

BEFORE THE DEVELOPMENT REVIEW COMMISSION
OF THE CITY OF LAKE OSWEGO

~~Approved~~

APPROVAL OF A DEVELOPMENT REVIEW PERMIT, MINOR) LU 12-0052-1813
VARIANCES, RP DELINEATION AND TREE REMOVAL TO) KRUSE VILLAGE, LLC
CONSTRUCT A 64,000 S.F.RETAIL/OFFICE DEVELOPMENT) FINDINGS, CONCLUSIONS & ORDER

NATURE OF APPLICATION

The applicant is requesting approval of a Development Review Permit for the following:

- Construction of an approximately 64,000 sq. ft. retail/office development in six single story, multi-tenant buildings (consisting of 53,710 sq. ft. of commercial retail use, and 10,574 sq. ft. of office use);
- Minor Variances to reduce the 15-ft. setback by up to two feet along the Carman Dr. and Meadows Rd. frontages to accommodate canopies on Buildings A, C, D, E and F; and
- Delineation of a Resource Preservation District.

The applicant also is requesting approval to remove 128 trees for development purposes.

The site is located at 4591 Carman Drive (Tax Lot 110 of Tax Map 21E 07AA).

HEARINGS

The Development Review Commission (Commission) held a public hearing and considered this application at its meetings of May 6 and May 20, 2013.

The following information was presented to the Commission at the May 20, 2013, hearing and added into the record:

- Exhibit F-23 Applicant's Powerpoint presentation
- Exhibit G-103 Letter from Carolyn Krebs, dated May 20, 2013
- Exhibit G-204 Presentation from Waluga Neighborhood Association, dated May 20, 2013

CRITERIA AND STANDARDS

A. City of Lake Oswego Community Development Code (Chapter LOC 50):

LOC 50.01.004.6	Effect of Conditions of Approval or Development or Design Regulations Imposed Prior to Annexation
LOC 50.02.002.2	Specific Standards for Commercial, Mixed Use and Industrial zones
LOC 50.03.002.3	Commercial, Mixed Use, Industrial and Special Purpose Districts Use Table
LOC 50.04.001.4	Dimensional Table for Commercial, Mixed Use and Industrial Zones
LOC 50.04.002.5	Special Street Setbacks
LOC 50.05.010 and 50.07.004.8	Sensitive Lands Overlay Districts
LOC 50.06.001	Building Design
LOC 50.06.002	Parking
LOC 50.06.003.1	Access
LOC 50.06.003.2	On-Site Circulation - Driveways and Fire Access Roads
LOC 50.06.003.3	On-site Circulation – Bikeways, Walkway and
	Accessways
LOC 50.06.003.4	Local Street Connectivity

1	LOC 50.06.003.5	Transit System
2	LOC 50.06.004.1	Landscaping, Screening, and Buffering
3	LOC 50.06.004.3	Lighting
4	LOC 50.06.005	Park and Open Space
5	LOC 50.06.006.1	Weak Foundation Soils
6	LOC 50.06.006.3	Drainage Standards
7	LOC 50.06.008	Utilities
8	LOC 50.06.011	Vision Clearance
9	LOC 50.07.003.1	Application Procedures
10	LOC 50.07.003.3	Public Notice/Opportunity for Public Comment
11	LOC 50.07.003.4	Hearings
12	LOC 50.07.003.5	Conditions on Development
13	LOC 50.07.003.7	Appeals
14	LOC 50.07.003.14	Minor Development Decision
15	LOC 50.08.002	Minor Variance
16	LOC 50.09.002.5	Compliance with Approved Permit

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18 B. City of Lake Oswego Streets and Sidewalks Ordinance [LOC Chapter 42]:

19	LOC 42.08.400 - 42.08.470	Streets and Sidewalks
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21 C. City of Lake Oswego Signs [LOC Chapter 47]:

22	LOC 47.03.005 - 47.03.030.2	Signs
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24 D. City of Lake Oswego Tree Chapter [LOC Chapter 55]:

25	LOC 55.02.010 - 55.02.080	Tree Removal
26	LOC 55.02.084	Mitigation Requirements
27	LOC 55.08.020	Tree Protection Plan Required
28	LOC 55.08.030	Tree Protection Measures Required

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30 E. Lake Oswego Charter Chapter IX

31	Section 40	Major Road Expenditures
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33 F. Metro Code:

34	MC 3.07.440	Protection of Employment Areas
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36 **CONCLUSION**

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38 The Commission concludes that LU 12-0052 can be made to comply with all applicable criteria by the
39 application of certain conditions.

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41 **FINDINGS AND REASONS**

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43 The Commission incorporates the April 26, 2013, Staff Report and the May 3 and May 17, 2013, Staff
44 Memoranda (with all exhibits attached thereto) as support for its decision, supplemented by the further
45 findings and conclusion set forth herein. In the event of any inconsistency between the supplementary matter
46 herein and the staff report, the matter herein controls. To the extent they are consistent with the approval
47 granted herein, the Commission adopts by reference its oral deliberations on this matter.

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1 Following are the supplementary findings and conclusions of this Commission:
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3 1. The Commission received testimony from the Waluga Neighborhood Association (Association) and other
4 residents that the proposed development does not comply with the Traffic Management requirements in
5 LOC 50.02.002.2.d and would significantly increase traffic impacts to surrounding neighborhoods. Below is
6 a list of the issues raised related to traffic impacts and the Commission's findings:
7

8 a. The following issues were raised by the Association in Exhibits G1 and G2:
9

- 10 • The assumptions in the traffic study are incorrect because:
 - 11 ○ The traffic study is deficient for not including the Meadows Road/Bangy Road and Bonita
12 Road/Bangy Road intersections.
 - 13 ○ The fruit stand traffic counts for the existing use on the site should not be included in the
14 baseline because the use is seasonal, highly variable, and lacks ITE-supported data.
 - 15 ○ The assumptions used in the traffic study for determining the number of vehicles entering the
16 site at each driveway are questionable. They contend that the intensity of traffic for the
17 Meadows Road driveway is underestimated.
 - 18 ○ The Transportation Impact Analysis does not address the lunch hour peak period.
 - 19 ○ The assumption of where net new traffic will disperse needs further analysis.
 - 20 ○ The Transportation Impact Analysis should consider pre-recession traffic volumes to adjust
21 the vacancy rate because it underestimates future traffic conditions.
22

23 Commission's Findings

24 The issues listed above were adequately addressed by the applicant in Exhibit F17. The Engineering
25 staff reviewed and responded to Exhibits G1, G2 and F17 in a memorandum (Exhibit F19) and
26 concurred with the applicant's findings. No traffic study was presented by the Association or other
27 interested party. The Commission adopts the findings of the Engineering staff outlined in Exhibit F19.
28

29 b. The Commission received testimony that the traffic study (Exhibits F10 and F11) assumptions hide the
30 fact that the level of service (LOS) of the roundabout at Carman Drive and Meadows Road will actually
31 be LOS "F", which exceeds the LOS "E" required by LOC 50.02.002.2.d.i. Additionally, the applicant's
32 traffic study used the 2000 Highway Capacity Manual (HCM) rather than the 2010 HCM, which has
33 updated LOS definitions for roundabouts, and based on the 2010 HCM, the LOS at the roundabout
34 fails. The applicant performed additional traffic counts at the roundabout in May 2013 that supports
35 this conclusion as it shows an increase in eastbound traffic that fails the volume to capacity ratio
36 based on the 2010 HCM. The Association submits that the Traffic Management Plan (TMP) should
37 require mitigation for impacts on Quarry and Galewood Roads if counts exceed a suggested threshold
38 of 20% more than were predicted in the traffic study.
39

40 Commission's Finding

41 The Commission finds that the applicant has demonstrated in Exhibit F22 that the roundabout will
42 operate in compliance with LOS "E" as required by LOC 50.02.002.2.d, because (a) the assumptions in
43 the applicant's Traffic Impact Analysis (Exhibits F10 and F11) are overly conservative and (b) the City's
44 Transportation System Plan Update finds that the surrounding roadway network, which includes the
45 intersections adjacent to the site, is forecasted to operate below capacity through 2035. Further,
46 industry practice determines an intersection's LOS based on the operations of all approaches at the
47 intersection, not one individual approach, as suggested by the opponent.
48

49 However, the Commission also finds that based on testimony received at the hearings, traffic studies
50 are not foolproof because the sampling process relies upon data collected from specific dates of
51 study, as an attempt to identify the typical amount of traffic, which can vary monthly or during event
52 times. The Commission finds that the traffic impacts from the development are not fully captured by
53 the traffic study and the TMP (Exhibits F10 and F11) is not sufficient to fully address these impacts.

1 Therefore, the Commission finds that some additional mitigation is necessary to address traffic
2 impacts, but the Commission believes that the additional improvements to mitigate the traffic
3 impacts should be relatively minimal: the developer's cost should not exceed \$20,000 in design and
4 construction costs.

5
6 The Commission discussed some possible mitigation options, including whether the roundabout was
7 too small and should be enlarged to increase safety and capacity. The applicant responded that
8 enlarging the roundabout would add more capacity, which would make that route more convenient
9 and would actually induce more drivers to cut through the neighborhood. The City Engineer
10 recommended requiring the applicant to complete the construction of the sidewalk in the northeast
11 quadrant of the Quarry Road/Meadows Road roundabout to mitigate impacts caused from the
12 additional traffic generated by the proposed development. (The City Engineer estimated that this
13 project could be designed and constructed for approximately \$20,000 or less.) The Commission finds
14 that the mitigation measure recommended by the City Engineer will sufficiently mitigate the
15 additional traffic from the proposed development and should be required as condition of approval.
16 Condition A (4)(d) has been added to address this requirement.

17
18 The Commission concurs with the applicant's findings in Exhibit F22 and finds that the City has not
19 adopted the 2010 HCM in lieu of the adopted 2000 HCM. Further, the Commission finds that it is local
20 practice to use the 2000 HCM. Adoption of the 2010 HCM has been delayed by the majority of local
21 jurisdictions pending consistency between software and manual calculations.

- 22
23 c. The Commission received testimony that uses such as coffee shops were not included in the traffic
24 study, which would drive the numbers higher than reported.

25
26 Commission's Finding

27 The Commission finds that the traffic study (Exhibits F10 and F11) uses a shopping center trip rate,
28 which assumes a variety of uses, including coffee shops. The Commission concludes that coffee shops
29 have been factored into the numbers in the traffic study.

- 30
31 d. The traffic study assumes a 2% growth rate in PM peak hour traffic for estimating the impact of trips
32 that would be on the transportation system if and when the vacant office space along Meadows Road
33 is re-occupied. The Association testified that this is inconsistent with published vehicle counts on the
34 City's website.

35
36 Commission's Finding

37 The Commission concurs with the applicant's analysis of occupancy increases in Exhibit F22. This
38 analysis showed little difference between using a growth factor that increased the turn movements in
39 all intersections and assuming full occupancy of the existing office development west of the site. In
40 both cases, the roundabout continues to operate within limits of LOS "E."

41
42 The Commission finds that traffic volumes can fluctuate from year to year as well as month to month.
43 With the recent economic downturn, traffic volumes have not followed traditional growth patterns
44 over the years and are currently very difficult to predict. The Commission concludes that the
45 applicant's approach to use a 2% growth rate is a typical practice and, barring any other trend
46 analysis, is a reasonable approach at this time.

- 47
48 e. The Commission received testimony that traffic counts at the roundabout performed by the applicant
49 in May 2013 shows dramatically different numbers from the counts in the December 2012 traffic
50 study and calls into question the validity of these studies. A third party traffic engineer should be
51 required to perform a traffic study over a longer period of time to assure proper underlying
52 assumptions were used and that defines explicit confidence intervals.

1 Commission's Finding

2 The Commission finds that the applicant has presented traffic data and findings from a qualified
3 professional traffic engineer. Traffic counts can and will vary at different times of the year and the
4 difference in the counts is not grounds for invalidating the traffic studies submitted by the applicant.
5 The Commission acknowledges that no traffic study can be a perfect predictor of traffic impacts. The
6 Commission further finds that the decision to approve or deny the application must be based upon
7 the evidence in the record; the Commission cannot require the submission of additional evidence
8 from either the applicant or any other interested party.
9

- 10 f. Nearby residents testified that the roundabout at Carman Drive and Meadows Road was dangerous to
11 pedestrians and bicycles, and that residents on Carman Drive south of the project site cannot walk to
12 the development due to the lack of sidewalks, a blind corner, and heavy traffic on Carman Drive. It
13 was suggested that sidewalk improvements on Carman Drive should be required to mitigate any
14 impact by the development to the bicycle and pedestrian public facilities.
15

16 The Association proposed a number of recommendations for mitigating traffic from the proposed
17 development that included educational efforts, continued enforcement by the Lake Oswego Police
18 Department, a number of traffic calming and pedestrian improvements on Quarry Road, Galewood
19 Street and Oakridge Road, and improvements at the Bonita Road and Carman Drive intersection.
20

21 Commission's Finding

22 The Commission finds that the applicant's TMP (Exhibits F10 and F11) and Condition A(4)(d), which
23 requires a landscaped curb extension to be installed at the intersection of Galewood Street and
24 Quarry Road, adequately demonstrates that development will comply with the Traffic Management
25 Requirements in LOC 50.05.002.d. As a result, the full list of offsite improvements proposed by nearby
26 residents and the Association is not warranted and therefore is not reasonably related to the need for
27 public services or facilities created or contributed by the proposed development based upon the
28 projected traffic from the evidence presented. The applicant proposed to include a statement in the
29 Transportation Management Plan advising employees of Kruse Village to avoid cutting through the
30 neighborhood to the south and east of the site as an additional effort to assure that the projected
31 traffic complied with the Traffic Management Requirements. The Commission finds that this
32 statement should be included in the Traffic Management Plan as proposed by the applicant. Condition
33 A(16) has been added to address this requirement.
34

- 35 g. The Commission received testimony that there are some errors in the Traffic Impact Analysis (Exhibit
36 F10) regarding ITE codes and worksheets that were not in the correct appendix.
37

38 Commission's Finding

39 This issue was addressed by the applicant in Exhibit F22. The Commission finds that the errors are not
40 substantive and concludes that they do not invalidate any of the findings in the traffic study.
41

- 42 2. The Commission received testimony that the development does not comply with Metro Code 3.07.440.A,
43 which limits new commercial retail uses to those appropriate in type and size to serve the needs of
44 businesses, employees and residents of Metro's Employment Areas. The opponents contend that the
45 development will draw customers beyond the Employment Area, such that the development will compete
46 with the retail uses in the Lake Grove Village Center (LGVC) Overlay District. They submit that the fact that
47 the commercial retail businesses will have longer hours than the surrounding office uses demonstrates
48 that the development's commercial retail uses are not appropriate in type and size to serve the needs of
49 businesses, employees and residents of Metro's Employment Areas. Currently, there is very little traffic
50 generated by the Employment Area on nights and weekends and the development will cause substantial
51 new traffic at these times. To comply with Metro Code 3.07.440.A, a condition of approval should require
52 more office and less retail in the development and require the commercial retail businesses to be closed
53 on weekends and by 7pm on weeknights.

1 Commission’s Findings

2 The Commission finds that there is very little commercial retail in the Employment Area to serve the office
3 development along Meadows Road. From the testimony received from owners, tenants, and employees
4 of the Employment Area, the Commission finds that commercial retail uses are needed and desired in the
5 Employment Area. The Commission further finds it is unlikely that the existing office buildings would be
6 retrofitted for these types of uses. The 53,710 s.f. of commercial retail uses proposed on the site is
7 relatively small in comparison to the total amount of office space in the Employment Area and will provide
8 much needed services to the surrounding office development within walking distance. The Commission
9 finds that whether or not the development will compete with the retail uses in the LGVC, by providing
10 commercial retail to the owners, tenants, and employees in the Employment Area, is not a criterion for
11 approval.

12
13 MC 3.07.440.A requires that retail uses be appropriate in type and size to serve the needs of businesses,
14 employees and residents of the Employment Area, but the Commission finds that this does not mean that
15 the uses must exclusively serve businesses, employees or residents of the Employment Area. The uses
16 proposed by the applicant are all permitted outright in the CR&D zone. The types of uses generally
17 allowed in the zone are appropriate to the Employment Area. Uses such as restaurant and retail are
18 specifically limited to 20,000 square feet in size to assure that “big box” retailers that draw customers
19 from beyond the surrounding area cannot locate there. The Commission further finds that the hours of
20 operation should not be restricted because it does not relate to the “type” or “size” of the use, nor is it
21 necessary because the uses need not be restricted to exclusively serve businesses, employees or residents
22 of the Employment Area. The Commission concludes that the proposed development is appropriate in
23 type and size to serve the needs of businesses and employees of the Employment Areas.

- 24
25 3. The Commission received testimony that the development does not comply with Metro Code 3.07.440.B,
26 which limits the size of a commercial retail use to 60,000 s.f. of gross leasable area in a single building or
27 commercial retail uses to 60,000 s.f. of retail sales area on a single lot or parcel or on adjacent lots or
28 parcels. The opponents contend that the staff interpretation of this requirement, as discussed on page 35
29 of the April 26 Staff Report, is not valid; the Association contends that the maximum square footage of
30 commercial retail on a site is determined by dividing 60,000 sq. ft. by the number of parcels adjacent to
31 and including the site (see Exhibit G4). For example, $60,000 \text{ sq. ft.} / [1 \text{ (subject parcel)} + 3 \text{ (number of}$
32 $\text{adjacent parcels})] = 15,000 \text{ sq. ft}$ for the subject parcel. The Association argues that this methodology is
33 more valid than staff’s interpretation because under their interpretation there would be a fixed amount of
34 commercial retail sq. ft. that is mathematically determinable. Under staff’s interpretation it would require
35 continual monitoring to determine the amount of commercial retail use that exists on the adjacent parcels
36 whenever a new commercial retail use is proposed on the subject site. Further the Association argues that
37 the erroneous nature of the staff interpretation is evidenced by the unfair allocation of retail development
38 rights. Alternatively, the opponents state that “contiguous” could be interpreted as the entire
39 Employment Area rather than just the lots that abut the site or that are located across the right-of-way
40 from the site as interpreted by staff.

41
42 Commission’s Finding

43 The Commission notes that staff acknowledges the cumbersomeness of the ongoing requirement under
44 the Metro provision to determine the amount of commercial retail on the subject site and the adjacent
45 parcels. [The Commission is advised that there is a code amendment pending that, if adopted, would
46 substantially comply with Metro Title 4, be easier to monitor, and would more equitably distribute rights
47 for retail development in the Employment Area. The Commission must, however, apply the requirements
48 to the development application as they existed at the time of filing of the application.] The Commission
49 finds that MC 3.07.440.B was correctly applied to the subject site as explained in the April 26 Staff Report,
50 and that the application complies with MC 3.07.440.B. The Commission notes that Metro reviewed the
51 staff interpretation of MC 3.07.440.B and Metro staff found the staff interpretation did not violate Metro
52 Title 4 restrictions (Exhibit F16).

- 1 4. The Commission received testimony that the proposed development is not consistent with the intent and
2 purpose of the CR&D zone as described in LOC 50.02.002.1.f, because the intensity of the development is
3 substantially more than was intended for the zone and would have a substantial negative impact on the
4 surrounding neighborhoods.

5
6 Commission's Finding

7 The criteria for approval of this minor development application are specified in LOC 50.07.003.14.d.ii, and
8 specifically subsection (1): "The requirements of the zone in which it is located." The Commission finds
9 that the zone purpose statement in LOC 50.02.002.1.f is not a criterion for approval because (a) the text of
10 the Code clearly states that this subsection is to broadly state the *purpose* of the zone, (b) the purpose of
11 a zone cannot be applied on a specific parcel basis because it is only through the mix of uses that would
12 occur on properties throughout the zone that the overall purpose of a zone can be achieved; and (c) the
13 specific zone standards, which carry out the purposes of the zone, are found in LOC 50.02.002.2 ("Specific
14 Standards For Commercial, Mixed Use, And Industrial Zones"), LOC 50.03: Use Regulations And
15 Conditions, and LOC 50.04: Dimensional Standards. The Commission finds that the purpose statement of a
16 zone guides the Council and Planning Commission when creating or amending the requirements of a zone
17 and serves as interpretational guidance when a zone standard is ambiguous.

- 18
19 5. Opponents contend that the CR&D zone use limitation for retail and restaurant uses is not clear as to
20 whether the 20,000 s.f. size limitations apply to the entire site or per use, and that referring to the zone
21 purpose statement, the limitation should be interpreted as a square footage limitation on the site, rather
22 than for each business.

23
24 Commission's Finding

25 The Commission concludes that the size limitations outlined in the use table apply per use, unless
26 specifically stated otherwise for the following reasons:

- 27
28 a. The historical interpretation by the City is that any size restrictions outlined in the Use Table of the
29 respective zone applies per use, not per site, unless specifically stated otherwise.
30
31 b. When express restrictions apply, they are called out (See Table 50.03.002-2: Commercial, Mixed Use,
32 Industrial and Special Purpose Districts Use Table):
33 i. "Max. 3,000 sq. ft. total per site" for incidental retail uses
34 ii. "5,000 sq. ft. in floor area, totally enclosed within a building" for footnote 3
35 iii. "Not to exceed 60,000 sq. ft. per building or business" for footnote 9.
36 iv. "Not to exceed 35,000 sq. ft. floor area per business" for footnote 22.
37 v. "Not to exceed 60,000 sq. ft. floor area per building or business" for footnote 23.
38 vi. "A single building which provides for any of the professional office permitted uses shall be limited
39 to a maximum building footprint of 5,000 sq. ft." for footnote 26.

40
41 There are numerous other square footage limitations in the zone use table which are not qualified.
42 The unqualified square footage limitations must therefore be given a uniform interpretation and
43 would not be guided by the purpose of the CR&D zone.
44

- 45 c. Even though the CR&D purpose is not applicable for interpreting whether a square footage limitation
46 is per site or per use, the Commission notes that limiting retail and restaurant uses to 20,000 s.f. per
47 use is consistent with the purpose of the CR&D zone because it excludes large tenants that would
48 draw customers from a wider area.
49
50 6. The Commission received testimony that the persons believed that most customers of the development
51 will drive to the site and parking will be inadequate and will overflow into the surrounding neighborhood,
52 citing the parking practices of the Lake Grove Village Shopping Center in the LGVC district and the
53 congregate housing facility on Oakridge Road.

1 Commission's Finding

2 Whether or not the minimum parking requirements prescribed by the Code actually provides for 100%
3 parking capture for all uses at all times is not the criterion; the question is whether or not the parking
4 criteria has been met. The Commission finds that the applicant has demonstrated compliance with the
5 parking requirements in LOC 50.06.0002 as discussed on pages 18-19 of the April 26 Staff Report.
6

- 7 7. The Commission received testimony that the grove of fir trees in the southeast corner of the site should
8 be not be removed because the applicant had not shown that their removal is necessary for development
9 purposes. The development removes some of the firs in this grove and buildings and utility vaults are
10 proposed in close proximity to the remaining trees in the grove.
11

12 Commission's Finding

13 The Commission finds that a grove of 10 fir trees is proposed to remain in the southeast corner of the site.
14 The utility vault illustrated in close proximity to the firs on the plans is an existing vault. The applicant has
15 submitted an arborist report (Exhibit F9) outlining tree protection measures and the arborist is required to
16 be on site to oversee excavation within the driplines of any trees. The Commission concludes that the
17 proposed development complies with the requirements of the Tree Code for the reasons set forth on
18 pages 32-34 of the April 26 Staff Report.
19

- 20 8. Staff noted that Exhibit E33, which consists of perspective views of the proposed development, contains
21 some inconsistencies with the building elevation drawings (Exhibit E6) and recommended that Condition
22 A(1) be modified to remove the reference to Exhibit E33. Condition A(1) has been modified accordingly.
23

24 **ORDER**

25
26 **IT IS ORDERED BY THE DEVELOPMENT REVIEW COMMISSION of the City of Lake Oswego that:**
27

- 28 1. LU 12-0052 is approved, except for the removal of Tree #10, subject to compliance with the conditions of
29 approval set forth in Subsection 2 of this Order.
30
31 2. The conditions for LU 12-0052 are as follows:
32

33 **A. Prior to Issuance of any Building Permit, the Applicant/Owner Shall:**
34

- 35 1. Submit final site and building plans for review and approval of staff that are the same or
36 substantially similar to the site plan, grading plan, floor plans, and building elevations illustrated on
37 Exhibits E3-E32 to the satisfaction of staff, with the following modifications:
38
39 a. All bike racks shall be covered. If free standing covers are proposed, the covers shall be
40 designed to be complementary to the buildings in material and colors.
41
42 b. Unless the transformers in the southeast corner of the site will be moved to an underground
43 vault, illustrate the location, size and species of evergreen shrubs or fencing of an adequate
44 height at the time of installation to screen the transformers. All other utility vaults/boxes shall
45 be placed underground. All utility/gas boxes shall be screened with fencing or landscaping.
46
47 c. Six-foot protection fencing shall be required on the south side of the RP district during
48 demolition and grading for the construction of the buildings and parking lot, but fencing on
49 the north side of the district will not be required. Sections of the fence may be removed or
50 opened as needed to provide access for the necessary equipment to perform the mitigation
work and construct the new pathway within the RP district, but the timing and location shall
be planned in advance and subject to City approval. Work within the RP district shall occur

1 after the site is graded and the buildings have been constructed to minimize potential
2 construction impacts after the fence is removed.

3 d. The materials and colors for the trash enclosures shall be compatible with the materials and
4 colors of the buildings and other site features, to the satisfaction of staff.
5

6 2. Submit a "Notice of Development Restrictions" containing the restrictions listed, below, for
7 review and approval of staff. A copy of the strategies in the TMP (Exhibits F10 and F11), a
8 reduced copy of the RP delineation map in acceptable format for recordation at the County,
9 and a copy of a site plan illustrating trees # 141, 150, 151, 154, 155, 156, 160, 161, 162 and
10 the three firs in the right-of-way at the northwest corner of Carman Drive and Meadows Road
11 as shown on Exhibit E10, shall be included with the Notice as "Exhibit A", "Exhibit B", and
12 "Exhibit C", respectively, to be recorded in the County record. The Notice shall include the
13 following information:
14

15 a. The site is subject to compliance with the Traffic Management Program (TMP) strategies
16 as described in Exhibit A. The TMP shall not be amended without prior written approval
17 by the City of Lake Oswego.
18

19 b. The property contains a delineated Resource Protection (RP) district as depicted in Exhibit
20 B, and as determined and documented in City of Lake Oswego Planning and Building
21 Services Department, Case File LU 12-0052.
22

23 The future development of the RP district is subject to the City of Lake Oswego
24 requirements and development standards set forth in LOC 50.05.010, including but not
25 limited to:
26

27 i. Tree removal within the RP district is subject to tree cutting permit requirements and
28 the provisions of LOC 50.05.010.

29 ii. Manual removal of invasive or nuisance plant materials (such as English Ivy,
30 Himalayan Blackberry, Poison Oak) within the RP district may be allowed, so long as
31 native understory plants are maintained.

32 iii. The RP district is intended to remain in its natural state to maintain the natural
33 function and character of the resource area, which provides food and shelter for
34 native wildlife.

35 iv. In the event the RP district designation is removed from the property by the action of
36 the City Council, the property would be subject to the base zone uses and standards
37 and any other regulations that may be applicable to the property.

38 CONTACT THE CITY OF LAKE OSWEGO PLANNING AND BUILDING SERVICES DEPARTMENT
39 PRIOR TO COMMENCING ANY ACTIVITY INSIDE THE RP DISTRICT.
40

41 c. The trees illustrated on Exhibit C are required to be preserved and may only be removed if
42 determined to be dead or hazardous to people or property and a tree removal permit is
43 issued. If so believed to be dead or hazardous, the property owner may apply for a tree
44 removal permit subject to approval from the City Manager and shall mitigate at a
45 minimum of a one-to-one ratio. Deciduous trees shall have a minimum caliper of two (2)
46 inches. Conifer trees shall be a minimum of eight feet high (excluding the leader).
47

48 3. Record the approved "Notice of Development Restrictions", as described in Condition A(2),
49 above, with the Clackamas County Clerk's Office and submit a copy of the document with the
50 recording number to the Planning and Building Services Department.

1 4. Submit engineered construction drawings for the public and site improvements for review and
2 approval by the City Engineer. Drawings shall conform to the City's designs standards and the
3 drafting specifications found in the City's booklet "CAD Standards and Design Requirements," May
4 2006 edition. The plans shall include the following design elements:

5 a. Along the site frontage of Carman Drive:

- 6 i. A five-foot wide bike lane (excluding striping and concrete portion of curb and
7 gutter) and a minimum twelve-foot wide travel lane.
- 8 ii. A minimum seven-foot wide sidewalk (excluding 6" curb width) along the site
9 frontage.
- 10 iii. A minimum five-foot sidewalk clearance width around street elements such as tree
11 wells, street lights, benches, etc.
- 12 iv. A minimum eight-foot wide public utility easement behind the right-of-way for
13 franchise utilities.
- 14 v. All utilities (new and existing) shall be installed underground. Along Carman Drive,
15 the existing overhead utilities shall be undergrounded starting from the existing
16 utility pole (which will remain) at the southwest corner of the intersection of Kruse
17 Way and Carman Drive south to Meadows Road.
- 18 vi. Design of the right-in/right-out driveway approach in compliance with City's
19 standards. The existing site driveway on Carman Drive shall be closed and replaced
20 by the single right-in/right-out driveway. The sidewalk cross-slope shall meet ADA
21 standards across the driveway approach. Shrubbery, landscaping, signage, and
22 above ground utilities located near the driveway approach shall be located and
23 maintained to ensure that adequate sight distance meeting AASHTO standards are
24 met.
- 25 vii. Design of street lights along the frontage according to the City's lighting standards.
- 26 viii. Design of a raised center median in the right-of-way for approximately 120 feet
27 north of the existing Meadows Road roundabout median, as shown on Exhibit E14.
28 Plantings shall be included to the satisfaction of the City Engineer.
- 29 ix. Drainage facilities as necessary to accommodate the frontage improvements, to the
30 satisfaction of the City Engineer.
- 31 x. Cross-sections of existing and proposed pavement widths. Any widening beyond
32 existing pavement that is not necessary for the construction of the 5-foot bicycle
33 lane shall be subject to the requirements of Section 40 of the City Charter.

34
35 b. Along the site frontage of Kruse Way:

- 36 i. Reconstructed pedestrian pathway along the entire site frontage to City standards. The
37 pathway shall be constructed with asphalt and be a minimum seven feet in width. Work
38 within the section of the pathway that is located in the RP district shall follow the
39 construction standards in LOC 50.05.010.4.d. If any area adjacent to the pathway in the
40 RP district is disturbed during construction, it shall be replanted. In kind vegetation (grass)
41 is acceptable on the north side of the pathway within the RP district.
- 42 ii. Eco-friendly root barriers along the edge of the pathway (where necessary) to avoid
43 future damage from tree roots.
- 44
- 45
- 46
- 47

- 1 c. Along the site frontage of Meadows Road:
- 2 i. Design the driveway approach in compliance with City’s standards. The driveway
- 3 approach shall be 36 feet wide and striped for a left turn lane and right turn lane
- 4 out of the site, and one lane for ingress (three 12-foot lanes). The sidewalk cross-
- 5 slope shall meet ADA standards across the driveway approach. Shrubbery,
- 6 landscaping, signage, and above ground utilities located near the driveway
- 7 approach shall be located and maintained to ensure that adequate sight distance
- 8 meeting AASHTO standards are met.
- 9 ii. A minimum five-foot sidewalk clearance width around street elements such as tree
- 10 wells, street lights, benches, etc.
- 11 iii. Design of the public sanitary sewer and public storm sewer systems within the
- 12 public right-of-way. The public sewer extensions shall each terminate with a
- 13 manhole at the right-of-way line.
- 14
- 15 d. Design of a sidewalk at the northeast quadrant of the Quarry Road and Meadows Road
- 16 roundabout to the satisfaction of the City Engineer. The applicant shall not be obliged to
- 17 incur costs for the design and construction of these improvements exceeding \$20,000.
- 18
- 19 e. Submit a lighting analysis for the existing street lights along Carman Drive and Meadows
- 20 Road. If the existing street lighting does not comply with the street lighting standards in
- 21 LOC 50.06.004.3.b.v, the applicant shall install new street lighting and/or modify existing
- 22 lighting to comply with this standard, to the satisfaction of the City Engineer.
- 23
- 24 f. The applicant shall monitor the condition of the pavement of Carman Drive and
- 25 Meadow Road during the entire construction period. If any resulting wear and tear is
- 26 discerned that exceeds the standards of the City Engineer, the applicant shall restore
- 27 the surface of the roadbeds to the satisfaction of the City Engineer.
- 28
- 29 5. Complete all public improvements required in Condition A(4), above or provide a financial
- 30 guarantee to ensure their construction per LOC 50.07.003.9. The financial guarantee shall be
- 31 based on an itemized engineer’s estimate that is in turn based on plans that are far enough
- 32 advanced to support the estimate, to the satisfaction of the City Engineer.
- 33
- 34 6. Submit a final site plan, storm plan and storm drainage report for the on-site water quality and
- 35 detention system, prepared by a registered engineer. The design shall follow any geotechnical
- 36 recommendations outlined in the geotechnical report (Exhibit F14).
- 37
- 38 7. Submit a final erosion control plan and evidence of DEQ 1200-C erosion control permit. The
- 39 erosion control plans shall be designed by a registered engineer.
- 40
- 41 8. Submit evidence that the onsite private water design has been approved by the Lake Grove Water
- 42 District.
- 43
- 44 9. Submit evidence that the fire suppression design is to the satisfaction of the Fire Marshal.
- 45
- 46 10. Pay all applicable System Development Charges pertaining to the development.
- 47
- 48 11. Apply for and obtain a verification tree removal permit for the 127 trees approved for removal.
- 49 The verification tree removal application shall include a copy of the tree removal plan (Exhibit
- 50 E10) and the mitigation plan (Exhibit E23).
- 51

- 1 12. Provide a written agreement between the applicant and a certified arborist demonstrating that
2 the arborist will review the final site, utility, grading and landscape plans to assure long term
3 survival of all trees to remain, and will be present on site at any time during excavation, trenching,
4 grading, root pruning or other activity within the tree protection zone to ensure proper protection
5 of trees. The arborist shall prepare the tree protection plan, which shall include a final copy of
6 Exhibit F9.
7
- 8 13. Submit a refundable deposit to the City that is equal to 120% of the value of the RP
9 mitigation (including the cost of material and labor) illustrated in Exhibit E24. The deposit
10 will be released by the City three years from the date of inspection of the RP mitigation
11 plantings by the City upon receiving proof that the mitigation measures have been
12 successfully implemented.
13
- 14 14. The RP Mitigation, Monitoring, and Maintenance Plan (Exhibit F8) shall be revised to state that all
15 native plants will be replaced as needed throughout the monitoring period to ensure an 80%
16 survival rate, and invasive plants will be removed to ensure less than 5% cover of invasive species.
17 It shall also state that any replacement species must be approved by the City, and that the
18 applicant or other legally responsible agent shall provide an annual report to the City Manager by
19 October 31 of each year for a three-year period.
20
- 21 15. Submit an Operations and Maintenance plan for the private on-site storm facilities for review and
22 approval by the Engineering staff and record a Declaration of Covenant for Operation and
23 Maintenance of Surface Water Management Facilities.
24
- 25 16. Submit a revised Transportation Management Plan to include a statement advising employees of
26 Kruse Village to avoid cutting through the neighborhood to the south and east of the site.
27

28 **B. Prior to Final Building Inspection or Occupancy of any Building, the Applicant/Owner Shall:**
29

- 30 1. Complete all public and site improvements required by Condition A(4), above, and submit
31 certified "as-built" drawings of public improvements conforming to the City's standards for record
32 drawings.
33
- 34 2. Construct all private utility services.
35
- 36 3. Construct the private water services to serve the development.
37
- 38 4. Install all landscaping/mitigation planting as illustrated in Exhibits E18 and E25, and
39 modified by Conditions A(1) and A(4), above.
40
- 41 5. Install the bicycle racks as required by Condition A (1)(a), above.
42
- 43 6. Provide a one-year guarantee (one 12-month growing season from the date of installation)
44 for all landscape materials required by Condition B(4), above, pursuant to LOC 50.06.010.2,
45 except for the mitigation planting that is subject to special bonding requirements of
46 Condition A(13), above. The guarantee shall consist of a security in the amount of five
47 percent of the total landscaping cost (including material and labor). The applicant/owner
48 shall also submit a landscape maintenance plan for review and approval of City staff.
49
- 50 7. Submit a final survey of the parking lot stamped and signed by a professional surveyor, with
51 spot elevations, showing compliance with the final grading plan to assure proper drainage
52 on site.
53

- 1 8. Perform an inspection of the pavement condition of Carman Drive and Meadows Road to
2 ensure compliance with the requirements of Condition A(4)(f), above, to the satisfaction of
3 the City Engineer. Complete necessary reconstruction of the surface of these streets if
4 needed, to the satisfaction of the City Engineer.
5

6 **C. Prior to Issuance of any Sign Permit, the Applicant/Owner Shall:**
7

- 8 1. Obtain all necessary sign permits. The applicant/owner shall submit sign plans and elevations in
9 accordance with the Sign Code for review and approval of staff. Colors and material of the signs
10 shall be compatible with the architectural details and colors of the approved building in the
11 following manner:
12
13 a. Internally lit cabinet signs or plastic-faced signs shall be prohibited.
14
15 b. Lighting shall be limited to indirect or halo lighting. Lighting for the monument sign shall
16 consist of external lighting only. The applicant/owner shall submit lighting fixture details,
17 including color, materials, and wattage for review and approval of staff.
18
19 c. Signage on the building shall consist of individual letters.
20
21 d. The monument sign shall not include any marquee (name plates), and shall incorporate
22 architectural details from the proposed building.
23

24 (Note: The Conditions of Approval regarding sign limitations are not exclusive to the requirements
25 and standards that will be reviewed when a sign permit application is submitted; there are
26 additional compatibility standards for signs relating not only to the building itself, but to the
27 surrounding area, in the Sign Code, LOC Chapter 47.)
28

29 **Code Requirements:**
30

- 31 1. **Expiration of Development Permit:** Per LOC 50.07.003.17, the development approved by this
32 decision shall expire three years following the effective date of the development permit, and may be
33 extended by the City Manager pursuant to the provisions of this section.
34
35 2. **Tree Protection:** Submit a tree protection plan and application prepared by a certified arborist as
36 required by LOC 55.08.020 and 55.08.030 for review and approval by staff, including off-site trees that
37 are within the construction zone. The plan shall include:
38
39 a. The location of temporary tree protection fencing, consisting of a minimum 6-foot high cyclone
40 fence secured by steel posts around the tree protection zone, or as recommended by the project
41 arborist and approved by the City.
42
43 b. A note stating that no fill or compaction shall occur within the critical root zones of any of the
44 trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a
45 certified arborist to reduce or mitigate the impact of the fill or compaction. The note shall also
46 inform contractors that the project arborist shall be on site and oversee all construction activities
47 within the tree protection zone.
48
49 c. A note that clearly informs all site contractors about the necessity of preventing damage to the
trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines,
penalties and mitigation for trees that are damaged or destroyed during construction.

1 d. A sign shall be attached to the tree protection fencing which states that inside the fencing is a tree
2 protection zone, not to be disturbed unless prior written approval has been obtained from the
3 City Manager and project arborist.
4

- 5 3. **Tree Removal in the RP District:** If removal of any tree in the RP is proposed in the future, a tree
6 removal application must be obtained removal the criteria in LOC 50.05.010.6.c.ii(1)(b) must be met.
7
- 8 4. **Permitted Uses and Parking Requirements in the CR&D Zone:** Each tenant in the development site
9 shall be reviewed for compliance with the use and size limitations in the CR&D zone (LOC 50.03.002.3)
10 and the parking requirements for the proposed use (LOC 50.06.002) at the time of business license
11 application and/or tenant improvement application. A current list of the use and square footage for
12 every tenant on the site will be required to be maintained to assure the combined parking
13 requirement is continuously met for the project as a whole.
14
- 15 5. **RP Maintenance and Monitoring Reports:** The applicant or other legally responsible agent shall
16 provide an annual report to the City Manager on October 31 of each year for a 3-year period following
17 installation of the RP mitigation and inspection by the City. The report shall be prepared by a qualified
18 professional and shall document site conditions with narrative and pictures [LOC 50.05.010.4.g.i(2)].
19
- 20 6. **Traffic Management Plan:** Per LOC 50.02.002.2.d.iv, implementation of the approved TMP for the site
21 (Exhibits F10 and F11) is required when the traffic at an affected intersection identified in the TMP
22 consistently exceeds "C" level of service.
23

24 **Notes:**
25

- 26 1. The applicant is advised to take part in a Post Land Use Approval meeting. City staff would like to
27 offer you an opportunity to meet and discuss this decision and the conditions of approval necessary
28 to finalize the project. The purpose of the meeting is to ensure you understand all the conditions
29 and to identify other permits necessary to complete the project. If you like to take advantage of this
30 meeting, please contact the staff coordinator at (503) 635-0290.
31
- 32 2. The land use approval for this project does not imply approval of a particular design, product,
33 material, size, method of work, or layout of public infrastructure except where a condition of
34 approval has been devised to control a particular design element or material.
35
- 36 3. Development plans review, permit approval, and inspections by the City of Lake Oswego Development
37 Review Section are limited to compliance with the Lake Oswego Community Development Code, and
38 other applicable codes and regulations. The applicant is advised to review plans for compliance with
39 applicable state and federal laws and regulations that could relate to the development, e.g.,
40 Americans with Disabilities Act, Endangered Species Act. City staff may advise the applicant of issues
41 regarding state and federal laws that the City staff member believes would be helpful to the applicant,
42 but any such advice or comment is not a determination or interpretation of federal or state law or
43 regulation.
44

1 DATED this 3rd day of June, 2013.
2
3

4 _____
5 /s/ Don Richards
6 Don Richards, Chair
7 Development Review Commission
8

9 _____
10 /s/ Janice Reynolds
11 Janice Reynolds
12 Administrative Support III
13

14 **ATTEST:**

15
16 **ORAL DECISION – May 20, 2013**

17 AYES: Creighton, Needham, Johnson, Poulson
18 NOES: None
19 ABSTAIN: None
20 ABSENT: Richards, Ahrend, and Rossi
21

22 **WRITTEN FINDINGS – June 3, 2013**

23 AYES: Needham and Poulson
24 NOES: Johnson
25 ABSTAIN: Richards and Ahrend
26 ABSENT: Creighton and Rossi
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