

August 26, 2015

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**VIA EMAIL**

Mr. Ryerson Schwark, Chair  
City of West Linn Planning Commission  
22500 Salamo Road  
West Linn, OR 97068

**Re: City of West Linn Planning File Numbers DR-15-11 and LLA-15-01**

Dear Chair Schwark and Members of the Planning Commission:

This office represents ConAm Properties, LLC (“ConAm”). I am writing concerning four (4) issues.

**1. Ex Parte Contacts.**

As the Planning Commission knows, the Applicant has sent all of its comments through the Planning Department. Some persons have decided to communicate directly with the Planning Commission. The Applicant respectfully requests that the Planning Commission continue to do as it has done, which is to send the *ex parte* comments to the Planning Department so they can properly become part of the record and to not consider them further until entered into the record. This Application is heard through a *quasi-judicial* process and one of the hallmarks of that process is that all parties should be privy to all of the information and that the Planning Commission should see only information that is in the public record.

I appreciate your consideration of this request.

**2. The Oregon Land Use Board of Appeals (“LUBA”) has approved of an applicant reserving its oral rebuttal until after the record is closed to all other parties.**

As the Planning Commission may remember on the hearings on the Applicant’s proposal to amend the Comprehensive Plan map and zoning map on this site, the Applicant provided its oral rebuttal at the continued hearing. Some parties objected to this.

LUBA has held that nothing in ORS 197.763 (the statutory procedures for quasi-judicial land use hearings) prohibits an Applicant from reserving its entire presentation at a continued hearing to its final rebuttal. *Ramsey v. City of Philomath*, 46 Or LUBA 241 (2004).

In the event this occurs again, I simply wanted the Planning Commission to know that, as the Applicant said last time, ORS 197.763 allows this to occur and it is not error.

**3. Response to ex parte email dated August 25, 2015 from Kathie Halicki to the West Linn Planning Commission.**

This response will be brief but given this ex parte contact, I want to respond now.

**A.** The Applicant has agreed to mitigate the impacts of the added trips to the surrounding streets by installing a signal at the site's Blankenship Road driveway and a second left turn lane from Salamo Road to Tenth Street. The Oregon Department of Transportation ("ODOT"), the City's consulting traffic engineer, DKS, and the City Engineer have accepted the mitigation improvements and said that they mitigate the Application's additional trips. Please keep in mind that Mr. Parker, the site owner, has a 2006 300,000 square feet vested office approval for this site, which would double the number of vehicle trips from the site as opposed to this Application.

**B.** Neither the Applicant's transportation engineer, MacKenzie, nor DKS, ODOT, or the City Engineer have identified any safety issues that ConAm should address. ConAm prepared its traffic impact analysis in coordination with DKS, ODOT, and the City Engineer. Applicable law does not require the Applicant to address existing problems; applicable law requires the applicant to address the problems it creates.

**C.** Visitor parking spaces on Tannler Drive are allowed by CDC Chapter 46. People are smart enough to deal with rare icy street conditions.

**D.** Tannler Drive is a Collector street and the Collector street designation provides that people may travel to and from areas on Collector streets. There is no prohibition on traffic using Tannler from this development. However, the Applicant's TIA indicates that very few trips from this site will use Tannler Drive.

**E.** The Tualatin Valley Fire and Rescue District is aware of this Application and has approved the site plan. The Fire District has *not* said that they have no ability to get to the site. Traffic mitigation will *improve* the existing intersection's capacity, Tualatin Valley Fire and Rescue District and the West Linn Police Department will be able to reach the site more quickly than currently.

**F.** The Applicant will contribute funds to the future improvement of Tenth Street.

**G.** Traffic studies account for full build-out and occupancy of projects. The 2006 traffic study for the vested office project on this site did so, as did the traffic study for this Application. In fact, they assume worst case traffic generation, as did this traffic study.

**H.** The Applicant has proposed a storm drainage system that meets City standards and has been approved by the City Engineer.

**I.** This Application will improve walkability because the Applicant must construct a sidewalk on the west side of Tannler Drive and pedestrian crossing of Blankenship Road will be easier with the signalized intersection at the Blankenship Driveway.

**J.** Tri-Met will not remove the bus stop.

**K.** It is ridiculous to assume that people will not be able to get in and out of their neighborhood. The residential area north of the site has four (4) streets to Salamo Road and with a signalized intersection at the site's Blankenship Road driveway, the traffic flow on Blankenship Road will be improved.

**L.** The Applicant complies with the City's regulations for preservation of significant trees and tree groves. Most of the significant trees are in the approximately 3.0 acre lot at the north end of the site that it will be preserved as open space.

**M.** ConAm commissioned a noise study by the firm of Daley, Standlee & Associates. Daley, Standlee concluded that the site will not generate noise inconsistent with City standards. The noise study is in the record.

**N.** The issue of how long it takes until ConAm "builds out" the mixed-use project is irrelevant to the approval criteria.

**O.** The OBC purpose statement is irrelevant to the approval criteria. Moreover, the OBC zone expressly allows this use, so if the purpose statement were applied in a way not to do so, it would be inconsistent with the express language of the OBC zone.

**P.** ConAm has no reason not to use its best efforts to lease all of the residential and commercial spaces but it is no different from any other Applicant in not being able to assure that all of the spaces will be leased out. However this is not relevant to the approval criteria and should not be considered.

**Q.** The West Linn Comprehensive Plan notes that the City has a problem with the lack of affordable apartments. While the Comprehensive Plan is not an approval standard, if the City were to refer to the Comprehensive Plan were as approval standard, Oregon Courts would give effect to the findings in the Plan that there is a need for multiple family housing because of low vacancy rates and high rents.

**4. The 2010 Transportation System Plan ("TSP") Technical Appendix has apparently not been adopted by the City of West Linn City Council nor has it been deemed acknowledged by the Oregon Department of Land Conservation and Development ("DLCD").**

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Garrett Stephenson of this office spoke with DLCD regarding the status of the TSP Technical Appendix. Mr. Stephenson spoke with Ms. Jennifer Donnelly at DLCD on August 19, 2015. Ms. Donnelly has provided us with the acknowledgement document submitted by the City of West Linn for the 2008 TSP. She stated in an email, "I found the document in what was originally submitted to us but not in the final proposal. It does state in the TSP that the Technical Appendix is a separate document but I did not see that in what was sent to us."

**Exhibit 1** to this document is the Notice of Adopted Amendments from DLCD dated January 13, 2009 to the City of West Linn concerning the December 8, 2008 adoption of the TSP. I note that the City of West Linn website shows the TSP as a 2008 document and the Technical Appendix is a 2010 document. Our communications with DLCD and the attached document show that while the City Council adopted the 2008 TSP and submitted it to DLCD for "acknowledgement" as consistent with the Statewide Planning Goals, DLCD has no evidence that the City did not do so for the 2010 TSP Technical Appendix. Therefore, without further evidence on this matter, the Technical Appendix is neither adopted nor acknowledged and may not be a basis for decision-making.

## **5. Conclusion.**

I conclude by saying how surprising it is that so many people object to apartments, which are a way for families to afford to live in West Linn. Not everyone can afford the privilege of living in a single-family home in West Linn and apartments bridge that gap. Notwithstanding the number of opponents, I urge the Planning Commission to look solely at the approval criteria and neither take into account the number of opponents nor "re-write" the OBC zone as the opponents wish it were written.

Thank you for your consideration of this letter.

Very truly yours,



Michael C. Robinson

MCR:rsp  
Enclosure

cc: Mr. Chris Kerr (via email) (w/ encl.)  
Mr. John Boyd (via email) (w/ encl.)  
Ms. Megan Thornton (via email) (w/ encl.)  
Mr. Gary Alfson (via email) (w/ encl.)  
Mr. Ron Dean (via email) (w/ encl.)

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Mr. Pete Miller (via email) (w/ encl.)  
Mr. Brent Ahrend (via email) (w/ encl.)  
Ms. Janet Jones (via email) (w/ encl.)  
Ms. Morgan Holen (via email) (w/ encl.)  
Mr. Mike Mahoney (via email) (w/ encl.)  
Mr. Rob Morgan (via email) (w/ encl.)  
Mr. Garrett Stephenson (via email) (w/ encl.)  
Mr. Seth King (via email) (w/ encl.)  
Mr. Jeff Parker (via email) (w/ encl.)



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



## NOTICE OF ADOPTED AMENDMENT

01/13/2009

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of West Linn Plan Amendment  
DLCD File Number 003-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, January 28, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc. Chris Kerr, City of West Linn  
Gloria Gardiner, DLCD Urban Planning Specialist  
Bill Holmstrom, DLCD Transportation Planner  
Jennifer Donnelly, DLCD Regional Representative

<paa> YA

Exhibit 1

# DLCD

## Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD  
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person  electronic  mailed

DATE  
STAMP

### DEPT OF

JAN 08 2009

LAND CONSERVATION  
AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: **City of West Linn**

Local file number: **PLN -08-07**

Date of Adoption: **12/8/2008**

Date Mailed: **JAN 6, 09**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **6/8/2008**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: **TSP**

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

The City is proposing a new TSP with related Comprehensive Plan and Community Development Code amendments to update and be consistent with TPR and regional requirements.

Does the Adoption differ from proposal? Yes, Please explain below:

The Council and Planning Commission only made minor changes to the documents.

Plan Map Changed from: **N/A**

to:

Zone Map Changed from: **N/A**

to:

Location: **N/A**

Acres Involved:

Specify Density: Previous: **NA**

New:

Applicable statewide planning goals:

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>											

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

**DLCD file No.** \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

ODOT, Metro, Tri-Met

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Local Contact: **Chris Kerr**

Phone: (503) 723-2538 Extension:

Address: **22500 Salamo Rd. #1000**

Fax Number: **503-656-4106**

City: **West Linn**

Zip: **97068-**

E-mail Address: **ckerr@westlinnoregon.gov**

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## **ADOPTION SUBMITTAL REQUIREMENTS**

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

- Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

**ORDINANCE NO. 1584  
WEST LINN, OREGON**

**AN ORDINANCE APPROVING A NEW TRANSPORTATION SYSTEM PLAN WITH AMENDMENTS  
TO GOAL 12 OF THE COMPREHENSIVE PLAN AND THE COMMUNITY DEVELOPMENT CODE**

**WHEREAS**, the City's current Transportation System Plan ("TSP") was adopted in 1998 and the Street Element was last updated and adopted in 2000; and,

**WHEREAS**, a new TSP will provide the City the opportunity to analyze and improve upon the City's transportation system; and,

**WHEREAS**, a new TSP can address the changed circumstances, regulatory requirements and includes updated technical data since the Plan was last updated; and,

**WHEREAS**, the proposed TSP provides a comprehensive assessment of the City's transportation system, and,

**WHEREAS**, the proposed TSP identifies current deficiencies in the City's transportation systems; and,

**WHEREAS**, the proposed TSP examines system improvement needs for all transportation modes consistent with coordinated population and employment projections and consistent with traffic volume forecasts for all transportation modes; and,

**WHEREAS**, the proposed Comprehensive Plan and CDC amendments address the most recent transportation data provided; and,

**WHEREAS**, the proposed Comprehensive Plan and CDC amendments will clarify transportation related policies and regulations; and,

**WHEREAS**, the proposed Comprehensive Plan and CDC amendments ensure consistency with the proposed new TSP; and,

**WHEREAS**, the proposed Comprehensive Plan and CDC amendments include new transportation data provided in the TSP; and,

**WHEREAS**, the proposed TSP and amendments to the Comprehensive Plan and CDC address the consistency requirements between the Statewide planning rules and Metro; and,

**WHEREAS**, the proposed TSP is classified as a Supporting Document to the West Linn Comprehensive Plan; and,

**WHEREAS**, the Community Development Code Chapter 98 provides the approval criteria for legislative amendments; and,

**WHEREAS**, the Transportation Advisory Board has reviewed the proposed TSP and recommended its approval; and,

**WHEREAS**, on November 5, 2008 and December 3, 2008, the West Linn Planning Commission considered and reviewed the proposed TSP and associated regulatory amendments and unanimously recommended approval;

**WHEREAS**, West Linn City Council held a public hearing on December 8, 2008 and after adopting findings of fact and conclusions in the record to justify its decision,

**WHEREAS**, the new TSP is included as Exhibit "A", the amendments to Goal 12 of the Comprehensive Plan are included as Exhibit "B", and the specific amendments to the CDC are identified as Exhibit "C";

**NOW, THEREFORE, BE IT RESOLVED BY THE WEST LINN CITY COUNCIL THAT:**

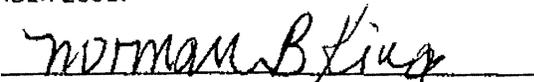
Section 1. The 2008 City of West Linn Transportation System Plan, as shown in Exhibit "A", is hereby adopted as the new plan governing transportation system policy.

Section 2: The City of West Linn Comprehensive Plan is hereby amended to include the text changes (additions are indicated by bold underline, deletions by bold strikeout) as follows in Exhibit "B"

Section 3: The West Linn Community Development Code is hereby amended to include the text changes (additions are indicated by bold underline, deletions by bold strikeout) as follows in Exhibit "C"

**NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:**

PASSED AND APPROVED THIS 8th DAY OF DECEMBER 2008.

  
Norman King, Mayor

ATTEST:  
  
Tina Lynch, City Recorder

**Exhibit "A"**

**The 2008 City of West Linn Transportation System  
Plan**