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CITY OF TIGARD

Washington County, Oregon

NOTICE OF FINAL ORDER BY THE HEARINGS OFFICER

Case Numbers:	<u>SUBDIVISION (SUB) 2007-00003</u> <u>ADJUSTMENT (VAR) 2007-00013</u>
Case Name:	<u>"APPEAL" OF FOSTER ESTATES SUBDIVISION</u>
Applicant's Name/Address:	<u>The Big Dog, LLC Attn: Kurt Dalbey 12703 SW 67th Avenue, Portland, Oregon 97223</u>
Owner's Names/Addresses:	<u>Same as Applicant</u>
Appellant's Name/Address:	<u>Robert E. Ruedy 14185 SW 100th Avenue, Tigard, Oregon 97223</u>
Address of Property:	<u>14259 SW 100th Avenue and 14300 SW 103rd Avenue, Tigard, Oregon 97223</u>
Tax Map/Lot Nos.:	<u>Washington Co. Tax Assessor's Map No. 2S111BB, Tax Lots 600/900/1000/1100.</u>

A FINAL ORDER INCORPORATING THE FACTS, FINDINGS AND CONCLUSIONS DENYING AN APPEAL AND APPROVING A REQUEST FOR A SUBDIVISION AND DENYING THE ADJUSTMENT.

THE CITY OF TIGARD HEARINGS OFFICER HAS REVIEWED THE APPLICANT'S PLANS, NARRATIVE, MATERIALS, COMMENTS OF REVIEWING AGENCIES, THE PLANNING DIVISION'S STAFF REPORT AND RECOMMENDATIONS FOR THE APPLICATION DESCRIBED IN FURTHER DETAIL IN THE STAFF REPORT. THE HEARINGS OFFICER HELD THE PUBLIC HEARING ON THIS ITEM ON JULY 23, 2007 PRIOR TO MAKING A DECISION ON THE REQUEST. THIS DECISION HAS BEEN BASED ON THE FACTS, FINDINGS AND CONCLUSIONS CONTAINED WITHIN THIS FINAL ORDER.

Item on Appeal: On June 18, 2007, the Director issued a decision to approve a request for a 12-lot Subdivision for detached single-family homes on a 3.61-acre site consisting of four (4) parcels; and for an Adjustment to the maximum permitted length of a cul-de-sac. The proposed cul-de-sac is 365 feet and the maximum permitted length is 200 feet. The two (2) existing homes will be demolished. On July 2, 2007 an appeal was filed by Robert E. Rudy, a neighboring property owner, relating to nine areas of concern from his comments presented on April 23, 2007. At the close of the public hearing on July 23, 2007 the Hearings Officer held the record open until August 31, 2007, then denied the appeal and affirmed the Planning Manager's decision to approve the subject applications, subject to the conditions of approval with minor modifications.

Zone: R-3.5: Low-Density Residential District. Review Criteria Being Appealed: Community Development Code Chapters 18.370; 18.390, 18.430, 18.510, 18.705, 18.715, 18.725, 18.745, 18.765, 18.780, 18.790, 18.795 and 18.810.

Action: ➤ Approval as Requested Approval with Conditions Denial

Notice: Notice was published in the newspaper and mailed to:
 Owners of Record within the Required Distance Affected Government Agencies
 Interested Parties The Applicants and Owners

Final Decision:

THIS IS THE FINAL DECISION OF THE CITY AND IS EFFECTIVE ON SEPTEMBER 17, 2007.

The adopted findings of fact, decision and statement of conditions can be obtained from the City of Tigard Planning Division, Tigard City Hall, 13125 SW Hall Boulevard, Tigard, Oregon.

Appeal: A review of this decision may be obtained by filing a notice of intent to appeal with the Oregon Land Use Board of Appeals (LUBA) according to their procedures within 21 days.

Questions: If you have any questions, please call the City of Tigard Planning Division or the City Recorder at (503) 639-4171.

**BEFORE THE LAND USE HEARINGS OFFICER
FOR THE CITY OF TIGARD, OREGON**

Regarding an appeal of an administrative decision) **FINAL ORDER**
approving an application for a 12-lot subdivision on)
3.61 acres at 14259 SW 100th Avenue and 14300) **SUB2007-00003/VAR2007-00013**
SW 103rd Avenue in the City of Tigard, Oregon) **(Foster Estates Subdivision)**

A. SUMMARY

1. The applicant, Kurt Dalbey/The Big Dog, LLC, requests approval of a preliminary plan for a 12-lot subdivision of a 3.61-acre parcel in the R-3.5 (Low Density Residential) zone located at 14259 SW 100th Avenue and 14300 SW 103rd Avenue; also known as Tax Lots 600, 900, 1000 and 1100, WCTM 2S111BB (the “site”). The site is currently developed with two single-family detached homes and associated accessory structures. The applicant proposes to remove all of the existing structures and construct a new single-family detached dwelling on each of the proposed lots. The applicant proposed to extend a new public street into the site from SW 100th Avenue, terminating in a cul-de-sac turnaround in the western portion of the site.¹ In addition, the applicant will dedicate right of way and construct frontage improvements along the site’s SW 100th Avenue and SW 103rd Avenue frontages. The applicant also requested an adjustment to allow the proposed 365-foot cul-de-sac street, which exceeds the maximum 200-foot length permitted allowed by the Code. The applicant proposes to collect storm water from impervious areas of the site and to convey it to a storm water facility in the northeast corner of the site, proposed Tract 1, for treatment, detention and discharge to the existing public storm sewer in SW 100th Avenue east of the site. All proposed lots will be served by public water and sanitary sewer systems. The applicant proposes to remove all but two of the regulated trees on the site.

2. On June 18, 2007, the Tigard Planning Manager (the “manager”) issued a Type II decision denying the adjustment request and approving the subdivision subject to conditions of approval, including the extension of a through street between SW 100th Avenue and SW 103rd Avenue.

3. On July 2, 2007, the City received an appeal of the Director’s decision filed by Robert E Ruedy (the “appellant”). The appeal alleged that the manager’s decision failed to adequately address certain requirements of the Tigard Development Code (the “TDC”), Title 18 of the Tigard Municipal Code (the “TMC”), including the following issues:

¹ The manager’s decision requires that the applicant extend the street through the site, connecting SW 100th and 103rd Avenues.

- a. Protection of off-site trees located near the boundaries of the site;
- b. The need for offsite improvements to SW 100th Avenue between the site and SW McDonald Street;
- c. The use of a stormwater detention pond;
- d. The design of improvements to the sewer system in SW 100th Avenue;
- e. Maintaining adequate visual clearance for the abutting property north of the site;
- f. Stormwater impacts to adjacent properties;
- g. Fire hydrant locations;
- h. Potential water pressure reductions impacting adjacent properties; and
- i. The adequacy of traffic controls at the intersection of 100th Avenue and the site access.

4. On July 23, 2007, Tigard Land Use Hearings Officer Joe Turner (the “hearings officer”) conducted a duly noticed public hearing to consider the appeal. City staff recommended the hearings officer deny the appeal and affirm the manager’s decision. See the Memorandum to the Hearings Officer dated July 16, 2007 (the “Memorandum”). Representatives of the applicant testified in support of the application. The appellant and two other area residents testified orally and in writing in support of the appeal. At the end of the hearing, the hearings officer ordered the record held open until August 31, 2007. The principal issues in this case include the following:

- a. Whether the hearings officer can schedule another public hearing to address the City’s failure to create an audio recording of the public hearing due to an equipment malfunction;
- b. Whether all of the issues raised on appeal fall within the limited scope of appeal established by TDC 18.390.040.G.2.b;
- c. Whether the proposed development complies with the tree removal regulations of TDC 18.790;
- d. Whether the applicant is required to install additional landscaping or a fence along the boundaries of the site in order to protect the privacy of existing residents;
- e. Whether the site contains steep slopes, natural drainageways or other “sensitive lands” subject to TDC 18.775;

f. Whether the applicant is required to construct off-site improvements to 100th and/or 103rd Avenues;

g. Whether the proposed surface stormwater detention facility violates the nuisance provisions of TMC 7.40;

h. Whether the applicant is required to relocate the proposed sanitary sewer manhole in 100th Avenue in order to facilitate future sewer service extension to the appellant's property;

i. Whether the applicant is required to provide a clear vision area for a potential future road on the south boundary of the appellant's property;

j. Whether development on the site will cause or exacerbate flooding and erosion on the site and on adjacent properties;

k. Whether the applicant is required to develop a "comprehensive temporary fire suppression plan" prior to disconnecting the existing fire hydrant near the site;

l. Whether the applicant is required to maintain current levels of service for water volume and pressure serving existing area residents;

m. Whether the applicant is required to extend a street through the site between SW 100th and 103rd Avenues;

n. Whether additional traffic generated by the proposed development and street extension will exceed the capacity of area streets or otherwise create a hazard; and

o. Whether the applicant is required to prepare a traffic study for the proposed development.

5. Based on the findings and conclusions contained herein and the testimony and evidence in the public record, the hearings officer denies the appeal and affirms the administrative decision conditionally approving the application with certain modifications for the reasons provided herein.

a. The hearings officer recognizes that the appellant undertook considerable time and effort in preparing the appeal and exhibits. However that effort is not sufficient to demonstrate the proposed development as conditioned will not comply with all applicable approval criteria. The hearings officer must apply the Code as adopted by the City Council. The hearings officer appreciates the appellant's passion and effort, but it is not sufficient to warrant denial of this application.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about the appeal on July 23, 2007. All exhibits and records of testimony are filed with the Tigard Department of Community Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony and evidence offered at the hearing.

2. City planner Emily Eng summarized the appeal and her July 16, 2007 Memorandum in response to the appeal. She noted that the applicant submitted revised drawings showing a public street extending through the site between SW 100th and SW 103rd Avenues as required by the manager's decision.

3. City Development Review Engineer Kim McMillan testified that the Code prohibits the applicant from increasing or concentrating stormwater runoff onto adjacent properties. The applicant is not required to eliminate all existing stormwater runoff that currently flows onto adjacent properties.

a. She noted that condition of approval 32 of the manager's decision should refer to "[t]he eastbound access onto 100th Avenue from the development" rather than the "westbound access..."

b. She testified that the City cannot require that this development provide traffic calming measures on the proposed through street because there is no substantial evidence that such measures are warranted or that cut-through traffic will occur. The City's skinny street design provides some traffic calming as vehicle parking on both sides of the street leaves a single travel lane, which forces drivers to slow down and discourages cut-through traffic. The City will review the need for additional traffic calming measures after the development is constructed and drivers get used to the new street system. Traffic calming measures may not be warranted under actual conditions.

c. She noted that the applicant could reduce the width of the street by eliminating the planter strips and provide a curb-tight sidewalk, which would allow the applicant to provide additional separation between the sidewalk and the retaining wall. She requested the hearings officer modify the conditions of approval to allow the City engineer to approve that design option. She noted that a "half-width" street improvement requires a minimum 24 feet of pavement to accommodate two-way traffic and emergency vehicles.

d. She noted that Tualatin Valley Fire and Rescue ("TVF&R") will review and approve the location of fire hydrants on and near the site. TVF&R must sign off on the applicant's plans before the City will issue construction permits. A condition of approval requiring TVF&R approval would be redundant.

e. She argued that the proposed surface stormwater detention pond is allowed by CWS regulations. CWS has a maintenance program for surface ponds, which includes mosquito and other vector controls.

f. She noted that the CWS regulations require that all stormwater detention facilities must be equipped with an engineered overflow for runoff in excess of the 25-year storm.

4. Planner Lee Leighton and engineer Patrick Tortora testified on behalf of the applicant.

a. Mr. Leighton noted that the City required the applicant to extend a public street through the site between SW 100th and 103rd Avenues to enhance cross-circulation and emergency access in the area. The applicant has no objection to that requirement. However it may be impossible to construct a full-width street improvement consistent with City requirements. The existing lot abutting the northwest corner of the site (14230 SW 103rd Avenue) is substantially higher than the proposed street. The abutting property owner is unwilling to grant a slope easement on his property. Therefore the applicant must construct a retaining wall along the north edge of the sidewalk, within the required right of way. A retaining wall in close proximity to the sidewalk may create a hazard for pedestrians. The applicant may need to construct a half-width street improvement as an interim improvement until the abutting property redevelops. In the alternative, the City may choose to exercise its eminent domain authority to obtain a slope easement sufficient to allow construction of the required roadway. It is inappropriate and unconstitutional for the City to burden the applicant with a condition of approval that may be impossible to implement.

i. He submitted a memorandum dated July 20, 2007 from Lancaster Engineering demonstrating that construction of a through street on this site is unlikely to generate a significant amount of cut-through traffic. The proposed through street does not provide a significant advantage for existing vehicle trips. The proposed street will carry substantially less than 1000 vehicles per day. Therefore the street can be developed as a “skinny street” with a 28-foot paved width within a 50-foot right of way.

ii. He noted that the original tree protection plan did not show the existing trees located on the appellant’s property abutting the north boundary of the site. He submitted a revised existing conditions plan that shows the trees. The applicant will construct a retaining wall along portions of the north and northeast boundaries of the site in order to reduce impacts to these trees. He agreed to an additional condition of approval requiring that the applicant install tree protection measures to protect these offsite trees during construction.

iii. He argued that the proposed development will not impact sight distance at the intersection of the appellant's existing driveway with 100th Avenue. Only a small portion of the site distance triangle for this intersection extends onto the site. The applicant will construct a retaining wall in the northeast corner of the site to ensure that the slopes on the site do not impact the sight distance triangle.

iv. He requested the hearings officer modify condition of approval 12 to allow flexibility in the design of the through street.

v. He agreed to toll the 120-day clock until September 17, 2007 to allow the hearings officer sufficient time to hold the record open and issue a written decision.

b. Mr. Tortora noted that condition of approval 28 of the manager's decision prohibits the applicant from discharging stormwater runoff onto adjacent properties. The applicant will install a French drain or similar facilities along the north boundary of the site to collect runoff from the back yards of the proposed lots and direct it to the public storm sewer in 100th Avenue. The applicant will provide an engineered overflow to convey excess runoff from the detention facility to the public storm sewer as required by CWS regulations.

5. The appellant Robert Ruedy submitted a large notebook of exhibits and summarized his written testimony dated July 23, 2007.

a. He argued that the proposed development will impact the visual clearance area on his property as illustrated in Tab E of his notebook of exhibits. He argued that the applicant should be required to provide a visual clearance area for a future road on the south boundary of his property, which will facilitate the future development of his property.

b. He questioned how Lancaster Engineer determined that the proposed through street will carry less than 1000 vehicles per day.

c. He argued that the applicant should be required to widen SW 100th Avenue between the site and McDonald Street rather than allowing the applicant to choose between improving SW 100th or 103rd Avenues.

d. He argued that the City Code and CWS regulations prohibit the proposed surface stormwater pond.

e. He argued that the applicant should be required to construct the new sewer manhole in SW 100th Avenue as proposed in his submittal in order to facilitate future development on his property. Otherwise it may not be feasible to comply with spacing requirements for sewer manholes.

f. He testified that stormwater runoff from the site does not flow onto his property under current conditions. Exhibit F-2 of his notebook shows a berm on the south boundary of his property that prevents runoff from the site from flowing onto his property. Stormwater from the site flows onto SW 100th Avenue near the northeast corner of the site as shown in Exhibit I-2 of his notebook. He argued that the applicant should be required to provide an overflow between the detention pond and the storm sewer system in 100th Avenue to ensure that water overflowing the stormwater pond during larger storms does not impact his property.

g. He argued that the applicant should be required to maintain the existing fire hydrant on 100th Avenue in its existing location, because surrounding residents' fire insurance rates are based on the location of the hydrant.

h. He argued that the applicant should be required to maintain the existing water volume and pressure received by surrounding residents.

i. He testified that many drivers "cut the corner" on the "S" curve on SW 100th Avenue south of the site. Stop signs proposed at the intersection of the on-site street and 100th Avenue will reduce traffic speeds to some extent. However the applicant should be required to install raised buttons or similar traffic control measures to force drivers to remain in the proper lane. He argued that the proposed through street will encourage cut-through traffic. Drivers on 103rd Avenue will use the street to access 100th Avenue and continue north of McDonald Street. The applicant should be required to provide a wider pavement width to accommodate bicycle riders who will utilize the proposed through street.

6. Ron Faber requested the hearings officer hold the record open to allow the public an opportunity to review the applicant's revised plans and other new evidence in the record. He argued that the applicant should not be required to extend a street through the site to 103rd Avenue.

a. The steep slopes on the west boundary of the site make it impossible to construct a safe intersection on SW 103rd Street abutting the site. SW 103rd Avenue is roughly eight feet lower than the site. The overhanging trees on either side of 103rd Avenue will block views of oncoming vehicles. The applicant will need to construct a ten-foot retaining wall along his property abutting the northwest corner of the site. The cost of the wall will likely make the development uneconomical.

b. Drivers will use the through street as a cut-through route to avoid congestion at the intersection of 103rd Avenue and McDonald Street. Many drivers use SW Inez Street south of the site as a cut-through route under existing conditions. The proposed street will encourage even more cut-through traffic because it allows drivers to avoid the "S" curves on 100th Avenue south of the site. The through street will carry more than 1000 vehicles per day within 20 feet of his home on the property abutting the

northwest corner of the site. Speed bumps or similar traffic control devices will generate additional noise and exacerbate the impacts on his home.

c. He argued that it would be inappropriate to allow a half-width street improvement abutting his property. His property is too small to be further divided under the current zoning. Therefore the City may never obtain the remainder of the road section.

7. Kelly Timmins argued that the proposed through street will encourage cut-through traffic, based on his observations of existing traffic patterns in the area. This cut through traffic will generate substantially more than 1000 vehicles per day on the through street, precluding use of the skinny street standard. The applicant should be allowed to construct a cul-de-sac street as originally proposed in order to avoid such cut-through problems.

a. Extensive vehicle queues form at the intersection of 103rd Avenue and McDonald Street during the morning rush hour. A vehicle waiting to make left turn onto McDonald Street may cause a three to five minute delay, resulting in even longer queues. Similar congestion problems do not occur at the intersection of 100th Avenue and McDonald Street under existing conditions because 103rd Avenue carries more traffic than 100th due to the number of apartment complexes that access 103rd Avenue. Therefore drivers will be tempted to cut through the site to 100th Avenue in order to avoid congestion problems at the 103rd Avenue/McDonald Street intersection.

b. He testified that SW Inez Street south of the site does not provide a convenient cut-through route, because drivers must still negotiate the “S” curves on 100th Avenue. The proposed through street on this site will allow cut-through drivers to avoid those curves.

c. During the evening rush hour traffic queues at the intersection of Pacific Highway and McDonald Street extend east past 103rd Avenue and sometimes past 100th Avenue. Drivers traveling westbound on McDonald will be tempted to turn onto 100th Avenue and cut through the site to access 103rd Avenue and avoid this congestion. The applicant should be required to install a median or similar barrier to prevent drivers from turning left out of the site onto 103rd Avenue.

8. City Planning Director Dick Bewersdorff argued that TMC 7.40.040 does not prohibit the use of surface stormwater detention ponds. The City can require additional mosquito abatement measures or take other enforcement action if a particular stormwater facility creates a nuisance as defined by TMC 7.40.

3. At the end of the hearing, the hearings officer ordered the public record held open until August 17, 2007 to allow all parties to submit additional testimony and evidence. The hearings officer held the record open for another week, until August 24, to allow all parties to respond to the new testimony and evidence submitted during the first open record period. The hearings officer held the record open for a final week for the

applicant to submit a final argument. The record in this case closed at 5:00 p.m. August 31, 2007.

a. The hearings officer left the originals of the exhibits submitted at the hearing with City staff to allow interested parties the opportunity to review the exhibits during the open record period. After the close of the record the City forwarded the originals of all of the exhibits received at the hearing and during the open record period to the hearings officer. The hearings officer will return the originals of all of the exhibits to the City with the written decision. The City will retain the exhibits as part of the record until all appeal opportunities expire.

C. DISCUSSION

1. The appellant in his August 17, 2007 submittal requested that the hearings officer reopen the record or schedule a new hearing because the City failed to record the hearing. The hearings officer understands that the City was unable to make an audio recording of the July 23, 2007 hearing in this case, because City's recording system malfunctioned. However the hearings officer has no authority to remedy that error in this proceeding.

a. TDC 18.390.050.D.2 provides that any participant may request an opportunity to present additional relevant testimony and evidence regarding the application. The hearings officer is required to grant such a request by continuing the hearing or holding the record open. The hearings officer granted such a request in this case, holding the record open for roughly one month to allow all parties to submit additional written testimony and evidence. TDC 18.390.050.D.4 provides that any participant may request that the hearings officer reopen the record to provide an opportunity to respond to new evidence submitted during the open record period. In this case the appellant submitted the only new evidence received during the open record period. The appellant has no right to request that the hearings officer reopen the record to respond to his own evidence.

b. The Code does not otherwise authorize the hearings officer to otherwise reopen the record or require additional hearings. In addition, granting the appellant's request at this point in the proceeding would cause the City to exceed the time limits set out in ORS 227.178 and allow the applicant to file a petition for a writ of mandamus compelling City approval of the application.

2. TDC 18.390.040.G authorizes the hearings officer to hear appeals of Type II decisions, such as the city's decision conditionally approving the subdivision application. TDC 18.390.040.G.2.b provides that appeals:

[S]hall be limited to the specific issues raised during the written comment period, as provided under Section 18.390.040.C, unless the Hearings Officer, at his or her discretion, allows additional evidence or testimony

concerning any other relevant issue. The Hearings Officer may allow such additional evidence if he or she determines that such evidence is necessary to resolve the case. The intent of this requirement is to limit the scope of Type II Administrative Appeals by encouraging persons with standing to submit their specific concerns in writing during the comment period. The written comments received during the comment period will usually limit the scope of issues on appeal. Only in extraordinary circumstances should new issues be considered by the Hearings Officer on appeal of a Type II Administrative Decision.

The appellant raised a number of issues on appeal that were not raised during the written comment period or in the appeal. Those issues include, but not limited to, alleged violations of the sensitive lands ordinance, TDC 18.775, solar access and “adequate light and air. The hearings officer finds that those issues exceed the permitted scope of appeal as defined by TDC 18.390.040.G.2.b. However the hearings officer will address those issues for the sake of completion.

3. The appellant cited to a number of purpose statements as support for the appeal, i.e., TDC 18.110.020, 18.790.010, 18.745.010, 18.360.010 and 18.430.010. However the hearings officer finds that purpose statements not applicable approval standards with which the applicant is required to demonstrate compliance. The goals set out in the purpose statements are achieved through compliance with the implementing regulations and approval criteria. The purpose statements themselves are not relevant unless they include specific approval criteria or the implementing regulations that follow are ambiguous, and resort to the purpose statements is necessary to determine the context and meaning of ambiguous terms. *See, e.g., Beck v. City of Tillamook*, 18 Or LUBA 587 (1990) (Purpose statement stating general objectives only is not an approval criterion).

4. The applicant is not required to contact the adjacent neighbors to address their concerns other than in the pre-application neighborhood meeting required by the City. Although it may be in the applicant’s interest to attempt to address neighbor’s concerns, the failure to do so is not a basis for denial of the application. Whether or not the applicant can integrate neighbor’s suggestions into the development is irrelevant. The hearings officer must review the application as proposed. If the proposed development complies with the applicable approval criteria, or can comply subject to conditions, it must be approved subject to those conditions, regardless of whether a subjectively “better” design is feasible.

5. The hearings officer finds that the application complies with the City’s tree removal ordinance, TDC 18.790.030, based on the following:

a. The applicant submitted a tree plan prepared by a certified arborist outlining the proposed planting, removal and protection of trees on the site as required by TDC 18.790.030.

b. The hearings officer finds that the tree protection and mitigation standards of TDC 18.790 do not apply to trees located on adjacent properties. The tree removal ordinance is limited to trees located on the site, based on the plain meaning of the words in the Code. Therefore the applicant was not required to include trees located on the appellant's property in the tree inventory.

i. For the most part TDC 18.790 refers to "trees" generally, without distinction between on-site and off-site trees. The stated purpose of the Code is to "encourage the preservation, planting and replacement of trees in the City" generally. TDC 18.790.010.B.1. However the tree plan requirements are expressly limited to the "lot, parcel or combination of lots or parcels for which [development is proposed]." TDC 18.790.030.A. In addition, TDC 18.790.040.B requires that developers record a deed restriction prohibiting removal of retained trees. The applicant has no right to enter adjacent properties to perform pruning and other palliative measures necessary to ensure the survival of off-site tree or to record a deed restriction over adjacent properties. Therefore the hearings officer finds that the Code does not require that the applicant protect trees on adjacent properties.

ii. The hearings officer has no authority to determine whether and to what extent the applicant is liable if clearing, grading, excavating and other construction activities on this site damage trees on adjacent properties. That is civil matter that is not regulated by the TDC. The applicant and future owners may have a common law right to remove roots and branches that extend onto the site, even if such pruning affects the health and survival of the trees. It could be argued that the appellant "assumed the risk" that the trees would be impacted by activities on this site when he planted the trees on the property line. However the applicant's common law rights are not unlimited. The owners of adjoining properties may have a cause of action against the applicant if the applicant's actions cause excessive or unnecessary damage to trees on adjoining properties. The owners of adjoining properties should consult a lawyer to advise them about such rights.

6. The hearings officer finds that the applicant is not required to install additional landscaping or fence along the boundaries of the site in order to protect the privacy of existing residents. TDC 18.745.050.A.2 provides that "buffering and screening is required to reduce the impacts on adjacent uses *which are of a different type* in accordance with the matrices in this chapter (Tables 18.745.1 and 18.745.2)." (Emphasis added). Table 18.745.1 does not require a buffer in this situation, where the applicant proposed to develop the site with single-family detached homes adjacent to existing single-family detached homes. This is consistent with TDC 18.360.090.A.4, which provides that "buffering shall be provided between different types of land uses, for example, between single-family and multiple-family residential, and residential and commercial uses..."

7. The hearings officer finds that the sensitive lands provisions of TDC 18.775 are inapplicable. There is no substantial evidence that the site or any surrounding properties constitute “sensitive lands” as defined by TDC 18.775.010.G.²

a. There are no existing slopes of 25-percent or more. The proposed development may create slopes of 25-percent or greater, depending on the final grading design. The hearings officer finds that sloped created by an approved development do not constitute “sensitive lands” as defined by TDC 18.775.010.G.4. By its terms, TDC 18.775 applies to review of impacts of proposed developments on existing sensitive lands areas, including steep slopes. This is consistent with TDC 18.775.010.G.4, which provides that “sensitive lands are lands potentially *unsuitable for development* because of their location within...steep slopes of 25% or more.” (Emphasis added). Slopes that are created by an approved development, subject to regulations controlling the design, construction, compaction etc. of the slopes, are not “unsuitable for development”.

b. The applicant argues that there are one or more “natural drainageways” on the site as shown in Appellant’s Exhibits A-2, E-3, I-2 and F –5.0, among others. However there is no substantial evidence in the record to support this assertion. Although the topography of the site may direct stormwater runoff along the general paths indicated, there is no evidence of a defined channel or other characteristics that indicate the existence of a natural drainageway on the site.

8. The manager’s decision requires that the applicant improve either 100th or 103rd Avenue to provide a minimum 24 feet of pavement on the offsite sections of one of these streets between the site and SW McDonald Street. The appellant argued that the applicant should be required to improve 100th Avenue rather than 103rd, because 100th Avenue will carry more traffic and is in greater need or improvement.

a. The hearings officer understands that the purpose of this condition is to provide adequate access between the site and the nearest collector street. However the hearings officer is unable to find any authority in the Code for this requirement. It appears that the City exceeded its authority in requiring that the applicant construct offsite street improvements.

² TDC 18.775.018.775.010.G provides:

Sensitive lands are lands potentially unsuitable for development because of their location within:

1. The 100-year floodplain or 1996 flood inundation line, whichever is greater;
2. Natural drainageways;
3. Wetland areas which are regulated by the other agencies including the U.S. Army Corps of Engineers and the Division of State Lands, or are designated as significant wetland on the City of Tigard “Wetland and Stream Corridors Map”;
4. Steep slopes of 25% or greater and unstable ground; and
5. Significant fish and wildlife habitat areas designated on the City of Tigard “Significant Habitat Areas Map.”

i. TDC 18.810.030.A.3 requires that the applicant construct half-width improvements on streets abutting the site. Conditions of approval 11 and 12 require that the applicant construct such improvements on the site's 100th and 103rd Avenue frontages. However nothing in the Code requires that the applicant construct off-site street improvements. Ordinarily applicants are not required to construct offsite road improvements because it would be disproportionate to the impact of the development on the need for such facilities. Applicants are not required to remedy all perceived and existing deficiencies in the vicinity of a development. The Code requires an applicant to mitigate impacts a development causes or to which it contributes significantly. Although the proposed development contributes to problems with substandard streets in the area, those problems exist largely because of existing development. It would be inequitable to require an applicant to bear the full burden of improvements where the proposed development is only responsible for a small portion of the problem. The need for wider pavement and other street improvements is one that exists generally along streets in the area, and is a need to which all adjoining properties contribute, not just the lots being created in this case. Street improvements in the area will occur over time as other properties in the area develop, but the applicant is not required to provide such continuous improvements at this time.

ii. There is no substantial evidence that additional traffic generated by the proposed development will cause or exacerbate a hazard on 100th and 103rd Avenues. There is no dispute that the narrow pavement width on these streets does not provide optimum driving conditions. However this does not mean that the streets are unsafe. The historic accident rate on these streets is well below the accepted action level of 1.0 accidents per million entering vehicles. Many streets in the City are in this same condition. These conditions are obvious. Reasonably prudent drivers will observe the posted speed limit and if necessary, further reduce their speed to accommodate changing road conditions. Unfortunately not all drivers are prudent enough to observe posted speed limits and road conditions. However there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers.

iii. The hearings officer cannot delete this condition because the applicant did not appeal the director's decision. Therefore the issue exceeds the scope of appeal allowed by TDC 18.390.040.G. However the hearings officer has no authority to modify this condition to require that the applicant improve a particular street, because the Code does not require offsite street improvements.

b. TDC 18.810.030.A.7, cited by the appellant, is inapplicable because the applicant did not request an adjustment to any applicable standards.

c. TDC 18.810.030.A.5.c only applies when "[t]he City could and would otherwise require the applicant to provide street improvements..." As discussed above, the City has no authority to require offsite street improvements in this case.

9. The hearings officer finds that the applicant is not required to construct other improvements to the offsite sections of 100th Avenue for the same reasons; there is no substantial evidence that traffic generated by the proposed development creates or significantly contributes to the need for the improvements. Therefore this section is inapplicable.

10. The applicant proposed to collect, treat and detain stormwater runoff from the site prior to discharging it to the existing public storm sewer system at less than predevelopment rates. The design of the treatment and detention facilities must comply with City and CWS regulations. The hearings officer finds that it is feasible to comply with those regulations based on the expert testimony of City engineering staff. There is no substantial evidence to the contrary. As discussed in the manager's decision, the City engineering department will ensure that City and CWS (Clean Water Services Standards) are met through the Public Facility Improvement (PFI) Permit review process. See condition 26.

a. The hearings officer finds that the proposed stormwater quality and detention pond will not have an adverse impact on surrounding properties. Surface detention facilities are expressly allowed by CWS regulations. The applicant must design, build and maintain the pond consistent with CWS regulations. There is no substantial evidence that similar ponds that are utilized throughout the region create a hazard for adjacent residents. The applicant will install fencing to restrict access to the pond if required by CWS.

b. The hearings officer finds that the proposed detention pond will not violate the City's nuisance ordinance, TMC 7.40, or the environmental performance standards of TDC 18.725.030. The applicant is required to maintain the detention facility in compliance with City and CWS regulations for at least three years prior to dedication to the City. See condition 26. The City can maintain the facility after the initial three-year period. There is no substantial evidence that a properly designed and maintained detention pond will create the nuisance conditions cited by the appellant. If the cited problems occur the City and/or CWS can require abatement through their enforcement procedures.

i. As Ms. McMillan testified, CWS has a maintenance program for surface ponds, which includes measures for the control of mosquitoes and other vectors. Compliance with current maintenance practices should be sufficient to ensure that the pond does not "afford[] a breeding place for mosquitoes and other insect pests", TDC 18.725.030.F, or "attract or aid the propagation of insects or rodents or create a health hazard." TMC 7.40.040.

ii. The applicant is required to plant landscaping within the stormwater tract consistent with a landscape plan approved by the City engineer. See condition of approval 26. Properly selected, installed and maintained landscaping will prevent noxious and invasive weed species from becoming established within the stormwater tract and reduce the risk of fire hazard from dead and dying vegetation. The applicant and or the City can maintain the vegetation within the stormwater facility to

ensure compliance with TMC 7.40.050.

iii. The hearings officer finds that the noise regulations of TDC 18.725.030.A and 7.40.130 do not apply to noises generated by frogs and other wildlife, based on the plain meaning of the words in the Code. TDC 18.725.030.A merely cross-references the noise regulations of TMC 7.40.130. TMC 7.40.130 provides that “No *person* shall make, assist in making, permit, continue, or permit the continuance of, any noise within the City of Tigard in violation of this article.” (Emphasis added).

iv. TDC 18.725.030.D prohibits “the emission of odorous gases or other matter in such quantities as to be readily detectable at any point beyond the property line of the use creating the odors...” However there is no substantial evidence that a properly designed and maintained stormwater detention facility will generate “odorous gases or other matter.” The appellant’s unsupported assertions are not substantial evidence.

v. There is no dispute that the impacts cited by the appellant *could* occur. Such impacts could occur anywhere, including on the proposed lots if the future residents fail to maintain their properties in compliance with the Code. However there is no substantial evidence that the proposed development creates a disproportionate risk of such impacts. City and other regulatory agencies (CWS, TVF&R etc) have sufficient authority to abate any problems that actually occur. These agencies enforcement processes are largely complaint driven. People who observe violations can report them to the relevant agency, which can take actions to require compliance and or abate the violations.

c. The hearings officer finds that it is feasible to fence the detention facility if required by the applicable regulations. Evidence that other detention facilities in the area are not fenced is irrelevant. There is no evidence that the cited facilities are required to be fenced. Even if they are, the lack of fencing at other facilities will not preclude compliance with the fencing requirement at this site.

d. Nothing in the Code requires that the applicant install a sight obscuring fence or hedge to screen views of the detention facility as requested by the appellant.

e. The hearings officer finds that TDC 18.810.080.A cited by the appellant is inapplicable. The proposed stormwater treatment and detention facility is not a “park, playground or other public use...” Even if the facility does qualify as a “public use” subject to this provision, TDC 18.810.080 merely authorizes the city to require dedication of public uses within a subdivision. In this case the applicant is proposing to dedicate the stormwater facility to City. Therefore the development is consistent with TDC 18.810.080.A, to the extent it applies.

11. The appellant requested that the applicant relocate the proposed sanitary sewer manhole in SW 100th Avenue shown in the appellant's Exhibit D-1 in order to facilitate the future extension of sanitary sewer service to the appellant's property. The appellant argued that this relocation is necessary to avoid the need for additional manholes in 100th Avenue.

a. The hearings officer understands the appellant's concerns. However the hearings officer has no authority to require this relocation as a condition of approval, because it does not relate to any applicable approval criteria for this subdivision. The hearings officer finds that it is feasible to install sanitary sewers and connect the proposed development to existing mains in accordance with CWS's Design and Construction Standards for Sanitary and Surface Water Management, TDC 18.810.090.A, based on the applicant's preliminary plans and the expert testimony of City engineering staff. The actual design of the sewer system, including the location of manholes, is a technical issue that is left to the expertise of the City and CWS engineers. TDC 18.810.090.B provides "the City Engineer shall approve all sanitary sewer plans and proposed systems prior to issuance of development permits involving sewer service."

b. The applicant may need to relocate the manhole as suggested by the appellant in order to comply with TDC 18.810.090.C, which requires that sanitary sewer system designs "[i]nclude consideration of additional development within the area as projected by the Comprehensive Plan" and condition 19 of the manager's decision, which requires that the applicant "[p]rovide sanitary sewer, per Clean Water Services (CWS) standards, to the adjacent un-served properties..." However there may be other competing considerations that support the manhole location proposed by the applicant. Review of the final design, and the choice of potentially conflicting designs considerations, is expressly left to the expertise of City and CWS engineering staff in their reviewing of the final design. TDC 18.810.090.B. The City may require that the applicant relocate the manhole as proposed by the applicant. However the hearings officer cannot require that the applicant do so as a condition of subdivision approval.

c. The hearings officer finds that TDC 18.810.120, cited by the appellant, does not apply to sanitary sewers. This provision is expressly limited to the design and location of "electric, communication, lighting and cable television services and related facilities..." The doctrine of *ejusdem generis* provides that a nonspecific or general phrase appearing at the end of list of items in statute is to be read as referring only to other items of same kind. *Vanetta v. Keisling*, 324 Or 514, 533 (1997). Sanitary sewers are clearly not related to "electric, communication, lighting and cable television services."

12. The appellant argued that the applicant should be required to maintain a clear vision area consistent with TDC 18.795 in the northeast corner of the site to facilitate a potential future intersection of a road on the south boundary of the appellant's property with SW 100th Avenue.

a. The hearings officer finds that the clear vision area requirement is limited to existing streets and driveways and new intersections created by the proposed development, based on the plain meaning of the words in the code. TDC 18.795.030 clearly uses the present tense, requiring maintenance of a clear vision area “[o]n the corners of all property adjacent to the intersection of two streets, a street and a railroad, or a driveway providing access to a public or private street.” There is no existing street or driveway on the south boundary of the appellant’s property. Nothing in the Code requires that the applicant provide a clear vision area for a potential future street on the appellant’s property. TDC 18.810.120.B.2 and 18.745.050.B.6, cited by the appellant, only apply where TDC 18.745 requires a clear vision area.

b. As the applicant noted at the hearing, the clear vision triangle for the appellant’s existing driveway extends onto the northeast corner of the site. The hearings officer finds that the applicant should be required to maintain a clear vision area consistent with TMC 18.795 for the existing driveway. A condition of approval is warranted to that effect. The applicant agreed to modify the design of the stormwater pond to ensure it does not extend into the required clear vision area (condition #33).

i. SW 100th Avenue is designated a local street (according to the manager’s decision) or a neighborhood route (according to the application narrative). There is no substantial evidence that 100th Avenue is designated a collector or arterial street, which may require a larger clear vision area pursuant to TDC 18.795.040.A.

13. The hearings officer finds that it is feasible to comply with the stormwater regulations of the City, TDC 18.180.100 and CWS, based on the applicant’s preliminary storm drainage report, Exhibit J of the application narrative and the expert opinion of City engineering staff.

a. The appellant expressed concerns that the proposed development will direct stormwater runoff onto his property. The topography maps in the record demonstrate that stormwater falling on this site flows downhill to the northeast under existing conditions. However a berm along the south boundary of the appellant’s property appears to prevent stormwater from flowing from the site onto the appellant’s property. See Exhibit F-2 of the appellant’s notebook. Grading and filling on the site will alter the existing topography and could potentially increase run-off onto adjacent properties. However CWS regulations expressly prohibit such impacts. Section 5.05.5 of R&O 07-20 provides:

Developments shall not materially increase or concentrate runoff onto adjacent properties, except when the runoff is contained in an existing drainage way.

The hearings officer finds that it is feasible to comply with Section 5.05.5 of R&O 07-20. The applicant proposes to collect storm water from the impervious areas of the site and to convey it to a treatment and detention facility in the northeast corner of the site prior to discharge to the public storm sewer in 100th Avenue at less than pre-development rates. New slopes created by the proposed grading and fill may result in localized increases or concentration of storm water runoff towards adjacent properties. However the applicant can grade the site to direct runoff away from adjacent properties, install drains near the boundaries of the site or utilize other measures to capture surface water before it leaves the site as necessary to ensure compliance with applicable regulations. This is required by condition 28.

b. The applicant is required to provide an overflow and an emergency spillway to convey excess runoff that exceeds the capacity of the detention facility to the street and away from adjacent properties. Section 4.03.3 of R&O 07-20. The City will ensure compliance with the applicable stormwater regulations through its review of the Public Facility Improvement plans and final grading plans. Conditions 26 and 28.

c. The appellant requested that he be allowed the opportunity to review and comment on the applicant's revised grading, erosion control and stormwater plans. However the Code does not require any additional opportunity for public review and comment. City staff's review of the final plans provides adequate protection of the public interest. The applicant's final engineering plans are public records that the appellant may review.

d. The applicant is not required to provide detailed engineering designs at this stage of review. The purpose of the preliminary storm water and erosion control plans is to determine whether it is feasible to comply with applicable criteria. The preliminary plans are conceptual, and analysis of all technical details is not required. See *Meyer v. City of Portland*, 67 Or App 274, n 6, 678 P2d 741, rev den 297 Or 82 (1984). ([C]onditions of approval may include conditions that specific technical solutions to identified development problems be submitted and reviewed and approved by the government's technical staff."). To require complete, detailed storm water and erosion control plans prior to approval of the plat would require re-working the entire plan any time amendments or modifications of the plat are required. This would be highly inefficient and is not necessary to protect the public interest.

e. The hearings officer finds that the proposed development complies with TDC 18.430.020.F, which requires that subdivisions be designed "to minimize flood damage." The site is not in or near a floodplain. The proposed development will not increase the volume of stormwater falling on the site. The proposed stormwater facilities will collect stormwater runoff from the site and convey it to the existing public storm sewer system, away from the proposed homes and surrounding properties, essentially replicating the existing conditions on the site.

f. CWS's Design and Construction Standards require implementation of erosion control measures to reduce the amount of sediment and other pollutants reaching adjacent properties or the public storm and surface water system resulting from development, construction, grading, excavating, clearing, and any other activity which accelerates erosion. Per CWS regulations, the applicant is required to submit an erosion control plan for City review and approval prior to issuance of City permits. See Condition 27 of the director's decision. In addition, the applicant is required to obtain a National Pollutant Discharge Elimination System (NPDES) erosion control permit prior to construction. Proper implementation of the plan will ensure that the proposed development will not cause sedimentation and erosion impacts on adjacent properties. The applicant will design the erosion control measures as necessary to control erosion based on the actual construction methods and season. Approved erosion control measures may include planting or other methods of stabilizing exposed soils. However the revegetation requirements of 18.775.070.C.4 are inapplicable, because there are no sensitive lands on or near the sites discussed above. The applicant is required to comply with the revegetation requirements of TDC 18.745.060 after construction is completed. CWS can require additional erosion controls if necessary to accommodate wet weather, steep slopes or other unique conditions. The hearings officer finds that it is feasible to comply with CWS regulations. There is no substantial evidence to the contrary.

14. The appellant appears to argue that the proposed development violates TDC 18.430.010.A.5 and solar access requirements. See p 2 of Tab 6 of the appellant's hearing notebook.

a. As discussed above, TDC 18.430.010 is a purpose statement, not an approval criterion. The goals of providing adequate light and air and preventing overcrowding of land set out in this provision are achieved through compliance with the applicable development standards, including regulations on building height, setback, lot coverage etc.

b. The City no longer regulates solar access. TMC 2.08.100(a)(2)(F) authorizes the planning commission to "recommend and make suggestions to the City Council and to other public authorities concerning...protection and assurance of solar access" among other things. However the City's solar access ordinance, TDC 18.88, was repealed and is no longer in effect. See the "Legislative Notes" attached to the Table of Contents of the development code, Title 18 of the TMC.

15. Even if the subdivision will have an adverse impact on property value --- and there is no substantial evidence to that effect in the record --- protection of property value is not relevant to the applicable State or City standards. The hearings officer must base the decision on the laws of the City of Tigard and the State of Oregon.

16. The hearings officer has no authority to require that the applicant develop a "comprehensive temporary fire suppression plan" prior to disconnecting the existing fire hydrant near the site. The hearings officer's jurisdiction is limited to review of

development proposals to determine compliance with the applicable development regulations. The hearings officer has no authority to regulate this type of construction issue. As the City noted, TVF&R must review and approve the applicant's construction plans before the City will issue the required permits. TVF&R can require the applicant to prepare a "comprehensive temporary fire suppression plan" if TVF&R finds that it is required by TVF&R regulations or that it is necessary based on the expertise and experience of TVF&R staff. As discussed above, neighboring residents have no right to review and approve the applicant's construction plans. TVF&R and City staff's review of the applicant's plans provides adequate protection of the public interest. However the applicant's construction plans are public records that the appellant may review. TMC 18.110.020 and 18.360.010, cited by the appellant, are purpose statements that are implemented through compliance with subsequent approval criteria.

a. The appellant expressed concern that the relocated fire hydrant could interfere with the required clear vision area on his property. As discussed above, the applicant is only required to maintain clear vision areas for existing offsite intersections, including the appellant's driveway. The applicant should be required to maintain the clear vision areas free from all obstructions, including the relocated fire hydrant.

b. The hearings officer cannot require that the City and/or TVF&R inspect and test the fire hydrant and the associated valves and connections. However the hearings officer assumes that these agencies will do so as part of their normal construction inspection processes and ensure that all fire suppression facilities comply with applicable regulations. The expertise and experience of agency staff is sufficient to protect the public health and safety. These agencies are not required to provide copies of their inspections to surrounding neighbors. However any relevant documents are presumably public records that the appellant and other interested parties may review upon request.

17. The hearings officer finds that the applicant is not required to maintain existing water volume and pressure received by adjacent residents. The applicant is only required to demonstrate that water is available to the site at sufficient pressure and volume to meet fire and domestic flow requirements. Existing residents have no inherent right to maintain existing service levels in excess of minimum requirements. Such a requirement could preclude the planned extension of public services within the City. Water volume and pressure can be expected to fluctuate to some extent as new development occurs and the existing infrastructure is extended and expanded. The City must review and approve any extension of the public water lines to serve the proposed development. TDC 18.810.150, .160 and .170. This is expressly required by condition 24 of the manager's decision.

18. The hearings officer finds that the applicant is required to extend the proposed street through the site to comply with the street extension and connectivity standards of TDC 18.810.030.H.³ The required through street connects the existing streets in the area, enhancing the connectivity of the existing street network and reducing travel distances for certain trips generated by the proposed development, enhancing compliance with TDC 18.810.030.H and the City's connectivity goals.⁴ Through street connections allow traffic to disperse onto multiple streets, reducing traffic volumes and congestion on individual streets in the area and enhancing emergency access.

a. The appellant and other area residents argued that the proposed through street will attract a significant amount of cut-through traffic. However there is no substantial evidence to that effect. The existing street system south of the site provides a number of cut-through opportunities; SW Inez, Murdock and Lady Marion Streets all provide through connections between SW 103rd and 100th Avenues. However there is no substantial evidence that these streets attract a significant amount of cut-through traffic. There is no evidence that the "S" curves on the section of 100th Avenue south of the site cause sufficient delays to discourage cut-through traffic on these existing streets.

³ TDC 18.810.030.H provides:

1. Full street connections with spacing of no more than 530 feet between connections is required except where prevented by barriers such as topography, railroads, freeways, pre-existing developments, lease provisions, easements, covenants or other restrictions existing prior to May 1, 1995 which preclude street connections. A full street connection may also be exempted due to a regulated water feature if regulations would not permit construction.
2. All local, neighborhood routes and collector streets which abut a development site shall be extended within the site to provide through circulation when not precluded by environmental or topographical constraints, existing development patterns or strict adherence to other standards in this code. A street connection or extension is considered precluded when it is not possible to redesign or reconfigure the street pattern to provide required extensions. Land is considered topographically constrained if the slope is greater than 15% for a distance of 250 feet or more. In the case of environmental or topographical constraints, the mere presence of a constraint is not sufficient to show that a street connection is not possible. The applicant must show why the constraint precludes some reasonable street connection.
3. Proposed street or street extensions shall be located to provide direct access to existing or planned transit stops, commercial services, and other neighborhood facilities, such as schools, shopping areas and parks.
4. All developments should provide an internal network of connecting streets that provide short, direct travel routes and minimize travel distances within the development.

TDC 18.810.030.D.2 provides:

Where the location of a street is not shown in an approved street plan, the arrangement of streets in a development shall either:

- a. Provide for the continuation or appropriate projection of existing streets in the surrounding areas, or
- b. Conform to a plan adopted by the Commission, if it is impractical to conform to existing street patterns because of particular topographical or other existing conditions of the land. Such a plan shall be based on the type of land use to be served, the volume of traffic, the capacity of adjoining streets and the need for public convenience and safety.

⁴ These "goals" are reflected in the street spacing and connectivity requirements of TDC 18.810.030.H, which implement the state Transportation Planning Rule.

b. The proposed development and through street connection will generate increased traffic on area streets. That increased traffic will be perceptible to area residents. However the City engineer determined that the additional traffic will not violate applicable approval criteria nor create a hazard. Although the existing pavement is relatively narrow in some places, it is more than adequate to accommodate the volume of traffic it is projected to carry and it is sufficient to accommodate two-way traffic. The accident history for the area does not reveal a disproportionate number of accidents.

i. Neighbors testified that the traffic from the development and the proposed through street will exacerbate existing hazards. Neighbors' observations of existing traffic is substantial evidence. But their opinions that cut-through traffic generated by the proposed street connection will make the streets unsafe is not supported by substantial evidence, because they are not experts in such matters. The fears of a substantial increase in traffic are reasonable; no one wants more traffic through their neighborhood. But fear is not evidence, even if reasonable. The hearings officer finds that the expert testimony by the traffic engineers for the applicant and the City is more persuasive than neighbors' testimony about the impact of traffic resulting from the connection of streets.

ii. The hearings officer acknowledges that more traffic on area streets creates a proportionally higher risk for drivers, pedestrians and bicyclists. In response reasonably prudent people exercise more care personally and with family members. Those risks are consistent with the location of the site in the urban area where City plans call for the sort of development being proposed. Although the hearings officer assumes that reasonably prudent drivers will observe the posted speed limits in the area and will further reduce their speed to accommodate sharp curves, narrow pavement and other conditions on area roads, some percentage of the new traffic will speed. However there is no evidence that the use proposed in this application will contribute a disproportionate share of imprudent drivers.

c. The hearings officer has no authority to require that the applicant install traffic calming measures as a condition of approval of this subdivision. TDC 18.810.030.AB only authorizes the installation of traffic calming measures "when, in the opinion of the City Engineer, the proposed development will create a negative traffic condition on existing neighborhood streets, such as excessive speeding..." The City engineer made no such finding in this case. Ms. McMillan expressly concluded that traffic calming measures are not warranted at this stage of review. The City can continue to monitor traffic conditions in the area and implement traffic calming measures if the City engineer determines they are warranted based on actual traffic conditions that may occur with the proposed development and through street connection. This method allows the City to design traffic calming measures based on actual traffic conditions and avoids the installation of unnecessary traffic calming measures, which inconvenience residents and delay emergency vehicles without providing any benefits.

d. The hearings officer finds that it is feasible to extend the street through the site, based on Ms. McMillan's expert testimony. If necessary, the applicant can construct retaining walls adjacent to the parcel abutting the northwest corner of the site as shown in the plans submitted at the hearing. The applicant also can eliminate the planter strips and construct a curb-tight sidewalk, subject to City approval, in order to reduce the need for retaining walls. As discussed in the manager's decision, the applicant can install a median to restrict the 103rd Avenue access to right-in/right-out only movements if necessary to overcome sight distance constraints at this intersection.

i. Neighboring residents argued that the cost of constructing retaining walls and other improvements to accommodate the through street may constitute an unconstitutional taking in violation of the U.S. Supreme Court's holding in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). However the hearings officer finds that the neighbors have no standing to raise this issue, because the cost of the road extension does not prejudice their substantial rights. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995). The applicant did not appeal the manager's decision and therefore waived any right to raise the issue in this proceeding.

ii. The applicant requested the option of constructing a half-width street adjacent to the existing lot abutting the northwest corner of the site. TDC 18.810.030.K provides that such partial width streets are "generally not acceptable." However they may be approved "[w]hen it will be practical to require the improvement of the other half when the adjoining property developed." In this case the hearings officer finds that it is not practical to require construction of the northern half of the proposed half-width street section, because the abutting property at 14230 SW 103rd Avenue is too small to be further developed under existing zoning. Based on Mr. Faber's un rebutted testimony, the property at 14230 SW 103rd Avenue contains roughly 16,000 square feet and therefore cannot be further divided in compliance with the 10,000 square foot lot size requirement of the R-3.5 zone.

e. The applicant proposed to develop the through street as a "skinny street" consistent with TDC Figure 18.810.4.B. The Code allows the use of "skinny streets" in residential developments where the street will carry less than 1,000 vehicles per day. The hearings officer has no authority to prohibit the use of skinny streets. TDC 18.810.030.E requires that streets rights of way and roadway widths must comply with the minimum widths set out in Table 18.810.1. The subjective criteria in 18.810.030.E.1 only apply where the Code provides a range of right of way or street widths, such as Table 18.810.1 provides for arterial, collector and neighborhood streets. Table 18.810.1 does not provide a range of widths for local streets. Skinny streets are expressly allowed where the applicant demonstrates that the street will carry less than 1,000 vehicles per day.

i. The hearings officer finds that review of the required traffic flow plan and determination of whether the street will carry more than 1,000 vehicles per day requires the exercise of discretion to determine whether the proposed through street will comply with the applicable approval criteria for skinny streets. Therefore the City must provide notice and an opportunity for public comment prior to allowing the use of the skinny street standards. *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992). A condition of approval is warranted to that effect (condition #12).

ii. The appellant and other area residents argued that the applicant should be required to construct a wider street to accommodate vehicle, bicycle and pedestrian traffic as well as “kids playing in the street.” P 2 of Tab 9 of the appellant’s hearing notebook. The hearings officer finds that the skinny street option provides significant traffic calming effects, reducing travel speeds and discouraging cut-through traffic, based on Ms. McMillan’s expert testimony. On-street parking is allowed on both sides of skinny streets, leaving a single lane for through traffic and forcing drivers traveling in opposing directions to take turns passing between parked vehicles. The applicant will provide sidewalks on both sides of the through street, which will facilitate safe pedestrian travel through the site. The applicant is not required to design streets to accommodate playing children. The travel lanes of streets are designed and intended to carry vehicular traffic, not as a playground for children.

19. The appellant appears to argue that a traffic study is required pursuant to TDC 18.810.030.AC. However the hearings officer finds that the Code did not require a traffic impact study in this case because traffic generated by the proposed development will not meet or exceed the standards in TDC 18.810.030.AC.⁵

⁵ TDC 18.810.030.AC provides:

1. A traffic study shall be required for all new or expanded uses or developments under any of the following circumstances: requires a traffic study “for all new or expanded uses or developments under any of the following circumstances:

- a. When they generate a 10% or greater increase in existing traffic to high collision intersections identified by Washington County
- b. Trip generations from development onto the City street at the point of access and the existing ADT fall within the following ranges:

Existing ADT	ADT to be added by development
0-3,000 vpd	2,000 vpd
3,001-6,000 vpd	1,000 vpd
>6,000 vpd	500 vpd or more

- c. If any of the following issues become evident to the City engineer:
 - (1) High traffic volumes on the adjacent roadway that may affect movement into or out of the site
 - (2) Lack of existing left-turn lanes onto the adjacent roadway at the proposed access drive(s)
 - (3) Inadequate horizontal or vertical sight distance at access points
 - (4) The proximity of the proposed access to other existing drives or intersections is a potential hazard
 - (5) The proposal requires a conditional use permit or involves a drive-through operation
 - (6) The proposed development may result in excessive traffic volumes on adjacent local streets.
- 2. In addition, a traffic study may be required for all new or expanded uses or developments under any of the following circumstances:
 - a. when the site is within 500 feet of an ODOT facility and/or

20. The hearings officer finds that condition 32 should be modified to clarify where traffic control signs are required.

D. CONCLUSIONS

Based on the findings adopted and incorporated herein, the hearings officer concludes that the appeal should be denied, because the applicant sustained the burden of proof that the proposed subdivision does or will comply with the applicable approval standards of the Tigard Community Development Code, subject to conditions adopted by the manager, and the appellant failed to provide substantial evidence or evidence of equal or greater probative value to the contrary and/or failed to persuade the hearings officer that the application violates the applicable approval standards based on such evidence. Therefore the hearings officer should affirm the manager's decision with minor modifications.

E. DECISION

In recognition of the findings and conclusions contained and incorporated herein, the hearings officer hereby denies the appeal, affirms the decision of the planning manager and approves SUB 2007-00003 (Foster Estates) subject to the following conditions of approval:

CONDITIONS OF APPROVAL

THE FOLLOWING CONDITIONS SHALL BE SATISFIED PRIOR TO COMMENCING ANY ON-SITE IMPROVEMENTS, INCLUDING TREE REMOVAL, CLEARING, GRADING, EXCAVATION, AND/OR FILL:

The applicant shall submit a cover letter along with any supporting documents and/or plans that address the following requirements to the CURRENT PLANNING DIVISION, ATTN: Emily Eng 503-718-2712. The cover letter shall clearly identify where in the submittal the required information is found:

1. Prior to commencing any onsite improvements, the applicant shall submit construction drawings to both Planning and Engineering that include:
 - A. A construction sequence including installation and removal of tree protection devices, clearing, grading, and paving;
 - B. A note prohibiting equipment, vehicles, machinery, grading, dumping, storage, burial of debris, or any other construction-related activities in any tree protection zone; and
 - C. A note stating that only those trees identified on the approved Tree Removal plan are authorized for removal by this report. Notwithstanding any other provision of this title, any party found to be in violation of this chapter [18.790] pursuant to Chapter 1.16 of the Tigard Municipal Code shall be subject to a civil penalty of up to \$500 and shall be required to remedy any damage caused by the violation. Such remediation shall

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- b. trip generation from a development adds 300 or more vehicle trips per day to an ODOT facility and/or
 - c. trip generation from a development adds 50 or more peak hour trips to an ODOT facility.
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include, but not be limited to, the following: 1) Replacement of unlawfully removed or damaged trees in accordance with Section 18.790.060.D of the Tigard Development Code; and 2) Payment of an additional civil penalty representing the estimated value of any unlawfully removed or damaged tree, as determined using the most current International Society of Arboriculture's Guide for Plant Appraisal.

2. Prior to commencing any onsite improvements, the applicant shall install tree protection fencing as directed by the project arborist to protect the trees to be retained. The applicant shall call for an inspection and allow access by the City Arborist or Current Planning for the purpose of monitoring the tree protection to verify that the tree protection measures are performing adequately. Erosion control fencing shall not substitute for tree protection fencing.
3. Prior to commencing any onsite improvements, the applicant shall submit a copy of a contract that ensures that the Project Arborist submits written reports to the City Arborist or Current Planning, at least once every two weeks, from initial tree protection zone (TPZ) fencing installation through building construction. The reports shall include the condition and location of the tree protection fencing and whether any changes occurred. If the amount of TPZ was reduced then the Project Arborist shall justify why the fencing was moved, and shall certify that the construction activities to the trees did not adversely impact the overall, long-term health and stability of the tree(s). Failure to follow the plan, or maintain tree protection fencing in the designated locations shall be grounds for immediate suspension of work on the site until remediation measures and/or civil citations can be processed.
4. Prior to commencing any onsite improvements, the applicant shall submit a cash assurance (letter of credit or cash deposit) for the equivalent value of mitigation required (140 caliper inches times \$125 per caliper inch = \$17,500). Any trees successfully planted on or off-site, in accordance with an approved Tree Mitigation plan and TDC 18.790.060.D, will be credited against the assurance for two years following final plat approval. After such time, the applicant shall pay the remaining value of the assurance as a fee in-lieu of planting.
5. Prior to commencing any onsite improvements, the applicant shall submit a summary of the biweekly arborist reports prepared by the Project Arborist. The summary shall document the effect of the approved tree protection plan, account for any violations, and certify the condition of protected trees.

The applicant shall submit a cover letter along with any supporting documents and/or plans that address the following requirements to the ENGINEERING DEPARTMENT, ATTN: KIM MCMILLAN 503-718-2642. The cover letter shall clearly identify where in the submittal the required information is found:

6. Prior to commencing onsite improvements, a Public Facility Improvement (PFI) permit is required for this project to cover street construction and any other work in the public right-of-way. Six (6) sets of detailed public improvement plans shall be submitted for review to the Engineering Department. NOTE: these plans are in addition to any drawings required by the Building Division and should only include sheets relevant to public improvements. Public Facility Improvement (PFI) permit plans shall conform to City of Tigard Public Improvement Design Standards, which are available at City Hall and the City's web page (www.tigard-or.gov).

7. The PFI permit plan submittal shall include the exact legal name, address and telephone number of the individual or corporate entity who will be designated as the "Permittee", and who will provide the financial assurance for the public improvements. For example, specify if the entity is a corporation, limited partnership, LLC, etc. Also specify the state within which the entity is incorporated and provide the name of the corporate contact person. Failure to provide accurate information to the Engineering Department will delay processing of project documents.
8. The applicant shall provide a construction vehicle access and parking plan for approval by the City Engineer. The purpose of this plan is for parking and traffic control during the public improvement construction phase.
9. The City Engineer may determine the necessity for, and require submittal and approval of, a construction access and parking plan for the home building phase. If the City Engineer deems such a plan necessary, the applicant shall provide the plan prior to issuance of building permits.
10. The applicant shall submit construction plans to the Engineering Department as a part of the Public Facility Improvement permit, which indicate that they will construct a half-street improvement along the frontage of 100th Avenue. The improvements adjacent to this site shall include:
 - A. City standard pavement section for a local street from curb to centerline equal to 16 feet;
 - B. pavement tapers needed to tie the new improvement back into the existing edge of pavement shall be built beyond the site frontage;
 - C. pavement widening to 24 feet from project access to McDonald street or a point where existing pavement is 24 feet wide, whichever is less (if applicable);
 - D. concrete curb, or curb and gutter as needed;
 - E. storm drainage, including any off-site storm drainage necessary to convey surface and/or subsurface runoff;
 - F. 5 foot concrete sidewalk with a 5 foot planter strip;
 - G. street trees in the planter strip spaced per TDC requirements;
 - H. street striping;
 - I. streetlight layout by applicant's engineer, to be approved by City Engineer;
 - J. underground utilities;
 - K. street signs (if applicable);
 - L. driveway apron (if applicable); and
 - M. adjustments in vertical and/or horizontal alignment to construct SW 100th Avenue in a safe manner, as approved by the Engineering Department.
11. The applicant shall submit construction plans to the Engineering Department as a part of the Public Facility Improvement permit, which indicate that they will construct a half-street improvement along the frontage of 103rd Avenue. The improvements adjacent to this site shall include:
 - A. City standard pavement section for a local street from curb to centerline equal to 16 feet;
 - B. pavement tapers needed to tie the new improvement back into the existing edge of pavement shall be built beyond the site frontage;
 - C. pavement widening to 24 feet from project access to McDonald street or a point where existing pavement is 24 feet wide, whichever is less (if applicable);
 - D. concrete curb, or curb and gutter as needed;
 - E. storm drainage, including any off-site storm drainage necessary to convey surface and/or subsurface runoff;

- F. 5 foot concrete sidewalk with a 5 foot planter strip;
 - G. street trees in the planter strip spaced per TDC requirements;
 - H. street striping;
 - I. streetlight layout by applicant's engineer, to be approved by City Engineer;
 - J. underground utilities;
 - K. street signs (if applicable);
 - L. driveway apron (if applicable)
 - M. centerline median for restricted right-turn movements (if applicable); and
 - N. adjustments in vertical and/or horizontal alignment to construct SW 103rd Avenue in a safe manner, as approved by the Engineering Department.
12. The applicant's plans shall be revised to extend the east-west street from 100th Avenue to 103rd Avenue. The design of the through street shall comply with applicable Code criteria or modified by the City engineer through applicable road modification or adjustment procedures. The City shall review any proposal for construction of a "skinny street" pursuant to TDC Figure 18.810.4.B through at least a Type II process to provide for public review and comment on the required traffic flow plan.
 13. The applicant's engineer shall submit additional information regarding sight distance and stopping sight distance to the north from the access at 103rd Avenue. If inadequate, the applicant's plans shall be revised to provide a centerline, raised median in order to provide a right-turn movement only at this intersection.
 14. A profile of 100th Avenue shall be required, extending 300 feet either side of the subject site showing the existing grade and proposed future grade.
 15. A profile of 103rd Avenue shall be required, extending 300 feet either side of the subject site showing the existing grade and proposed future grade.
 16. The applicant's Public Facility Improvement permit construction drawings for the east-west street shall indicate that full width street improvements, including traffic control devices, mailbox clusters, concrete sidewalks, driveway aprons, curbs, asphaltic concrete pavement, sanitary sewers, storm drainage, street trees, streetlights, and underground utilities shall be installed within the interior subdivision streets. Improvements shall be designed and constructed to local street standards, Figure 18.810.4.B.
 17. The applicant's engineer shall submit a traffic flow plan and revised vehicle per day count per listed criteria under Figure 18.810.4.B, for approval prior to issuance of permits.
 18. The applicant's engineer shall obtain the City CIP's sewer design for the sewer main extension in 100th Avenue. This plan shall be incorporated into the design for this project and the main from the existing manhole in 100th Avenue to the proposed manhole at the intersection of 100th Avenue and the proposed east-west street shall be constructed per the CIP plan.
 19. The applicant's plans shall be revised to provide sanitary sewer, per Clean Water Services (CWS) standards, to the adjacent un-served properties, TL 2S111BC01400, TL 2S111BC01500 and TL 2S111BC01600. CWS requires any lines crossing property lines to be public lines.
 20. The applicant shall connect TL 2S111BB00800 to the public sewer.
 21. The applicant shall connect TL 2S111BB00800 to the public storm sewer.

22. The applicant's plans shall be revised to provide a direct connection to the public storm sewer for the proposed wall drains in lots 1 & 2 and lots 6 & 7, per CWS comments.
23. The applicant shall place the existing overhead utility lines along SW 100th Avenue underground as a part of this project. A fee-in-lieu of undergrounding must be requested in writing and approved by the City Engineer.
24. Any extension of public water lines shall be shown on the proposed Public Facility Improvement (PFI) permit construction drawings and shall be reviewed and approved by the City's Water Department, as a part of the Engineering Department plan review. NOTE: An estimated 12% of the water system costs must be on deposit with the Water Department prior to approval of the PFI permit plans from the Engineering Department and construction of public water lines.
25. The applicant shall work with TVFR to ensure adequate protection of the subdivision.
26. Final design plans and calculations for the proposed public water quality/detention facility shall be submitted to the Engineering Department (Kim McMillan) as a part of the Public Facility Improvement plans. Included with the plans shall be a proposed landscape plan to be approved by the City Engineer. The proposed facility shall be dedicated in a tract to the City of Tigard on the final plat. As a part of the improvement plans submittal, the applicant shall submit an Operations and Maintenance Manual for the proposed facility for approval by the Maintenance Services Director. The facility shall be maintained by the developer for a three-year period from the conditional acceptance of the public improvements. A written evaluation of the operation and maintenance shall be submitted and approved prior to acceptance for maintenance by the City. Once the three-year maintenance period is completed, the City will inspect the facility and make note of any problems that have arisen and require them to be resolved before the City will take over maintenance of the facility. In addition, the City will not take over maintenance of the facility unless 80 percent of the landscaping is established and healthy. If at any time during the maintenance period, the landscaping falls below the 80 percent level, the developer shall immediately reinstall all deficient planting at the next appropriate planting opportunity.
27. An erosion control plan shall be provided as part of the Public Facility Improvement (PFI) permit drawings. The plan shall conform to the "Erosion Prevention and Sediment Control Design and Planning Manual, February 2003 edition."
28. A final grading plan shall be submitted showing the existing and proposed contours. The plan shall detail the provisions for surface drainage of all lots, and show that they will be graded to insure that surface drainage is directed to the street or a public storm drainage system approved by the Engineering Department. For situations where the back portions of lots drain away from a street and toward adjacent lots, appropriate private storm drainage lines shall be provided to sufficiently contain and convey runoff from each lot.
29. The applicant shall obtain a 1200-C General Permit pursuant to ORS 468.740 and the Federal Clean Water Act.
30. The applicant's engineer shall submit preliminary stopping sight distance certification and sight distance certification from 15 feet back from the edge of the through travel lane for the access at 103rd Avenue looking north.

31. The applicant shall trim vegetation and grade as needed within the right-of-way (ROW) along 103rd Avenue to the north of the proposed access in order to improve sight distance.
32. The applicant's plans shall be revised to provide "STOP AHEAD" and "STOP" signs on the north/westbound and south/eastbound legs of 100th Avenue. The plans shall still indicate the installation of a "STOP" sign on the eastbound access onto 100th Avenue from the development.

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED
PRIOR TO APPROVAL OF THE FINAL PLAT:**

The applicant shall submit a cover letter along with any supporting documents and/or plans that address the following requirements to the CURRENT PLANNING DIVISION, ATTN: Emily Eng 503-718-2712. The cover letter shall clearly identify where in the submittal the required information is found:

33. Prior to approval of the final plat, the applicant shall provide clear vision triangles for the intersection of "A" Street and SW 103rd Avenue and the intersection of the existing driveway and SW 100th Avenue on tax lot 500 north of the site to the extent the clear vision triangle extends onto the site. If clear vision cannot be met for this intersection, the applicant shall submit an application for a Variance to the vision clearance requirements.
34. Prior to approval of the final plat, the applicant shall include a street tree plan with construction plans, indicating the species of the trees. Species shall be chosen from the City of Tigard Street Tree List and spaced per standards in Section 18.745.040.C.2. The applicant shall submit one copy of the street tree plan to Planning and include one copy in the construction drawings to be submitted to Engineering.
35. Prior to approval of the final plat, the applicant shall revise lot dimensions (including frontages and lot areas) in accordance with the required through-street.

The applicant shall submit a cover letter along with any supporting documents and/or plans that address the following requirements to the ENGINEERING DEPARTMENT, ATTN: KIM MCMILLAN 503-718-2642. The cover letter shall clearly identify where in the submittal the required information is found:

36. Prior to final plat approval, the applicant shall pay the addressing fee. (STAFF CONTACT: Bethany Stewart, Engineering).
37. The applicant's final plat shall contain State Plane Coordinates on two monuments with a tie to the City's global positioning system (GPS) geodetic control network (GC 22) as recorded in Washington County survey records. These monuments shall be on the same line and shall be of the same precision as required for the subdivision plat boundary. Along with the coordinates, the plat shall contain the scale factor to convert ground measurements to grid measurements and the angle from north to grid north. These coordinates can be established by:
 - ◆ GPS tie networked to the City's GPS survey.
 - ◆ By random traverse using conventional surveying methods.

38. Final Plat Application Submission Requirements:
- A. Submit for City review four (4) paper copies of the final plat prepared by a land surveyor licensed to practice in Oregon, and necessary data or narrative.
 - B. Attach a check in the amount of the current final plat review fee (Contact Planning/Engineering Permit Technicians, at (503) 639-4171, ext. 2421).
 - C. The final plat and data or narrative shall be drawn to the minimum standards set forth by the Oregon Revised Statutes (ORS 92.05), Washington County, and by the City of Tigard.
 - D. The right-of-way dedication for 100th and 103rd Avenues, providing 27 feet from centerline, shall be made on the final plat.
 - E. **NOTE:** Washington County will not begin their review of the final plat until they receive notice from the Engineering Department indicating that the City has reviewed the final plat and submitted comments to the applicant's surveyor.
 - F. After the City and County have reviewed the final plat, submit two mylar copies of the final plat for City Engineer signature (for partitions), or City Engineer and Community Development Director signatures (for subdivisions).

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED
PRIOR TO ISSUANCE OF BUILDING PERMITS:**

The applicant shall submit a cover letter along with any supporting documents and/or plans that address the following requirements to the CURRENT PLANNING DIVISION, ATTN: Emily Eng 503-718-2712. The cover letter shall clearly identify where in the submittal the required information is found:

39. Prior to issuance of building permits, the applicant (developer or builder) shall:
- A. Submit site plan drawings showing the accurate location of the trees that were preserved, the location of tree protection fencing, and the location of mitigation trees, if any. Attach copies of the approved Tree Protection and Mitigation Plans.
 - B. Submit a statement and signature of approval from a certified arborist regarding the siting and construction techniques to be employed in building the house with respect to any protected trees on site.
 - C. Install required tree protection fencing as specified by the project arborist and call for an inspection by the City Arborist.
 - D. Applicant shall submit biweekly reports, prepared by a certified arborist, through final inspection documenting the status of required tree protection fencing.
40. Prior to issuance of building permits, the applicant shall record a deed restriction to the effect that any existing tree greater than 12 inches diameter may be removed only if the tree dies or is hazardous according to a certified arborist. The deed restriction may be removed or will be considered invalid if a tree preserved in accordance with this decision should either die or be removed as a hazardous tree.
41. Prior to the issuance of building permits, the developer shall sign a copy of the City's sign compliance agreement.

The applicant shall submit a cover letter along with any supporting documents and/or plans that address the following requirements to the ENGINEERING DIVISION, ATTN: Kim McMillan 503-718-2642. The cover letter shall clearly identify where in the submittal the required information is found:

42. Prior to issuance of building permits, the applicant shall provide the Engineering Department with a “photomylar” copy of the recorded final plat.
43. Prior to issuance of building permits, the applicant shall provide the City with as-built drawings of the public improvements as follows: 1) 3 mil mylar, 2) a diskette of the as-builts in “DWG” format, if available; otherwise “DXF” will be acceptable, and 3) the as-built drawings shall be tied to the City’s GPS network. The applicant’s engineer shall provide the City with an electronic file with points for each structure (manholes, catch basins, water valves, hydrants and other water system features) in the development, and their respective X and Y State Plane Coordinates, referenced to NAD 83 (91).
44. Any necessary off-site utility easements shall be the responsibility of the applicant to obtain and shall be submitted to and accepted by the City prior to issuance of a building permit.
45. If power is taken from 103rd Avenue the undergrounding fee shall be calculated by the frontage of the site that is parallel to the utility lines and will be \$35.00 per lineal foot. The amount will be \$5,880.00 and it shall be paid prior to issuance of building permits.
46. If power is taken from 100th Avenue and the City Engineer has approved the fee-in-lieu the undergrounding fee shall be calculated by the frontage of the site that is parallel to the utility lines and will be \$35.00 per lineal foot. The amount will be \$5,565.00 and it shall be paid prior to issuance of building permits.
47. Upon completion of street improvements and prior to issuance of building permits, the applicant’s engineer shall submit final sight distance certification for the intersection of the east-west street with 100th and 103rd Avenues.

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED
PRIOR TO A FINAL INSPECTION**

The applicant shall submit a cover letter along with any supporting documents and/or plans that address the following requirements to the CURRENT PLANNING DIVISION, ATTN: Emily Eng 503-718-2712. The cover letter shall clearly identify where in the submittal the required information is found:

48. Prior to a final inspection, the applicant shall submit a final report by the Project Arborist certifying the health of protected trees. Tree protection measures may be removed and final inspection authorized upon review and approval by the City Arborist.
49. Prior to a final inspection, a member of the planning staff shall conduct a walk-through at the site to ensure that the development is consistent with this decision.

IN ADDITION, THE APPLICANT SHOULD BE AWARE OF THE FOLLOWING SECTIONS OF THE COMMUNITY DEVELOPMENT CODE; THIS IS NOT AN EXCLUSIVE LIST:

18.430.080 Improvement Agreement:

Before City approval is certified on the final plat, and before approved construction plans are issued by the City, the Subdivider shall:

1. Execute and file an agreement with the City Engineer specifying the period within which all required improvements and repairs shall be completed; and
2. Include in the agreement provisions that if such work is not completed within the period specified, the City may complete the work and recover the full cost and expenses from the subdivider.

The agreement shall stipulate improvement fees and deposits as may be required to be paid and may also provide for the construction of the improvements in stages and for the extension of time under specific conditions therein stated in the contract.

18.430.090 Bond:

As required by Section 18.430.080, the subdivider shall file with the agreement an assurance of performance supported by one of the following:

1. An irrevocable letter of credit executed by a financial institution authorized to transact business in the State of Oregon;
2. A surety bond executed by a surety company authorized to transact business in the State of Oregon which remains in force until the surety company is notified by the City in writing that it may be terminated; or
3. Cash.

The subdivider shall furnish to the City Engineer an itemized improvement estimate, certified by a registered civil engineer, to assist the City Engineer in calculating the amount of the performance assurance.

The subdivider shall not cause termination of nor allow expiration of said guarantee without having first secured written authorization from the City.

18.430.100 Filing and Recording:

Within 60 days of the City review and approval, the applicant shall submit the final plat to the County for signatures of County officials as required by ORS Chapter 92.

Upon final recording with the County, the applicant shall submit to the City a mylar copy of the recorded final plat.

18.430.070 Final Plat Application Submission Requirements:

Three copies of the subdivision plat prepared by a land surveyor licensed to practice in Oregon, and necessary data or narrative.

The subdivision plat and data or narrative shall be drawn to the minimum standards set forth by the Oregon Revised Statutes (ORS 92.05), Washington County, and by the City of Tigard.

STREET CENTERLINE MONUMENTATION SHALL BE PROVIDED AS FOLLOWS:

Centerline Monumentation

In accordance with Oregon Revised Statutes 92.060, subsection (2), the centerline of all street and roadway rights-of-way shall be monumented before the City accepts a street improvement.

The following centerline monuments shall be set:

1. All centerline-centerline intersection points;
2. All cul-de-sac center points; and
3. Curve points, beginning and ending points (PC's and PT's).

All centerline monuments shall be set during the first lift of pavement.

Monument Boxes Required

Monument boxes conforming to City standards will be required around all centerline intersection points, cul-de-sac center points, and curve points.

The tops of all monument boxes shall be set to finished pavement grade.

18.810 Street & Utility Improvement Standards:

18.810.120 Utilities

All utility lines including, but not limited to those required for electric, communication, lighting and cable television services and related facilities shall be placed underground, except for surface-mounted transformers, surface-mounted connection boxes, and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric lines operating at 50,000 volts or above.

18.810.130 Cash or Bond Required

All improvements installed by the subdivider shall be guaranteed as to workmanship and material for a period of one year following acceptance by the City.

Such guarantee shall be secured by cash deposit or bond in the amount of the value of the improvements as set by the City Engineer.

The cash or bond shall comply with the terms and conditions of Section 18.810.180.

18.810.150 Installation Prerequisite

No land division improvements, including sanitary sewers, storm sewers, streets, sidewalks, curbs, lighting or other requirements shall be undertaken except after the plans therefore have been approved by the City, permit fee paid and permit issued.

18.810.180 Notice to City Required

Work shall not begin until the City has been notified in advance.

If work is discontinued for any reason, it shall not be resumed until the City is notified.

18.810.200 Engineer's Certification

The land divider's engineer shall provide written certification of a form provided by the City that all improvements, workmanship and materials are in accord with current and standard engineering and construction practices, and are of high grade, prior to the City acceptance of the subdivision's improvements or any portion thereof for operation and maintenance.

18.785 Temporary Uses:

18.785.040 Temporary Sales Office or Model Home

By means of a Type I procedure, as governed by Section 18.390.030, the Director may approve, approve with conditions or deny the use of any real property within the City as a temporary sales office, offices for the purpose of facilitating the sale of real property, or model home in any subdivision or tract of land within this City, but for no other purpose, provided the following criteria are satisfied:

The applicant shall apply for a temporary use permit for a temporary sales office or model home at the appropriate time. The temporary use permit shall be valid for a period of 1 year.

**THIS APPROVAL SHALL BE VALID FOR 18 MONTHS
FROM THE EFFECTIVE DATE OF THIS DECISION.**

DATED this 14th day of September 2007



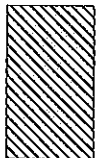
Joe Turner, Esq., AICP

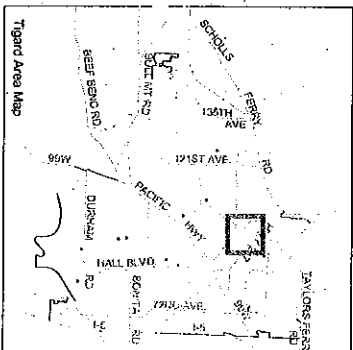
City of Tigard Land Use Hearings Officer

VICINITY MAP

SUB2007-00003
VAR2007-00013

FOSTER ESTATES
SUBDIVISION

LEGEND:
 SUBJECT SITE



Information on this map is for general location only and should be verified with the Development Services Division.

Tigard, OR 97228
(503) 539-4171
<http://www.ci.tigard.or.us>

