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3 **BEFORE THE CITY COUNCIL**  
4 **OF THE CITY OF LAKE OSWEGO**

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

140 A Avenue

LU 13-0046-1852  
EVERGREEN GROUP, LLC  
FINDINGS, CONCLUSIONS & ORDER

8  
9 **NATURE OF PROCEEDINGS**

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

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

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

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

21 **HEARINGS**

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

1 (deliberation), and adopted Findings, Conclusions and Order denying the application on August  
2 18, 2014.

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

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

7 **CRITERIA AND STANDARDS**

8 A. City of Lake Oswego Community Development Code [Chapter LOC 50]:

9	LOC 50.04.001.4	Commercial, Mixed Use and Industrial Zones
10	LOC 50.05.004.1-12	Downtown Redevelopment District Design Standards
	LOC 50.06.002	Parking
11	LOC 50.06.003.1	Access/Access Lanes (Flag Lots)
	LOC 50.06.003.2	On-Site Circulation - Driveways and Fire Access Roads
12	LOC 50.06.003.3	On-Site Circulation – Bikeways, Walkways and -Accessways
	LOC 50.06.003.5	Transit System
13	LOC 50.06.004.1	Landscaping, Screening and Buffering
	LOC 50.06.004.2	Fences
14	LOC 50.06.004.3	Lighting
	LOC 50.06.005	Park and Open Space Contributions
15	LOC 50.06.006.1	Weak Foundation Soils
	LOC 50.06.006.3	Drainage
16	LOC 50.06.008	Utilities
	LOC 50.07.003.1	Application for Development, Burden of Proof
17	LOC 50.07.003.5	Conditions of Approval
	LOC 50.07.003.6	Effect of Decision
18	LOC 50.07.003.7	Appeal of Minor Development Decisions
	LOC 50.07.003.11	Modification of Development Permits
19	LOC 50.07.003.14	Review Criteria for Minor Development
20	LOC 50.08.005	Downtown Redevelopment Design District Exceptions

21 B. City of Lake Oswego Streets and Sidewalks Code [LOC Chapter 42]:

22	LOC 42.03	Street Design Standards
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23 C. City of Lake Oswego Sign Code [LOC Chapter 47]:

24	LOC 47.10.412	Permanent Signage Allowed in the EC Zone
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25 D. City of Lake Oswego Tree Code [LOC Chapter 55]:

26	LOC 55.02.010 – 55.02.135	Tree Removal
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2 **FINDINGS AND REASONS**

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

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

13 **Village Character**

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

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

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

23 As used in this section, "village character" means a community of small-scale  
24 structures that appears and operates like a traditional small town. A village is  
25 typically composed of an assembly of smaller mixed used structures often  
26 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

1 small city that is pedestrian friendly, creates a sense of community and attracts  
2 people to the downtown in the same manner and using similar design concepts  
as historic small towns and neighborhood centers.

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

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

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

23 Each of these referenced standards contains a comprehensive list of approval standards  
24 that reflect the general definition and are read together, not in conflict with, the definition of  
25 village character. As an example, Subsection 5, Building Siting and Massing, ensures that  
26 complex massing, Lake Oswego Style design, roof forms, pedestrian amenities, height, stories,

1 entrances and street corners create village character. Subsection 6, Building Design, ensures  
2 again that the Lake Oswego Style is adhered to, that projects meet the village character  
3 standards for storefront appearance, and that the materials, ground floor and mixed use design  
4 also meets those village characteristics. Subsections 9 and 12 follow this same pattern. These  
5 are the same elements that are more generally described in the definition section but that are  
6 actually implemented through the applicable standards in Subsections 5, 6, 9 and 12.

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

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

22         The Council finds that there is no conflict between the definition of Section 4 and the  
23 approval standards of Sections 5, 6, 9 and 12 and that “small-scale” in the definition has the  
24 same meaning as the scale components specifically regulated under Subsections 5, 6, 9 and 12.  
25 The Council also finds that the term “small-scale structure” is ambiguous and general on its  
26 own. This is particularly true when the entire phrase from the Subsection 4 definition is

1 included, which is a “community of small-scale structures.” One development does not result  
2 in the construction of an entire community or the construction of a traditional small town.  
3 These are broad, aspirational, purpose-like statements that are only achieved through multiple  
4 projects over time. To achieve that result, the City has a Code that contains particular  
5 regulations that further define and narrow how each individual project builds that village  
6 character, that small scale, and that traditional small town over time. These criteria describe  
7 and implement what the City means by the general term “village character.” The Code  
8 appropriately qualifies and limits the general definition with the specific requirements of  
9 Subsections 5, 6, 9 and 12.

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

12  
13 Approval or denial of a discretionary permit application shall be based on  
14 standards and criteria, which shall be set forth in the development ordinance  
15 and which shall relate approval or denial of a discretionary permit application to  
16 the development ordinance and to the comprehensive plan for the area in which  
17 the development would occur and to the development ordinance and  
18 comprehensive plan for the city as a whole.

19 Subsections 5, 6, 9 and 12 constitute reasonably clear standards and comply with  
20 ORS 227.173(1). In particular, each section identifies the relevant standards that, if met, create  
21 or maintain “village character.” In preparing a proposal, an applicant can understand, for  
22 example, that “village character” is created by complying with the massing characteristics of the  
23 Lake Oswego Style [ LOC 50.05.004(5)(a)], by complying with the established height limit [LOC  
24 50.05.004(5)(e)], by orienting entrances towards pedestrian ways [LOC 50.05.004(5)(f)], by  
25 using particular building materials [LOC 50.05.004(6)(c)], by complying with the corner design  
26 standards [ LOC 50.05.004(6)(j)], and by meeting the established parking standards [LOC  
50.05.004(9)(a)].

1 The City Council does not accept the argument that the City should instead rely on a  
2 term like “small-scale” that has no description as to how to meet it and no direction on how to  
3 measure it. Those measurements are specifically stated in Subsections 5, 6, 9 and 12 and  
4 control over the undefined term “small-scale.” The Council finds that using the term “small-  
5 scale” as a threshold to the Code standards or as its own independent approval standard would  
6 insert uncertainty into the Code and subject applications to the unknowable predilections of  
7 the decision-makers on whether a particular project is “small-scale” enough.

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

14 The City Council relies on the applicable standards of Subsections 5, 6, 9 and 12 as it  
15 pertains to village character and finds that the application, as revised by the applicant in July  
16 2014, satisfies all of the Code criteria for village character as further detailed in the  
17 incorporated materials.

18 **Exceptions (LOC 50.008.005)**

19 Under LOC 50.08.005, an applicant may request certain exceptions:

- 20
- 21 1. The reviewing authority may allow exceptions to LOC 50.05.004, Downtown  
22 Redevelopment Design District, and to other Lake Oswego Community  
23 Development Code provisions that are applicable to the downtown  
24 redevelopment design district without the need to obtain a formal variance  
25 in one or more of the following circumstances:
    - 26 i. The applicant demonstrates that the physical characteristics of  
the site or existing structure make compliance impractical; or

1           ii.       New buildings or substantial remodels may vary from the design  
2 requirements in LOC 50.05.004.5 through 50.05.004.7 if:

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

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

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

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

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

23           The UDP applies only to the element of the proposal that requests an exception. The  
24 Council does not accept the arguments that the UDP is generally applicable as an approval  
25 criterion for the project. The only reference to the UDP in LOC Chapter 50 is in the exceptions  
26 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



1 statement but instead contains multiple objectives including: support a high-density, compact  
2 shopping district, build a pedestrian network that supports the retail areas and encourage  
3 “high-density housing to provide greater intensity of use in the retail core.” The UDP and the  
4 DRDD specifically encourage high density residential uses on this site and within the four-block  
5 “compact shopping district.”

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

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

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

21 The majority of the exception area will be in gym or library use or in a live/work  
22 configuration, with “work” (commercial use) on the ground floor and residential on the upper  
23 floors. Even if the use of a live/work unit is viewed as a single type of use, nevertheless the  
24 Council finds that the commercial portion of the live/work will be occurring on the ground floor  
25 and thus would meet the purposes of the UDP at least equally to a project that meets the  
26

1 standard. Regardless of whether these live/work units qualify as residential or commercial  
2 uses, they meet the exception standard.

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

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

20 Thus, in this proposed development, the multiple purposes of the UDP are better served  
21 than a project designed to the standard. The proposed exception: (a) provides an appropriate  
22 balance of retail, office and housing on the ground floor in a mixed use form as directly  
23 encouraged by the UDP; and (2) at the same time preserves the City's ability to develop all four  
24 blocks of the compact shopping district as anticipated by the UDP by preserving capacity in the  
25 transportation system to serve the remaining two blocks of the four-block district.

1           Lastly, the UDP states that it is a “guideline document” and illustrates “intent while the  
2 City retains the flexibility to respond to specific economic, market and functional circumstances  
3 that may arise during the life of the Plan.” (UDP at page 1). The Council finds that the  
4 proposed exceptions here are consistent with the purpose of the UDP stated through its  
5 multiple objectives and such exceptions are appropriate given the current economic, market  
6 and functional circumstances that have arisen between the time the plan was adopted in 1988  
7 and the present.

8           **Adding a Fourth Story – LOC 50.05.004.5.d.i**

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

11           LOC 50.05.004.5.d.i provides:

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

- 13
- 14                   (1) The fourth story is residential and is contained within a gabled  
                          or hipped roof;
  - 15                   (2) The site is sloping and the structure has three or fewer stories  
16                   on the uphill side;
  - 17                   (3) The fourth story is significantly stepped back from the building  
18                   plane created by the lower stories; or
  - 19                   (4) Fourth story design elements are used to break up the mass of  
20                   a building, create visual interest and variety, hide mechanical  
21                   equipment, define an entry or define a particular building’s  
                          function. Examples of such design elements include dormers,  
                          towers, turrets, clerestories, and similar features.

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

24

25           Whereas, the reorganization, formatting, and consolidation of the Community  
26           Development Code, Solar Access and Historic Preservation chapters, and the

1 Fence Article are not intended to result in any substantive changes to the  
2 existing content of these codes.

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

13 The Council finds that the correct interpretation of Ordinance No. 2579 and Section  
14 50.05.005.5.d.i is that a fourth floor shall be allowed if one or more of the listed conditions are  
15 satisfied by the proposal.

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

21 The Council has adopted the findings in the incorporated Staff Report demonstrating  
22 how the fourth story on this proposal meets one or more of the qualifying conditions for a  
23 fourth story under 50.05.004.5.d.i. Each of the fourth stories contain residential uses in a  
24 gabled or hipped roof, is significantly stepped back from the building plane created by the  
25 lower stories and the fourth story elements break up the mass of a building, create visual  
26 interest and variety, hide mechanical equipment, define an entry or define a particular

1 building’s function. The Council therefore finds that the fourth stories are appropriate in this  
2 case and are designed to meet the fourth story conditions set out in the Code.

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

5  
6 Story: That portion of a building included between the upper surface of any floor and  
7 the upper surface of the floor next above, except that the topmost story shall be that  
8 portion of a building included between the upper surface of the topmost floor and the  
9 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.*

10 LOC 50.10.003.2, “Story” (Emphasis added)

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

13 **East End Redevelopment Plan**

14 Opposing submittals and testimony have cited portions of the description of potential  
15 redevelopment projects for the subject site contained in the East End Redevelopment Plan  
16 (EERP). The EERP is an urban renewal plan adopted by the Lake Oswego Redevelopment  
17 Agency. It is not a land use regulation of the City of Lake Oswego, and is not incorporated in  
18 the Code as a development standard. The City Council finds that nothing in the EERP  
19 constitutes approval criteria in these proceedings, including without limitation project  
20 descriptions stating that new or remodeled buildings on the subject site shall be designed to  
21 complement structures on adjacent Blocks 138 (Lake View Village) and 136 (townhouses), or in  
22 Millennium Plaza Park, or that development on the site should enhance the compact shopping  
23 district extending one block in all directions from the intersection of First Street and A Avenue.

1 One submittal in the record (Exhibit G-506) argues that LOC 50.11.005, which is  
2 Appendix E to the Community Development Code<sup>1</sup> (Commercial Land Use Policies), recognizes  
3 that the City will develop policies that will guide development in the East End Business District.  
4 The submittal then infers, without stating, that the UDP is one of those policies, and suggests  
5 that, because the UDP “acknowledges” that the “City” adopted the EERP, the applicant has the  
6 burden of establishing compliance with the element of the EERP project description that calls  
7 for enhancing the compact shopping district. The submittal also states in a separate section  
8 that the applicant must comply with the portion of the project description calling for designs to  
9 complement structures on certain adjacent properties.

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

21 The City Council finds that the provisions of, and project descriptions within, the EERP  
22 are not approval criteria for the subject application, either independently or through any  
23

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24  
25 <sup>1</sup> Exhibit G-506 incorrectly characterized this as an appendix specifically to the Downtown Redevelopment Design  
26 District.

1 acknowledgement or reference to the EERP in the UDP. The Council also finds that the EERP is  
2 not incorporated in, or a part of, the UDP.

3 **Parking**

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

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

18 The City Council finds that residential parking lifts are permitted parking spaces under  
19 the Code. Tandem parking in residential developments is permitted if the tandem parking  
20 space is owned by, leased or assigned to a single residential owner or tenant. LOC  
21 50.06.002.2.a.iii. The Council finds that tandem parking includes vertically or horizontally  
22 stacked parking as long as the stacked or lift spaces are owned, leased or assigned to the same  
23 residential unit owner. The tandem or stacked spaces in the residential parking garage will be  
24 reserved for single residential unit owners or tenants in compliance with this criterion.

25 **Mixed Use Residential**

26

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

### 7 **Storefront Appearance**

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

### 14 **Sidewalk Design**

15 The Council heard testimony from the applicant that the varying building setbacks on  
16 Buildings A and C along A Avenue and 1<sup>st</sup> Street offer opportunities for sidewalk activities. LOC  
17 50.05.004.12.d. The Council finds that the large retail plaza at the corner of A Avenue and 1<sup>st</sup>  
18 Street and the outdoor seating at the roundabout at the corner of 1<sup>st</sup> Street and Evergreen  
19 Road provide additional opportunities for pedestrian access and seating.

### 20 **A Avenue Entrance**

21 The Council also heard testimony from an opponent that the mixed  
22 residential/commercial entrance on A Avenue is not active space on A Avenue. The Council  
23 finds that the limited entrance area is active space. The A Avenue lobby is not only an entrance  
24 to the residential units above but is also access to the interior pathways of the site where the  
25 commercial uses are located. The lobby also houses the leasing office where members of the  
26 public will gather to activate the space and lease a unit. The lobby serves as a commercial



1 access for at least the residents and their guests on the site to enter the offices and retail uses  
2 on the interior of the block, or for members of the public to visit the leasing offices, and is  
3 therefore activated as intended by the Code.

4 **CONCLUSION**

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

7 **ORDER**

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

11  
12 **A. Prior to the Issuance of any Grading or Building Permits, the Applicant/Owner**  
13 **Shall:**

- 14 1. Submit final site and building plans for review and approval of staff that are the  
15 same or substantially similar to the approved plans, illustrated on Exhibits E40  
16 – E57 to the satisfaction of staff, with the following modifications:
  - 17 a. On Building B, replace the flat roof on the west side of the conservatory  
18 gable with a pitched roof to match the dormer on the east side.
  - 19 b. All retail canopies on Buildings A and C shall be at least six feet in depth.
  - 20 c. A complementary color that provides contrast on the reveals on the stucco  
21 gable ends shall be provided on Building C, to the satisfaction of staff.
  - 22 d. Provide a minimum of 26 common or visitor parking spaces in the  
23 residential parking garage.
  - 24 e. The lighting levels on the east-west pedestrian walkway shall comply with  
25 the standards of LOC 50.06.004.3.
  - 26 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.

- 1 h. All street furniture shall be consistent with City design standards of LOC
- 2 50.05.004.8.
- 3 i. Show one additional on-site loading space for the residential use.
- 4 2. Provide a copy of the development guidelines pertaining to nighttime
- 5 storefront lighting, to the satisfaction of staff.
- 6 3. Submit a final landscape/mitigation plan substantially similar to Exhibit E49,
- 7 except modified to show the following information for review and approval of
- 8 staff:
- 9 a. Shrub size shall be a minimum of 3-gallon or 36" in height, whichever is
- 10 greater.
- 11 b. Groundcover materials shall be planted at no more than 18" on center.
- 12 c. All burlaps or cages shall be removed from all trees and plants prior to
- 13 planting.
- 14 d. Submit a landscape maintenance and monitoring plan.
- 15 4. Submit final engineered construction plans for the public improvements and
- 16 storm water management facilities, and an itemized cost estimate for review
- 17 and approval by the City Engineer. Drawings shall conform to the City's design
- 18 standards and the drafting specifications found in the City's booklet "CAD
- 19 Standards and Design Requirements," May 2006 edition. The plans shall
- 20 include the following design elements:
- 21 a. Along the site frontage of 2<sup>nd</sup> Street:
- 22 i. The new curb and sidewalk along the site frontage shall be
- 23 designed to the DRDD standards.
- 24 ii. A minimum 5-foot sidewalk clearance width around street
- 25 elements such as tree wells, benches, etc.
- 26 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 2<sup>nd</sup> Street. The intersection crossings and curb ramps shall
- comply with ADA standards.
- vi. Design for a 3-way stop controlled intersection at 2<sup>nd</sup> 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.
- i. Provide a minimum 5-foot sidewalk clearance width around street elements such as tree wells, benches, etc.
- ii. All new utilities shall be installed underground.

c. Along the site frontage of First Street:

- i. Design for reconstructing the curb and sidewalks where necessary to close off the existing driveway approach, design of additional on-street parking and to repair portions of sidewalk where necessary for ADA compliance. All sidewalk construction shall also comply with the DRDD standards.
- ii. Design of the commercial driveway approach and the location of public art in the right-of-way in compliance with City and AASHTO standards.
- iii. Provide a minimum 5-foot sidewalk clearance width around street elements such as tree wells, benches, etc.
- iv. Design of street lights according to the City's lighting standards.
- v. All new utilities shall be installed underground.

d. Along the site frontage of Evergreen Road:

- i. 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.

- 1 g. Design of public storm water collection for any street frontage  
2 improvements.
- 3 h. Submit an investigation of the existing sanitary sewer capacity from  
4 the site to the sewer interceptor in Oswego Lake at the south end of  
5 3<sup>rd</sup> Street, and the engineering analysis of the mitigation necessary  
6 to accommodate the additional flow from the site. Upon approval,  
7 construct the necessary capacity upgrades to the satisfaction of the  
8 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.)

- 9 5. Construct all public improvements as required by Condition A(4), above, or  
10 submit a financial guarantee for all required public improvements, per LOC  
11 50.87.020. The financial guarantee shall be based on an engineer's estimate  
12 that is in turn is based on construction plans that are far enough advanced to  
13 support the materials and quantities found in the estimate.
- 14 6. Submit a final site plan, storm water plan and storm drainage report for the  
15 on-site storm water quality system(s), prepared by a registered engineer, for  
16 review and approval by the City Engineer.
- 17 7. Per LOC Chapter 52, apply for and obtain an erosion prevention and  
18 sediment control permit issued through the City of Lake Oswego, and install  
19 and maintain all BMPs as indicated in the permit. These measures shall  
20 remain in place throughout the development period.
- 21 8. Provide evidence that an erosion control permit 1200-C has been obtained  
22 from the Oregon Department of Environmental Quality (DEQ).
- 23 9. Submit a site plan showing the proposed design for the private water and  
24 sanitary services to the satisfaction of the City Engineer. A sanitary clean-out  
25 shall be located at the right-of-way line on 2<sup>nd</sup> Street.
- 26 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

1 removal permit submittal shall include an 8½" x 11" copy of the tree removal  
2 plan and a mitigation plan showing replacement trees on a 1:1 basis.  
3 Replacement trees shall not be dwarf or ornamental varieties and shall be at  
4 least two inches in caliper if deciduous or at least 6-8 feet tall (excluding the  
5 leader) if evergreens.

6  
7 13. Submit a revised preservation plan for the Japanese maple prepared by a  
8 certified arborist that identifies construction impacts and mitigation measures  
9 based on root exploration, construction techniques and impacts to the planter  
10 box for review and approval of staff. The certified arborist shall be present on  
11 site during any excavation or construction activity within the dripline of this  
12 tree to assure compliance with the protection plan.

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

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

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

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

22 2. Construct all private utility services.

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

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

26 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.

1 7. Conduct a secondary conditions survey and mitigate any construction  
2 impacts, as identified by the baseline survey required by Condition A(15).

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

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

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

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

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

16 **Code Requirements:**

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

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

24 a. The location of temporary tree protection fencing, consisting of a minimum 6-foot  
25 high cyclone fence secured by steel posts, around the tree protection zone, or as  
26 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.

1 c. A note that clearly informs all site contractors about the necessity of preventing  
2 damage to the trees, including bark and root zone. The applicant and  
3 contractor(s) shall be subject to fines, penalties and mitigation for trees that are  
4 damaged or destroyed during construction.

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

8 **Note:**

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

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

19 3. Development plans review, permit approval, and inspections by the City of Lake Oswego  
20 Planning and Building Services Department are limited to compliance with the Lake  
21 Oswego Community Development Code, and related code provisions. The applicant is  
22 advised to review plans for compliance with applicable state and federal laws and  
23 regulations that could relate to the development, i.e., Americans with Disabilities Act,  
24 Endangered Species Act. Staff may advise the applicant of issues regarding state and  
25 federal laws that staff members believe would be helpful to the applicant, but any such  
26 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

1 DATED this 7<sup>th</sup> day of October, 2014.

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Kent Studebaker /s/  
Kent Studebaker, Mayor

ATTEST:

Catherine Schneider /s/  
Catherine Schneider, City Recorder