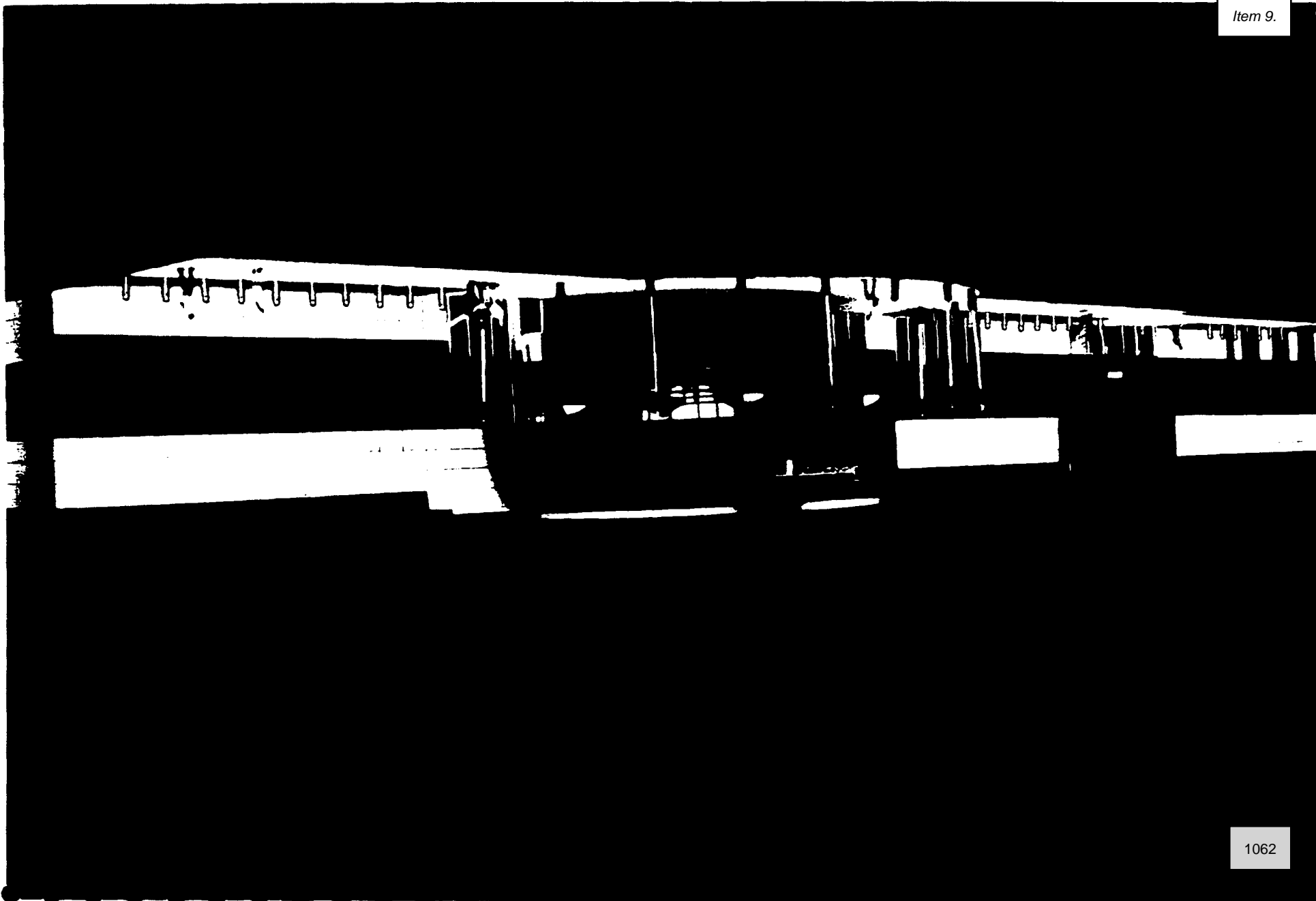
We request the consideration of the Design Review Board for a deviation from the Phase I, Wilsonville Town Center Signage program, as follows:

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

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

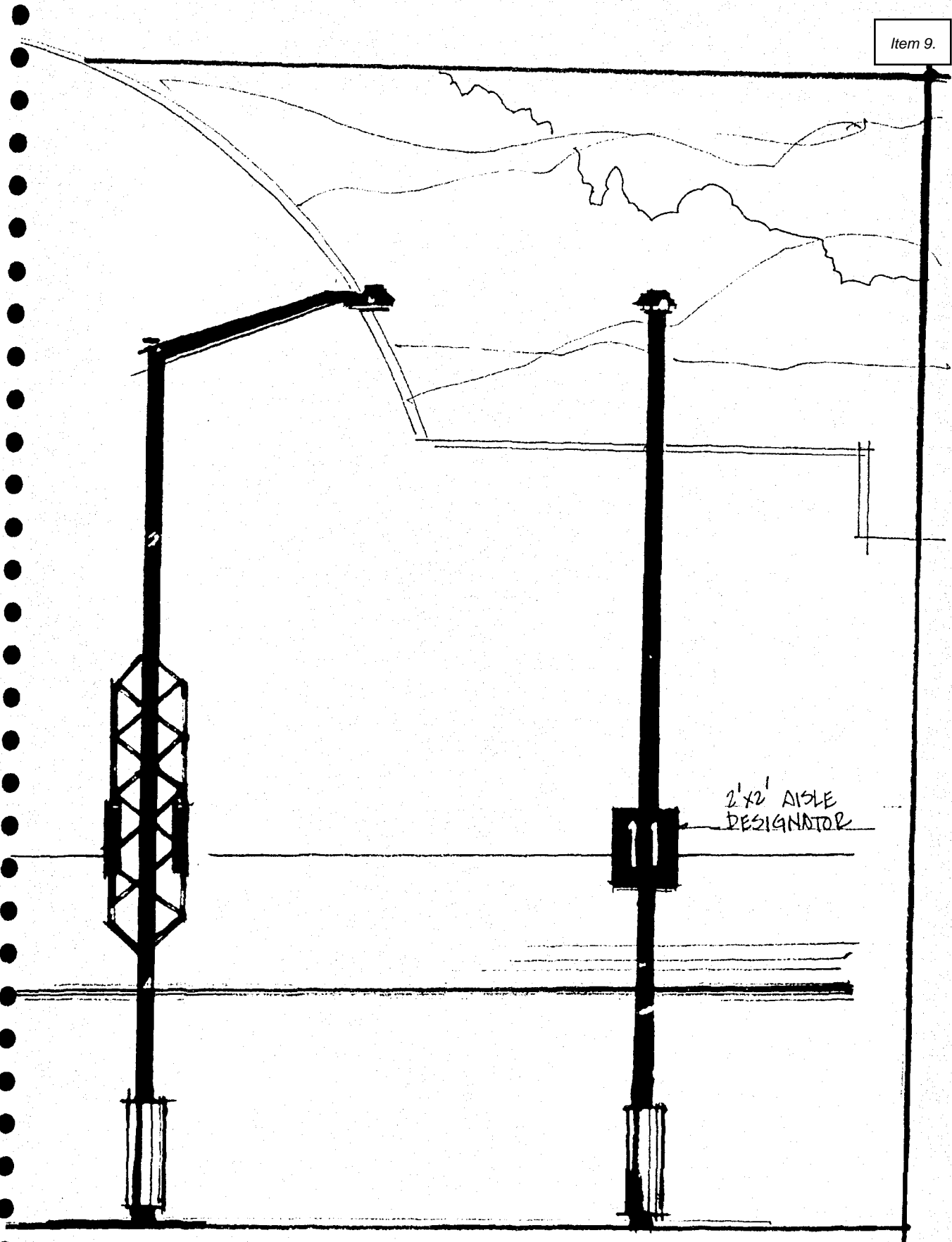
We request this deviation from the approved program for the purpose of changing the method of construction for the 3 fascia signs (aggregate area approximate 81 SF) to be consistent with our design idiom. We feel our approach of a fascia panel type sign, back lit, cutout individual letters, appearing 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



Item 9.



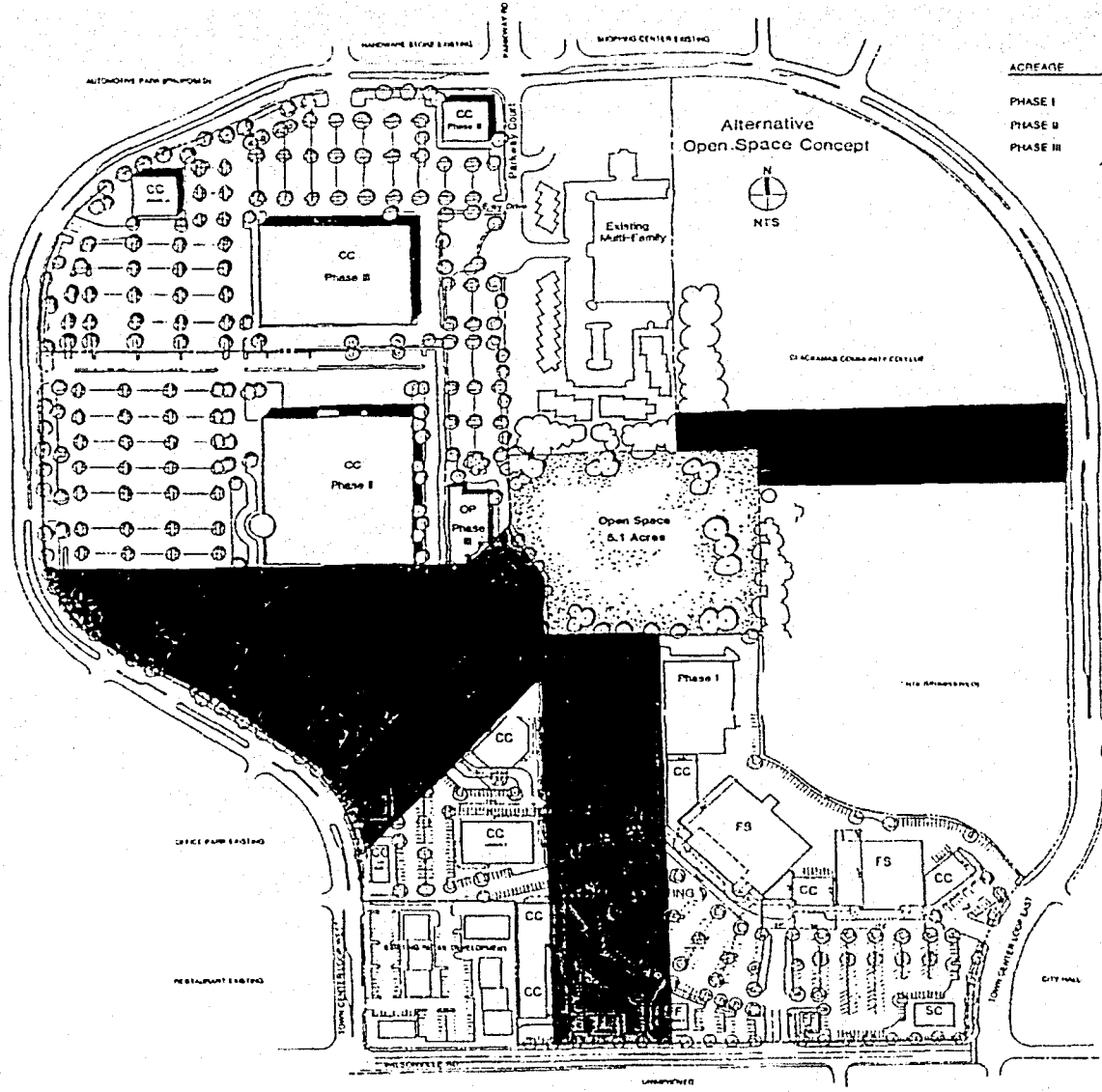


PROJECT THUNDER
 Wilsonville, Oregon
 Design Review Board
 January 27, 1992 Meeting

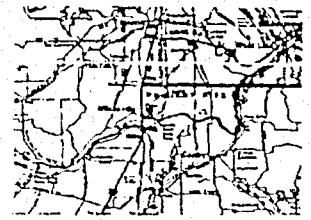
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2401 Fox Hills Avenue, Dayton, Ohio 45424 Telephone (612) 258-4488

Exhibit D



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



VICINITY MAP

NOTES

1. THIS PLAN IS A PRELIMINARY CONCEPT AND IS NOT TO BE USED FOR CONSTRUCTION. ALL DIMENSIONS AND LOCATIONS ARE APPROXIMATE AND SUBJECT TO CHANGE WITHOUT NOTICE.

2. THE EXISTING MULTI-FAMILY BUILDING IS TO BE DEMOLISHED AND REPLACED WITH A NEW BUILDING AS SHOWN ON THIS PLAN.

3. THE DI GRAMMA COMMUNITY CENTER IS TO BE DEMOLISHED AND REPLACED WITH A NEW BUILDING AS SHOWN ON THIS PLAN.

4. THE OPEN SPACE IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

5. THE PARKING AREAS ARE TO BE IMPROVED AS SHOWN ON THIS PLAN.

6. THE STREETS ARE TO BE IMPROVED AS SHOWN ON THIS PLAN.

7. THE UTILITIES ARE TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

8. THE LANDSCAPE IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

9. THE SIGNAGE IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

10. THE FURNITURE IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

11. THE LIGHTING IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

12. THE SECURITY IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

13. THE ACCESSIBILITY IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

14. THE SAFETY IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

15. THE QUALITY IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

16. THE DURATION IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

17. THE COST IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

18. THE RISK IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

19. THE BENEFIT IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

20. THE IMPACT IS TO BE MAINTAINED AND ENHANCED AS SHOWN ON THIS PLAN.

SITE MASTER PLAN: PHASE I, II, & III
VIEW CORRIDOR CONCEPT

1-6-92

JKS
JKS Architects PC
 625 SW 3rd Street, Suite 202 • Portland, Oregon 97204
 503.227.4444 • Fax 503.227.4444

WILSONVILLE TOWN CENTER
 WILSONVILLE, OREGON

DATE: 1-6-92
 DRAWN BY: JKS
 CHECKED BY: JKS

SCALE: AS SHOWN
 SHEET NO. 1
 OF 1

1

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
 - Estimates
 - Plans
 - 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

- For your use
- For approval
- 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* Date: 10/28/91
 William F. Bergman, AIA
 Project Architect

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.

Blair -
I understand
W & H says 150 cfs
for Town Center to go into
48" culvert - is there
more from other properties -
if so how does that affect
park drainage - if you
know & if not I'm probably
need to make sure all
info is available - before
abandoning on site retention -
could be a plus as a water
feature for Town Center
Mike,
cc. Steve Stamer

PLEASE MAIL
TO
LESLIE
DO NOT
WAYNE
SAID THAT
YOU HAVE
HLS
ADVISORY.

MEMORANDUM

TO: Development Review Team

DATE:

FROM: Blaise Edmonds, Associate Planner, City

B

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.

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

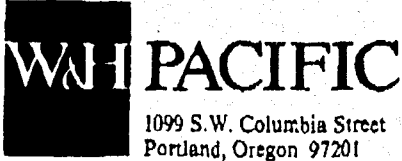


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Final Phase Two development design will provide connections to the existing storm drain system currently terminating at the pond. Refer to the Phase Two Utility Plan submitted with this application.



Creative Solutions ... Superior Service



1099 S.W. Columbia Street
Portland, Oregon 97201

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

• Planning • Surveying
• Engineering • Landscape Architecture

• Environmental Services

To: Blaise Edmunds Date: 10/16/91
Pam Edmunds
City of Wilsonville, Annex Project Number: 407-0301
30000 SW TOWN CENTRAL LOOP EAST Project Name: PROJECT THUNDER
Wilsonville, OR, 97070 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 ea	Minutes of 10/14/91 Meeting

Comments

Blaise & Pam

We'll see you 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

Tan Stines

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.

October 15, 1991
Page 2

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 submittal 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.



FAXED 10/17/91

Item 9.

1099 S.W. Columbia Street
Portland, Oregon 97201

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

- Planning
- Engineering
- Surveying
- Landscape Architecture
- Environmental Services

To: Blaise Edmunds Date: 10/16/91
Pam Eumons Project Number: 467-0301
City of Wilsonville, Annex Project Name: PROJECT THUNDER
30000 SW TOWN CENTER LOOP EXT. Regarding:
WILSONVILLE, OR. 97070

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

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

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

Copied To: _____

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

Comments

Blaise & Pam

We'll see you 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 Tan Jones

DesignForum

A R C H I T E C T S

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.

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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 excavation, 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.

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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.

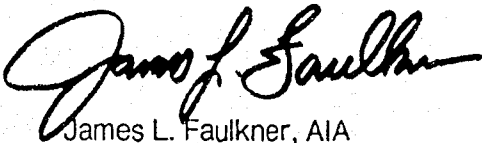
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Project Thunder
Wilsonville, Oregon
Project No. 91702.03
Pre-Application Conference
October 8, 1991

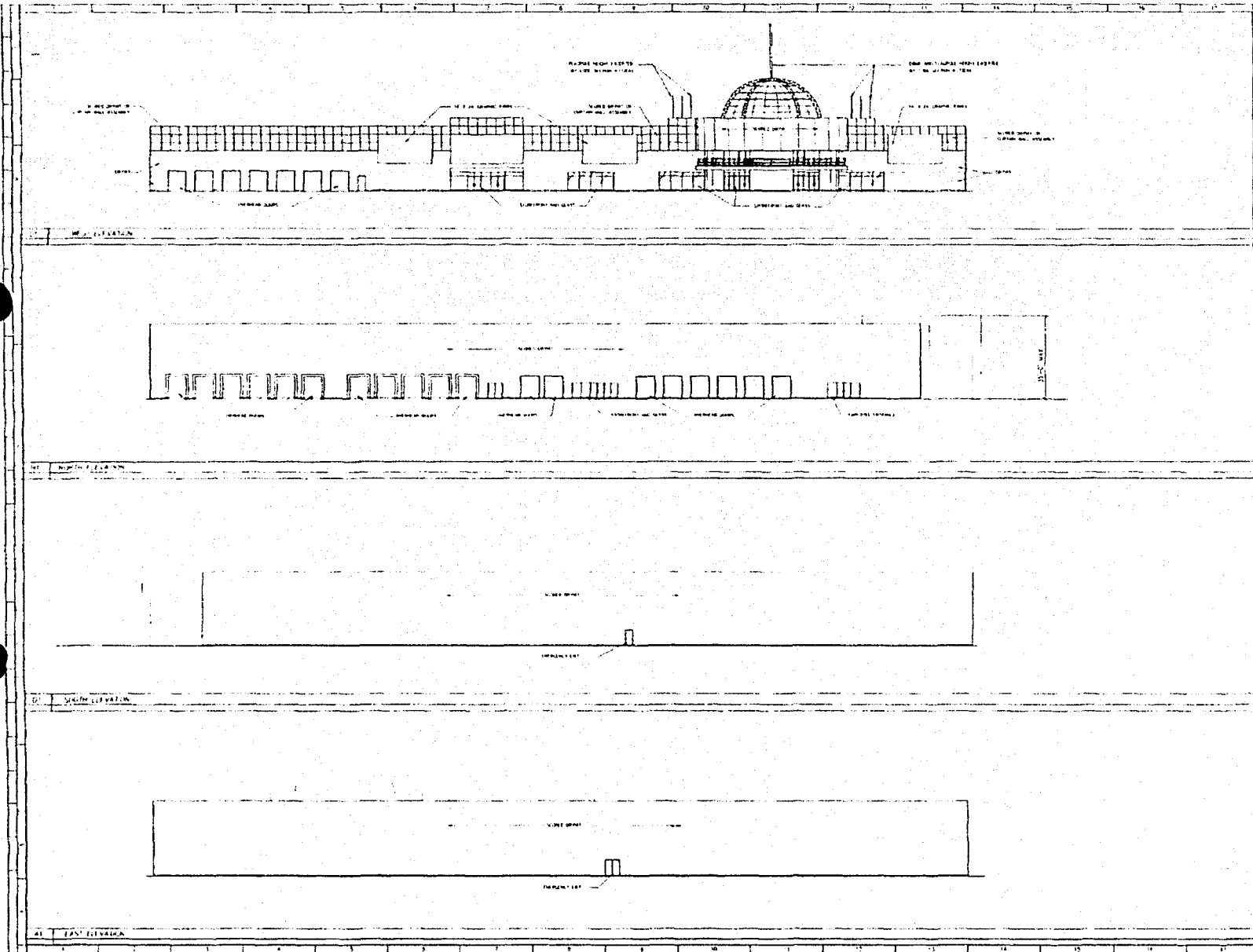
The meeting notes represent comments that have been paraphrased as accurately as possible. The notes will be held as an accurate and true account as to intent unless notice to the contrary is set forth within 10 days of the date above.

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



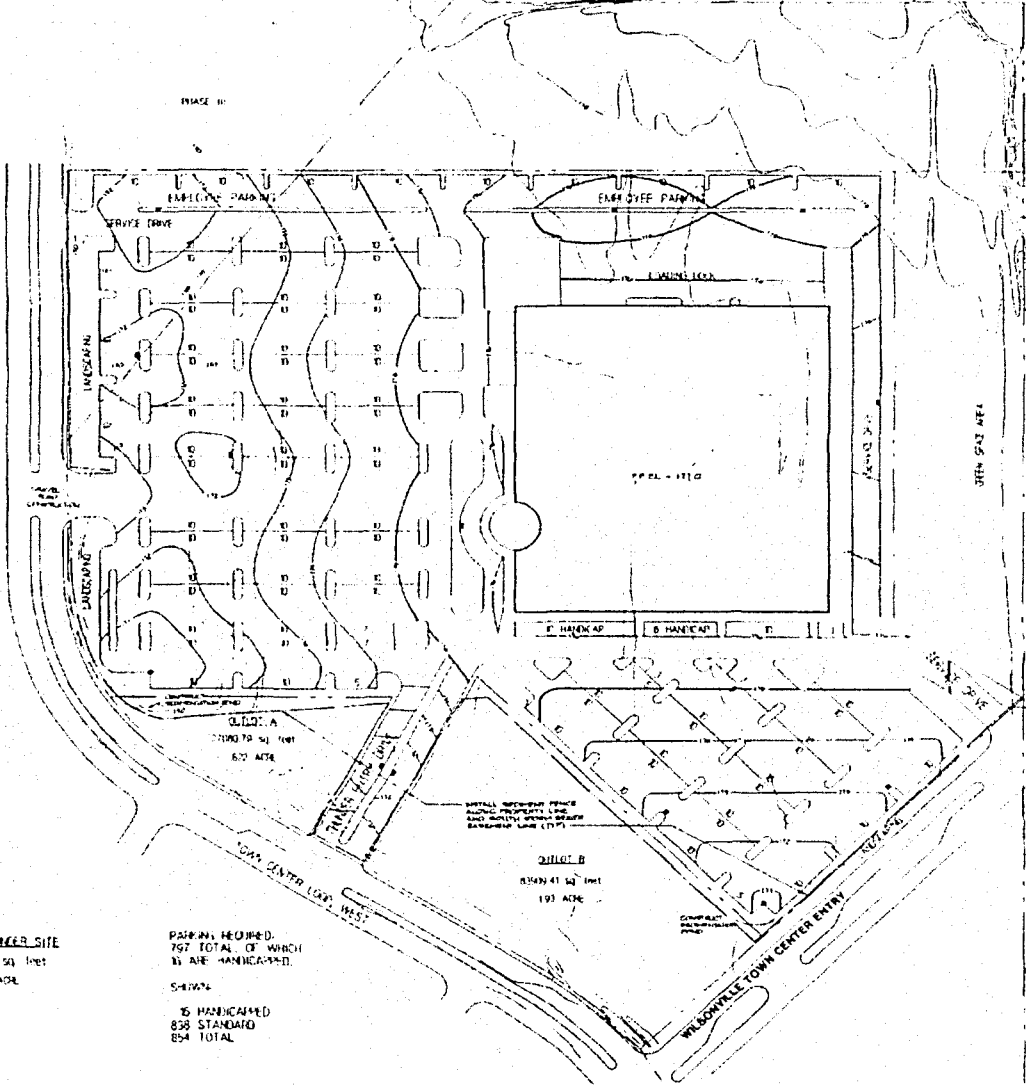
EXTERIOR ELEVATIONS

DesignForum ARCHITECTS

PROJECT THUNDER
WESLEYVILLE, MICHIGAN

EXTERIOR ELEVATIONS

Author	WFB	Project No.	17-022-14
Checker	WFB	Date	1/16/17
Designer	WFB	Sheet No.	1080
Scale	1/4" = 1'-0"	Sheet Count	2



NOTES

- 1) RECALCULATION OF ALL EROSION CONTROL DESIGN VALUES AND PERCENT FERTILIZER APPLICATION TO BE PROVIDED BY CUSTOMER (BASED ON THE WILSONVILLE COUNTY DEPARTMENT OF LAND USE AND PLANNING) REQUIRED.
- 2) WHEREAS AND ACCESS SHALL BE PROVIDED AND MAINTAINED BY THE CLIENT THROUGHOUT THE CONSTRUCTION PERIOD AND THROUGHOUT THE LIFE OF THE PROJECT.

LEGEND

- EXISTING CONTOUR
- PROPOSED CONTOUR
- HANDED CATCH BASIN
- PERMANENT FENCE

PROJECT THUNDER SITE
 142,541 SQ. FEET
 3.28 ACRES

PARKING REQUIRED:
 767 TOTAL OF WHICH
 15 ARE HANDED.
 5,876 SQ. FT.
 15 HANDED
 838 STANDARD
 854 TOTAL

LOT B
 83,549 SQ. FEET
 1.91 ACRES

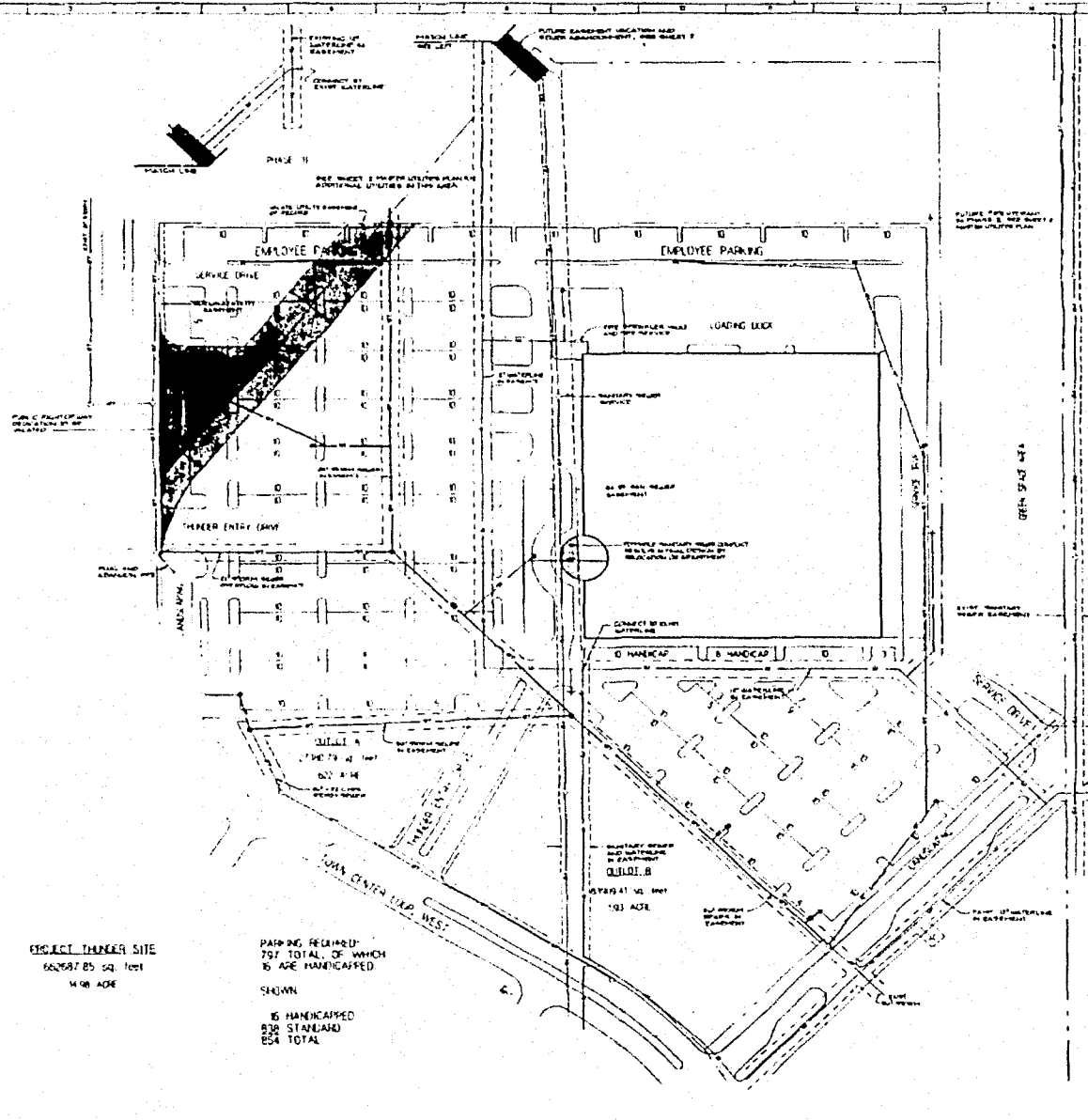
LOT A
 27,900 SQ. FEET
 6.37 ACRES

DesignForum ARCHITECTS
 1000 NE Oregon Street, Suite 200, Portland, OR 97232
 TEL: 503.255.1111 FAX: 503.255.1112
 WWW.DESIGNFORUMARCHITECTS.COM

PROJECT THUNDER
 WILSONVILLE, OREGON
PHASE II GRADING/EROSION CONTROL PLAN

DATE	NOV 14 2014
SCALE	1" = 50'-0"
DRAWN BY	W.A.P.
CHECKED BY	W.A.P.
DATE	NOV 14 2014





PROJECT THUNDER SITE
66,267.85 sq. feet
14.98 ACRE

PARKING REQUIRED:
757 TOTAL, OF WHICH
16 ARE HANDICAPPED
SHOWN
16 HANDICAPPED
830 STANDARD
854 TOTAL

LEGEND

SYMBOL	DESCRIPTION
(Symbol)	MASS SHED
(Symbol)	WALKWAY
(Symbol)	WATER LINE
(Symbol)	SEWER LINE
(Symbol)	EMERGENCY LINE
(Symbol)	UTILITY
(Symbol)	EXISTING BUILDING
(Symbol)	NEW UTILITY
(Symbol)	PHASE II UTILITIES PLAN

GENERAL NOTES

Key Plan

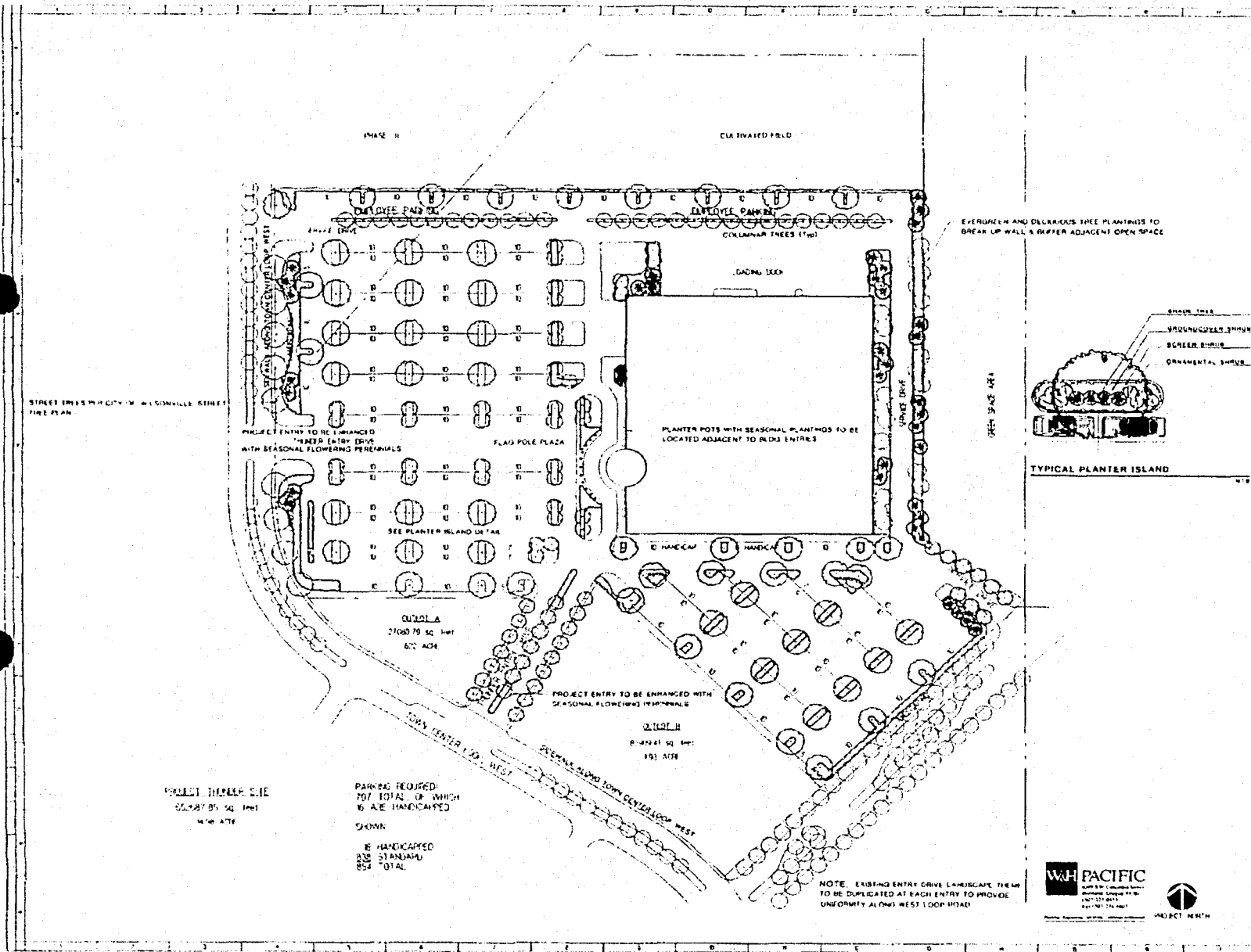
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ARCHITECTS

PROJECT THUNDER
WILSONVILLE, OREGON

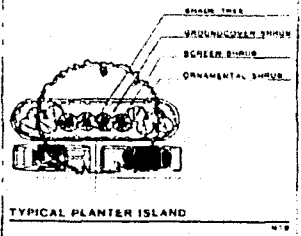
PHASE II UTILITIES PLAN



DATE	DESCRIPTION
11/11/11	ISSUED FOR PERMIT
11/11/11	ISSUED FOR PERMIT
11/11/11	ISSUED FOR PERMIT



- LEGEND**
- SHADE TREES
 - FLOWERING TREES
 - EVERGREEN CONIFER TREES
 - ORNAMENTAL LANDSCAPE SHRUBS & GROUNDCOVER
 - LAWN
 - EXISTING STREET TREES



GENERAL NOTES
 1. AUTOMATIC IRRIGATION SYSTEM WILL BE PROVIDED

PROJECT NUMBER: 05-287 05 54 1001
 1/18/05

PARKING REQUIRED:
 707 TOTAL OF WHICH
 16 ARE HANDICAPPED
 SHOWN
 16 HANDICAPPED
 691 STANDARD
 854 TOTAL

NOTE: EXISTING ENTRY DRIVE LANDSCAPE TREES TO BE DUPLICATED AT EACH ENTRY TO PROVIDE UNIFORMITY ALONG WEST LOOP ROAD



DesignForum ARCHITECTS

PROJECT: THUNDER
 WASHINGTON, DC 20001

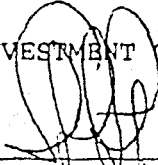
PHASE II LANDSCAPE PLAN

DATE	BY	REV
1/18/05	JL	1

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.

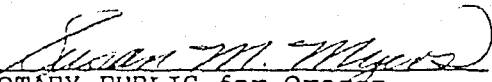
February 1, 1990,

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

1989.11

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-13D, 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 500, MAP 3-1W-13D 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 6391 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.

~~tion.~~ The Option to purchase Phase 2 in its entire 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 before November 2, 1992, at the purchase price of _____ plus 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 [Signature]
SFS President
Steven F. Styles

David S. Young
DAVID S. YOUNG
Marlene A. Young
by [Signature], attorney in fact
MARLENE A. YOUNG

SFS INVESTMENT CORP.
By [Signature]
SFS OFFICER

ESTATE OF HAROLD J. LASWELL
DECEASED

GRANTEES

By Emma D. Laswell
Emma D. Laswell
Personal Representative

By Eugene L. Doffler
Eugene L. Doffler
Personal Representative

Fred A. Anderson
FRED A. ANDERSON

GRANTORS

ST IES PROPERTIES LTD.
by [Signature]

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, together 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 & 405, Clackamas County MAP 3-1W-14B and a triangle of land approximately 6,391 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, 1969 and August 23, 1969, 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 per 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. (F)
P. X. Z.

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, 1990 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 14 day of November, 1989.

Jack L. Lozo
JACK L. LOZO

SFS INVESTMENT CORP.

ANN S. LOZO, Trustee for
CLAUDE F. SMITH TRUST *Q.T.T.*
SF

By *[Signature]*
SFS President
Steven F. Stiles

GRANTORS

SFS INVESTMENT CORP.

By *[Signature]*
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 $00^{\circ}03'01''$ 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 $45^{\circ}03'00''$ West 400.00 feet; thence North $44^{\circ}57'00''$ 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 $65^{\circ}07'50''$ West) through a central angle of $07^{\circ}23'12''$ an arc distance of 257.84 feet (the long chord bears South $28^{\circ}33'46''$ 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 $57^{\circ}44'38''$ 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 $05^{\circ}32'12''$ an arc distance of 186.31 feet (the long chord bears North $29^{\circ}29'16''$ East 186.23 feet); thence South $89^{\circ}52'55''$ 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 $56^{\circ}01'43''$ East) through a central angle of $33^{\circ}55'55''$ an arc distance of 158.81 feet (the long chord bears North $17^{\circ}00'19''$ West 156.50 feet) to a point of tangency; thence continuing along said right-of-way line North $00^{\circ}02'22''$ 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 $38^{\circ}37'19''$ East 215.39 feet to the northerly line of said tract per fee 86-44959; thence tracing said northerly line South $89^{\circ}58'19''$ 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 $89^{\circ}59'19''$ an arc distance of 47.12 feet (the long chord bears North $45^{\circ}02'02''$ 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 $00^{\circ}02'22''$ 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

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Pat Marquis

OREGON
JANUARY 20, 1989
PAT MARQUIS
2382

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

Lindy - Transfer 170⁺ ^{thou} footprint
Electronics +

Driveway / TC (E) + (W)

Driveway → Open Space

Submit Stage I + II Simultaneously

Blaise
What else?

* Gave Stage I + II + application x 2
250' radius map owners

Topo - 1' intervals - (map has readings)

~~Blaise 52' top down~~
Phase

CITY

100 - 120 DWELING UNITS.

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

- CONTOUR SURVEY - 720' / 0

[TREE SURVEY
 > 6" CALIBER]

MAJOR DRAINAGEWAY.

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

CALL. VALUE ~~120~~

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 by 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.

<u>Item</u>	<u>Lot Coverage</u> <u>in sq. ft.</u>	<u>Lot Coverage</u> <u>in %</u>
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 !

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.

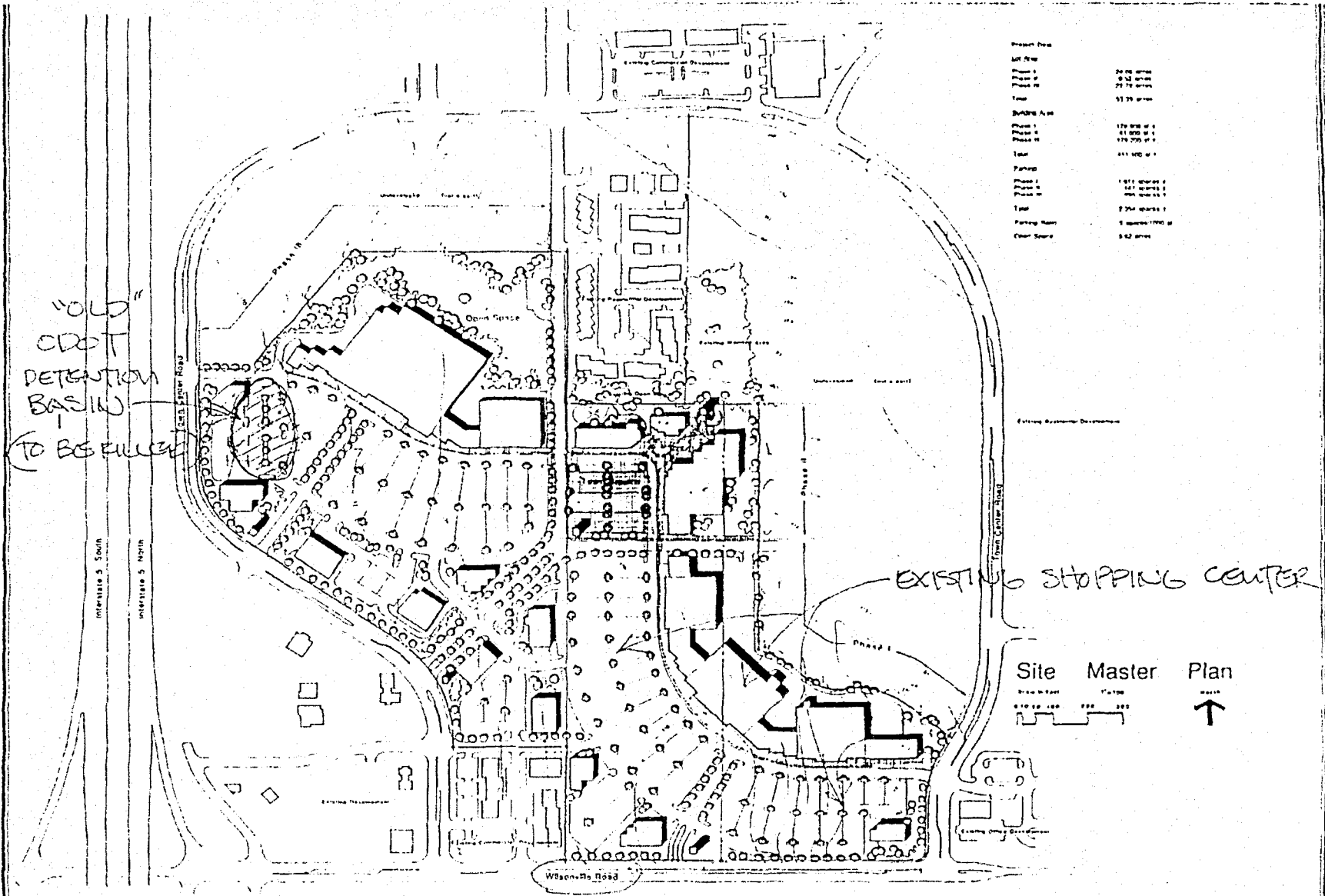
Second, the study assumed that 40 percent of the flow into the Incredible Universe would be "drop-in" traffic — that is, traffic already on the streets for other reasons. But the store has become a regional draw, and "drop-in" traffic is a tiny percentage of traffic it attracts. Finally, the traffic 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."

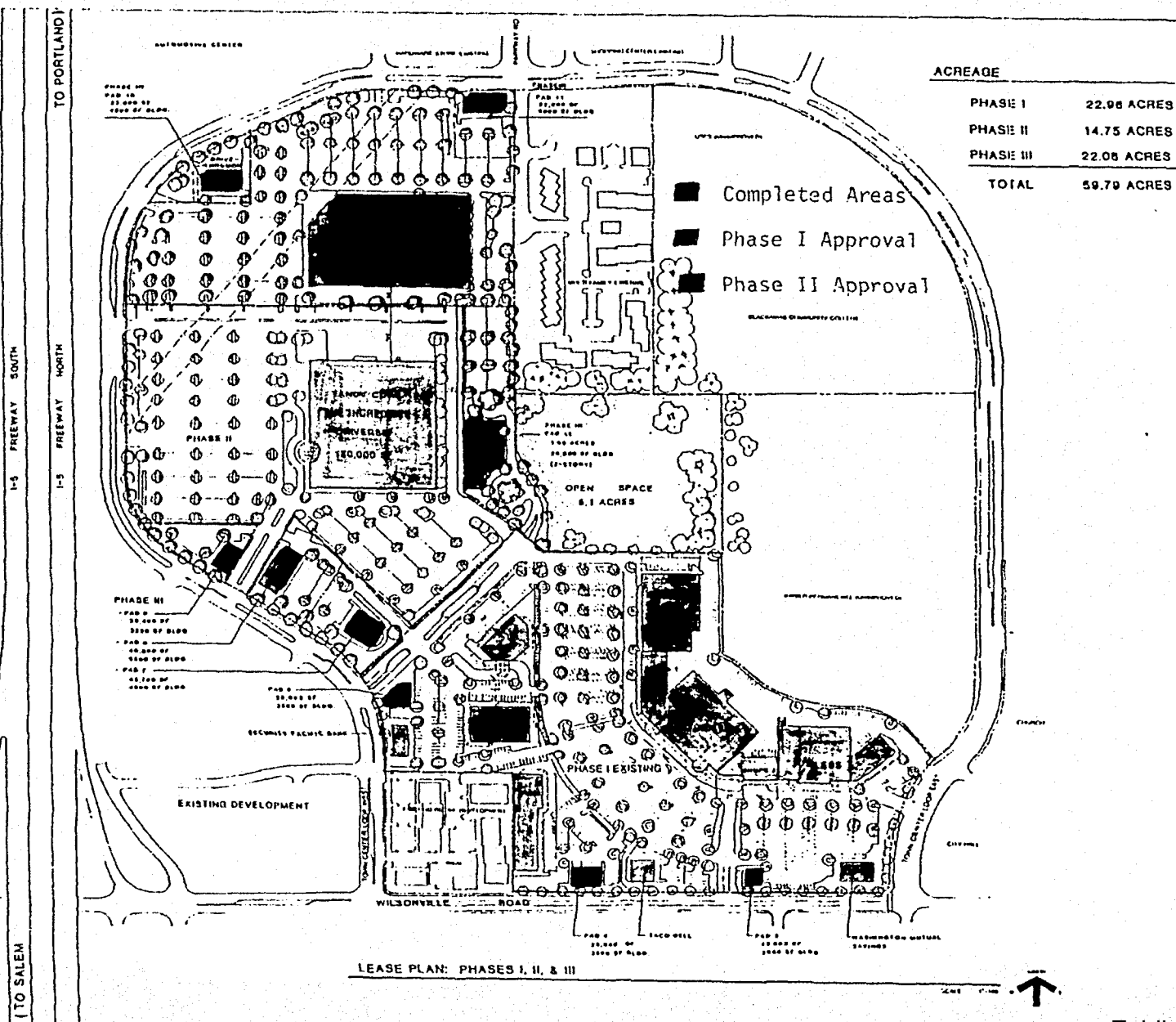
Sorensen, however, later said there are no plans to tinker with the engineering manual — he called it "the bible" — that predicts how many new trips will be generated by a particular use.

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.

cc: Bill, JAVLS



Phase I	170,000 sq. ft.
Phase II	140,000 sq. ft.
Total	310,000 sq. ft.
Building Area	170,000 sq. ft.
Parking	140,000 sq. ft.
Landscaping	100,000 sq. ft.
Total	410,000 sq. ft.
Phase I	170,000 sq. ft.
Phase II	140,000 sq. ft.
Total	310,000 sq. ft.
Parking	140,000 sq. ft.
Landscaping	100,000 sq. ft.
Total	410,000 sq. ft.



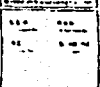
ACREAGE	
PHASE I	22.98 ACRES
PHASE II	14.75 ACRES
PHASE III	22.05 ACRES
TOTAL	59.79 ACRES

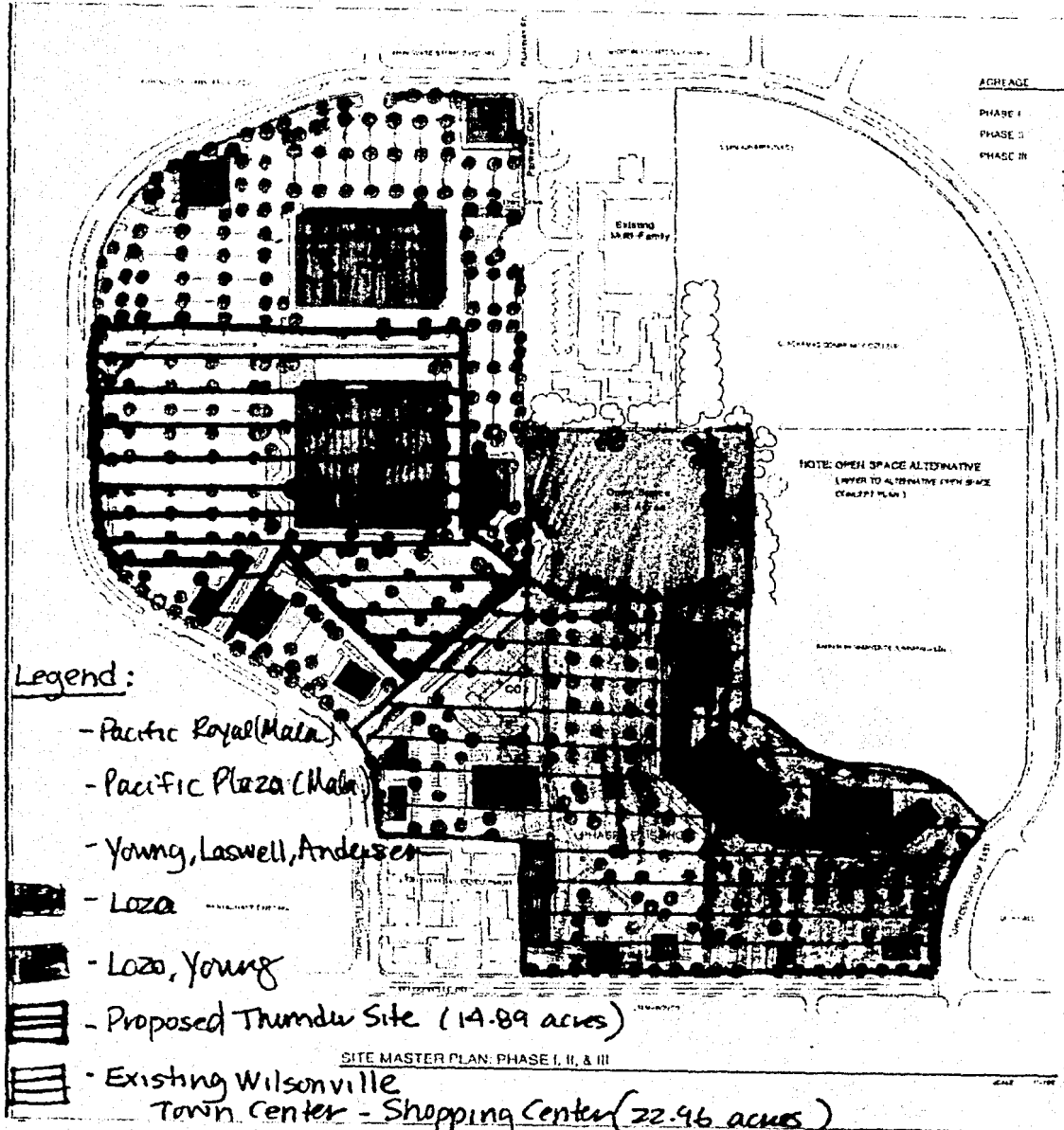
- Completed Areas
- Phase I Approval
- Phase II Approval

LEASE PLAN: PHASES I, II, & III

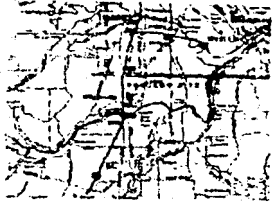
JKS Architects PC
 433 W. Taylor Street, Suite 200 • Beaverton, Oregon 97005
 503.766.1111 • Fax: 503.766.1112

WILSONVILLE TOWN CENTER
 WILSONVILLE, OREGON





ACREAGE	
PHASE I	22.96 ACRES
PHASE II	14.75 ACRES
PHASE III	22.58 ACRES
TOTAL	60.29 ACRES



VICINITY MAP

DESCRIPTION OF PROJECT

GENERAL NOTES

1. THE PROJECT IS SCHEDULED TO BE COMPLETED IN PHASES I, II, AND III.

2. THE PROJECT IS SCHEDULED TO BE COMPLETED IN PHASES I, II, AND III.

3. THE PROJECT IS SCHEDULED TO BE COMPLETED IN PHASES I, II, AND III.

4. THE PROJECT IS SCHEDULED TO BE COMPLETED IN PHASES I, II, AND III.

5. THE PROJECT IS SCHEDULED TO BE COMPLETED IN PHASES I, II, AND III.

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7. THE PROJECT IS SCHEDULED TO BE COMPLETED IN PHASES I, II, AND III.

8. THE PROJECT IS SCHEDULED TO BE COMPLETED IN PHASES I, II, AND III.

9. THE PROJECT IS SCHEDULED TO BE COMPLETED IN PHASES I, II, AND III.

10. THE PROJECT IS SCHEDULED TO BE COMPLETED IN PHASES I, II, AND III.

Legend:

- Pacific Royal (Mala)
- Pacific Plaza (Mala)
- 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
 22 SW 3RD AVE, SUITE 200, WILSONVILLE, OREGON 97150
 503.535.1111

WILSONVILLE TOWN CENTER
 WILSONVILLE, OREGON

DEFECTS IN

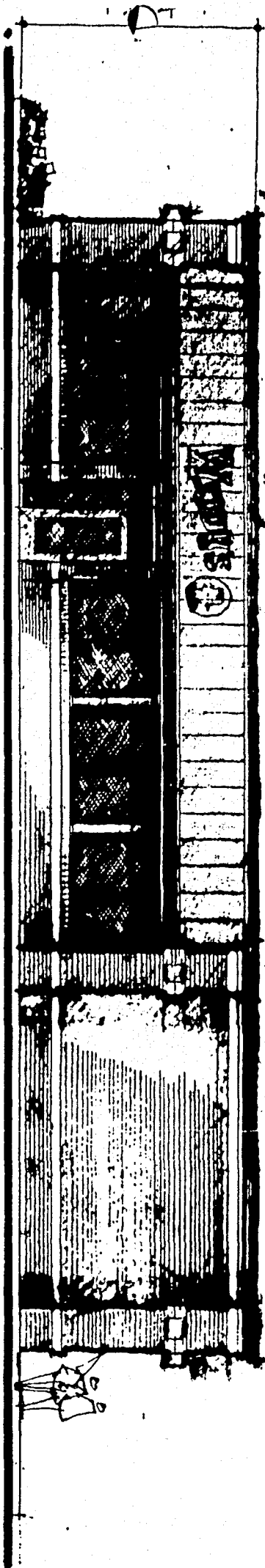
ORIGINAL

DOCUMENT

EXHIBIT F

1/8" = 1'-0"

NORTH ELEVATION



1/8" = 1'-0"

SOUTH ELEVATION

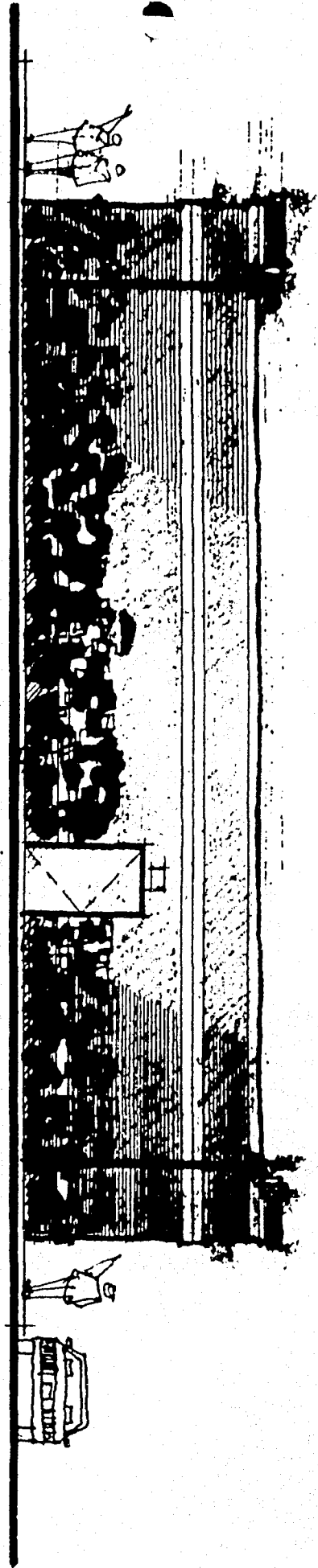


DRAWING NO: 1	PROJECT NAME: Wendy's Restaurant	DATE: 2/5/93
	DRAWING TITLE: Elevations	REVISION:



1/8" = 1'-0"

WEST ELEVATION



1/8" = 1'-0"

EAST ELEVATION



2	DRAWING NO:	PROJECT NAME:	DATE:
		DRAWING TITLE:	REVISION:

Wendy's Restaurant

Elevations

2/5/93



CITY OF WILSONVILLE

PLANNING DEPARTMENT SITE DEVELOPMENT APPLICATION AND

Item 9.

3445 S.W. Elsworth Road
P.O. Box 220 Wilsonville, OR 97150-0220
503-662-3445

File No. 91 PC 43 1/4 Sec.
Final action on application or other change is required within 120 days in accordance with provisions of ORS 227.175
A pre-application conference normally is required prior to submission of an application. Please contact the Planning Department at (503) 662-3445 for an appointment.

Pre-App. No. Day Yr

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 Kimberly Beach, Vice President Capital Realty Corp

Property Description: Plaza Royal Office Center Representative 500 sq ft
Map 13 & 14-D Tax class 200, 201, 101
102, 300

Request: STAGE I MASTER PLAN REVISION
STAGE II PHASE II WILSONVILLE Town Center
SITE PLAN - MOBILITY CONDITION #8 OF 90PC15

Please attach a plat 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 12/19/91

Staff Signature Brian Edwards

Class I Class II Class III

- | | | |
|---|--|---|
| <input type="checkbox"/> PLAN AMENDMENT | <input type="checkbox"/> MAJOR PARTITION | <input type="checkbox"/> DESIGN REVIEW |
| <input type="checkbox"/> ZONE CHANGE | <input type="checkbox"/> MINOR PARTITION | <input type="checkbox"/> TEXT AMENDMENT |
| <input type="checkbox"/> PRELIMINARY PLAT | <input type="checkbox"/> CONDITIONAL USE | <input type="checkbox"/> SIGN REVIEW |
| <input type="checkbox"/> FINAL PLAT | <input type="checkbox"/> VARIANCE | <input type="checkbox"/> TEMPORARY USE |
| <input checked="" type="checkbox"/> PLANNED DEVELOPMENT | <input checked="" type="checkbox"/> OTHER RECONSIDERED CONDITION OF 90PC15 | |

SITE FINDINGS

- Zoning: PC & TOWN CENTERS, Building Area _____
- Area of lot: SEE FILE
- Building or Sign Height: TOWN CENTER LOOP WEST
(Max) _____
- Zoning Code Minimum Set-backs:
Front _____
Side _____
Rear _____
- Access to Property _____
- 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 or called for above. Any change of plans or incorrect information submitted may result in revocation of 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 FILE Cash 1205 Fee \$500.00 Fee - I
1206 Fee \$825.00
1207 Fee \$250.00 - cash

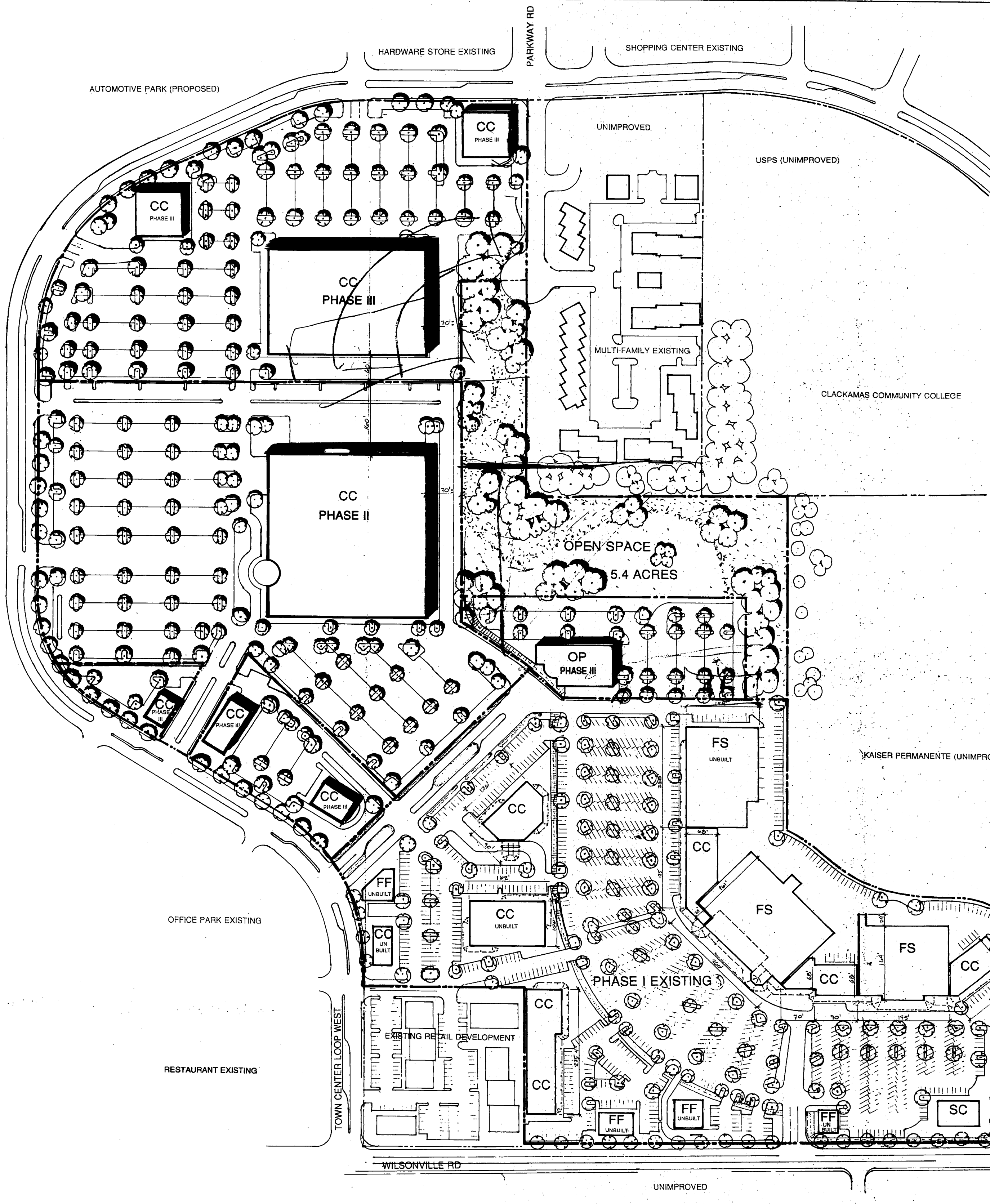
Permit Approval: Planner's Signature _____

City Council or Planning Commission Approval Yes No

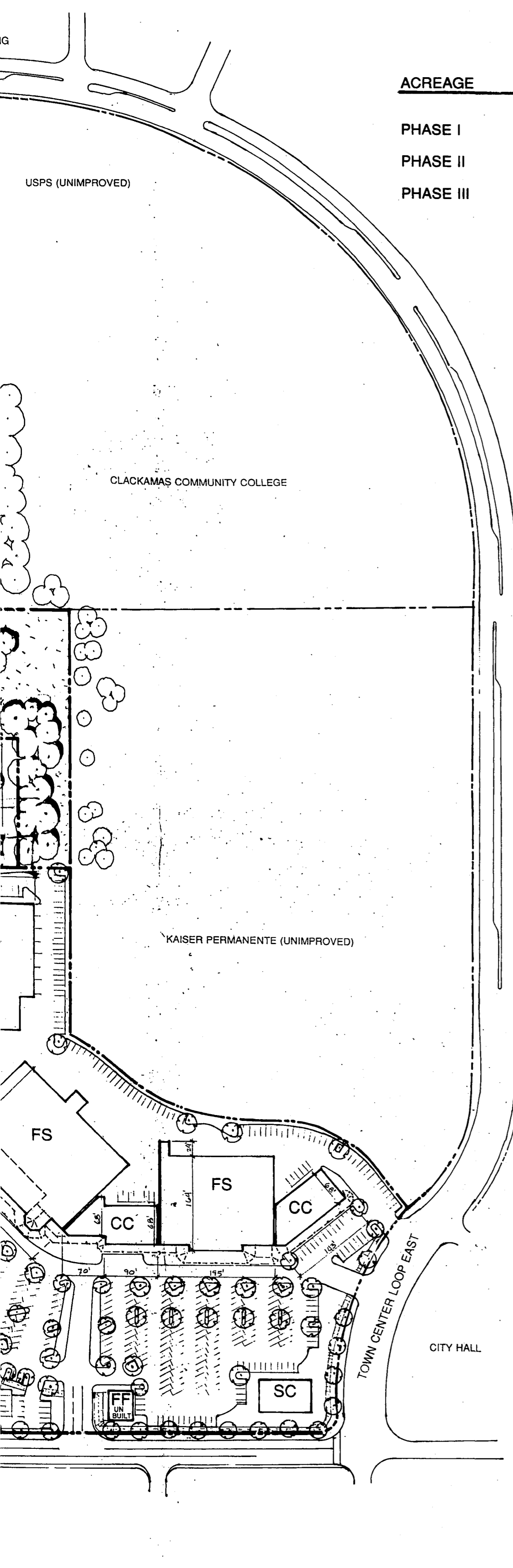
Order: Resolution _____

1109

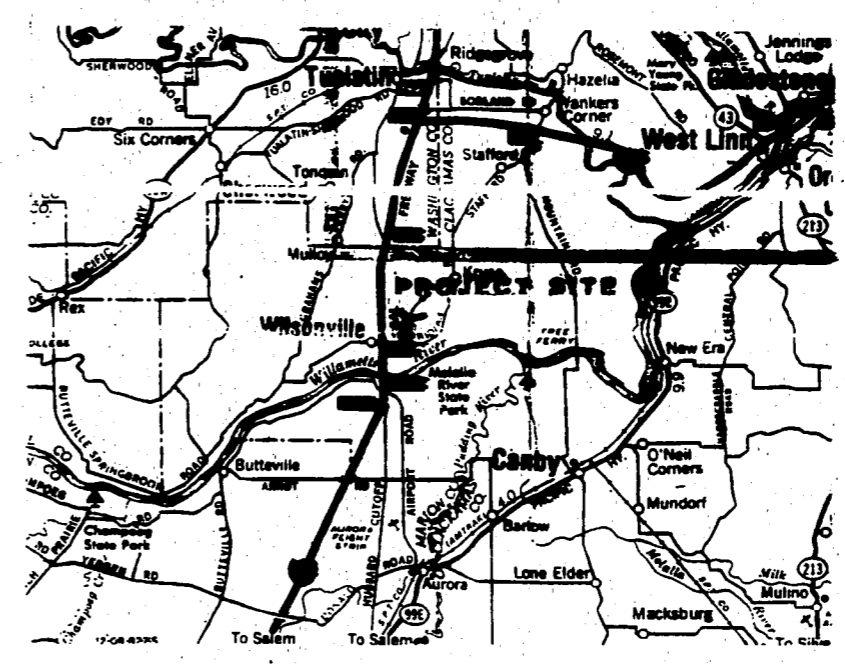
Exhibit D



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 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°03'21" East along the section line between Sections 13 and 14 a distance of 44.00 feet to the **POINT OF BEGINNING**; thence continuing North 02°03'00" East along said section line a distance of 339.50 feet; thence South 89°55'30" 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 46.55 feet to a point of curvature; thence 247.91 feet along the arc of a 250.34 foot radius curve to the left through a central angle of 37°15'11" and whose chord bears North 15°39'27" West a distance of 243.55 feet to a point on a curve; thence North 45°03'00" East a distance of 554.11 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 285.58 feet to the intersection with a non-tangent curve; thence 33.82 feet along the arc of a 317.35 foot radius curve to the right through a central angle of 16°59'21" and whose chord bears South 55°30'50" East a distance of 93.45 feet to a point of reverse curvature; thence 148.26 feet along the arc of a 338.67 foot radius curve to the left through a central angle of 42°03'30" and whose chord bears South 89°02'43" 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 74.68 feet along the arc of a 220.00 foot radius curve to the right through a central angle of 5°27'10" and whose chord bears South 89°01'32" East a distance of 169.15 feet to a point of tangency; thence South 29°00'13" East a distance of 87.50 feet to a point on a non-tangent curve; thence 124.11 feet along the arc of a 220.00 foot radius curve to the left through a central angle of 19°14'18" and whose chord bears South 29°40'08" West a distance of 231.74 feet to a point of tangency; thence South 00°03'01" West a distance of 88.17 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 89°16'20" and whose chord bears South 89°42'00" West a distance of 48.17 feet to a point of tangency; thence South 22°22'25" West a distance of 97.54 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 4,077.07 feet to the most westerly northwest corner of Parcel 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 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 350.84 foot radius curve to the left the radial center of which bears South 52°40'44" West) through a central angle of 20°25'22" an arc distance of 135.64 feet (the long chord bears North 47°11'56" West 134.32 feet) to a point of tangency; thence North 57°44'38" West 463.50 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°27'16" 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 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 as deeded to the City of Wilsonville in deed recorded November 12, 1986 in recorder's fee 86-44959 North 38°37'13" East 215.39 feet to the northerly line of said tract per fee 84-4353; 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°58'19" 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 arc curvilinearly along the easterly right-of-way line of said Town Center Loop Road West along the following courses and distances: North 00°02'22" West 230.31 feet to a point of curvature; thence tracing the arc of a 250.00 foot radius curve to the right through a central angle of 84°13'44" an arc distance of 458.91 feet (the long chord bears North 32°24'30" East 444.25 feet) to a point of tangency; thence North 89°57'00" East 285.04 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 150.41 feet (the long chord bears North 70°22'24" East 178.36 feet) to a point of tangency; thence North 89°43'25" 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 15.46 feet (the long chord bears South 23°27'42" West 15.90 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 1 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°28'52" East 849.20 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 1,604,249 square feet or 36.83 acres more or less.

467-0301
10/16/91

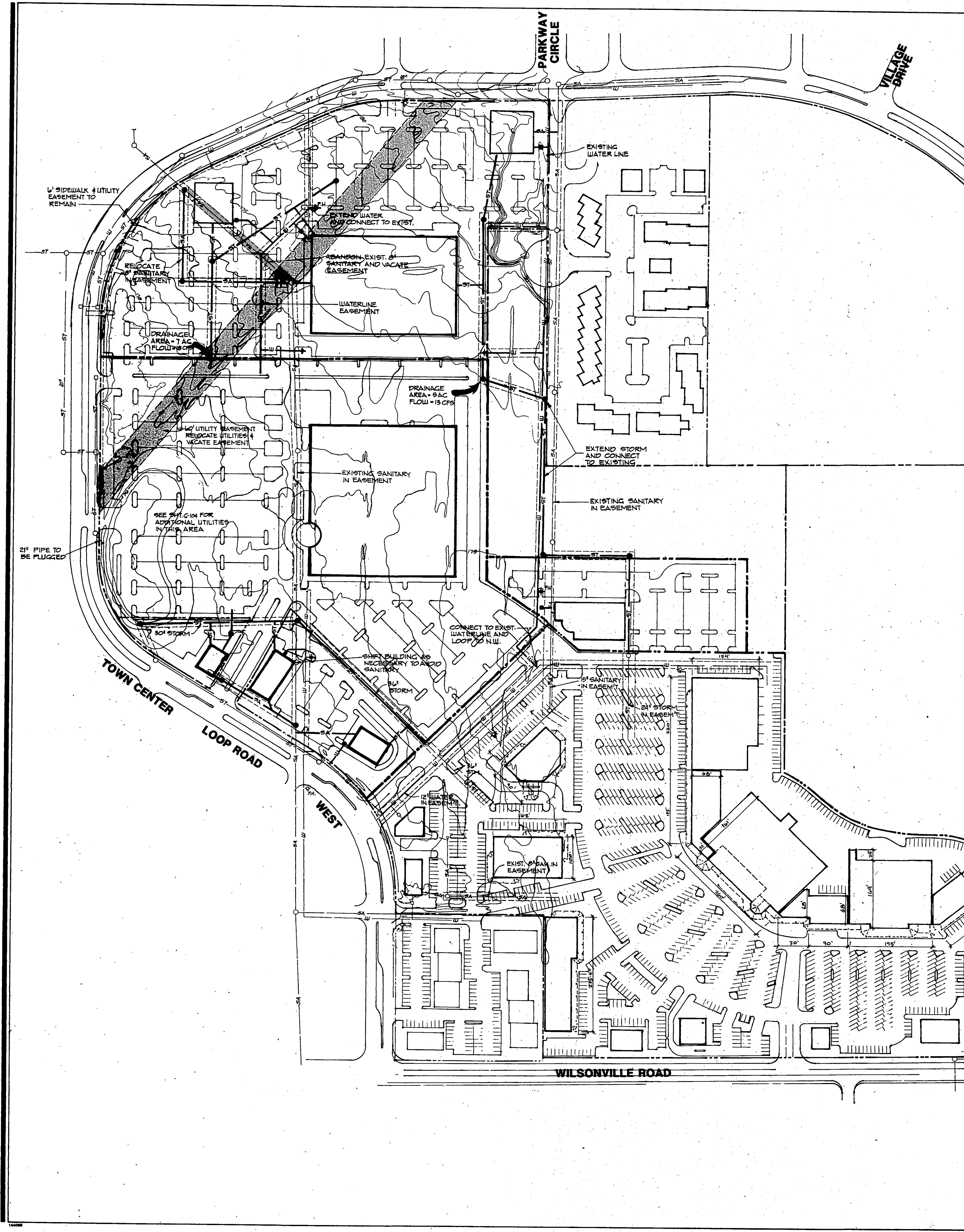
JKS Architects PC
1620 S.W. Taylor Street • Suite 200 • Portland, Oregon 97205
503-227-5616 • FAX 503-227-3590

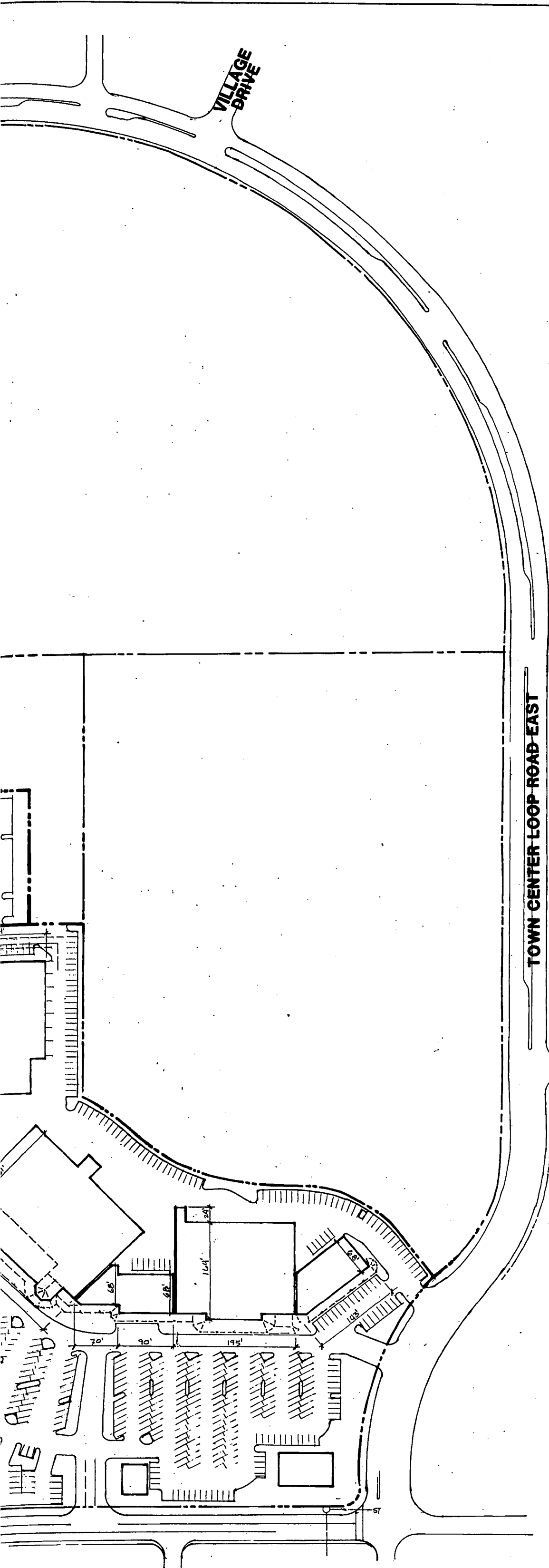
WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON

Revisions	
KJD Drawn By	RBB Checked By
8963	10/18/91
Job No.	Date
SITE MASTER PLAN	
Sheet Title	
Sheet No.	

1

SCALE 1"=100' W ↑ E





COURTSIDE DRIVE

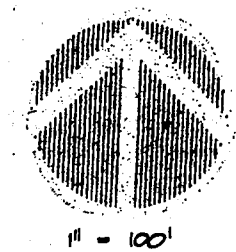
TOWN CENTER LOOP ROAD EAST

VILLAGE DRIVE

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	



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

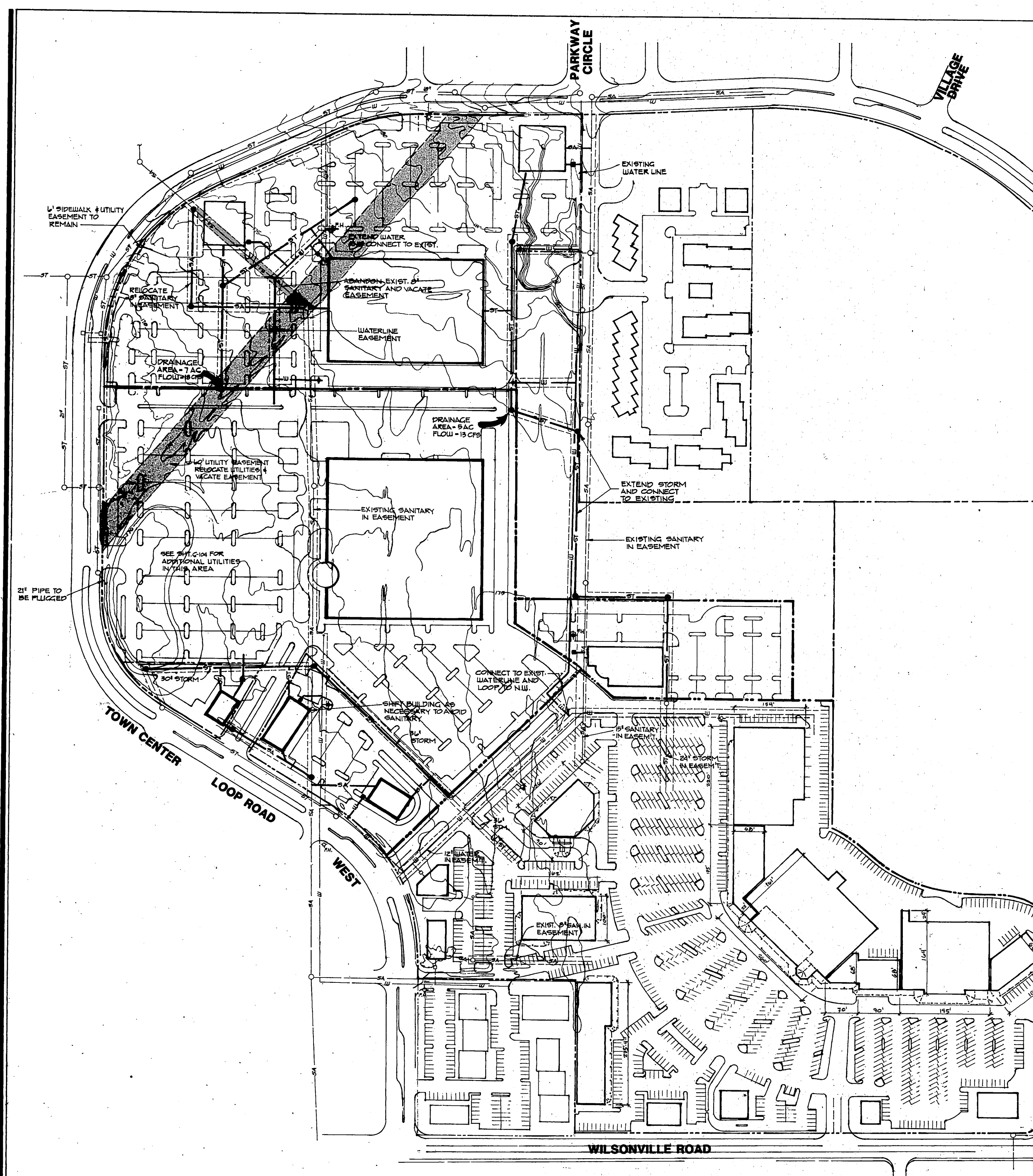
WILL PACIFIC
 1099 S.W. Columbia Street
 Portland, Oregon 97201
 Fax (503) 224-4407
 Planning • Lighting • Surveying • Landscape Architecture

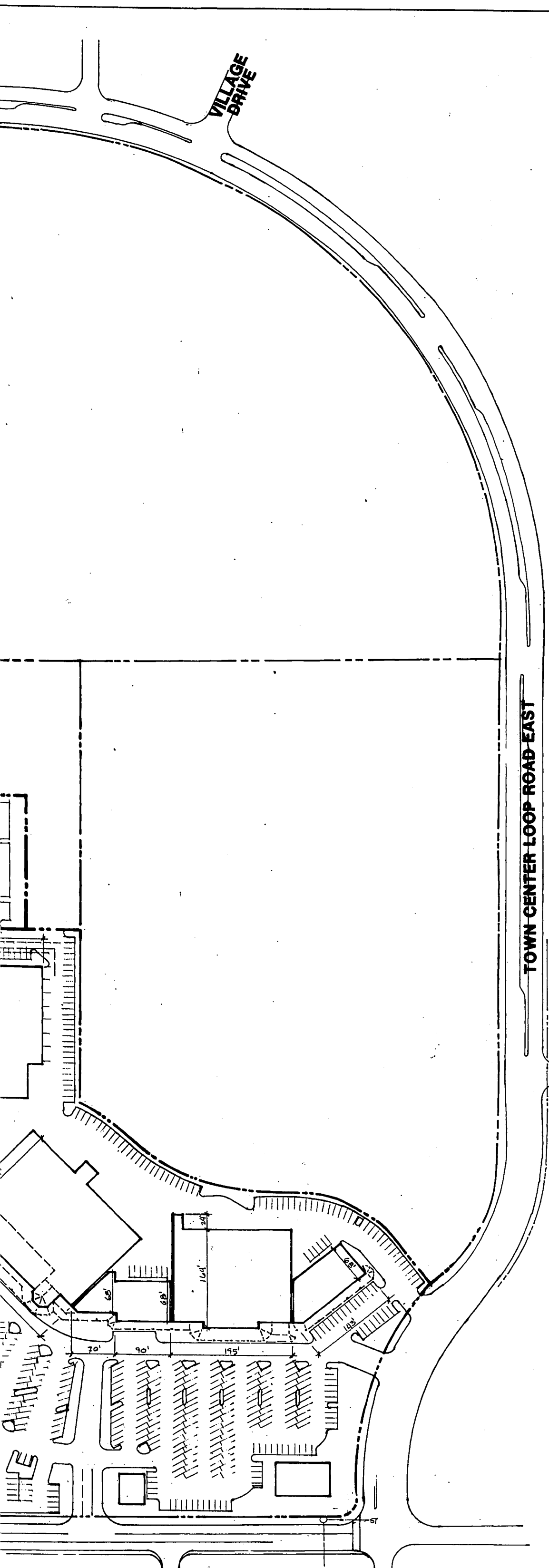
WILSONVILLE TOWN CENTER
 Wilsonville, Oregon

Revisions

Drawn By _____ Checked By _____
 Job No. 4-467-0301 Date 10-18-11
MASTER UTILITIES PLAN
 Sheet Title

Sheet No.
2





COURTSIDE DRIVE

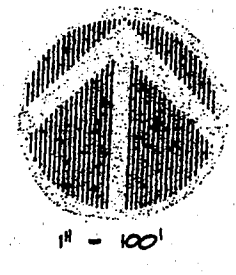
TOWN CENTER LOOP ROAD EAST

VILLAGE DRIVE

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	



APPROVED *ALLES*
Release Sheet No. 1020/181

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 503-227-5616 • FAX 503-227-3590

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 1620 S.W. Taylor Street
 Portland, Oregon 97205
 (503) 227-0435
 Fax (503) 274-4607
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WILSONVILLE TOWN CENTER
 Wilsonville, Oregon

Revisions

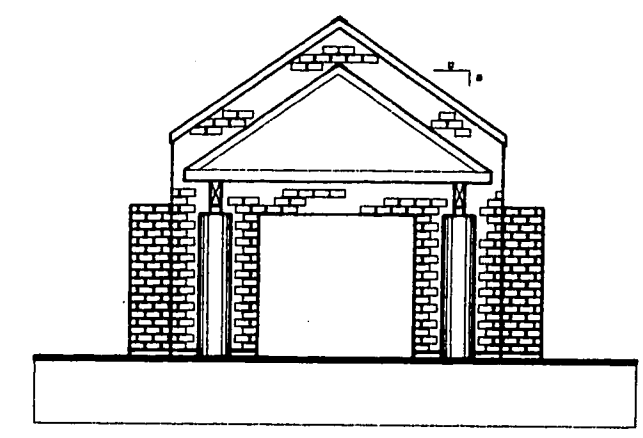
Drawn By	Checked By
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Job No. 4-467-0301 Date 10-18-91
MASTER UTILITIES PLAN
 Sheet Title

Sheet No.
2

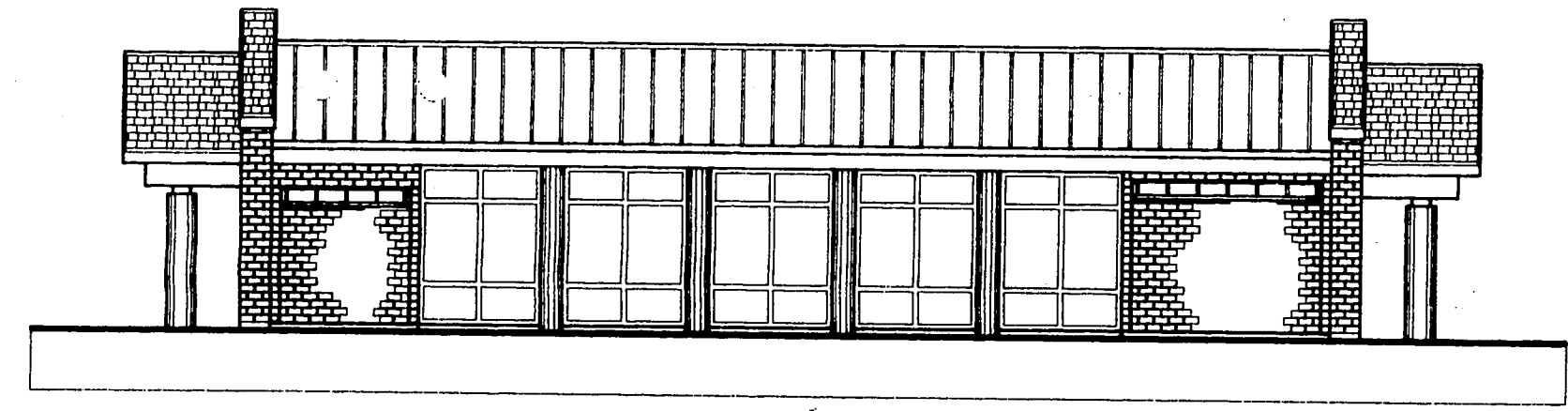
**WILSONVILLE TOWN CENTER
 PROPOSED CAR WASH**

WILSONVILLE, OREGON



END ELEVATION

1/8" = 1'-0"

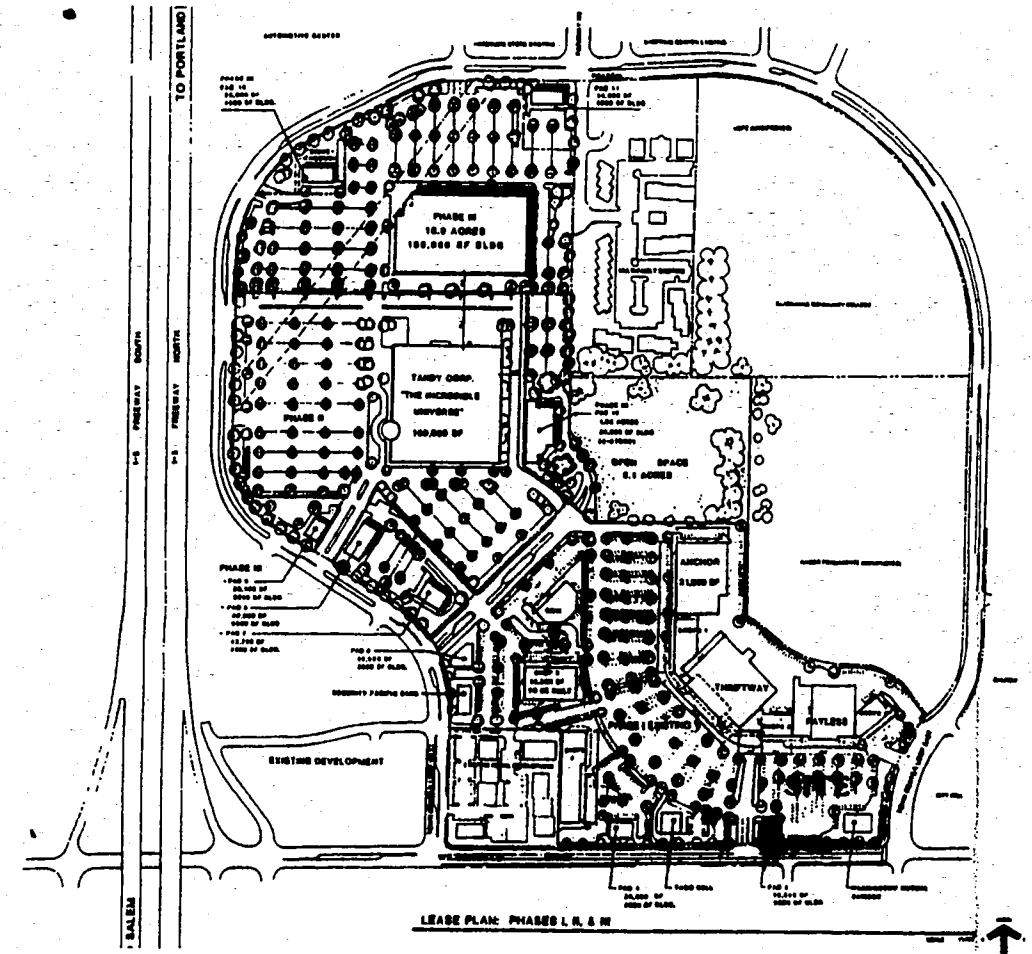


FRONT ELEVATION

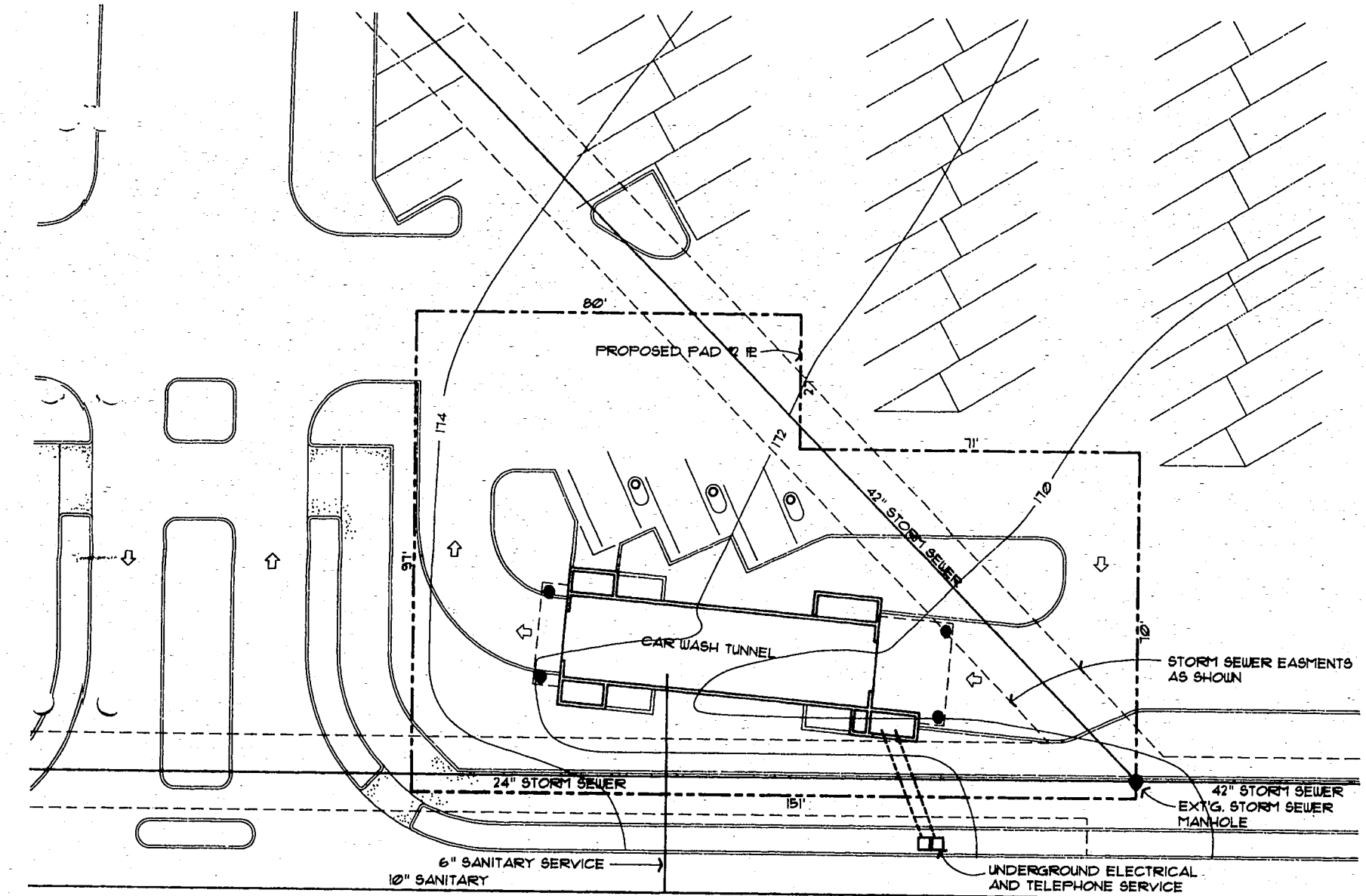
1/8" = 1'-0"

SITE DATA

	LOT COVERAGE IN SQ. FT.	LOT COVERAGE IN %
BUILDING AREA	15,000	12%
PARKING & DRIVES	8,293	65%
LANDSCAPING/OPEN SPACE	2,937	23%
TOTAL SITE AREA	12,730	100%



VICINITY MAP



WILSONVILLE RD.



PRELIMINARY SITE PLAN

1" = 20'

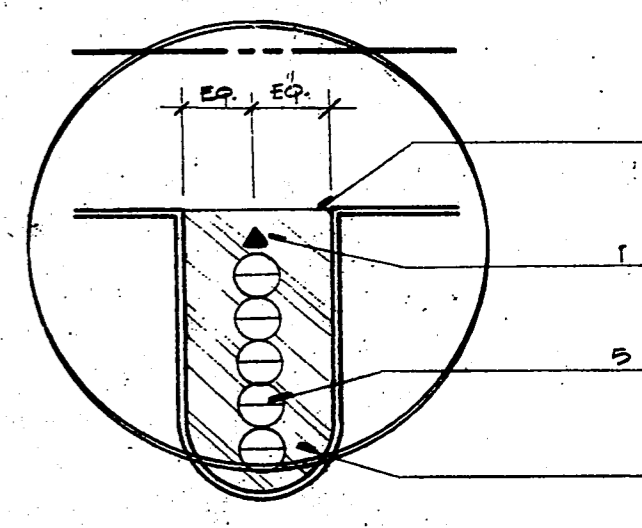
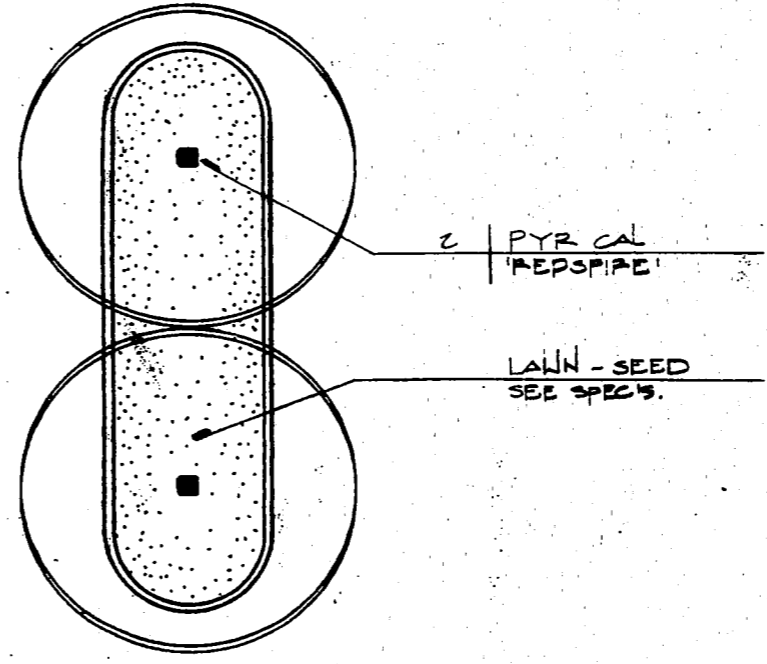
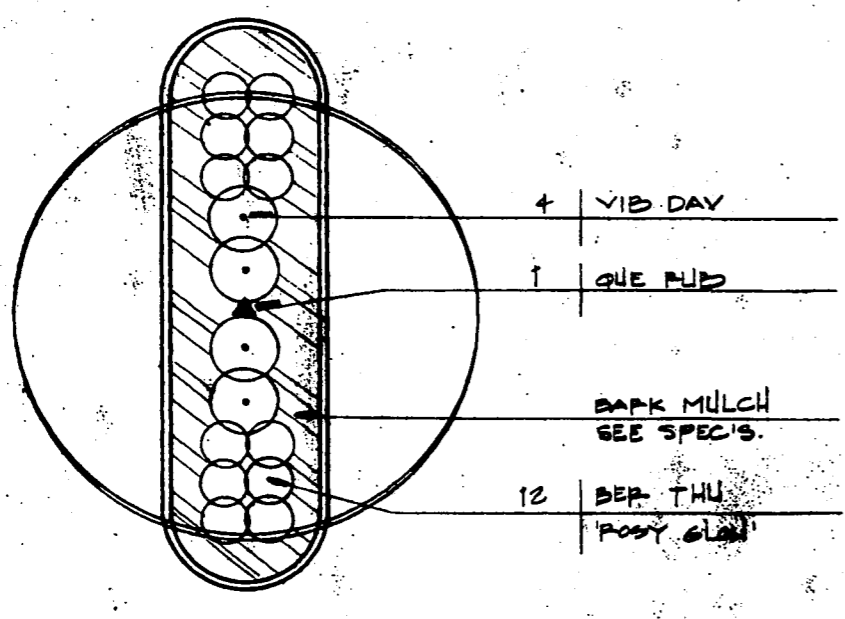
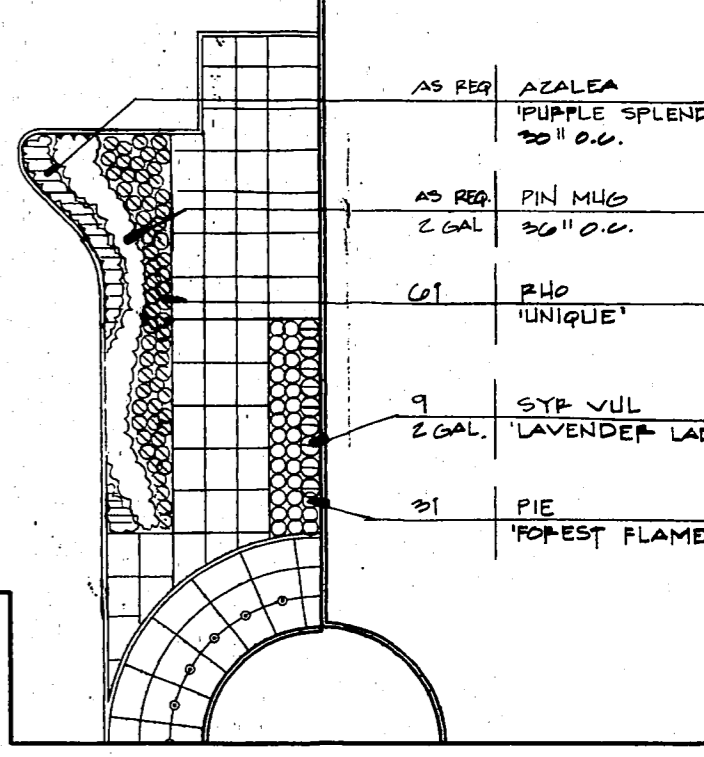
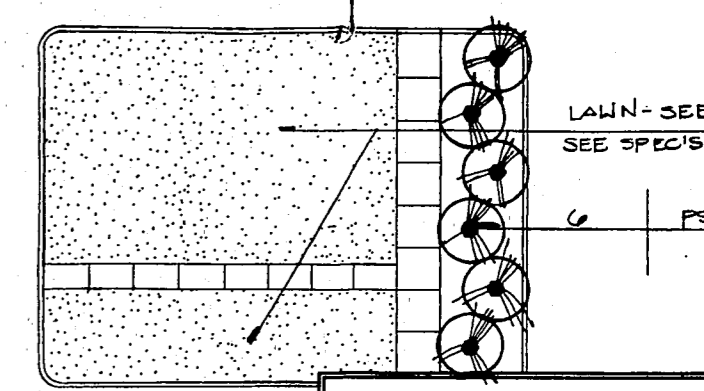
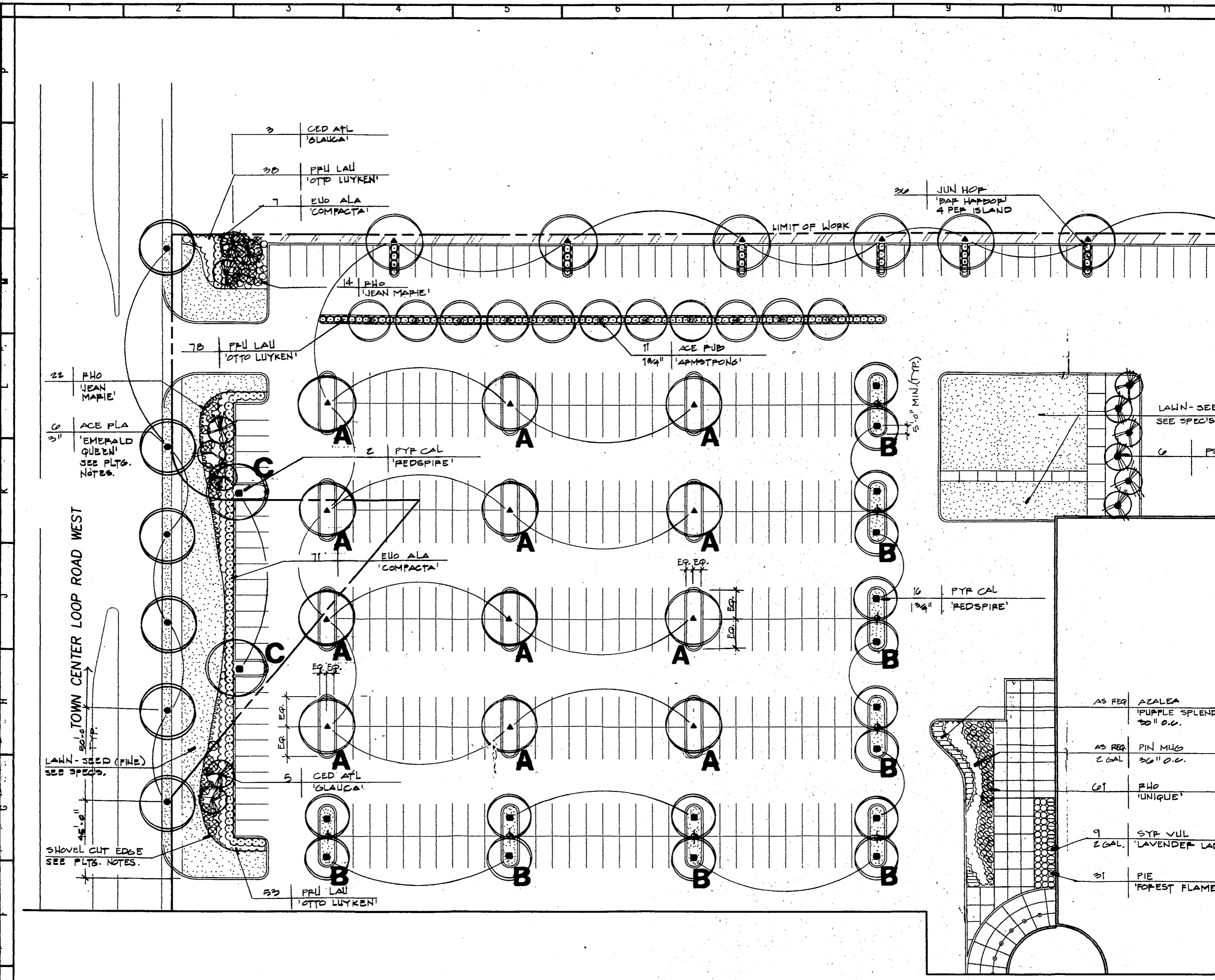
CLIENT:
DENNIS THOMPSON

REVISIONS:

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

PER WS. 1, 2, 3, 4, 13, 18, 88, 88, 88, 88

PROJECT NO. 4-755-0327
CADD FILE: 07/25/2017.DWG



A PLANTING ISLAND 'A' DETAIL

B PLANTING ISLAND 'B' DETAIL

C PLANTING ISLAND 'C' DETAIL

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.

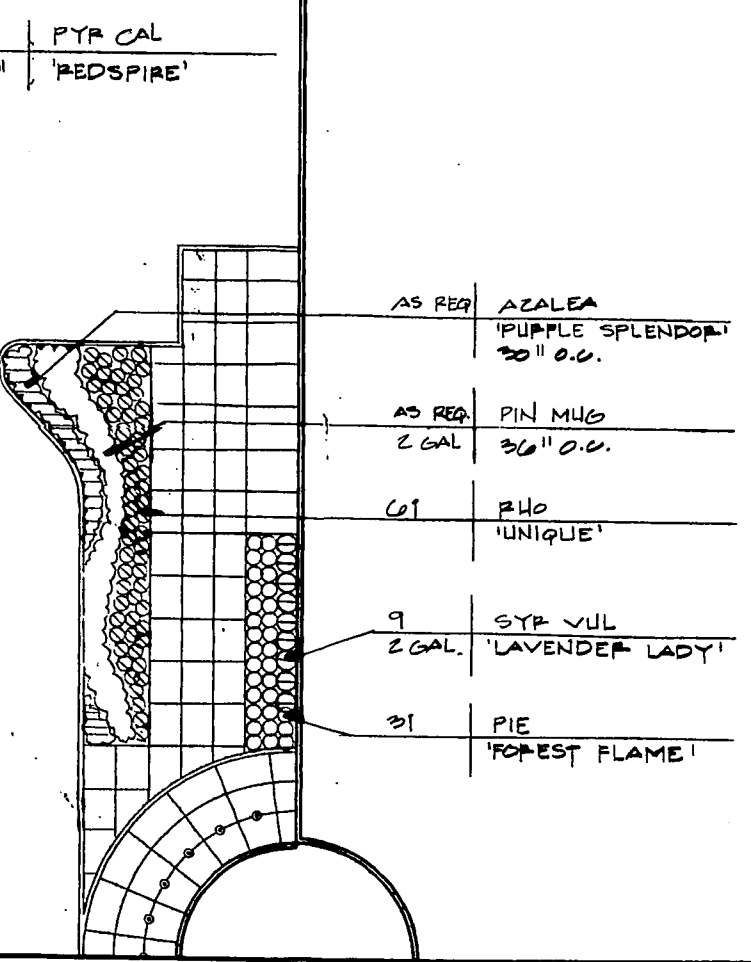
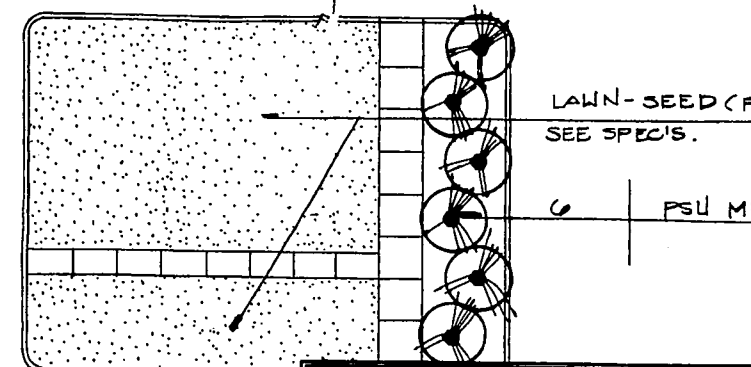
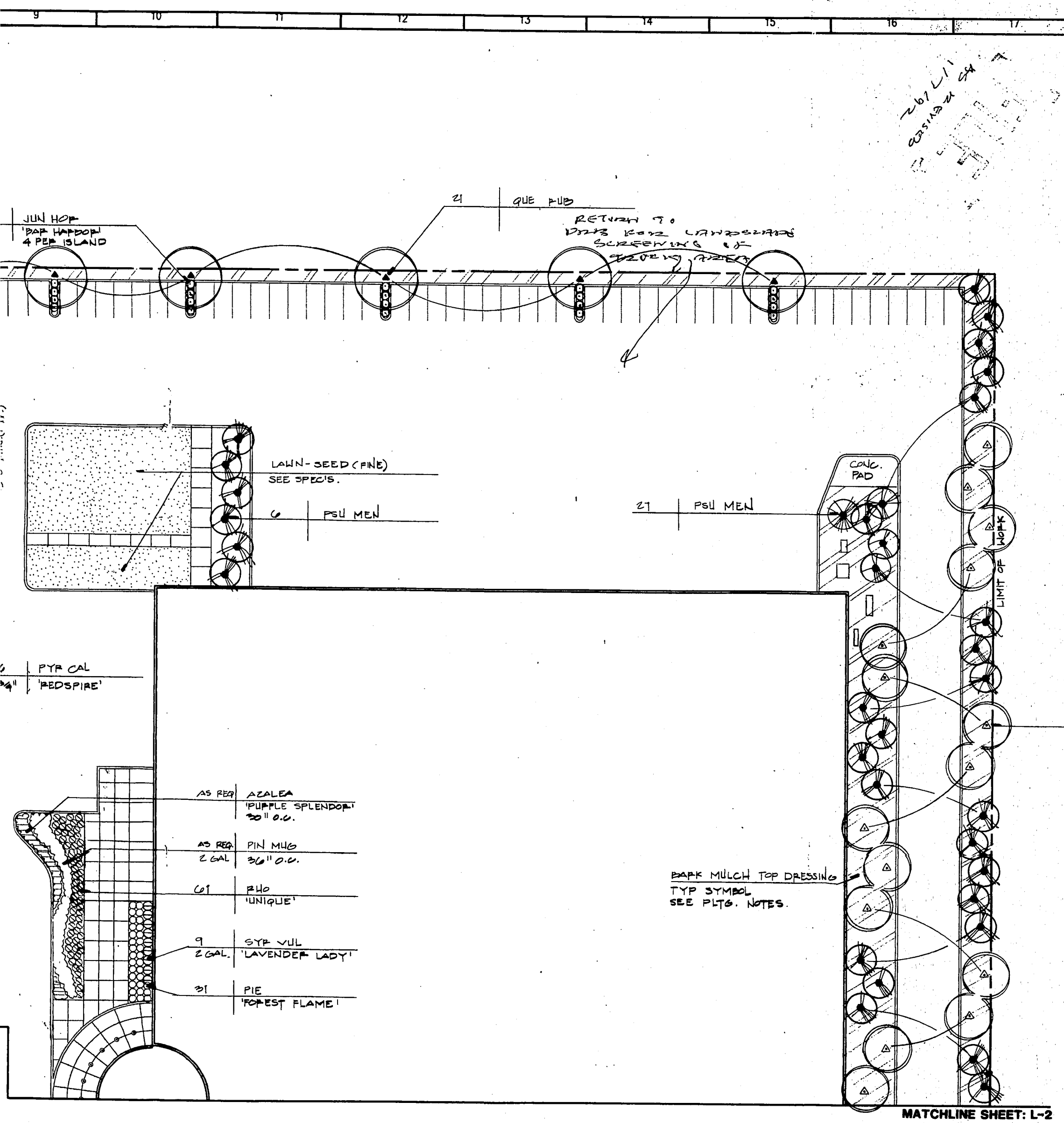
ALL SHRUB AND GROUNDCOVER PLANTING AREAS TO RECEIVE MINIMUM 2" DEPTH OF BARK MULCH. SEE SPECIFICATIONS 02950.

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.

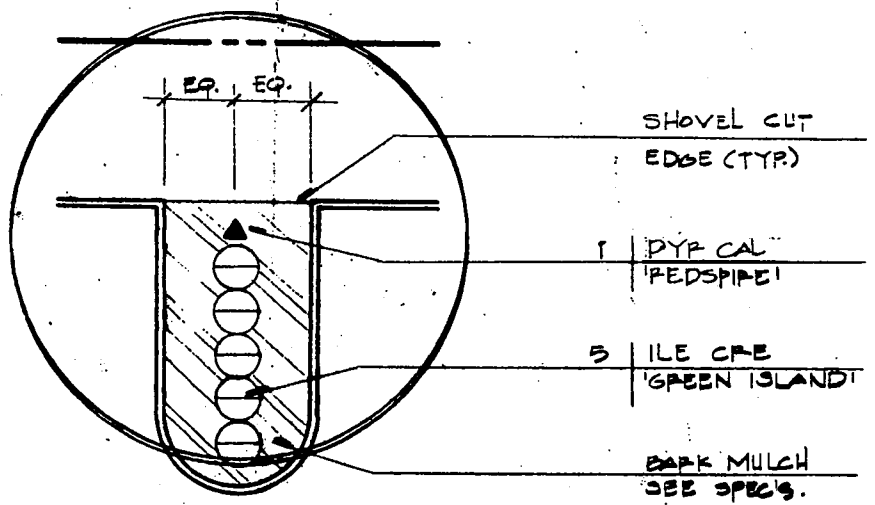
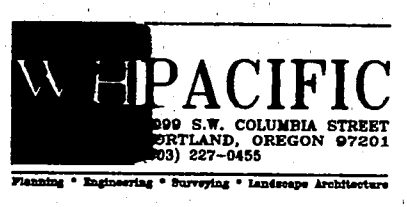
ALL LAWN EDGES AT SHRUB PLANTING AREAS SHALL BE SHOVEL CUT. CONTRACTOR SHALL MAINTAIN ALL SHOVEL CUT EDGES IN A SMOOTH AND EVEN CONDITION UNTIL FINAL ACCEPTANCE.

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.



BARK MULCH TOP DRESSING
TYP SYMBOL
SEE PLTG. NOTES.

MATCHLINE SHEET: L-2



APPROVED

No.	Revisions/Submissions	Date

DesignForum ARCHITECTS

3484 For Hills Avenue, Dayton, Ohio 45428 Telephone: (513) 288-4400

Project Title **PROJECT THUNDER**
WILSONVILLE, OREGON

Drawing Title **LANDSCAPE PLAN**

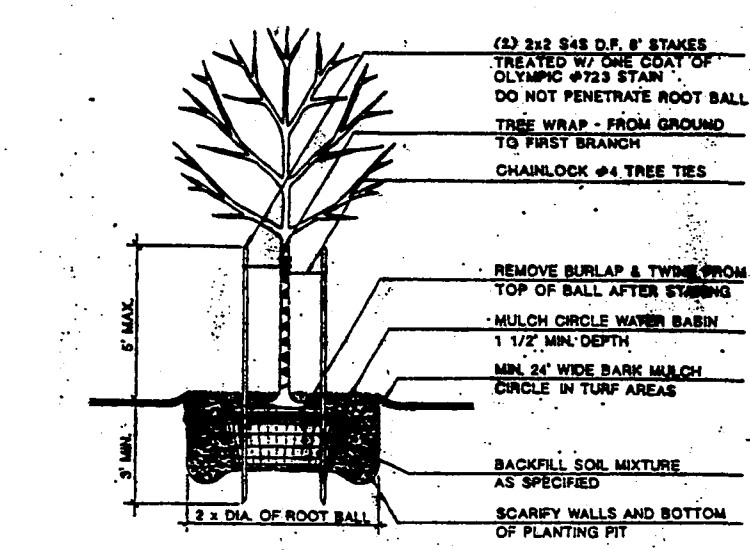
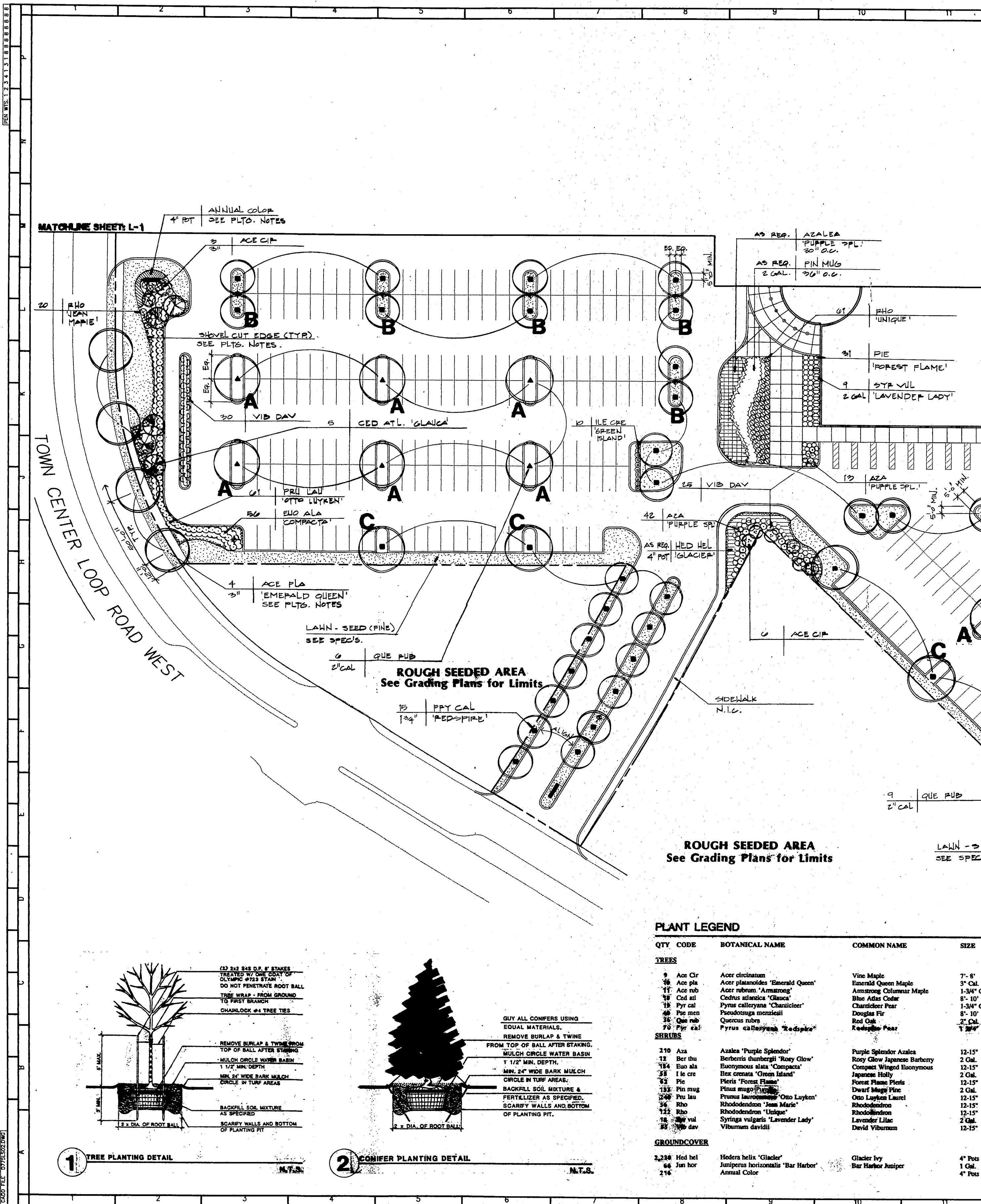
Seal REGISTERED 2011 Matthew P. Simpson MATTHEW P. SIMPSON OREGON LANDSCAPE ARCHITECT	Designed MDS MPS	Project No. 4-755-0202
	Drawn MDS	Scale 1" = 30'-0"
	Checked MPS	Drawing No. L1.0
	Reviewed MH	Date 12-27-91

PLANTING ISLAND 'C' DETAIL

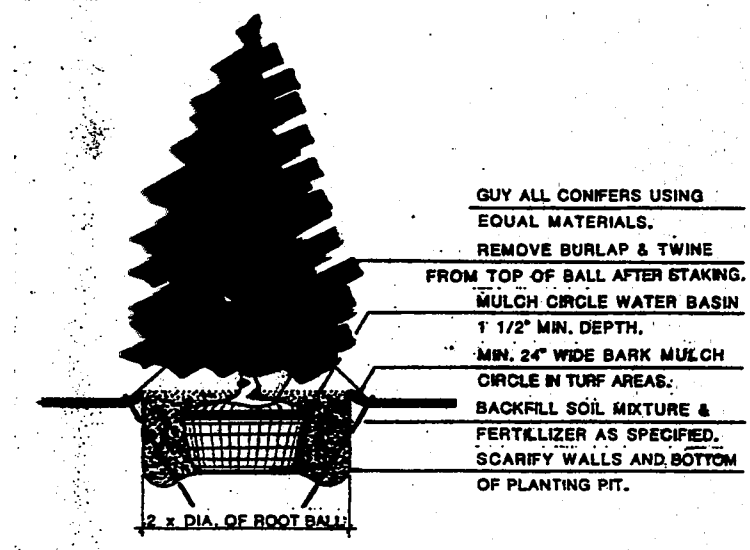
NOT FOR CONSTRUCTION

PRINTED
JAN 06 1992
W & H PACIFIC





1 TREE PLANTING DETAIL N.T.S.



2 CONIFER PLANTING DETAIL N.T.S.

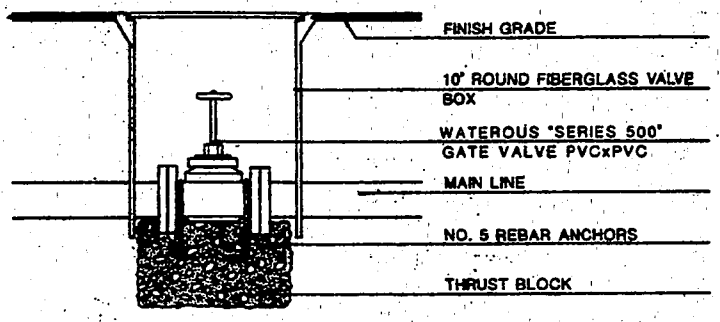
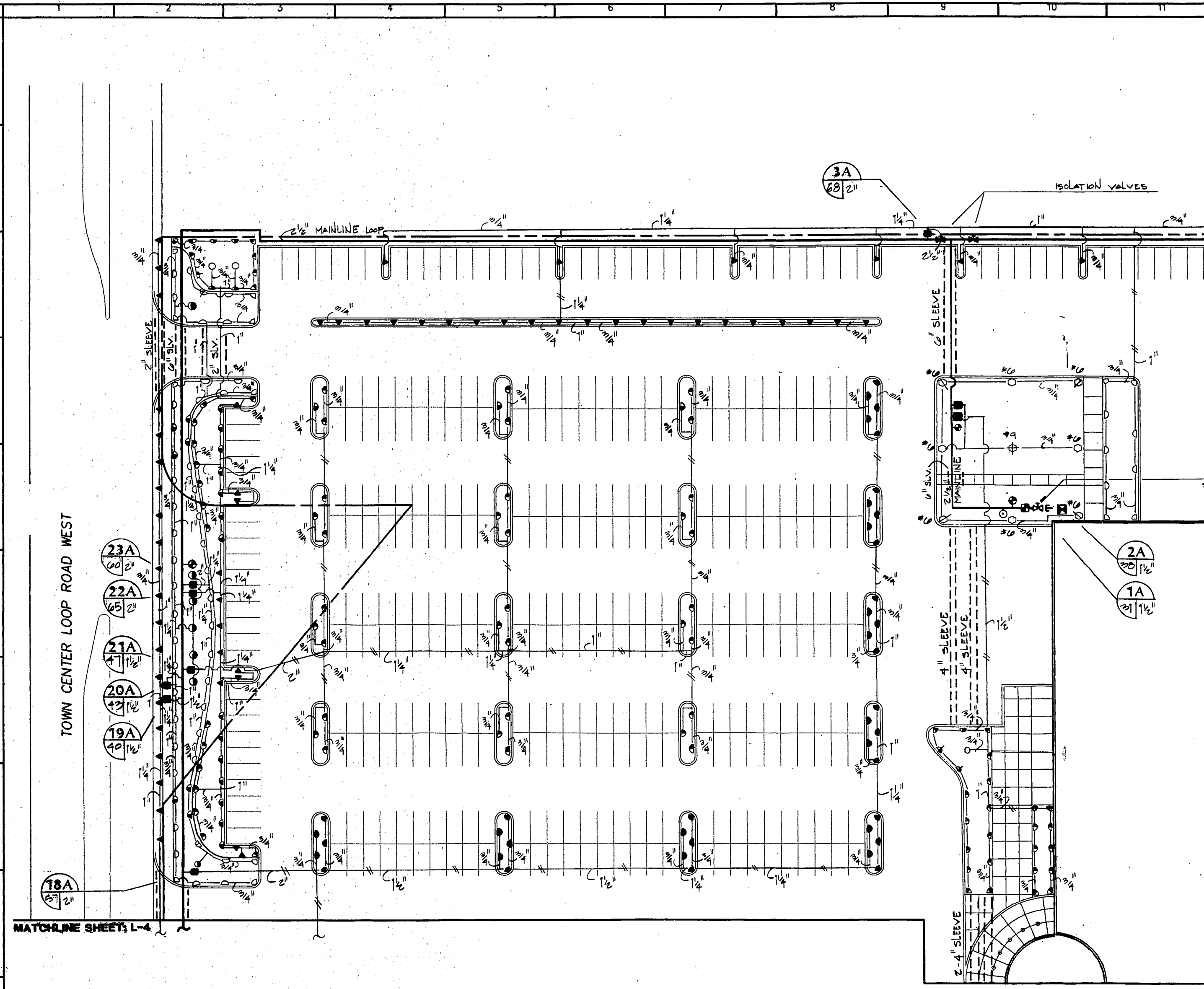
PLANT LEGEND

QTY	CODE	BOTANICAL NAME	COMMON NAME	SIZE
TREES				
9	Ace Cir	Acer circinatum	Vine Maple	7'-8'
11	Ace pla	Acer platanoides 'Emerald Queen'	Emerald Queen Maple	3" Cal.
11	Ace rub	Acer rubrum 'Armstrong'	Armstrong Columnar Maple	1-3/4" Cal.
18	Ced atl	Cedrus atlantica 'Glaucia'	Blue Atlas Cedar	8'-10'
18	Pyr cal	Pyrus calleryana 'Chanticleer'	Chanticleer Pear	1-3/4" Cal.
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" Cal.
SHRUBS				
210	Aza	Azalea 'Purple Splendor'	Purple Splendor Azalea	12-15"
12	Ber thu	Berberis thunbergii 'Rosy Glow'	Rosy Glow Japanese Barberry	2 Gal.
184	Euo ala	Euonymus alata 'Compacta'	Compact Winged Euonymus	12-15"
35	I le cre	Ilex crenata 'Green Island'	Japanese Holly	2 Gal.
163	Pie	Pieris 'Forest Flame'	Forest Flame Pieris	12-15"
133	Pin mug	Pinus mugo	Dwarf Mugo Pine	2 Gal.
140	Pru lau	Prunus laurocerasus 'Otto Luyken'	Otto Luyken Laurel	12-15"
36	Rho	Rhododendron 'Jesse Marie'	Rhododendron	12-15"
112	Rho	Rhododendron 'Unique'	Rhododendron	12-15"
18	Rho vil	Syringa vulgaris 'Lavender Lady'	Lavender Lilac	2 Gal.
33	Vib dav	Viburnum davidii	David Viburnum	12-15"
GROUND COVER				
2,230	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

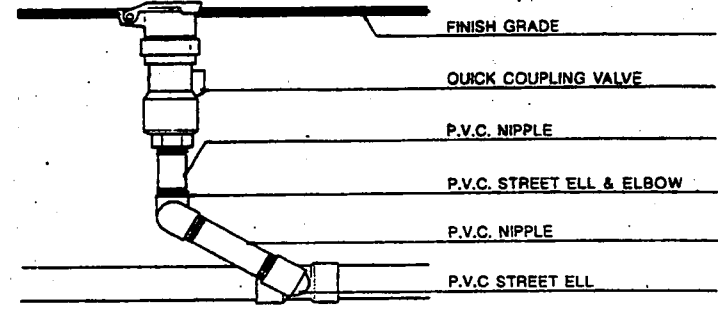
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PER WIS. 1233.1318888888

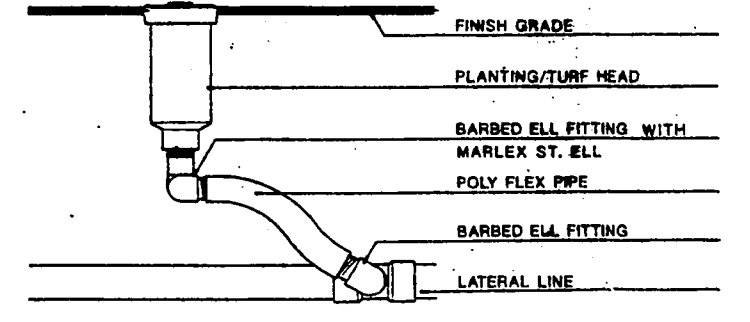
PROJECT NO. 7-15E-0002
CADD FILE: 07580000



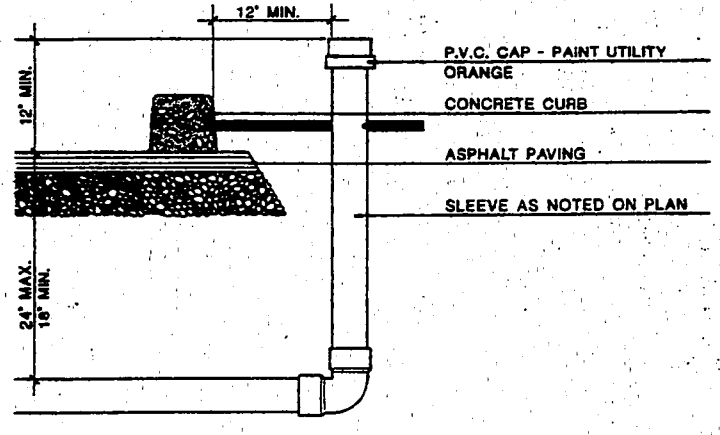
MAINLINE GATE VALVE



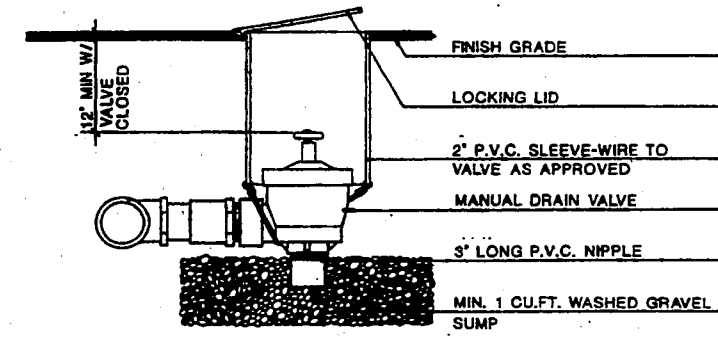
QUICK COUPLING VALVE DETAIL



POLY FLEX RISER DETAIL

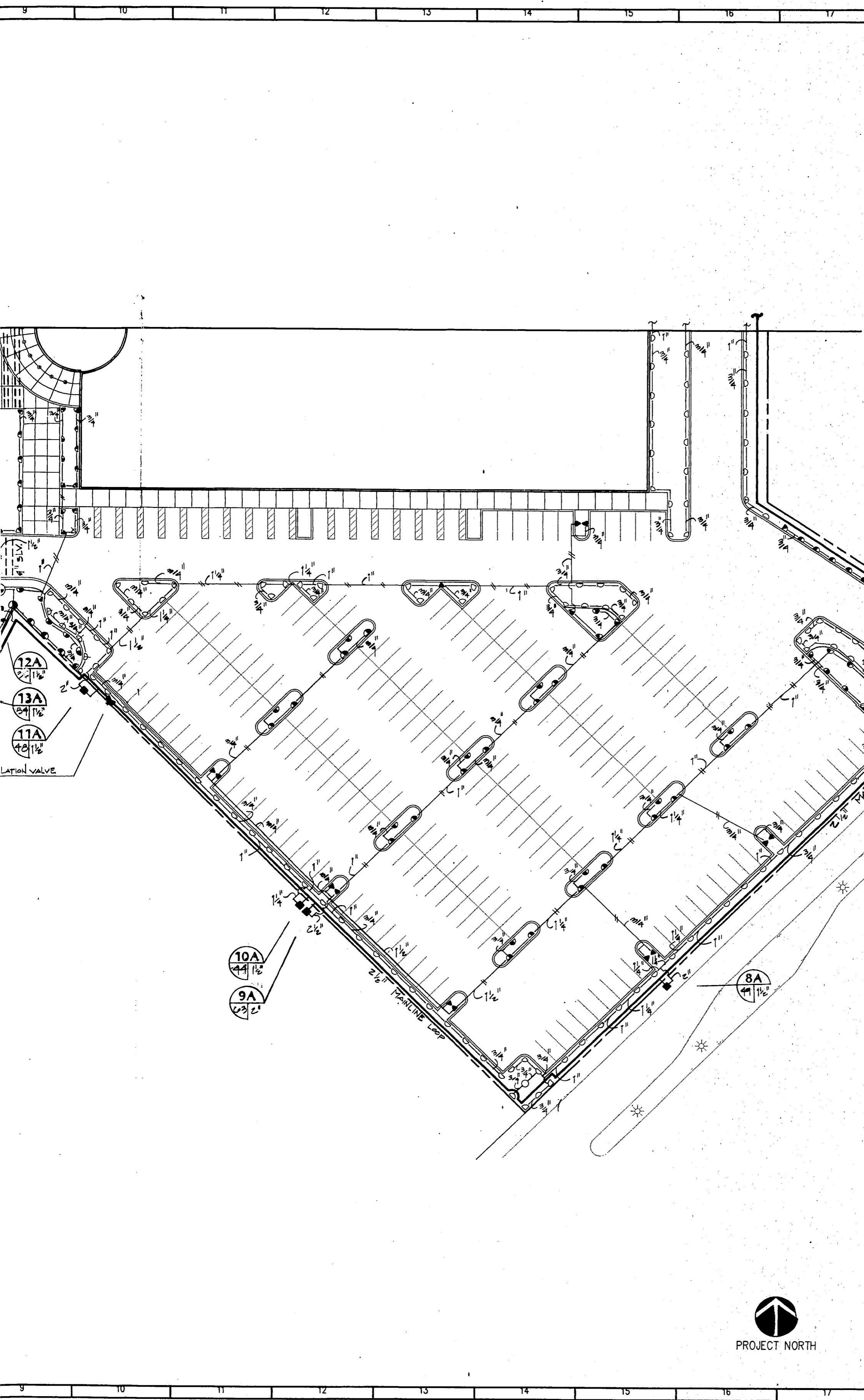


SLEEVING DETAIL

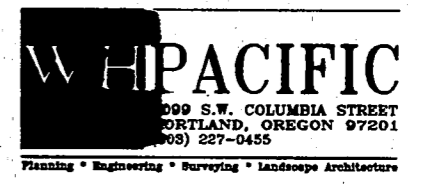


MANUAL DRAIN VALVE DETAIL

CONTROL



SHEET NOTES



No.	Revisions/Submissions	Date

DesignForum
ARCHITECTS

3484 For Hills Avenue, Dayton, Ohio 45429 Telephone: (513) 298-4400

Project Title **PROJECT THUNDER**
WILSONVILLE, OREGON

Drawing Title **IRRIGATION PLAN**



Seal REGISTERED 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 c 1991 DESIGN FORUM ARCHITECTS



**DEVELOPMENT REVIEW BOARD PANEL B – SPECIAL MEETING
VERBATIM MINUTES EXCERPT
Appeal of Administrative Decision ADMN23-0029
March 14, 2024 at 4:30 PM
City Hall Council Chambers & Remote Video Conferencing**

CALL TO ORDER

A special meeting of the Development Review Board Panel B was held at City Hall beginning at 4:30 p.m. on Thursday March 14, 2024. Chair Rachelle Barrett called the meeting to order at 4:31 p.m.

ROLL CALL

Present for roll call were: Rachelle Barrett, Alice Galloway, John Andrews, and Kamran Mesbah. Megan Chuinard was absent.

Staff present: Daniel Pauly, Stephanie Davidson, Kimberly Rybold, Amanda Guile-Hinman, Miranda Bateschell, and Mandi Simmons

CONTINUING BUSINESS

Resolution No. 429. Appeal of Administrative Decision. The applicant is appealing the Planning Director's determination of non-conformance in Case File ADMN23-0029.

Case File:
DB24-0002 Appeal of Administrative Decision

On February 26, 2024, the Development Review Board closed the public hearing and moved to keep the record open until March 4, 2024. This item will be for deliberation and decision only based on the evidence in the record. No further testimony or written comments will be accepted.

[Verbatim transcript begins 0:19]

Chair Barrett: With the public hearing and record closed, it is time for the Board to entertain a motion to deliberate and make a decision on the application before us. As part of these proceedings, the Board will also need to establish the record. I will begin by calling for a motion regarding the record, then the Staff report, and finally the Resolution.

So that paper we have is the Resolution, just so everyone's clear.

Roll Call was taken at this time.

Chair Barrett: Okay. So, I'm starting with the record. If there's been evidence provided that is outside of the scope of the appeal before the Board, a Board member can make a motion to reject such evidence from the record. If no motion or action is taken on the record, all information, exhibits, materials, and

testimony by all parties placed before the Board during the public hearing will become part of the record.

Do I have a motion regarding any of the evidence submitted on this appeal?

Alice Galloway: 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.

Chair Barrett: Do I have a second?

John Andrews: I'll second that.

Chair Barrett: Do we need to have some discussion on that motion?

Alice Galloway: No discussion.

Chair Barrett: I would like to clarify that we are not removing the original 1991 application, just the parking from the record.

Stephanie Davidson: Okay, that's correct.

Chair Barrett: All right. Any other discussion that we need to have?

All right. I will call to vote. All in favor of this motion, say 'Aye'.

Voices Heard: Aye. Aye. Aye. Aye.

Chair Barrett: The motion carries 4 to 0.

Okay, next I will call for a motion to adopt the Staff report, including all findings and exhibits, except those listed before, and enter it into the record. If a Board member wishes to amend the Staff report in any way, including adding a new condition, removing a condition, or modifying a condition, it should be included in the motion.

Do I have a motion on the Staff report?

Alice Galloway: I move to adopt the Staff report as presented.

Kamran Mesbah: Second.

Chair Barrett: Did you hear the second? Okay. Is there discussion that needs to happen on the Staff report?

Alice Galloway: No.

John Andrews: No

Kamran Mesbah: No.

Chair Barrett: No. Okay. I'm going to call the vote for adopting the Staff report into the record. All in favor?

Voices Heard: Aye. Aye. Aye.

Chair Barrett: Aye. The motion carries 4 to 0.

It is moved and seconded that the Staff report was entered into the record. Do we need to have any further discussion on making a different motion to adopt the Resolution before us?

Okay. Do I hear a motion on the Resolution before us today? On Resolution No. 429.

Kamran Mesbah: I move that we adopt Resolution No. 429.

John Andrews: I'll second it.

Chair Barrett: Okay. It has been moved and seconded that we adopt Resolution 429. Any discussion now?

Alice Galloway: No.

John Andrews: No.

Kamran Mesbah: None.

Chair Barrett: Can I have that?

Kamran Mesbah: Absolutely.

Chair Barrett: I want to specifically call out that on No. 1 of this Resolution, down at the bottom, the second page, last paragraph, it says, “Now, therefore, it be resolved that the Development Review Board of the City of Wilsonville does hereby affirm the Planning Director's determination of nonconformance dated December 28th, 2023, attached hereto with findings and recommendations contained therein, determining 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.”

I just wanted to clarify that it says that and not Fry's, so that we have that clear in our record. So are we—that's all the discussion I wanted to have. Any further discussion?

Alice Galloway: No.

Kamran Mesbah: No.

Chair Barrett: Okay. Hearing no further discussion, I will call it to a vote. All in favor of adopting the Resolution and the Staff report on Resolution 429?

Alice Galloway: Aye.

John Andrews: Aye.

Chair Barrett: Aye.

Kamran Mesbah: Aye.

Chair Barrett: The motion carries 4 to 0.

If you desire to appeal this decision to the City Council, you must file an application stating the grounds for the appeal to the City Council and submit any applicable fee within 14 days of mailing of the decision of notice.

[End of Verbatim Transcription 9:25]

STAFF COMMUNICATION

Development Review Board Panel B – Special Meeting
March 14, 2024

Page 4 of 5

Exhibit E
Page 4 of 5

Daniel Pauly, Planning Manager, confirmed that Chair Barrett, John Andrews, and Kamran Mesbah were available to attend the DRB Panel B meeting, which was rescheduled to the 2nd Monday next month, on April 8th. DRB Panel A would meet on the 4th Monday of April.

ADJOURNMENT

The meeting adjourned at 4:42 p.m.