



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Linda Odermott, Paralegal
Sean Brady, City Attorney

DATE: 08/26/2013

SUBJECT: Consideration of **Resolution No. 5164-13** Granting a Conditional Use Permit for the Nyberg Rivers Shopping Center to Allow Retail Uses in a Commercial Office (CO) Planning District at 7055-7433 SW Nyberg Street (2S124A 2700) and Outside Storage and Sales in the Central Commercial (CC) Planning District at 7437-7463 SW Nyberg (2S124A2100 and 2S124B2507)

ISSUE BEFORE THE COUNCIL:

The City Council will consider Resolution 5164-13 that would grant a conditional use permit for the Nyberg Rivers Shopping Center to allow retail uses in a Commercial Office (CO) Planning District at 7055-7433 SW Nyberg Street (2S124A 2700) and outside storage and sales in the Central Commercial (CC) Planning District at 7437-7463 SW Nyberg (2S124A2100 and 2S124B2507).

RECOMMENDATION:

Staff recommends that the City Council approve Resolution 5164-13 granting CUP-13-04.

EXECUTIVE SUMMARY:

On August 7th, 2013, the City Council held a quasi-judicial public hearing on CUP-13-04 to decide whether to grant a conditional use permit to CenterCal Properties, owners of the Nyberg Rivers Shopping Center to allow retail uses in a Commercial Office (CO) Planning District. Following a request that the record be left open for 7 days, the hearing was continued on August 19, 2013. At the conclusion of the continued public hearing, the Council approved the Staff Report with a vote of 6 - 0 with Councilor Brooksby absent and Mayor Ogden attending by phone, and directed Staff to bring back a resolution granting CUP-13-04.

OUTCOMES OF DECISION:

ALTERNATIVES TO RECOMMENDATION:

FINANCIAL IMPLICATIONS:

Revenue for Conditional Use Permits has been budgeted for Fiscal Year 13/14.

Attachments: Resolution
 Exhibit 1 - Findings and Conclusions
 Exhibit 2 - Findings and Conclusions Supplemental

RESOLUTION NO. 5164-13

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR THE NYBERG RIVERS DEVELOPMENT TO ALLOW RETAIL USES IN A COMMERCIAL OFFICE (CO) PLANNING DISTRICT AND OUTSIDE STORAGE AND SALES IN A CENTRAL COMMERCIAL (CC) PLANNING DISTRICT AT 7055-7463 SW NYBERG STREET (2S124A2700—2S124A2100 AND 2S124B2507) (CUP 13-04)

WHEREAS, a quasi-judicial public hearing was held before the City Council of the City of Tualatin on August 7, 2013 and continued on August 19, 2013, upon the application of CenterCal Properties, LLC (Applicant) for the Nyberg Rivers Commercial Center; and

WHEREAS, notice of public hearing was given as required by Tualatin Development Code 1.031; and

WHEREAS, the Council conducted a public hearing on August 7, 2013 and continued on August 19, 2013, and heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing; and

WHEREAS, the initial public hearing was held on August 7, 2013. The Council heard oral testimony and received written testimony from City Staff, the Applicant, proponents, and opponents. During the hearing, Zian Limited Partnership requested that the record remain open for seven days for it to submit additional evidence.

WHEREAS the Council allowed the record to remain open for seven days for any person to submit additional evidence. Zian Limited Partnership was the only person or entity to submit evidence. They submitted additional evidence on August 14, 2013.

WHEREAS the Applicant was allowed until August 19, 2013, to submit any rebuttal evidence or argument. The Applicant submitted argument.

WHEREAS the City Council conducted a related hearing on the Master Plan application. All information submitted in the Master Plan proceeding is part of the record in the CUP proceeding.

WHEREAS, after the conclusion of the public hearing, the Council voted 6-0 with Councilor Brooksby absent and Mayor Ogden participating by phone, to approve the application.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Council grants CUP-13-04 with the following conditions:

- A. Recreational equipment, apparel and sports outfitting sales are prohibited in areas identified as public gathering, multi-function open plaza and plaza seating with fire pit in the approved Master Plan Exhibit Q1 Building Frontage landscape plan.
- B. The applicant shall operate the use consistent with all application materials submitted to the City on June 24, 2013.
- C. The applicant shall comply will all applicable TDC policies and regulations.

Section 2. The Findings and Conclusions are adopted as set forth in "Exhibit 1," and "Exhibit 2" which are attached and incorporated by reference.

Section 3. This Resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 26th day of August, 2013.

CITY OF TUALATIN, Oregon

By _____
Mayor

APPROVED AS TO LEGAL FORM

ATTEST:

By _____
City Attorney

BY _____
City Recorder

EXHIBIT 1

RESOLUTION NO. 5164-13

FINDINGS AND CONCLUSIONS

CUP 13-04

CenterCal (Applicant) applied for a conditional use permit for the Nyberg Rivers Development at 7055-7463 SW Nyberg Street. The Conditional Use Permit had two components for consideration:

- 1) To Allow Retail Uses in a Commercial Office (CO) Planning District; and
- 2) To allow Outside Storage and Sales in a Central Commercial (CC) Planning District

City Council held the initial public hearing on August 7, 2013. The Council heard oral testimony and received written testimony from City Staff, the Applicant, proponents, and opponents. During the hearing, Zian Limited Partnership requested that the record remain open for seven days for it to submit additional evidence. The City Council allowed the record to remain open for seven days for any person to submit additional evidence. Zian Limited Partnership was the only person or entity to submit evidence. They submitted additional evidence on August 14, 2013. The Applicant was allowed until August 19, 2013, to submit any rebuttal evidence or argument. The Applicant submitted additional argument. The City Council conducted a related hearing on the Master Plan application and considered as part of the record in this CUP proceeding all information submitted in the Master Plan proceeding.

The Nyberg Rivers Building 1040 is proposed for retail use in the 24,000 sq. ft. northern portion of Building 1040 within the Commercial Office (CO) Planning District and CURD Block 1 (Parcel 2S124A 2700). An outdoor storage and sales area adjacent to the Nyberg Rivers Building 1040 is within the Central Commercial (CC) Planning District (Parcels 2S124A2100 and 2S124B2507). The approval criteria of the Tualatin Development Code (TDC) 32.030 must be met if the proposed Conditional Use Permits (CUP) listed are to be granted. The City Council makes the following findings based on the requirements in TDC 32.030:

1. The use is listed as a Conditional Use in the underlying planning district.

The Applicant is applying for conditional use permits to allow:

- The Nyberg Rivers Building 1040 retail use in the 24,000 sq. ft. northern portion of Building 1040 that is within the Commercial Office (CO) Planning District and CURD Block 1 (Parcel 2S124A 2700).
- An outdoor storage and sales area adjacent to the Nyberg Rivers Building 1040 that is within the Central Commercial (CC) Planning District (Parcels 2S124A2100 and 2S124B2507).

Within Central Urban Renewal District Plan (CURD) Block 1 and the Commercial Office (CO) Planning District "Uses Permitted in the Central Commercial (CC) Planning District" are listed as a conditional use, Tualatin Development Code (TDC) 50.030(2). The CC Planning District allows sporting goods stores and other various retail, professional and service uses as permitted, TDC 53.020.

The Nyberg Rivers Building 1040 is a proposed sporting goods store. A "sporting goods store" is a permitted use in the CC Planning District" as per TDC 53.020(45). Locating a portion of the Building 1040 sporting goods store use in the portion of the Building located in the CO Planning District CURD Block 1 is allowed as a conditional use.

"Outside storage or sales" is listed as a conditional use in the Central Commercial (CC) Planning District" TDC 53.050(5). The south portion of the Nyberg Rivers Building 1040 is in the CC Planning District. The proposed outside storage and sales activity shown on the south elevation of Building 1040 is allowed as a conditional use.

Criterion 1 is met.

2. The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements and natural features.

Size: The proposed Nyberg Rivers shopping center site is a commercial center project proposal to redevelop the former Kmart site and adjacent properties. The Nyberg Rivers project will encompass a net development area of approximately 26 acres on the 32 acre Primary Development Area (Attachments 201 and 202). The project site will be redeveloped through a Master Plan (MP-13-01) followed by Architectural Review with proposed seven (7) new one-level buildings with parking, landscaping, and access on SW Nyberg Street, SW Martinazzi Avenue and SW Boones Ferry Road. Existing Buildings A, B, D1, D2 and E-100 will remain. The former Kmart store and Jiggles Restaurant buildings will be demolished. Wendy's restaurant will be relocated.

The requested conditional uses are associated with the proposed new 110,000 square foot Building 1040 which is identified as a sporting goods retail store. A 24,000 square foot portion of building 1040 is located on the currently undeveloped 11 acre parcel 2S124A 2700 in the CO Planning District which has a minimum lot size of 10,000 square feet (TDC 50.050). The remainder of Building 1040 is located on parcels 2S124A2100 (8.8 acre) and 2S124B2507 (2.8 acre) in the CC Planning District which has a minimum lot size of 10,000 square feet (TDC 53.060). There is adequate room within the developed CO and CC portions of the site for the proposed uses

associated with Building 1040. The site size is suitable for the uses requested.

Shape: The shape of the subject property is irregular and bounded by the Tualatin River, Interstate I-5, SW Nyberg Street and the City Hall/ Library Campus. The shape is suitable for the Nyberg Rivers development and the proposed uses associated with Building 1040.

Location: The Nyberg Rivers site is at the northwest corner of the I-5 Freeway Exit 289/Nyberg interchange, has extensive frontage adjoining the I-5 Freeway property and includes Tualatin River Greenway frontage where public access and natural area enhancements are identified. It is on the eastern edge of downtown Tualatin. To the west, the City Hall/Library campus directly abut the site and the Lake of the Commons is nearby. The Fred Meyer Shopping Center and the recently installed Gateway Feature are located south of the site. Nyberg Street and Tualatin-Sherwood Road adjoin the site to the south and will provide the primary access to the development. Martinazzi Avenue is west of the site and SW Boones Ferry Road is at the northwest corner. Both of these streets are intended to provide secondary access to the development. The subject Building 1040 location is at the center of the Nyberg Rivers site with new buildings, parking lots, a loading service area bordering.

Topography: The site is flat with little change in topography.

Improvements: The Nyberg Rivers development will occupy 26 acres of the former Kmart/Mercury Development shopping center and the associated properties shown on Attachment 201. The Nyberg Rivers Master Plan proposes seven (7) new buildings, renovated and expanding parking areas, landscaping, loading and service areas, pedestrian and bicycle facilities, access improvements and public facility improvements for streets and stormwater. The subject Building 1040 is approximately 110,000 square feet in floor area.

Natural Features: The northern portion of the Nyberg Rivers site adjoins the Tualatin River and the Tualatin River Greenway. The Nyberg Rivers Master Plan shows a 5.3 acre Natural Area that is currently set aside for preservation and restoration and is proposed to be enhanced as part of the development process for Nyberg Rivers. A shared pathway (Tualatin River Greenway) is shown on the plans extending from the I-5 Bridge to the proposed "Street A" public street at the northwest corner of the development site.

The applicant states: "The conditional use is proposed to be developed within an existing retail center. The site is already committed to large format retail with a mix of

smaller and medium sized complementary commercial uses. The site is zoned CC and CO and allows and encourages the kinds of uses contemplated here. The Urban Renewal Plan further encourages redevelopment of this site with a denser mix of commercial uses to meet the redevelopment and economic development objectives of that Plan as discussed earlier in this application. The site size and shape allow an efficient layout of the uses with adequate parking and a well-designed landscape plan. Site topography is relatively flat with no steep grades. The location of the site is adjacent to the City's downtown and adjacent the I-5 corridor along Nyberg Street, a corridor already committed to large format retail development and designed to accommodate commercial uses. As detailed above and incorporated herein by reference, the transportation system can safely accommodate the use and the development of the site will include several improvements to public facilities that will improve bicycle, pedestrian and vehicle movements in the area. The Tualatin River runs to the north of the site and will not be negatively impacted. In fact, the site development includes a dedication of a trail easement along the river for future development. Therefore, the characteristics of the site are suitable for the proposed use.

The current and proposed Nyberg Rivers center tenants are stores, banks, restaurants and services. The proposed use of Building 1040 is a sporting goods store. None of the existing or proposed center tenants are likely to have activities or business requirements in terms of access or parking that will have conflicts with the Building 1040 proposed commercial activities. The parking and access improvements associated with the Nyberg Rivers development and the proposed Building 1040 commercial activities will be addressed in the Master Plan and Architectural Review.

Given the features and improvements of the subject property listed above, it is concluded the characteristics of the site are suitable for the proposed uses. Criterion 2 is met.

3. The proposed development is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use.

The transportation facilities in the area were reviewed in the Transportation Impact Analysis (TIA) completed for the proposed project. The scope of the TIA was first approved by Washington County and the City. The Applicant then conducted the analysis consistent with this scoping agreement. The analysis demonstrates that all study intersections will continue to operate at acceptable levels of service, with the conditions of approval imposed as part of the Master Plan, and that the development is timely considering the adequacy of transportation services. This conditional use request pertains to only 23,513 SF (Revised in Addendum 1 to 23,923 SF) of the sporting goods store and the outdoor storage and sales. The site and its associated density are consistent with the timely delivery of transportation facilities, including the portion of that square footage subject to this conditional use request.

The Applicant has proposed to complete the required infrastructure improvements to the water, sanitary sewer and stormwater systems that service the site. The proposed large format retail store is consistent with this requirement.

Public sewer and water and storm will be addressed in the Nyberg Rivers Master Plan and Architectural Review and will be required to be adequate to serve the site and proposed use.

The proposal to allow Nyberg Rivers to add 24,000 square feet of retail store use in Building 1040 for development in the CO Planning District on Parcel 2700 and add approximately 7,000 square feet of outside storage and sales area to the proposed Building 1040 will not result in changes to the traffic analysis and transportation requirements of the Nyberg Rivers project. The transportation system, public facilities and services that are necessary for the Nyberg Rivers project as a whole are considered in MP-13-01 and subsequent Architectural Review. With the transportation facilities identified in the Master Plan and conditions of approval of the Master Plan, the transportation facilities are adequate.

Based on Council review and analysis of the application, the existing public facilities for the site, along with those proposed in the Master Plan and conditions of approval applied to the Master Plan, are adequate for the proposed retail use in the CO Planning District and the proposed outside storage and sales use for Building 1040. The development is timely.

Criterion 3 is met.

4. The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying planning district.

The subject portions of the Nyberg Rivers development are in the CO and CC Planning Districts and in Central Urban Renewal Districts Blocks 1 and 2. Surrounding land uses are: (Attachment 201)

N:	CO	Tualatin River, Greenway, Proposed Natural Area.
	CO	Proposed Nyberg Rivers Building N-100 (Fitness Center)
E:	CC	Proposed Nyberg Rivers Buildings J-100, H-100
		Interstate I-5
S:	CC	Proposed Nyberg Rivers Buildings G-100, F-100,
		Building E-100 (Banner Bank)
		Fred Meyer, Nyberg Crossing (Across SW Nyberg Street)
W:	CC	Nyberg Rivers Buildings 1030, 1010, 1005
	RH	Heron's Landing Apartments

The property north and west of the subject portion of the Nyberg Rivers site is a residential development and the nearest building in the complex is approximately 120 feet from the closest corner of Building 1040. All the other adjoining development or development within Nyberg Rivers near the Subject Building 1040 is commercial and is or will be developed as a retail shopping center. The proposed outside sales area is shown on the south elevation of Building 1040 in the same location as public plaza and public walkway proposed in the Nyberg Rivers Master Plan.

The character of the area is defined by its existing and surrounding uses. The site itself is currently developed with a retail center. This application will permit the redevelopment of that center with a well-designed site plan, landscape plan and architectural elevations. New commercial uses will replace old commercial uses. Vacant and undesirable uses will be removed and replaced with a more family-friendly and active center. The Site Plan as proposed reflects the uses allowed in the underlying zoning district and contemplated in the Urban Renewal Plan. The transportation, pedestrian and bicycle network will be improved with this development, not only serving the subject site but contributing to greater circulation options for surrounding properties. In particular, the new loop road through the site will make the new connection between Boones Ferry, Seneca and Nyberg streets and the improvements along Nyberg will facilitate better traffic movements along the perimeter.

The surrounding properties are also zoned for like uses. The redevelopment of this site will complement and perhaps encourage future redevelopment on other surrounding parcels as more people are drawn to the downtown core by these economic redevelopment projects. The proposed use will not therefore alter the character of the surrounding area in a way that impairs, precludes or limits. Rather, redevelopment of this underutilized site in the Central Urban Renewal Area will more likely encourage similar redevelopment opportunities consistent with the underlying planning districts.

The outdoor storage and sales area is entirely within the CC District and is not located in whole or in part in the CO District. The outdoor storage and sales area is accessory to the use it is attached to, Cabela's, and is not dedicated to any other use on the site. The size of this area is 6,993 square feet and the merchandise sold in this area is the merchandise that will be sold in the primary use. This merchandise is recreational equipment and sports outfitting.

The proposed location of the Building 1040 retail use within the portion of the building that extends into the Commercial Office (CO) Planning District and CURD Block 1 is not an activity that will alter or impact the surrounding area in any significant way. Adding the retail use to the allowed development on the subject Parcel 2700 will not preclude development of permitted commercial office uses allowed in the CO District. The proposed commercial use allowed under Tualatin Development Code 50.030(2) meets the requirement of Criterion 4.

The Nyberg Rivers Master Plan narrative and plans identify a “Multi-function Open Plaza” located between the south west corner of Building 1040 and the proposed Buildings 1030 and 1010 where there is an intersection of pedestrian and bicycle ways. The plaza is described as providing a community gathering place that will include landscaping, art and pedestrian amenities as part of an enhanced pedestrian experience throughout Nyberg Rivers. The proposed plaza plans show seating, canopies, awnings, landscape planters, water, fireplace and statuary features. The width of the open portions of the plaza ranges from approximately 20 ft. to 30 ft. with 10 ft. to 12 ft. wide aisles within the plaza. The area of the plaza is approximately 6,400 sq. ft., including the outdoor dining area associated with Building 1030 (food & beverage) and raised planters/sculpture/feature pads.

Also, the Master Plan site plan (Attachment 203, Exhibit A, L, Q1 and Q2) show a primary pedestrian route and “linear” plaza across the front (south) elevations of the subject Building 1040 as well as west across Buildings 1030, 1010, 1005, D2 and D1. The walkway area includes raised planters, seating, sculpture features, canopies and outdoor dining/outdoor sales areas associated with the grocer and retailer storefronts. The width of the east west walkway/plaza surface is approximately 12-16 ft. while the passage way for pedestrians ranges from 8 ft. to 16 ft. taking into account raised planters, trees, and space devoted to dining/ retail activities. The pedestrian route will function as an attractive east/west connection across the Nyberg Rivers storefronts of the main center buildings as well as a connection north, south and west to other downtown locations including the Tualatin River, Library/City Hall Campus and commercial areas south.

In the Master Plan MP-13-01, the need for public gathering spaces and connections to civic areas are discussed in terms of the Central Urban Renewal Plan Goals and Objectives. Also the pedestrian and bicycle connections within the development are given importance.

The proposed “outdoor sales area” shows the sales activity occupying portions of the plaza proposed as the multi-function open plaza and the plaza seating area with fire pit. This conflict reduces the viability, safety and desirability of a public outdoor space, allowing the outside sales use to restrict the area and amenity available for the public plaza uses identified as important in the Master Plan. The proposed location of outside sales in the same space identified as public plaza in the southwest corner of Building 1040 does not meet Criterion 4.

The applicant indicates that the proposed outside sales area will be for the Building 1040 sporting goods store tenant. This merchandise is recreational equipment and sports outfitting. The Building 1040 tenant has been identified as Cabela’s, a large outdoor and sports equipment retailer. In a review of the proposed tenant’s commercial offerings and provided in public comments at the Architecture Review Advisory meeting and in comment documents, the Cabela’s firm commonly displays large sports recreation equipment outside the building at store locations. Typically, the merchandise

displayed outside of the stores includes tents and shelters, canoes, kayaks, outboard and inboard powered boats, trailers and motorized ATVs. Merchandise is typically displayed on the pavement or on large racking systems.

The permanent use of Outside storage and sales is conditionally permitted in the Central Commercial district. Merchandise stored outside “shall include only materials or merchandise directly related to primary permitted uses on the site where outdoor storage is proposed to be conducted.” (TDC 31.060) The sale and storage of merchandise outside of the Cabela’s will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties.

To meet the suitability requirements of Criterion 4, City Council finds the following conditions of approval for the proposed outside storage and sales use:

Recreational equipment, apparel and sports outfitting sales are prohibited in areas identified as public gathering, multi-function open plaza and plaza seating with fire pit in the approved Master Plan Exhibit Q1 Building Frontage landscape plan.

The Conditional Use applications will allow retail sales in Parcel 2700 portion of the Nyberg Rivers Building 1040 and allow with conditions outside storage and sales on the south elevation of Building 1040. Based on the applicant’s submitted information, review by Council, with the approval of the proposed Nyberg Rivers Master Plan and with the conditions of approval listed above, it is concluded that the proposal will not alter the character of the surrounding area in any manner which substantially limits, impairs or precludes the surrounding properties for the primary uses listed in the underlying Planning Districts.

Criterion 4 is met with the condition.

5. The proposal is consistent with plan policies.

Council identified one Tualatin Community Plan objective in TDC Chapter 6 (Commercial Planning Districts) that apply to the proposed commercial development activities in the CC Planning District and is relevant to the CO District as well.

Section 6.040(4) states:

To provide areas for a full range of retail, professional and service uses of the kinds usually found in downtown areas patronized by pedestrians. Civic, social and cultural functions that serve the general community are also appropriate. The Central Commercial Planning District is almost entirely within the downtown portion of the urban renewal area. The Urban Renewal Plan contains extensive development policies and design

standards that apply to this district. These policies and standards are intended to help create a village atmosphere in the downtown area.

The Nyberg Rivers shopping center development proposed in Master Plan MP-13-01 is subject to the objectives and standards found in the Central Urban Renewal District Plan. These will be evaluated in the Master Plan review process which will be followed by Architectural Review for the development. The proposal to develop the Nyberg Rivers as a commercial center, extend the retail activities into the Commercial Office portion of the site and propose outside storage and sales for one of the Nyberg Rivers buildings is suitable at this location.

The proposal is consistent with plan policies.

Criterion 5 is met.

Based on the application and the above findings and analysis and with the recommended conditions of approval, the Nyberg Rivers Conditional Use permit application allowing CC Planning District permitted uses in the CURD Block 1/CO Planning District and to allow outside storage and sales on the south elevation of the proposed Building 1040 in the CC Planning District meets the criteria of TDC 32.030 with the condition of approval.

Exhibit 2
Resolution No. 5164-13

Christe C. White
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971-634-0204

August 19, 2013

Mayor Lou Ogden
City Council
City of Tualatin
18880 SW Martinazzi Avenue
Tualatin, OR 97062

Re: Final Legal Argument in File No. CUP-13-04: Cabela's Conditional Use Permit

Dear Mayor Ogden and Councilors,

This letter is submitted on behalf of CenterCal as final legal argument in support of the staff recommendation of approval for the Cabela's Conditional Use Permit. This letter specifically responds to Zian's August 14, 2013 submittal in the open record period. This letter does not contain any new evidence but instead relies on evidence already in the record to make final legal arguments in support of the Cabela's Conditional Use Permit as permitted under ORS 197.763.

Cabela's Conditional Use Permit is Consistent with the Purpose of the CC and CO Planning Districts and the Central Urban Renewal Plan.

The land uses in the CC and CO Districts on Blocks 1 and 2 within the Central Urban Renewal Area are governed by the Planning District standards as supplemented by the Central Urban Renewal Plan ("CURP"). This is demonstrated by the express terms of the CURP:

"In addition to the uses normally permitted within the relevant Plan District, the Planning District standards allow the following additional permitted and conditional uses in the areas listed..." (CURP at page 34).

The CURP continues to specifically express that all uses permitted in the CC Planning District are permitted on Block 1 as conditional uses. Cabela's is partially located on Block 1 and is a permitted use in the CC Planning District. Therefore it is a conditional use in the CO Planning District on Block 1 by the express terms of the CURP.

Zian completely ignores these provisions of the CURP and instead attempts to argue that the only provisions that control whether the Cabela's outdoor storage and sales or the portion of the building in the CO District are permitted as conditional uses are the CC and CO Planning

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District regulations. This is not accurate and is a misreading of the TDC. Instead, the CURP states:

“The Urban Renewal Plan is a part of the Community Plan. The Community Plan and the Planning District Standards together comprise the Tualatin Development Code.” (CURP at page 13).

One cannot read the CURP out of the zoning code when it is convenient for your argument. Instead one is required to apply both the Planning District standards and the CURP provisions to determine the use allowance on a particular block within the CURP. Here, the CURP clearly recognizes the Cabela’s as a conditional use for those portions in the CO District and the Planning District recognizes the outdoor storage and sales as a conditional use in the CC District. Any argument to the contrary is simply wrong. Staff correctly interpreted these provisions of the Planning District and CURP and recognized the express allowance of outdoor storage and sales in the CC District and the portion of the Cabela’s in the CO District as conditional uses permitted where they have been proposed.

With that introduction, Zian turns to the purpose statement of the CO and CC Planning Districts and attempts to argue that a use that is expressly allowed as a conditional use in the zone (and even one that is attached to a permitted use in the zone) is not consistent with the purpose statement of the same zone that allows the use. This is also a misread of the TDC and the CURP.

TDC 32.020 contains siting criteria for conditional uses. The siting criteria refer to consistency with the purpose statement of each Planning District, benefit to the general welfare and the fulfillment of a probable public need. Zian quotes the purpose statement of the CC and CO Planning Districts and claims that a large retailer with outdoor sales is not consistent with either purpose statement in a commercial planning district.

The Cabela’s is entirely consistent with both purpose statements and, while again ignored by Zian, is also highly consistent with the purpose of the CURP.

The purpose statement of the CC Planning District states in part:

“To provide areas of the City that are suitable for a full range of retail, professional and serviced uses of the kind usually found in downtown areas patronized by pedestrians.” TDC 53.010 (Emphasis added).

The purpose statement goes on to also encourage civic, social and cultural functions as well as other uses.

The purpose statement of the CO Planning District states in part:

“To provide areas for professional offices in locations adjacent to or across the street from residential areas. The district is intended to provide for office development

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ranging in size from small buildings with one or two tenants to large complexes housing business headquarters.” TDC 50.010.

These two purpose statements are then supplemented by the multiple purposes of the CURP. They provide in part:

“To strengthen the social and economic development of central Tualatin...” (CURP at page 7)

“To encourage and facilitate commercial development in the Urban Renewal Area...” (CURP at page 8).

“Encourage the development of existing Central Commercial designated land before re-designating other land within the Urban Renewal Area as Central Commercial.” (CURP at page 8).

“Support Central Commercial designated land for development by assisting in the marketing and promotion of Central Tualatin as a place to visit, shop and conduct business.” (CURP at page 8).

Zian ignores the CURP purpose statements in its critique of the staff recommendation. However, the CURP purpose statements supplement the Planning District purpose statements and must be considered part of the TDC. (CURP at page 13).

The areas of the proposed Cabela’s that are conditional uses are consistent with all of these purpose statements. First, a Cabela’s is an important element in providing a “full range” of retail uses as contemplated by the CC purpose statement. The CC Planning District is not intended to accommodate only one type of retail nor does the Planning District or the CURP limit the square footage of this retail use. The Cabela’s is also located in a shopping center that has extensive improvements for pedestrian access including the provision of outdoor sales itself, a network of sidewalks and a plaza and connections to the surrounding uses. For all of these reasons, the Cabela’s is consistent with the CC District purpose statement.

Second the Cabela’s is consistent with the CO purpose statement as supplemented by the CURP. The Cabela’s is a recognized conditional use on this particular site within the CURP. The CURP calls for this kind of commercial economic activity on Blocks 1 and 2 within the URA. With its economic activity, Cabela’s will “strengthen the economic development of Central Tualatin; encourage and facilitate commercial development in the Urban Renewal Area; encourage the development of Central Commercial designated land before redesignating other land; and support commercially designated land for redevelopment.”

The City Council should therefore accept the recommendation of staff and similarly find that the portions of the Cabela’s that are conditional uses are consistent with all of the relevant purpose statements of the Planning District and CURP.

The Cabela's Fills a Probable Need of the Public

Zian claims that because the City already has a Dick's Sporting Goods and an REI, there is no remaining public need for an outdoor sports retailer in the City. Zian further argues that locating a portion of the store in the CO District displaces office uses and therefore cannot meet this need requirement. These arguments are in error for several reasons.

First, to accept the REI/Dick's argument would be to accept no further retail growth in sports sales in the community without any evidence of remaining demand. This approval criterion does not require a supply and demand study. Nor should it be interpreted as a "cap" on further retail. Such an interpretation would be counter to the fundamental goals of the CURP. Instead the standard states that the use will fill a probable need. Cabela's has determined that the Tualatin area has a probable need for an outdoor outfitter of this type and magnitude. The CURP establishes a public need for more commercial development in the Urban Renewal Area through a direction to encourage redevelopment of CC and CO zoned sites and a provision that expressly calls for the development of CC zoned properties with retail and commercial uses before redesignating any other CC zoned lands in the Plan Area. The City has firmly established more than a probable public need through the goals of the CURP and Cabela's has confirmed that probable need though a decision to locate a store in this community.

Because the CURP plainly and particularly allows Cabela's as a conditional use on this Block 1 in the CO District and allows the store as a permitted use in the CC Planning District, the public need has been demonstrated at this time in this specific location.

The Cabela's is Timely Considering the Adequacy of Public Facilities

The City demanded an exhaustive traffic analysis for both this conditional use permit and the underlying master plan. That analysis was also supplemented several times in response to further inquiries from Zian and the City itself. The full analysis and supplements are referenced and reviewed in the staff report which concludes there is substantial evidence in the record to support the conclusion that the development is timely considering the adequacy of public facilities. Because the record is complete with a comprehensive rebuttal to Zian's traffic claims, this argument simply incorporates by reference the Kittelson traffic analysis as supplemented by its multiple memorandums.

However, one additional claim offered by Zian in its August 14, 2013 letter must be addressed here. Zian claims that approval of the master plan now requires that all of the trips associated with the master plan approval be considered existing and current background traffic and that this conditional use evaluate the Cabela's trips against that background traffic. This belies reason. All of the Cabela's trips were already considered in the Kittelson traffic analysis and the conclusion of that analysis is that the system will continue to operate adequately. To now require Cabela's to falsely double its trips on the system departs from reality and is certainly not required under this approval criteria.

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The CUP Will Not Alter the Character of the Area in a Manner that Substantially Impairs or Precludes the Use of Surrounding Properties

The staff report defines the surrounding area as adjacent properties as well as the downtown core. Staff then finds that redevelopment of the site is consistent with the intended character of the area as expressed in the CURP and the underlying Planning Districts. Staff emphasizes the redevelopment of an existing center with improved design, active uses and a transportation and pedestrian network that will not only serve the site but draw people to the downtown core though the significant redevelopment activity on this site and perhaps other sites that are catalyzed by this development. Staff also notes that the transportation system will adequately accommodate the expected trips and even improve the system to serve this site and surrounding and adjacent sites, including the downtown core.

Zian counters that the City should accept its traffic report over the Kittelson report and therefore find that the development jeopardizes future redevelopment on other sites. Staff rejected this argument in the master plan and again rejects it here, relying on the substantial evidence provided in the Kittelson analysis and supplemental memorandums. That analysis aptly and substantially demonstrates that the transportation system will remain adequate and even improve to serve other uses in the future.

Zian then constructs a claim that Seneca Street will displace City Hall and this off-site impact is akin to a proposed mine destroying an off-site wetland. There are a few problems with this argument. First, Seneca Street will be constructed by the applicant as a voluntary and not required condition of approval of the master plan only when the City desires to re-locate City Hall. City Hall, unlike the mine and the wetland, will not be involuntarily displaced or destroyed as Zian claims. Rather, if and when the City desires to voluntarily relocate City Hall, Seneca will be constructed. Zian also fails to acknowledge that the Seneca Street extension was approved by the City in the TSP in this very location. City Hall is not a wetland and Cabela's is not a polluting mine. This claim should be summarily dismissed.

The CUP is Consistent with Access Policy 2.

To the extent Access Policy 2 is relevant to this proposal, it is satisfied. Zian repeats the same arguments here that it made in the master plan proceedings.

The Loop Road is a minor collector, designed to minor collector standards as permitted by the CURP and the TDC. It is also a public road that will be dedicated for public use by appropriate instrument. Because Zian's arguments on this point rely on Zian's incorrect conclusion that the road is private, they should be dismissed.

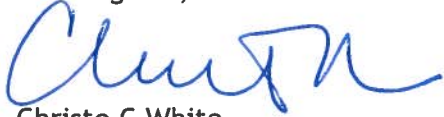
Even if the road were private, the conditional use still complies with this policy. Access Management Policy 2 states that where a property abuts an arterial and another roadway, the access for the property shall be located on the other roadway, not the arterial. Cabela's only has frontage on an arterial, Nyberg Street. Accordingly, even if the Loop Road were private, Cabela's would be permitted to access Nyberg Street under Policy 2.

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Conclusion

Based on the staff recommendation of approval, the substantial evidence in the whole record and this final legal argument, the applicant respectfully requests approval of the conditional use permit.

Best regards,



Christie C White

cc: City Council Members
Jean Paul Wardy
Fred Bruning



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Linda Odermott, Paralegal
Sean Brady, City Attorney

DATE: 08/26/2013

SUBJECT: Consideration of **Resolution No. 5163-13** Approving a Central Urban Renewal District Master Plan for the Nyberg Rivers Shopping Center Development located at 7455-7925 SW Nyberg Street (Tax Map 2S124A 2700--2S124A 1601, 1602, 1900, 2502, 2506, 2507, 2700/ 2S124B 2000, 2001, 2100) in the Central Commercial (CC), Commercial Office (CO) and High-Density Residential (RH) Planning Districts and Central Urban Renewal Blocks 1-5 (MP 13-01)

ISSUE BEFORE THE COUNCIL:

Council will consider Resolution No. 5163-13 approving a Resolution approving a Central Urban Renewal District Master Plan for the Nyberg Rivers Shopping Center Development located at 7455-7925 SW Nyberg Street (Tax Map 2S124A 2700--2S124A 1601, 1602, 1900, 2502, 2506, 2507, 2700/ 2S124B 2000, 2001, 2100) in the Central Commercial (CC), Commercial Office (CO) and High-Density Residential (RH) Planning Districts and Central Urban Renewal Blocks 1-5 (MP 13-01).

RECOMMENDATION:

Staff recommends that the City Council approve Resolution No. 5163-13 approving the Master Plan 13-01.

EXECUTIVE SUMMARY:

On April 23, 2013, CenterCal Properties LLC (Applicant) submitted an application for the Nyberg Rivers Master Plan (MP-13-01) and on May 22, 2013, the application was deemed complete, on June 24, 2013 the Applicant submitted an addendum to the Master Plan application, including updated plans and a response to issues and questions raised by Staff during the application review process. The City Council held the initial public hearing on this matter on July 22, 2013 and the public hearing was continued to August 7, 2013. At both hearings, and between the two hearing dates, the City Council accepted written testimony and heard oral testimony from City staff, the Applicant, proponents, and opponents of the project. After hearing from City staff, the Applicant, proponents, and opponents, and receiving additional written testimony, the City Council closed the public hearing and began deliberations. After deliberating, the City Council approved with conditions MP-13-01 by a vote of 7 to 0.

OUTCOMES OF DECISION:

ALTERNATIVES TO RECOMMENDATION:

FINANCIAL IMPLICATIONS:

Attachments: Resolution
 Exhibit 1 - The Nyberg Rivers Master Plan MP-13-01
 Exhibit 2 - Findings and Conclusions

RESOLUTION NO. 5163-13

RESOLUTION APPROVING A CENTRAL URBAN RENEWAL DISTRICT MASTER PLAN FOR THE NYBERG RIVERS SHOPPING CENTER DEVELOPMENT LOCATED AT 7455-7925 SW NYBERG STREET (TAX MAP 2S124A 2700 – 2S124A 1601, 1602, 1900, 2502, 2506, 2507, 2700/ 2S124B 2000, 2001, 2100) IN THE CENTRAL COMMERCIAL (CC), COMMERCIAL OFFICE (CO) AND HIGH-DENSITY RESIDENTIAL (RH) PLANNING DISTRICTS AND CENTRAL URBAN RENEWAL BLACKS 1-5 (MP-13-01)

WHEREAS, the Central Urban Renewal District Plan (Plan) requires development or redevelopment within Central Urban Renewal District Blocks 1, 2, 3, 4, 5, 13, 25, 26, 27, 31, 32, and 33 to obtain Master Plan approval from the City Council at a public hearing before submitting for Architectural Review and other development approvals for the project.

WHEREAS, The Nyberg Rivers project is located in Central Urban Renewal District Blocks 1-4 and subject to the master plan requirement.

WHEREAS, on April 23, 2013, CenterCal Properties LLC (Applicant) submitted an application for the Nyberg Rivers Master Plan (MP-13-01) and on May 22, 2013, the application was deemed complete, on June 24, 2013 the Applicant submitted an addendum to the Master Plan application, including updated plans and a response to issues and questions raised by Staff during the application review process; and

WHEREAS, the criteria for approving the Master Plan is found in eleven (11) Goals and Objectives in the Central Urban Renewal District Plan.

WHEREAS, the City Council held the initial public hearing on this matter on July 22, 2013 and the public hearing was continued to August 7, 2013. At both hearings, and between the two hearing dates, the City Council accepted written testimony and heard oral testimony from City staff, the Applicant, proponents, and opponents of the project.

WHEREAS, the Applicant submitted a supplemental site plan at the final evidentiary hearing on August 7, 2013.

WHEREAS, After hearing from City staff, the Applicant, proponents, and opponents, and receiving additional written testimony, the City Council closed the public hearing and began deliberations. After deliberating, the City Council approved with conditions MP-13-01 by a vote of 7 to 0.

WHEREAS, based upon the record submitted to City Council, the City Council makes this final written decision.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The Nyberg Rivers Master Plan MP-13-01, is attached as "Exhibit 1" and incorporated by reference, and consists of:

- *Application Binder.* The Application Binder outlines the proposed multi-tenant shopping center redevelopment in narrative and through site plans.)
- *Presentation Document.* The Presentation Document provides a high level overview of the existing conditions, redevelopment plan, and associated improvements to the site.
- *Addendum #1.* Addendum #1 includes more detailed information on various aspects of the proposed redevelopment, and an updated site plan; and
- *Supplemental Site Plan.* The Supplemental Site Plan provides a visual description of how the Applicant proposes to address some of the conditions of approval.

is hereby approved with the following conditions:

- A. Limit the number of drive-thru facilities in the Nyberg Rivers development to no more than four and design any new or re-located drive-thru facilities so the service windows and service aisles are screened from public streets. (Goal 1)
- B. Master Plan area and Nyberg Rivers site shall design provide attractive and pedestrian-oriented features including accessways and pathways that will connect to existing and future residential development in the downtown area and specifically to the adjoining Heron's Landing Apartments property. (Goal 2)
- C. Recreational equipment, apparel and sports outfitting sales are prohibited in areas identified as public gathering, multi-function open plaza and plaza seating with fire pit on Attachment 102D page 60 Building Frontage landscape plan. (Goal 4)
- D. A minimum of 12 feet of clear, unobstructed width for walkways or accessways through a plaza or along the building frontage between Building D1 and northeast corner of the public gathering, multi-function plaza seating with fire pit on Attachment 102D page 60 Building Frontage landscape plan. (Goal 4)
- E. The Truck Route designations from Street "A" and Seneca Street are removed. (Goals 4 and 5)

- F. The following transportation improvements are necessary for the Master Plan (Goal 5):
- a. The Seneca Street extension to the Nyberg Rivers site with a signal at SW Martinazzi Avenue constructed to the standards of a Minor Collector Street. The time of construction will be determined through the public facilities decision process. The time of construction will be determined through the public facilities decision and is not anticipated or required to occur prior to removal of the Council Chambers building.
 - b. A westbound right turn lane on SW Nyberg Road.
 - c. Two southbound left turn lanes and a shared through/right turn lane from the site's access onto SW Nyberg Road.
 - d. Two inbound receiving lanes; and
 - e. The associated signal improvements at the main entrance.
- G. The street cross-sections are necessary for the Master Plan and are approved with the following modifications (Goal 5):
- a. Attachment 102D -Exhibit B: Cross-section A-A:
 1. A 4 to 7-foot planter strip on the east side with curb, streetlights, and trees
 2. A 4-foot planter on the west side with curb, streetlights adjacent to the travel lanes, and groundcover and shrubs with a 14-foot shared path with tree wells
 3. Three 12-foot southbound travel lane
 4. Two northbound 12-foot travel lanes
 5. A center median consisting of an 18-inch concrete median, with striping on both sides for a total of 2.5-feet.
 6. The road shall be a public road.
 - b. Attachment 102D - Exhibit C: Cross-section B-B:
 1. A 12-foot pedestrian walkway on the north side with tree wells
 2. Two 13-foot travel lanes. 12 foot travel lanes are acceptable.
 3. A 6-foot planter on the south side
 4. A 5-foot sidewalk on the south side
 5. The road shall be a public road.
 - c. Attachment 102D - Exhibit D: Cross-section C-C:
 1. A 10-foot wide pedestrian walkway on the east side with tree wells
 2. 17.5-foot angled parking on both sides
 3. Two 14-foot travel lanes
 4. A 4-foot sloped landscape area on the west side
 5. A 12-foot multi-use path on the west side
 6. The road shall be a public road.
 - d. Attachment 102D - Exhibit E: Street "A": Cross section D-D:
 1. A 12-foot multi-use path on the west side

2. A 4-foot planter strip with curb, streetlights, and trees
 3. Two 12-foot travel lanes
 4. A 6-foot bike lane on the east side
 5. A 5-foot sidewalk on the east side
 6. The pork chop at the intersection of Boones Ferry Road will be mountable for emergency vehicles
 7. The road shall be a public road.
- e. City Parking Lot/Heron's Landing/Access to Street "A" and intersection with the greenway:
1. The accessway shown is 40-feet wide
 2. The multiuse path crossing is located south of the accessway
 3. The crossing will include striping and bump-outs
 4. The Heron's Landing Apartment access easement opposite the City staff parking lot access.
 5. A crosswalk on Street "A" adjacent to SW Boones Ferry Road
 6. The road shall be a public road.
- f. Attachment 102D -Exhibit G: Nyberg Street between the entrance of the site and Martinazzi Avenue: Cross section F-F:
1. A 4-6 foot planter strip with trees. This planter does not include curbs and streetlights, which are placed on the curb-tight sidewalk.
 2. A 5-6-foot curb-tight sidewalk on the north side of Nyberg Road
 3. A 6-foot bike lane
 4. Two 11-foot westbound travel lanes
 5. The north-south crosswalk across Nyberg Street will have a dedicated pedestrian/bicyclist-activated sequence
 6. The road shall be a public road.
- g. Attachment 102D - Exhibit H: Nyberg Street between the entrance of the site and I-5: Cross section G-G
1. A minimum 12-feet for bike and pedestrian use on the north side of Nyberg Road
 2. A 4-foot planter strip with curb, streetlights, and trees
 3. A 15-foot westbound right-turn lane
 4. No proposed changes to the existing west and east-bound turn lanes
 5. A two foot landscape strip prior to a hand rail on top of a retaining wall, then a water quality pond
 6. The road shall be a public road.
- h. Seneca Street and the signal at SW Martinazzi Avenue
1. Two 12-foot travel lanes
 2. One 14-foot center turn lane
 3. Two 6-foot bike lanes
 4. Two 8-foot parking strips

5. Two 6-foot planter strips with curbs, streetlights, and street trees
 6. Two 6-foot sidewalks
 7. The road shall be a public road.
- H. All shared pathways shall be open to the public. (Goal 5 and 6)
- I. New or relocated buildings on the Nyberg Rivers site shall have bicycle parking facilities. (Goal 5 and 6)
- J. The Master Plan area shall use vegetative treatment of stormwater where feasible. (Goal 8)
- K. No increase in the 100-Year Floodplain associated with improvements to public "Street A" and SW Seneca Street. (Goal 10)
- L. There shall be additional window and architectural features that break up the building mass and add architectural interest on each of the four sides of Buildings 1040, G-100, H-100, J-100 and N-100. (Goal 11)
- M. Building 1040 shall have variations in building height, additional gabled roof feature, canopy feature, entry feature, dimensional wall feature such as columns or pilaster and projected entries, show larger window and entry areas and show diversity in the exterior wall design and material on all four sides of the building. (Goal 11)
- N. The loading and service facilities for the existing Michaels (Building D2) and new Buildings 1005, 1010 and 1040 shall provide adequate visual and noise buffering for the benefit of nearby public areas and residential areas. (Goal 11)
- O. If oversized vehicle parking stalls occupy or replace standard parking stalls proposed in the Master Plan, the total number of parking stalls and the dimensions shall be adjusted accordingly to reflect the revision. (Goal 11)
- P. Trees planted in "diamond planters" shall achieve a growth that is a minimum of 66 % (2/3) of the 30 ft. mature tree height standard in TDC 73.360(7)(a-e) within 5 years of planting. If the trees do not meet the performance requirement, then Applicant, its successors and assigns, must remedy the failure. Such remedy shall be up to and including rebuilding and expanding the planting area. (Goal 11)
- Q. Trees planted in the "diamond planters" shall be monitored annually. The applicant, its successors or assigns, shall submit a report from a certified arborist that documents tree height, health of canopy, and size of trunk by November 1 of each year after planting. (Goal 11)

- R. Prior to development, a tree maintenance plan shall be established for all trees in Master Plan area where development occurs. (Goal 11)
- S. All trees on the former Nyberg House site (tax lot 2502), adjacent to Building C (Tax Lot 1602) and in the vicinity of the proposed Building N-100 shall be preserved and retained as reasonably feasible. Where tree preservation is not reasonably feasible, 3" caliper or 10-12 foot replacement tree plantings of a similar character shall be planted in the vicinity of where trees were removed on Tax Lot 2502. (Goal 11)
- T. Plant 15 additional Douglas Fir, Western Red Cedar, or other tall-maturing conifer tree plantings in the landscape plan for location on the site's eastern frontage along I-5. (Goal 11)
- U. The following items requested for approval are not within the purview of the Master Plan process and are not approved with the Master Plan decision:
 - 1. Approve and permit retail uses within the Office Commercial (CO) designated portions of the property.
 - 2. Approve and permit outdoor sales within the Central Commercial designated portion of the property.
 - 3. Approve right-of-way vacation of the Oregon Department of Transportation property along Nyberg Road.
 - 4. Approval of any modification of land uses.
 - 5. Acceptance by the City of any easements or other land transactions for pedestrian or transportation facilities.
 - 6. A decision on whether to adopt a separate review procedure for the Master Plan
 - 7. Approve the Nyberg Rivers alternate sign program.

Section 2. The Findings and Conclusions are adopted as set forth in "Exhibit 2," which is attached and incorporated by reference.

Section 3. This Resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 26th day of August, 2013.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO LEGAL FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder