BEFORE THE CITY COUNCIL
OF THE CITY OF LAKE OSWEGO

DEVELOPMENT REVIEW PERMIT TO
CONSTRUCT A MIXED USE PROJECT WITH
RETAIL AND RESIDENTIAL UNITS

140 A Avenue

LU 13-0046-1852
EVERGREEN GROUP, LLC

FINDINGS, CONCLUSIONS & ORDER

NATURE OF PROCEEDINGS

This is an appeal of a decision by the Development Review Commission denying a request for approval of a Development Review Permit to construct a mixed use project, including 201 residential units, six live/work units and 36,500 square feet of commercial use in three buildings, with the following exceptions to the Community Development Code (LOC Chapter 50) standards:

- Residential uses on the ground floor in EC zone [LOC 50.03.003.1.e.ii]
- Reduced amount of storefront glazing [LOC 50.05.004.6.b.i]
- Retail parking entrance on 1st Street [LOC 50.05.004.10.b]
- Shared private/public parking provided on-site [LOC 50.06.002]

The applicant also requests approval to remove 25 trees to accommodate the development.

The site is located at 140 A Avenue (Tax Lot 8300 of Tax Map 21E).

HEARINGS

The Development Review Commission held public hearings and considered this application at its meetings of January 22, January 29, and February 19, 2014 (deliberation). On February 19, 2014, prior to the Commission issuing a decision, the applicant requested a continuance in order to return with a revised design. The Commission held a public hearing and considered the revised design at its meetings of July 21, July 24, and July 30, 2014.
(deliberation), and adopted Findings, Conclusions and Order denying the application on August 18, 2014.

On August 27, 2014, the applicant/owner, Eugene Wizer, and the applicant's representative, Evergreen Group, LLC, filed a Notice of Intent to Appeal the Commission’s decision.

The City Council held a public hearing on the appeal on September 22, 23 and 24, 2014.

CRITERIA AND STANDARDS

A. City of Lake Oswego Community Development Code [Chapter LOC 50]:
   LOC 50.04.001.4 Commercial, Mixed Use and Industrial Zones
   LOC 50.05.004.1-12 Downtown Redevelopment District Design Standards
   LOC 50.06.002 Parking
   LOC 50.06.003.1 Access/Access Lanes (Flag Lots)
   LOC 50.06.003.2 On-Site Circulation - Driveways and Fire Access Roads
   LOC 50.06.003.3 On-Site Circulation – Bikeways, Walkways and -Accessways
   LOC 50.06.003.5 Transit System
   LOC 50.06.004.1 Landscaping, Screening and Buffering
   LOC 50.06.004.2 Fences
   LOC 50.06.004.3 Lighting
   LOC 50.06.005 Park and Open Space Contributions
   LOC 50.06.006.1 Weak Foundation Soils
   LOC 50.06.006.3 Drainage
   LOC 50.06.008 Utilities
   LOC 50.07.003.1 Application for Development, Burden of Proof
   LOC 50.07.003.5 Conditions of Approval
   LOC 50.07.003.6 Effect of Decision
   LOC 50.07.003.7 Appeal of Minor Development Decisions
   LOC 50.07.003.11 Modification of Development Permits
   LOC 50.07.003.14 Review Criteria for Minor Development
   LOC 50.08.005 Downtown Redevelopment Design District Exceptions

B. City of Lake Oswego Streets and Sidewalks Code [LOC Chapter 42]:
   LOC 42.03 Street Design Standards

C. City of Lake Oswego Sign Code [LOC Chapter 47]:
   LOC 47.10.412 Permanent Signage Allowed in the EC Zone

D. City of Lake Oswego Tree Code [LOC Chapter 55]:
   LOC 55.02.010 – 55.02.135 Tree Removal

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FINDINGS AND REASONS

As findings supporting its decision, the City Council incorporates the July 11, 2014 Revised Staff Report, and the Applicant’s June 23, 2014 Code Evaluation Narrative (Exhibit F-25). The Council also incorporates the Development Review Commission findings in this matter, except for the findings relating to: (1) the requested exception from the ground floor residential use prohibition; (2) building siting and massing, and whether the definition of “village character,” or any element of that definition, is an approval criterion; and (3) the Commission’s conclusion. In the event of any inconsistency between the supplementary findings and conclusions herein and the incorporated materials, the matter herein controls.

Following are the supplementary findings and conclusions of the City Council:

Village Character

The City Council considered testimony, evidence and legal argument on the issue of how to apply the definition of village character in LOC 50.05.004.4 to the elements of the proposed development.

After considering all of the evidence and arguments, the Council finds that the definition of village character is not itself an approval criterion but instead a general statement of purpose that is specifically implemented through the clear village character standards found in Subsections 5, 6, 9 and 12 of LOC 50.005.004.

Specifically, Subsection 4 of the 50.05.004 contains a definition. That definition reads in total:

As used in this section, "village character" means a community of small-scale structures that appears and operates like a traditional small town. A village is typically composed of an assembly of smaller mixed used structures often centered on a square or other public space or gathering area, such as a body of water, a transportation route or a landmark building. Adherence to village character is not intended to require an historical reproduction of a turn of the century small town, but rather to encourage the development of a sophisticated
small city that is pedestrian friendly, creates a sense of community and attracts people to the downtown in the same manner and using similar design concepts as historic small towns and neighborhood centers.

Immediately following this definition subsection, the Code establishes specific requirements as to how an applicant can meet this general purpose of village character.

Based on this Code structure, the Council finds that the definition of village character in Subsection 4 of LOC 50.05.004 is not an approval standard. It is instead a general and aspirational purpose statement for the balance of the more specific Downtown Redevelopment Design District (DRDD) provisions. The general and aspirational purpose statement in the definition of village character is implemented through the specific approval criteria of Subsections 5, 6, 9 and 12 of Section 50.05.004. The text and the context of the Code are clear on this point. Subsection 4 establishes the general purpose for the whole of the Downtown Redevelopment Design District (DRDD) planning area and Subsections 5, 6, 9 and 12 contain the particular provisions for implementing the vision through specific approval criteria that apply to each individual development proposal.

Specifically, Subsection 5 reads: “Building siting and massing shall create a village character by compliance with the following requirements.” Subsection 6 states: “Building elements shall be designed to create a village character through compliance with the following requirements.” Subsection 9 states: “Parking shall be designed to provide adequate, but not excessive, space while preserving and enhancing the village character of Lake Oswego through compliance with the following criteria.” Subsection 12 states: “Street, sidewalk and alley design shall safely and efficiently provide for vehicular and pedestrian travel while enhancing village character through compliance with the following design standards.” (Emphases added.)

Each of these referenced standards contains a comprehensive list of approval standards that reflect the general definition and are read together, not in conflict with, the definition of village character. As an example, Subsection 5, Building Siting and Massing, ensures that complex massing, Lake Oswego Style design, roof forms, pedestrian amenities, height, stories,
entrances and street corners create village character. Subsection 6, Building Design, ensures again that the Lake Oswego Style is adhered to, that projects meet the village character standards for storefront appearance, and that the materials, ground floor and mixed use design also meets those village characteristics. Subsections 9 and 12 follow this same pattern. These are the same elements that are more generally described in the definition section but that are actually implemented through the applicable standards in Subsections 5, 6, 9 and 12.

This interpretation gives meaning to the definition as a general purpose statement and meaning to the balance of the DRDD as implementing standards for that purpose. We therefore specifically reverse the Development Review Commission’s interpretation of Section 4. That interpretation is inconsistent with the express text and context of the land use regulation at issue.

In response to the opposing arguments, we find that the Code was not drafted to create a conflict between the general description of village character in the definition, including the term “small-scale structure,” and the implementing standards for that definition in the balance of the DRDD provisions. The City Council therefore does not accept the argument that “small-scale” in the definition means something different than the specific scale criteria found in Subsections 5, 6, 9 and 12 of LOC 50.05.004. Even if we found that the term “small-scale” could be defined with a different meaning than the specific approval standards of Subsections 5, 6, 9 and 12, which we do not here, then we find that such a conflict is resolved by having the specific terms found in Subsections 5, 6, 9 and 12 supersede or control over the general, unspecific terms in the village character definition.

The Council finds that there is no conflict between the definition of Section 4 and the approval standards of Sections 5, 6, 9 and 12 and that “small-scale” in the definition has the same meaning as the scale components specifically regulated under Subsections 5, 6, 9 and 12. The Council also finds that the term “small-scale structure” is ambiguous and general on its own. This is particularly true when the entire phrase from the Subsection 4 definition is
included, which is a “community of small-scale structures.” One development does not result
in the construction of an entire community or the construction of a traditional small town.
These are broad, aspirational, purpose-like statements that are only achieved through multiple
projects over time. To achieve that result, the City has a Code that contains particular
regulations that further define and narrow how each individual project builds that village
character, that small scale, and that traditional small town over time. These criteria describe
and implement what the City means by the general term “village character.” The Code
appropriately qualifies and limits the general definition with the specific requirements of
Subsections 5, 6, 9 and 12.

Finally, the Council finds that interpreting the definition of village character to be a
separate criterion would violate of ORS 227.173(1), which provides:

Approval or denial of a discretionary permit application shall be based on
standards and criteria, which shall be set forth in the development ordinance
and which shall relate approval or denial of a discretionary permit application to
the development ordinance and to the comprehensive plan for the area in which
the development would occur and to the development ordinance and
comprehensive plan for the city as a whole.

Subsections 5, 6, 9 and 12 constitute reasonably clear standards and comply with
ORS 227.173(1). In particular, each section identifies the relevant standards that, if met, create
or maintain “village character.” In preparing a proposal, an applicant can understand, for
example, that “village character” is created by complying with the massing characteristics of the
Lake Oswego Style [ LOC 50.05.004(5)(a)], by complying with the established height limit [LOC
50.05.004(5)(e)], by orienting entrances towards pedestrian ways [LOC 50.05.004(5)(f)], by
using particular building materials [LOC 50.05.004(6)(c)], by complying with the corner design
standards [ LOC 50.05.004(6)(j)], and by meeting the established parking standards [LOC
50.05.004(9)(a)].
The City Council does not accept the argument that the City should instead rely on a term like “small-scale” that has no description as to how to meet it and no direction on how to measure it. Those measurements are specifically stated in Subsections 5, 6, 9 and 12 and control over the undefined term “small-scale.” The Council finds that using the term “small-scale” as a threshold to the Code standards or as its own independent approval standard would insert uncertainty into the Code and subject applications to the unknowable predilections of the decision-makers on whether a particular project is “small-scale” enough.

Lastly, much testimony was offered on how one defines a structure and whether multiple attached structures should be understood as many separate structures or as one combined structure. We find this discussion irrelevant under this proposal. The project contains three clearly separated structures, all of which meet the specific criteria of the Code and all of which are within the allowed height, density and building coverage for the EC zone and DRDD overlay district on the site.

The City Council relies on the applicable standards of Subsections 5, 6, 9 and 12 as it pertains to village character and finds that the application, as revised by the applicant in July 2014, satisfies all of the Code criteria for village character as further detailed in the incorporated materials.

**Exceptions (LOC 50.008.005)**

Under LOC 50.08.005, an applicant may request certain exceptions:

1. The reviewing authority may allow exceptions to LOC 50.05.004, Downtown Redevelopment Design District, and to other Lake Oswego Community Development Code provisions that are applicable to the downtown redevelopment design district without the need to obtain a formal variance in one or more of the following circumstances:
   
i. The applicant demonstrates that the physical characteristics of the site or existing structure make compliance impractical; or
ii. New buildings or substantial remodels may vary from the design requirements in LOC 50.05.004.5 through 50.05.004.7 if:

(1) The applicant demonstrates that the design should vary in order to create a complimentary relationship with an abutting viable existing structure that is not designed in the Lake Oswego Style; and

(2) The applicant demonstrates that the alternative design is exceptional in the quality of detailing, appearance or materials and/or creates a positive unique relationship to other structures, views or open space in a manner that accomplishes the purpose of the Downtown Redevelopment District Design Standards; or

iii. The applicant demonstrates that the alternative design accomplishes the purpose of the Urban Design Plan in a manner that is equal or superior to a project designed pursuant to this standard.

2. A request for exception under this provision may be processed as part of the underlying application or separately as a major development.

The applicant here requested four exceptions to the Code under subsection (1)(iii). The standard is therefore whether the alternative design accomplishes the purpose of the Urban Design Plan (“UDP”) in a manner that is equal or superior to a project designed pursuant to this standard.

The UDP applies only to the element of the proposal that requests an exception. The Council does not accept the arguments that the UDP is generally applicable as an approval criterion for the project. The only reference to the UDP in LOC Chapter 50 is in the exceptions section cited above. Otherwise the UDP is not listed as an approval criterion in the EC or DRDD standards. The Council finds that the UDP is applied only to the requested exceptions and only in the instance where the applicant requests an exception under subsection (1)(iii).

The focus for the exception is whether the alternative design of that element accomplishes the purpose of the UDP in a way that is at least equal to a project that meets the standard of that element without the exception. The UDP does not contain a single purpose
statement but instead contains multiple objectives including: support a high-density, compact shopping district, build a pedestrian network that supports the retail areas and encourage “high-density housing to provide greater intensity of use in the retail core.” The UDP and the DRDD specifically encourage high density residential uses on this site and within the four-block “compact shopping district.”

The Council does not accept the argument that suggests the UDP allows only commercial uses on this site or requires more commercial and less residential use. The EC zone and DRDD standards control the uses permitted on the site. Those regulations allow residential uses on the site as well as commercial uses and do not prescribe the proportion or percentage of those uses. The only exception to this is the area on the ground floor where the EC zone provides that residential uses are not allowed. LOC 50.03.003.1.e.ii. The applicant has requested an exception to the residential use prohibition in that area to permit the gym and library (accessory uses to the residential use) and a portion of the backs of the residential units that are actually permitted along Second Street.

The incorporated July 11, 2014 Revised Staff Report addresses the UDP and, as stated, the Council adopts by incorporation the findings that each of the four exceptions meets this exception criterion.

In addition to those incorporated findings, the Council specifically finds that the limited exception area for ground floor residential accomplishes the purpose of the UDP in a manner that is at least equal to a project that meets the standard.

The majority of the exception area will be in gym or library use or in a live/work configuration, with “work” (commercial use) on the ground floor and residential on the upper floors. Even if the use of a live/work unit is viewed as a single type of use, nevertheless the Council finds that the commercial portion of the live/work will be occurring on the ground floor and thus would meet the purposes of the UDP at least equally to a project that meets the
standard. Regardless of whether these live/work units qualify as residential or commercial uses, they meet the exception standard.

The commercial-like uses of the live/work units, the gym, and the library are the type of uses that would be permitted in a retail area. The only distinction here is that they are operating as accessory to a residential use and therefore are considered residential use. In form they are active uses and are therefore appropriate on the site in this location. The gym and library areas are active gathering areas, are similar in use to a commercial or public use and are offset by the area committed to commercial that is permitted to be residential along Second Street and the east-west corridor. Specifically, a surface parking lot for commercial uses would be permitted on the site where the gym, library, plaza and back doors of the residential units are located as well as the live-work units. The Council finds that the proposed uses are at least equal to a parking lot in serving the purpose of the UDP.

Substantial evidence was submitted into the record demonstrating that the amount of commercial use compared to residential use on the ground floor is consistent with the available transportation facilities and that adding even more retail or office would create excessive traffic trips that would negatively impact the system. Recognizing that there are two more blocks intended for this compact shopping district that have not been redeveloped, the balance of the residential and commercial ground floor uses on the Wizer block preserves remaining capacity for these other blocks to accommodate a share of the retail and office demand.

Thus, in this proposed development, the multiple purposes of the UDP are better served than a project designed to the standard. The proposed exception: (a) provides an appropriate balance of retail, office and housing on the ground floor in a mixed use form as directly encouraged by the UDP; and (2) at the same time preserves the City’s ability to develop all four blocks of the compact shopping district as anticipated by the UDP by preserving capacity in the transportation system to serve the remaining two blocks of the four-block district.
Lastly, the UDP states that it is a “guideline document” and illustrates “intent while the City retains the flexibility to respond to specific economic, market and functional circumstances that may arise during the life of the Plan.” (UDP at page 1). The Council finds that the proposed exceptions here are consistent with the purpose of the UDP stated through its multiple objectives and such exceptions are appropriate given the current economic, market and functional circumstances that have arisen between the time the plan was adopted in 1988 and the present.

Adding a Fourth Story – LOC 50.05.004.5.d.i

In addition to the findings and interpretation in the incorporated July 11, 2014 Revised Staff Report, the City Council adopts the following findings regarding the fourth story.

LOC 50.05.004.5.d.i provides:

i. A fourth story may be permitted subject the [sic] following:

(1) The fourth story is residential and is contained within a gabled or hipped roof;

(2) The site is sloping and the structure has three or fewer stories on the uphill side;

(3) The fourth story is significantly stepped back from the building plane created by the lower stories; or

(4) Fourth story design elements are used to break up the mass of a building, create visual interest and variety, hide mechanical equipment, define an entry or define a particular building’s function. Examples of such design elements include dormers, towers, turrets, clerestories, and similar features.

In 2012 the City reorganized its Code under Ordinance No. 2579. The following language is contained within that Ordinance:

Whereas, the reorganization, formatting, and consolidation of the Community Development Code, Solar Access and Historic Preservation chapters, and the
The incorporated Staff Report and referenced City Attorney opinion found at Exhibits D1 and F16 demonstrate that the Code prior to Ordinance No. 2579 contained the term “shall” in the first sentence of Subsection 50.05.004.5.d.i and now contains the term “may.” The argument that this scrivener’s error means that “may” is permissive rather than mandatory violates the quoted portion of Ordinance No. 2579. The clear text, context and intent of the Code was to retain the term “shall,” particularly where it is argued here by the opponents that the switch from “shall” to “may” leads to a substantive change in application of the Code. The Council notes that the switch was not a point of discussion in the annotated discussion versions of Ordinance No. 2579, and did not receive any comment by either the Planning Commission or City Council.

The Council finds that the correct interpretation of Ordinance No. 2579 and Section 50.05.005.5.d.i is that a fourth floor shall be allowed if one or more of the listed conditions are satisfied by the proposal.

Further, even if the term “may” as it is used in LOC 50.05.004.5.d.i is interpreted as permissive, we find that the project meets one or more of the conditions set out for the fourth story and it is therefore permitted under the Code. This section also contains the term “or” and therefore an applicant can meet one or more of the conditions for a fourth floor and satisfy the standard.

The Council has adopted the findings in the incorporated Staff Report demonstrating how the fourth story on this proposal meets one or more of the qualifying conditions for a fourth story under 50.05.004.5.d.i. Each of the fourth stories contain residential uses in a gabled or hipped roof, is significantly stepped back from the building plane created by the lower stories and the fourth story elements break up the mass of a building, create visual interest and variety, hide mechanical equipment, define an entry or define a particular
building’s function. The Council therefore finds that the fourth stories are appropriate in this case and are designed to meet the fourth story conditions set out in the Code.

The Council does not accept the arguments that the development has a fifth story based on an opponent’s understanding of the floor plans. The term “story” is defined by the Code.

Story: That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. *If the finished floor level directly above a basement or unused under-floor space is more than six ft. above grade for more than 50% of the total perimeter or is more than 12 ft. above grade at any point, such basement or unused under-floor space shall be considered as a story.*

LOC 50.10.003.2, “Story” (Emphasis added)

Based on that definition and the applicant’s revised drawings, each of the three buildings is a maximum of four stories and no building contains a fifth story.

**East End Redevelopment Plan**

Opposing submittals and testimony have cited portions of the description of potential redevelopment projects for the subject site contained in the East End Redevelopment Plan (EERP). The EERP is an urban renewal plan adopted by the Lake Oswego Redevelopment Agency. It is not a land use regulation of the City of Lake Oswego, and is not incorporated in the Code as a development standard. The City Council finds that nothing in the EERP constitutes approval criteria in these proceedings, including without limitation project descriptions stating that new or remodeled buildings on the subject site shall be designed to complement structures on adjacent Blocks 138 (Lake View Village) and 136 (townhouses), or in Millennium Plaza Park, or that development on the site should enhance the compact shopping district extending one block in all directions from the intersection of First Street and A Avenue.
One submittal in the record (Exhibit G-506) argues that LOC 50.11.005, which is Appendix E to the Community Development Code¹ (Commercial Land Use Policies), recognizes that the City will develop policies that will guide development in the East End Business District. The submittal then infers, without stating, that the UDP is one of those policies, and suggests that, because the UDP “acknowledges” that the “City” adopted the EERP, the applicant has the burden of establishing compliance with the element of the EERP project description that calls for enhancing the compact shopping district. The submittal also states in a separate section that the applicant must comply with the portion of the project description calling for designs to complement structures on certain adjacent properties.

This argument is incorrect on all counts. None of the Code criteria applicable to the subject proposal incorporates or refers to the provisions of Appendix E. In fact, the only remaining reference to Appendix E in the Code relates to floor area ratio for a portion of the Neighborhood Commercial Zone that includes the Grimm’s Corner area – not the subject property. See footnote 2, LOC 50.04.001.4, Table 50.04.001-14: Commercial, Mixed Use, and Industrial Dimensions. Secondly, even if Appendix E did apply to the current proposal, nothing establishes that the UDP was a policy adopted pursuant to Appendix E, or if it had been so adopted, that its provisions would therefore become approval criteria. And finally, nothing about an acknowledgement in the UDP that the Lake Oswego Redevelopment Agency has adopted the EERP, or about any other UDP references to the EERP, makes the EERP part of the UDP or makes the EERP urban renewal project descriptions into approval criteria.

The City Council finds that the provisions of, and project descriptions within, the EERP are not approval criteria for the subject application, either independently or through any

¹ Exhibit G-506 incorrectly characterized this as an appendix specifically to the Downtown Redevelopment Design District.
acknowledgement or reference to the EERP in the UDP. The Council also finds that the EERP is not incorporated in, or a part of, the UDP.

Parking

The City Council heard testimony on the nature and adequacy of parking. The Council finds that the project will provide parking in excess of what is required for both the commercial and residential portions of the development, and that the 27 on-street parking spaces that abut the site can be counted toward the residential parking requirement per LOC 50.05.004.9.a.vi.

The July 11, 2104, Staff Report, incorporated herein by reference as stated above, evaluates the square footage of each use and the number of units and concludes that the project contains parking in excess of code requirements. The minimum required retail and office parking is 132 spaces. The revised parking plan provides 155 spaces in the garage, or 23 spaces (18%) in excess of the requirement. Of these spaces, 15 will be compact spaces. The minimum required residential parking is 209 spaces. Of these spaces, 25% or 53 spaces must be available for visitor parking. The project provides a total of 302 spaces, which is 93 spaces or 44% more than the required minimum. As mentioned above, of these 302 spaces, 27 guest spaces are provided on-street in compliance with LOC 50.05.004.9.a.vi and 26 guest spaces are provided in the garage for a total of 53 visitor parking spaces.

The City Council finds that residential parking lifts are permitted parking spaces under the Code. Tandem parking in residential developments is permitted if the tandem parking space is owned by, leased or assigned to a single residential owner or tenant. LOC 50.06.002.2.a.iii. The Council finds that tandem parking includes vertically or horizontally stacked parking as long as the stacked or lift spaces are owned, leased or assigned to the same residential unit owner. The tandem or stacked spaces in the residential parking garage will be reserved for single residential unit owners or tenants in compliance with this criterion.

Mixed Use Residential

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With the addition of the live/work units, Building B is considered a mixed use residential building. The City Council finds that, to the extent Building B is a mixed use residential building, it meets the Building Design standard requiring definition of the residential portion of the structure through design elements such as balconies and decks on the residential floors, gable and hipped roofs, dormers set back above the second story, and masonry chimney construction. LOC 50.06.004.6.i.

**Storefront Appearance**

With the addition of the live/work units, Building B is also considered a mixed use building with ground floor commercial uses in the live/work units. The City Council finds that, by its terms, the Storefront Appearance standard (LOC 50.05.004.6.b) applies only to “streets and alleys” designed for pedestrian use, not to the internal passageways of the east-west pedestrian easement or the north-south passageway as neither is considered a street or alley under the Code.

**Sidewalk Design**

The Council heard testimony from the applicant that the varying building setbacks on Buildings A and C along A Avenue and 1st Street offer opportunities for sidewalk activities. LOC 50.05.004.12.d. The Council finds that the large retail plaza at the corner of A Avenue and 1st Street and the outdoor seating at the roundabout at the corner of 1st Street and Evergreen Road provide additional opportunities for pedestrian access and seating.

**A Avenue Entrance**

The Council also heard testimony from an opponent that the mixed residential/commercial entrance on A Avenue is not active space on A Avenue. The Council finds that the limited entrance area is active space. The A Avenue lobby is not only an entrance to the residential units above but is also access to the interior pathways of the site where the commercial uses are located. The lobby also houses the leasing office where members of the public will gather to activate the space and lease a unit. The lobby serves as a commercial
access for at least the residents and their guests on the site to enter the offices and retail uses on the interior of the block, or for members of the public to visit the leasing offices, and is therefore activated as intended by the Code.

**CONCLUSION**

The City Council concludes that LU 13-0046 meets all applicable approval criteria and should be approved.

**ORDER**

THE LAKE OSWEGO CITY COUNCIL ORDERS that the decision of the Development Review Commission is reversed, the appeal is sustained, and LU13-0046 is approved, subject to the following conditions of approval:

A. **Prior to the Issuance of any Grading or Building Permits, the Applicant/Owner Shall:**

1. Submit final site and building plans for review and approval of staff that are the same or substantially similar to the approved plans, illustrated on Exhibits E40 – E57 to the satisfaction of staff, with the following modifications:

   a. On Building B, replace the flat roof on the west side of the conservatory gable with a pitched roof to match the dormer on the east side.

   b. All retail canopies on Buildings A and C shall be at least six feet in depth.

   c. A complementary color that provides contrast on the reveals on the stucco gable ends shall be provided on Building C, to the satisfaction of staff.

   d. Provide a minimum of 26 common or visitor parking spaces in the residential parking garage.

   e. The lighting levels on the east-west pedestrian walkway shall comply with the standards of LOC 50.06.004.3.

   f. The basalt planters shall be topped with granite caps.

   g. Delineate a minimum 12-foot wide unobstructed pedestrian corridor through the east-west pedestrian walkway, to the satisfaction of staff.
h. All street furniture shall be consistent with City design standards of LOC 50.05.004.8.

i. Show one additional on-site loading space for the residential use.

2. Provide a copy of the development guidelines pertaining to nighttime storefront lighting, to the satisfaction of staff.

3. Submit a final landscape/mitigation plan substantially similar to Exhibit E49, except modified to show the following information for review and approval of staff:

   a. Shrub size shall be a minimum of 3-gallon or 36” in height, whichever is greater.

   b. Groundcover materials shall be planted at no more than 18” on center.

   c. All burlaps or cages shall be removed from all trees and plants prior to planting.

   d. Submit a landscape maintenance and monitoring plan.

4. Submit final engineered construction plans for the public improvements and storm water management facilities, and an itemized cost estimate for review and approval by the City Engineer. Drawings shall conform to the City’s design standards and the drafting specifications found in the City’s booklet “CAD Standards and Design Requirements,” May 2006 edition. The plans shall include the following design elements:

   a. **Along the site frontage of 2nd Street:**

      i. The new curb and sidewalk along the site frontage shall be designed to the DRDD standards.

      ii. A minimum 5-foot sidewalk clearance width around street elements such as tree wells, benches, etc.

      iii. All new utilities shall be installed underground.

      iv. Design of the driveway approach to the residential parking in compliance with City and AASHTO standards.

      v. Design of new ADA ramp at the northeast corner of Evergreen Road and 2nd Street. The intersection crossings and curb ramps shall comply with ADA standards.

      vi. Design for a 3-way stop controlled intersection at 2nd Street and Evergreen Road.
vii. Electrical pigtails in street tree wells for seasonal lighting.
viii. Root barriers in all tree wells to protect the new sidewalks from tree root heaving.
ix. Design of street lights according to the City’s lighting standards.

b. Along the site frontage of A Avenue:

i. Design for reconstructing the curb and sidewalks where necessary to close off existing driveway approaches and to repair portions of sidewalk where necessary for ADA compliance. All sidewalk construction shall also comply with the DRDD standards.
ii. Provide a minimum 5-foot sidewalk clearance width around street elements such as tree wells, benches, etc.
iii. All new utilities shall be installed underground.

v. Design for reconstructing sidewalks where necessary for ADA compliance. All sidewalk construction shall also comply with the DRDD standards, to the satisfaction of the City Engineer and the Lake Oswego Downtown Redevelopment Agency (LORA).

ii. All new utilities shall be installed underground.

e. Design for the water services and sanitary service.

f. Design for the fire service and location of the fire FDCs, to the satisfaction of the Fire Marshal.
g. Design of public storm water collection for any street frontage improvements.

h. Submit an investigation of the existing sanitary sewer capacity from the site to the sewer interceptor in Oswego Lake at the south end of 3rd Street, and the engineering analysis of the mitigation necessary to accommodate the additional flow from the site. Upon approval, construct the necessary capacity upgrades to the satisfaction of the City Engineer.

(The City is conducting a capacity analysis regarding the downstream capacity of the existing sewer system. The applicant may elect to accept the City’s study in lieu of a separate analysis.)

5. Construct all public improvements as required by Condition A(4), above, or submit a financial guarantee for all required public improvements, per LOC 50.87.020. The financial guarantee shall be based on an engineer’s estimate that is in turn is based on construction plans that are far enough advanced to support the materials and quantities found in the estimate.

6. Submit a final site plan, storm water plan and storm drainage report for the on-site storm water quality system(s), prepared by a registered engineer, for review and approval by the City Engineer.

7. Per LOC Chapter 52, apply for and obtain an erosion prevention and sediment control permit issued through the City of Lake Oswego, and install and maintain all BMPs as indicated in the permit. These measures shall remain in place throughout the development period.

8. Provide evidence that an erosion control permit 1200-C has been obtained from the Oregon Department of Environmental Quality (DEQ).

9. Submit a site plan showing the proposed design for the private water and sanitary services to the satisfaction of the City Engineer. A sanitary clean-out shall be located at the right-of-way line on 2nd Street.

10. Submit evidence that the fire suppression design is to the satisfaction of the Fire Marshal. Utility vaults shall not be located in the sidewalk.

11. Pay all applicable System Development Charges pertaining to the development.

12. Apply for and obtain a verification tree removal permit for the 25 trees approved for removal to construct the improvements. The verification tree
removal permit submittal shall include an 8½” x 11” copy of the tree removal plan and a mitigation plan showing replacement trees on a 1:1 basis. Replacement trees shall not be dwarf or ornamental varieties and shall be at least two inches in caliper if deciduous or at least 6-8 feet tall (excluding the leader) if evergreens.

13. Submit a revised preservation plan for the Japanese maple prepared by a certified arborist that identifies construction impacts and mitigation measures based on root exploration, construction techniques and impacts to the planter box for review and approval of staff. The certified arborist shall be present on site during any excavation or construction activity within the dripline of this tree to assure compliance with the protection plan.

14. Submit a geotechnical report with the building permit application for review and approval of staff.

15. Conduct a conditions survey of baseline conditions as recommended in the geotechnical report (Exhibit F7).

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

1. Complete all public and site improvements required by Condition A(4), above, and submit certified “as-built” drawings of public improvements conforming to the City’s standards for record drawings.

2. Construct all private utility services.

3. Construct the private water and sanitary services to serve the development.

4. Install all landscaping/mitigation plantings as illustrated in Exhibit E49, and modified by Conditions A(3) and A(13), above.

5. Install all the bicycle racks.

6. Provide a one-year guarantee (one 12-month growing season from the date of installation) for all landscape materials, pursuant to LOC 50.06.010.2. The guarantee shall consist of a security in the amount of five percent of the total landscaping cost (including materials and labor). The applicant/owner shall also submit a landscape maintenance plan for review and approval of City staff.
7. Conduct a secondary conditions survey and mitigate any construction impacts, as identified by the baseline survey required by Condition A(15).

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

1. Obtain all necessary sign permits. The applicant/owner shall submit sign plans and elevations in accordance with the Sign Code for review and approval of staff. Color and material of the signs shall be compatible with the architectural details and colors of the approved building in the following manner:

a. Internally lit cabinet signs or plastic-faced signs shall be prohibited.

b. Signage on the buildings shall consist of individual letters.

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

Code Requirements:

1. Expiration of Development Permit: Per LOC 50.07.003.17, the development approved by this decision shall expire three years following the effective date of the development permit, and may be extended by the City Manager pursuant to the provisions of this section.

2. Tree Protection: Submit a tree protection plan and application prepared by a certified arborist as required by LOC 50.08.020 and 55.08.030 for review and approval by staff, including off-site trees that are within the construction zone. The plan shall include:

a. The location of temporary tree protection fencing, consisting of a minimum 6-foot high cyclone fence secured by steel posts, around the tree protection zone, or as recommended by the project arborist and approved by the City.

b. A note stating that no fill or compaction shall occur within the critical root zones of any of the trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a certified arborist to reduce or mitigate the impact of the fill or compaction. Such measures shall be clearly outlined in the tree protection plan. The note shall also inform contractors that the project arborist shall be on site and oversee all construction activities within the tree protection zone.
c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction.

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

Note:

1. The applicant is advised to take part in a post-Land Use Approval meeting. City staff offers an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure the applicant understand all the conditions and to identify other permits necessary to complete the project. If the applicant desires to take advantage of this meeting, please contact the staff coordinator at (503) 635-0290.

2. The land use approval for this project does not imply approval of a particular design, product, material, size, method of work, or layout of public infrastructure except where a condition of approval has been devised to control a particular design element or material.

3. Development plans review, permit approval, and inspections by the City of Lake Oswego Planning and Building Services Department are limited to compliance with the Lake Oswego Community Development Code, and related code provisions. The applicant is advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, i.e., Americans with Disabilities Act, Endangered Species Act. Staff may advise the applicant of issues regarding state and federal laws that staff members believe would be helpful to the applicant, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

AYES: Mayor Studebaker, Gudman, Gustafson, Jordan, O'Neill

NOES: Bowerman, Hughes

ABSENT: None

ABSTAIN: None

EXCUSED: None

Page 23 – FINDINGS, CONCLUSIONS & ORDER (LU 13-0046-1852)
DATED this 7th day of October, 2014.

Kent Studebaker /s/  
Kent Studebaker, Mayor

ATTEST:         Catherine Schneider /s/  
Catherine Schneider, City Recorder