

October 10, 2014

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VIA EMAIL

Ms. Christine Steel, Chair
West Linn Planning Commission
City of West Linn Planning Department
22500 Salamo Road, Suite 1000
West Linn, OR 97068

**Re: Applications by ConAm Properties, LLC
City of West Linn File Nos. ZC-14-01/PLN-14-01
Applicant's Final Written Argument**

Dear Chair Steel and Members of the West Linn Planning Commission:

This office represents ConAm Properties, LLC ("ConAm"). This letter, submitted in two (2) parts, constitutes the applicant's final written argument as allowed by ORS 197.763(6)(e) and under the schedule approved by the Planning Commission at the conclusion of public testimony on October 1, 2014. Neither of the two (2) parts of this final written argument contains new evidence as that word is defined in ORS 197.763(9)(b). All of the evidentiary exhibits attached to the final written argument were submitted into the record on or before October 8, 2014.

I have asked Mr. Pelz to place this letter consisting of two (2) parts into the official Planning Department file and before you at the continued public hearing (for applicant oral rebuttal only) on October 15, 2014 at 6:30 p.m.

Very truly yours,



Michael C. Robinson

MCR:rsr

Enclosures

cc: Mr. Mike Mahoney (via email) (w/ encls.)
Mr. Rob Morgan (via email) (w/ encls.)
Mr. Jeff Parker (via email) (w/ encls.)
Mr. Brendan Buckley (via email) (w/ encls.)
Mr. Brent Ahrend (via email) (w/ encls.)
Mr. Chris Kerr (via email) (w/ encls.)
Mr. Zach Pelz (via email) (w/ encls.)
Ms. Megan Thornton (via email) (w/ encls.)

CONAM FINAL WRITTEN ARGUMENT; SUMMARY OF ARGUMENTS IN FAVOR OF THE APPLICATION

This part of the Applicant's final written argument consists of a summary of the reasons in support of the Application.

1. The Application Meets the Relevant Approval Criteria in CDC Chapter 105.05.A-D.

The Planning Commission can find based on un rebutted substantial evidence in the record that the relevant West Linn Comprehensive Plan Policies are satisfied, as well as relevant provisions of West Linn Community Development Code (the "CDC").

As required by CDC 105.05.B.1 and 2, substantial evidence in the record demonstrates that the OBC zone on this property is a mistake due to the fact that there is no demand for additional office development in West Linn, that other commercial zones and other commercially zoned property in West Linn can accommodate the foreseeable need for commercial development in the City and that the site is better suited for multi-family development. The Applicant is committed to set aside a 3.0 acre area on the north side of the property as an open space area.

The Planning Commission can also find that CDC 105.05.C is satisfied because there is a public need for the change and the change will not adversely affect the health, safety, and welfare of the community. Because there is a public need for the change and the changes in the interest of the present and future community and there will be no adverse impact on the community.

The community benefits by having the land developed for a number of economic reasons as explained in the Applicant's revised economic study. Development of the land will not adversely affect the community either in terms of the impact of the school district or in terms of traffic since multi-family development will generate far fewer vehicle trips than would office development on this property. Leaving property vacant with little expectation of development because of the zone in which it is located is neither beneficial to the public nor in the interest of the present and future community.

Finally, the Planning Commission can find that the Transportation Planning Rule, and Administrative Rule adopted by the Oregon Department of Land Conservation and Development ("DLCD") is satisfied. The record demonstrates, and is consistent with relevant case law concerning compliance with the TPR, that where fewer vehicle trips will be generated by a proposed zone, there is no "significant affect" under the TPR and thus no further analysis is necessary. As noted above, the Applicant will be required to conduct a transportation impact analysis study ("TIA") in the Design Review application.

2. This Site is Appropriate for Multi-Family Development.

This site is next to a park, close to a Tri-Met bus line, close to shopping and yet does not conflict with single-family homes because of the relationship of the site to the property on which

the single-family homes are located and because of the 3.0 acre open space area at the north end of the site will act as a buffer.

Moreover, while the Applicant acknowledges that the site is steep, the conceptual site plan included in the Pre-Application meeting notes demonstrate that is far easier to develop a steep site such as this with several buildings rather than a large building which requires more grading. Development of this site, which requires more extensive grading.

3. This Application is Appropriate.

The CDC and the West Linn Comprehensive Plan provide a process whereby a property owner may apply concurrently to a Comprehensive Plan Map and zoning map amendment as is the case here. There is no prohibition on such Applications nor is it a requirement for "Community Planning". However, the community has been fully involved in this process because the Applicant has met twice with two (2) neighborhood associations, its Application addressed the relevant neighborhood plan and the public is able to participate in this process.

4. Ample Land Remains for Economic Development.

The revised Economic Study shows an excess of a 20-year supply of commercial land and office land elsewhere in the City. Even if this site is rezoned from OBC to R-2.1, ample land for economic development remains.

5. The Applicant appreciates and understands the issues raised by the neighbors. Issues such as traffic, whether a left turn will be allowed from Tannler Drive to Blankenship Road and whether a traffic signal can be installed at that intersection are property addressed through the Design Review application. Other issues, such as impact on the West Linn-Wilsonville School District, can be resolved in this Application because this Application will not have an adverse effect on the community or the school district since only 44 children, using the school district's own student generation numbers, are expected to live in this development. Further, as the Planning Commission knows, the school district has not appeared in opposition to this Application and has not testified in any way in the Application.

6. The Site Should Not Remain Vacant.

Finally, this Application is about whether this property will be allowed to remain vacant in light of unrebutted evidence that office development is likely to occur on this site. Further, the OBC zone is not an effective commercial zone because so few retail or commercial uses are allowed. Moreover, it is not a suitable site for a hotel given the steepness of the slope (and, as noted above, large buildings are more difficult to accommodate on steep slopes, as testified to by the Applicant in the October 1, 2014 hearing) and the Arch Bridge and Bolton Town Center Study suggests that a hotel is more appropriately located in that area.

7. Conclusion.

For all of these reasons, the Applicant respectfully requests that the Planning Commission find that the Applicant has satisfied the applicable approval criteria and recommend

approval of this concurrent Comprehensive Plan map and zoning map amendment to the West Linn City Council.

The Applicant thanks and appreciates the Planning Commission for its consideration of the Application.

CONAM PROPERTIES, LLC FINAL WRITTEN ARGUMENT; RESPONSE TO DOCUMENTS FROM THOSE OPPOSING THE APPLICATION RECEIVED BY THE CITY OF WEST LINN PLANNING DEPARTMENT ON OCTOBER 8, 2014 AT OR BEFORE 5:00 P.M., THE CLOSE OF THE EVIDENTIARY OPEN RECORD PERIOD

This document is the first of two (2) parts of the Applicant's final written argument as allowed by ORS 197.763(6)(e) and as approved by the West Linn Planning Commission at the conclusion of public testimony on October 1, 2014. This document contains no new evidence as that word is defined in ORS 197.763(9)(b), but instead relies upon evidence submitted to the Planning Commission prior to the close of the evidentiary record on October 8, 2014 at 5:00 p.m.

1. Response to one-page email from Commissioner Russell Axelrod dated October 8, 2014

The Applicant appreciates and understands Commissioner Axelrod's explanation of his email dated September 30, 2014.

Commissioner Axelrod sent his earlier email prior to the October 1, 2014 Planning Commission hearing at which the public testified on the Application, both in support and in opposition, and prior to additional argument and evidence submitted by the Applicant in support of the Application. Commissioner Axelrod's September 30, 2014 email (**Exhibit 1**) states in the second paragraph, "I urge the Planning Commission to deny this request until further community planning for the area is performed." His email then goes on to urge denial of the Application by the Planning Commission two (2) additional times.

Mr. Axelrod now says that he did not prejudge the Application and does not feel that he is biased against the Application. However, any reasonable person reading his September 30, 2014 email would conclude two things:

- That he reached a decision on the matter prior to the hearing; and
- That he decided to oppose the Application without the benefit of hearing all of the evidence and argument in support of the Application.

The Applicant respects Commissioner Axelrod's commitment to the citizens of West Linn through his participation as a member of the Planning Commission. However, the integrity of the quasi-judicial process requires that the public believe that the Planning Commission is acting on the Application, not based on personal interest or preconceived notions about the Application, but after the Planning Commission has heard all of the argument and evidence and determined whether the argument and evidence satisfies the applicable approval criteria.

In this case, no matter how thoughtfully Commissioner Axelrod seeks to justify his September 30, 2014 email, the fact is that he urged the Planning Commission three (3) times to deny the Application, he did so prior to the hearing and prior to hearing additional argument in evidence regarding the Application, he described the Application as one allowing "dense residential development" that has the "potential to significantly impact traffic and other aspects of the community and region of West Linn" and urged that "community-based planning should

be first performed for the area before piece-meal development is allowed . . .” means that Commissioner Axelrod has strong opinions that are unaffected by the evidence and argument and that because he did not say “I believe I am opposed, but will consider all of the argument and evidence before deciding”, he has prejudged the Application. His prejudgment cannot be removed from the record.

The Applicant respectfully requests that Commissioner Axelrod recuse himself as he offered to do in his October 8, 2014 email (“However, based on the concern that it has apparently raised, and to avoid potential further complications for the City or Applicant, I will recuse myself from the zoning change matter if necessary.”) because it is necessary for him to do so or, alternatively, that the Planning Commission exercise its authority under West Linn Community Development Code (“CDC”) 99.180 and recuse Commissioner Axelrod from further participation on this Application.

The Applicant regrettably makes this request in order to protect the dignity of the process and ensure the public that the Planning Commission is unbiased in its decision making. We know the Planning Commission will understand the Applicant having to make this request.

2. Response to two-page letter from Greg Stults in opposition to the Application.

Mr. Stults raises several general issues but does not cite any applicable approval criteria with specificity. Nevertheless, the Applicant will respond to all of the issues raised in his letter since he took the time to submit the letter and the Planning Commission deserves a response from the Applicant.

a. Economic impact of the Application.

Although Mr. Stults does not say so, it is clear that he believes this Application, if approved, will have an adverse economic impact on the City. His concern is unfounded based on un rebutted substantial evidence in the whole record before the Planning Commission. The Planning Commission can find that this is the case for two reasons.

First, the Applicant’s **revised** economic study by Johnson Economics dated June 27, 2014 is in the record. The Applicant submitted a prior version of the economic study with its Application. The Applicant submitted the revised version to Planner Zach Pelz on September 18, and Mr. Pelz placed the letter in the official Planning Department file and before the Planning Commission prior to the close of the evidentiary record. It is this study to which the Planning Commission should refer and which demonstrates the fallacy of Mr. Stults’ argument.¹

As the Applicant explained at the public hearing, the revised economics study (**Exhibit 2**) at page 3 demonstrates the following economic benefits to the city:

- \$572,500 in annual property tax revenues;
- \$4.1 million in various fees and system development charges;

¹ The Applicant's October 8, 2014 letter referred to economic benefits from the original economic study. The Planning Commission should use the figures from the revised study, shown here.

- 170 jobs created or induced by construction and operation of the multi-family project;
- \$12.3 million added through wages and economic activity related to these 170 jobs; and
- Up to \$9.3 million in household spending by new residents in the multi-family development.

Moreover, the greatest economic benefit is development of a property where there is otherwise a high likelihood that the property will remain vacant. Notwithstanding that Mr. Parker spent hundreds of thousands of dollars to obtain approval for and vested an approximately 289,000 square foot office project on the site in 2006 and 2010, the property has remained vacant. Mr. Parker testified that he believes it will continue to be implausible to construct an office building in light of a weak suburban office market. A vacant property such as this adds no value to the community, whereas the proposed Application offers substantial value to the community.

Moreover, to the extent Mr. Stults' argument is premised on the idea as suggested by Commissioner Axelrod that this property will become a park like the park to the east, that is unfounded and speculative at best. An additional park site is unwarranted (although the Applicant is committed to providing approximately 3.0 acres of the northern end of the property as open space) and development of the property is anticipated by the West Linn Comprehensive Plan.

b. Impacts to the school district.

A multi-family development will not have an adverse impact to either the community or the West Linn-Wilsonville School District for two reasons. First, there is no testimony from the West Linn-Wilsonville School District opposing this Application or offering any evidence as to impact. The evidence the Planning Commission has before it regarding school impacts is from opponents and from the Applicant. Had the School District believed this Application would adversely affect the district, it would have appeared to so testify but it did not.

The Applicant's October 8, 2014 letter includes Exhibit 3, a memorandum dated October 7, 2014 from Brendan Buckley of Johnson Economics. Pages 6 and 7 of the letter and an exhibit attached to the letter (Exhibit 4) respond to the argument that opponents made that up to 100 students would be generated by this multi-family development. As Mr. Buckley explains, *the opponents used the wrong table to calculate that number of students*. Mr. Buckley's letter explains that "Table 5 on page 35 of that same plan shows that the district forecast a lower number of students per multi-family unit, then for a single-family unit. When the proper forecast factor is 0.21 students per multi-family unit is applied, it yields the estimate of 44 new students. This equates to less than a 1% increase in enrollment for the West Linn Area of the district and slightly more than 0.5% in enrollment for the entire district."

Each new housing development represents new families. As the Applicant has explained, these new families will shop, live, work and play in West Linn. As a matter of argument, each of

the opponents to this Application lives in houses constructed by a builder. Undoubtedly, there were opponents to those applications. Nevertheless, the City chose to approve those applications so that new homes could be constructed and families could live in them. The result is a better and more vibrant community with new citizens. That will be the result here, as well.

As a conclusion to the school issue, the Planning Commission can find that there is no evidence confirming that the additional 44 students will negatively impact either the community or the school district. In fact, even though the school district received notice of this Application from the city and a personal request from one of the opponents to testify on the Application, the school district did not do so. As explained elsewhere in this document, an unsupported secondhand statement about school impact is not evidence.

The Planning Commission can find that this Application will not have an adverse impact on the school district.

c. Traffic.

Mr. Stults begins this section by stating, "There is no compelling reason to make the zoning change except to generate income for the property owner."

The Planning Commission should remember that everyone with the exception of charitable organizations intends to generate a profit. Even Mr. Stults, when he sells his home, will wish to generate a profit. The ability to develop and redevelop land in West Linn is crucial to the city's growth.

Mr. Stults argues that the Applicant has been "deceptive" by not providing a full transportation impact study ("TIA"). The Planning Commission should understand exactly why the Applicant did not do so and, indeed, is not required to do so at this stage. First, there is no dispute that multi-family housing on this property will generate *fewer* vehicle trips than would office development, especially approximately 289,000 square feet of vested office development. The record shows that the Applicant coordinated with the West Linn Planning Department, which, in turn, coordinated with the Oregon Department of Transportation ("ODOT") on this issue. ODOT advised the Planning Department that a TIA was not required for this map amendment because (and it is undisputed that this is the case) multi-family development will generate fewer vehicle trips than will office development. Therefore, regardless of how one approaches this issue, if multi-family development occurs on this site, fewer vehicle trips will enter the road system and, when compared to Mr. Parker's approximately 289,000 square foot vested office development, fully two-thirds fewer trips will enter the road system.

Second, as explained in Mr. Ahrend's October 8, 2014 letter (Exhibit 1 to the Applicant's October 8, 2014 letter), the Transportation Planning Rule (an administrative rule adopted by the Oregon Department of Land Conservation and Development ("DLCD") which applies to applications such as this and is incorporated in the West Linn Community Development Code ("CDC") Chapter 105) requires a comparison of reasonable worst case development scenarios between the existing zoning district and the proposed zoning district. In this case, where fewer vehicle trips are reasonably and objectively expected, a full TIA is not required. The ODOT response to Planner Peter Spir (recited in full in Mr. Ahrend's letter at page 2) is as follows:

“They [ODOT] stated that ODOT’s position is that where the proposed use is [l]ess impactful in terms of trip generation then ODOT stops there and does not require further study or analysis”

In other words, both the City and the State told the Applicant that a TIA is not required at this point. No relevant approval criterion requires a TIA at this stage where fewer vehicle trips would result if the zoning map amendment is approved. In fact, the relevant approval criteria for this Application found in CDC 105.050, “Quasi-Judicial Amendments and Standards for Decision Making” at CDC 105.040.D, “Transportation Planning Rule Compliance” does not require a TIA.

Additionally, if this Application is approved, the Applicant will be required to obtain Design Review approval pursuant to CDC Chapter 55, “Design Review”. CDC 55.125 is entitled “Transportation Analysis” and requires that a TIA be provided with a Design Review application. As the Planning Commission knows, the Applicant has already committed to doing a TIA with the Design Review application.

Mr. Stults argues that the Applicant should have considered a 24 hour timeframe rather than only during peak hours. However, analyzing traffic impacts of a particular application from a peak hour perspective is both common and universal for a single reason: The analysis must be done to account for the busiest times.

Finally, Mr. Stults is wrong that the potential impact of this Application is “large and negative”. It may have a large impact in the sense that peak hour vehicle trips will be reduced by two-thirds compared to office development but it is entirely positive in terms of traffic. With less traffic being developed, there is more capacity in the system, meaning there is less congestion and less need for costly mitigation measures by either the public or Applicant. The result is that with the development of this property in the R-2.1 zone, there will be fewer vehicle trips in the system than would otherwise be the case.

3. Response to one-page memorandum from Roberta Schwarz.

Ms. Schwarz's memorandum raises three (3) issues.

a. Notice.

Ms. Schwarz argues that because the notice of the October 1, 2014 Planning Commission hearing failed to describe that the Application was a “quasi-judicial” application, the notice was inadequate. Ms. Schwarz is incorrect for several reasons.

First, Ms. Schwarz fails to explain how an inadequate notice, in her opinion, affected her substantial rights. She and others submitted argument and evidence before the Planning Commission hearing, submitted argument and evidence at the hearing, and submitted argument and evidence after the hearing during the open record period. Ms. Schwarz availed herself of all of the rights allowed to any participant during a quasi-judicial proceeding. The fact that she disagrees with the wording of the notice did not prevent her from participating and, in any event, she fails to explain how the adequate notice would have changed the way in which she would

have participated. LUBA has consistently ruled that complaints such as Ms. Schwarz's do not constitute error by the local government.

If the Planning Commission compares the notice of public hearing to CDC 99.090, "Contents of Notice" (**Exhibit 3**), the Planning Commission will see that the notice follows the requirements of that CDC section. Second, CDC 99.090.A requires that the notice shall comply with applicable provision of the Oregon Revised Statute. **Exhibit 4** is ORS 197.763, "Conduct of Quasi-Judicial Land Use Hearings; Notice Requirements; Hearing Procedures". ORS 197.763(3) describes the contents of a notice of a quasi-judicial hearing. The content required by ORS 197.763(3) mirrors the requirements of CDC 99.090 and reflects what is contained in the notice of public hearing of which Ms. Schwarz complains.

Based on all of the above, the Planning Commission can clearly find that the notice of hearing met the requirements for a quasi-judicial hearing. However, the Planning Commission should go further to reject Ms. Schwarz's argument. The notice states that: "The criteria applicable to the Comprehensive Plan Map and Zoning Map Amendments are found in Chapters 99 and 105 of the West Linn Community Development Code ("CDC"). **Exhibit 5** to this letter is CDC Chapter 105, "Amendments to the Code and Map". The very first page of CDC Chapter 105 is CDC 105.040, "Quasi-Judicial Amendments and Procedures". CDC 105.040.C refers to a quasi-judicial proceeding as a concurrent zone change and comprehensive plan map amendment, in other words, what the hearing notice describes. Anyone receiving the notice could have, by referring to the CDC Chapters referenced in the notice, concluded that a quasi-judicial hearing was going to be held.

However, even without doing what I suggested, anyone receiving the notice would have been aware of their rights at the hearing, which constitute the full quasi-judicial hearing rights. The fact that the notice does not say the hearing is a quasi-judicial hearing does not mean it is inadequate and, more importantly, does not mean that Ms. Schwarz was deprived of any additional rights, keeping in mind that she did not explain any additional rights of which she was deprived.

b. School District Impact.

Ms. Schwarz argues that the Application fails to satisfy CDC 105.050.C.3 because she asserts that approximately 100 children will be added to the West Linn-Wilsonville School District. She relies on this statement, in part, based on an unsubstantiated telephone conversation with one member of the West Linn/Wilsonville School District Board who stated that because the property is zoned OBC it is not included in long range planning for the school district.

First, Ms. Schwarz fails to explain how the addition of 100 children will adversely affect the health, safety, and welfare of the community. There is no credible evidence in the record from anyone, let alone the school district, that additional children will negatively impact the community. Further, as already explained in this letter, the opponents *erred* by relying on the wrong number of school children based on the school district table. In fact, the number of children that might be reasonably expected from development of this site for multi-family housing is about 44 children, not 100 children.

Finally, the fact that the school district did not include this site in its planning given its OBC zone does not have any relevance to the Planning Commission's decision. The fact is the school district will serve students in its district. No evidence supports a conclusion that adding 44 students will affect the health, safety, and welfare of the community.

c. Burdon of Proof.

Ms. Schwarz argues that ConAm's Application does not "rise to the high level necessary for Comprehensive Plan change and zoning change." The language cited by Ms. Schwarz is not included in CDC Chapter 105 or any other relevant approval criterion.

Mr. Parker testified that he cannot develop his vested office project because there is no demand for office space in West Linn. ConAm explained why it cannot develop multi-family housing under the existing OBC zone. The OBC zone permits multi-family housing under specified conditions. Unfortunately, those specified conditions are ambiguous. ConAm wishes to develop this site for multi-family development and it would certainly be easier to do so in the OBC zone but for the ambiguity of the section allowing multi-family development. Thus, this Application is necessary.

For the reasons subscribed above, the Planning Commission can reject Ms. Schwarz's arguments.

4. Response to two-page memorandum submitted by Ed and Roberta Schwarz.

a. Goal 1.

The Schwarzs argue that West Linn Comprehensive Plan, Goal 1 was not satisfied because of lack of access to the Planning Commission work session prior to the Planning Commission public hearing on October 8, 2014. The Planning Commission must reject the Schwarzs' arguments for two (2) reasons. First, they are legally incorrect but, second, their facts are egregiously wrong.

First, a person's substantial rights apply to the public hearing where a decision can be or is made. In this case, the work session was not the public hearing. Thus, even if the things occurred in the way the Schwarzs said they did, that does not raise a procedural violation of the public hearing, which occurred after the work session. For this legal reason alone, the Planning Commission should reject the Schwarzs' argument.

Second, the facts upon which the Schwarzs rely are incorrect. First, they say that the door to the meeting room was "locked." In fact, four members of the public were present at the work session: two (2) representatives of the Applicant, the Applicant's attorney, and Ms. Carrie Ochs. About halfway through the meeting, Mr. Schwarz attended the meeting. The fact that others did not do so does not mean a violation occurred. Further, in their testimony to the Planning Commission, these parties asserted that they believed the Planning Commission did not intentionally lock the door. Now they apparently assert otherwise. They cannot have it both ways and have waived this argument.

Second, the Schwarzs assert that the Applicant's attorney spoke at the Planning Commission work session. The Applicant's attorney did not request the Planning Commission hearing be continued at that work session and, in fact, said nothing at all at the work session, as he said in the October 8, 2014 letter. In fact, the Applicant made the request for a continued hearing in a letter submitted to the City on October 1, 2014 at 11:38 a.m. The Applicant's request that the hearing be continued for limited purposes and the written record held open for seven days (as allowed by state law) was provided to the public by the Planning Department secretary well before the work session.

Third, the Schwarzs assert that the work session resulted in a "done deal" without the opportunity for citizens to comment. They are incorrect for two (2) reasons. The record reflects that there was no decision made by the Planning Commission at the work session; the Planning Commission voted on a motion at the public hearing as to the request for a continuance and open record period and their motion was entirely consistent with state law. Additionally, anyone had an opportunity in their testimony to testify on the Applicant's request and some did so. The fact that the Schwarzs disagree with the Planning Commission's decision does not mean it is an error.

Fourth, Mrs. Schwarz raised a "point of order." She states that the City Attorney said that the point of order was not to be addressed by the Planning Commission. The Planning Commission followed the advice of the City Attorney in not hearing a point of order from a person not a member of the decision making body. This is not error.

Fifth, the Schwarzs complain about the date established by the Planning Commission for the continuance of the public hearing and the open record period. They did not object at the time of the motion and their failure to do so means they have waived the issue. Moreover, they failed to explain how the requested time period is inconsistent with state law, which expressly provides that seven days is the minimum amount of time for an open record period.

The Planning Commission should reject these arguments.

b. Under Protest Submittal.

The Schwarzs state that they have submitted this letter "under protest" and submitted a petition with signatures attached objecting to the Application.

First, as noted above, the Schwarzs failed to object at the time of the motion and so have waived the issue. However, even if the issue is preserved, the fact is that the Planning Commission motion complies with state law and is not error.

Second, while the Applicant respects the citizens of West Linn, the Planning Commission has no idea what the petition signers were told, what information they were given, or why they signed petitions. Petitions have very little value, and even less so in this case, because the petition signers did not have before them the entire Application.

d. School District.

The Schwarzs rely on an unsubstantiated telephone call from a school district board member that the OBC-zoned property was not in the West Linn-Wilsonville School District.

However, the fact is that the school district has not appeared in this proceeding and has not objected to the amendments.

e. Business Support.

The Schwarzs argue that businesses do not support the Application. **Exhibit 6** is the September 25, 2014 letter from Powell Development Company, owner of the River Falls Shopping Center across Tannler Road. That letter states, in part: “. . . We believe the residential tenants would create substantial more demand for the daily needs that our shopping center provides. This economic benefit is certain to help improve the viability of the many hardworking small business owners in our center. Furthermore, the walkability between the properties is high and will help minimize traffic that would otherwise be created.”

The Planning Commission can reject this argument.

f. Traffic.

The Schwarzs complain that additional development potential on other land was ignored in the traffic estimates. However, the requirement for the Transportation Planning Rule, which is incorporated into the CDC, requires a comparison between reasonable worst-case development scenarios for the existing zone and the proposed zone. A TIA that will include the land the Schwarzs describe is required only at the Decision Review stage.

The Planning Commission can reject this argument.

g. Left Turn.

The Schwarzs complain that the “no left turn” restriction from Tannler Drive onto Blankenship Road was not addressed by the Applicant. The Design Review application will include a TIA that will address this issue. This is not a relevant consideration for a Transportation Planning Rule analysis.

The Planning Commission can reject this comment.

h. Signalized Intersection.

The Schwarzs argue that ODOT has prohibited a traffic signal at the intersection of Tannler Drive and Blankenship Road. As noted above, this is not a relevant consideration for the TPR analysis. The Applicant will examine the need for and the ability to install a traffic signal in its TIA submitted with the Design Review application.

The Planning Commission should reject this argument.

5. Conclusion.

For all of the reasons contained in this part of the Applicant’s final written argument, the Planning Commission should reject these arguments.

Shroyer, Shauna

From: Boyd, John
Sent: Tuesday, September 30, 2014 1:37 PM
To: Kerr, Chris; Shroyer, Shauna
Subject: FW: RE: Testimony for 10/1/14 PC Meeting

For the record

From: Ryerson Schwark [<mailto:ryersonschwark@gmail.com>]
Sent: Tuesday, September 30, 2014 1:36 PM
To: Boyd, John
Subject: Fwd: RE: Testimony for 10/1/14 PC Meeting

I believe since we are sitting quasi judicial that this needs to be part of the public record.

John Boyd,
#1524



Please consider the impact on the environment before printing a paper copy of this email.
This e-mail is subject to the State Retention Schedule and may be made available to the public.

----- Forwarded message -----

From: "Russell Axelrod" <rbaxelrod@yahoo.com>
Date: Sep 30, 2014 1:30 PM
Subject: RE: Testimony for 10/1/14 PC Meeting
To: "tomlorie@comcast.net" <tomlorie@comcast.net>, "rosecityre@gmail.com" <rosecityre@gmail.com>, "nancy.king@gmail.com" <nancy.king@gmail.com>, "ryersonschwark@gmail.com" <ryersonschwark@gmail.com>, "steelc123@gmail.com" <steelc123@gmail.com>, "Russell Axelrod" <rbaxelrod@yahoo.com>
Cc:

Dear Planning Commission Members,

It is unfortunate that I am out of the country and unable to participate in the hearing regarding File No. ZC-14-01/PLN-14-01 for the proposal to rezone lands along Tannler in the Savanna Oakes/Willamette neighborhood areas.

I am not able to further review and comment in more detail at this time in my remote location; however, I wish to express officially my strong opposition to the rezoning proposal. I urge the planning commission to deny this request until further community planning for the area is performed.

The lands in question present physical challenges that might constrain their use for other more appropriate uses, including potentially open/green space land uses. The proposed rezoning to allow dense residential development also has the potential to significantly impact traffic and other aspects of the community and region of West

Linn. Further community-based planning should first be performed for the area before piece-meal development is allowed as has been done in other areas of West Linn with adverse impacts to the community.

I urge you to deny the proposed zoning change until further community-based planning is performed to determine, at minimum, a preferred conceptual plan for future development of this area. Please enter my comments in the official record to deny this proposal at this time.

Respectfully,

Russ Axelrod

Sent from Yahoo Mail for iPad

From: Shroyer, Shauna <SShroyer@westlinnoregon.gov>;
To: Griffith, Lorie <tomlorie@comcast.net>; Knight, Jesse <roseccityre@gmail.com>; King, Nancy <nancy.king@gmail.com>; Axelrod, Russel <rbaxelrod@yahoo.com>; Schwark, Ryerson <ryersonschwark@gmail.com>; Steel, Christine <steelc123@gmail.com>;
Cc: Kerr, Chris <ckerr@westlinnoregon.gov>; Boyd, John <jboyd@westlinnoregon.gov>; Pelz, Zach <ZPELZ@westlinnoregon.gov>;
Subject: Testimony for 10/1/14 PC Meeting
Sent: Thu, Sep 25, 2014 11:17:25 PM

All,

Attached you will find a staff memo from Zach Pelz with new evidence and testimony for the 10/1/14 PC meeting. I have also placed the document into your dropbox folders and it is online.

Shauna

Shauna Shroyer, Administrative Assistant
Planning.#1557

Please consider the impact on the environment before printing a paper copy of this email.
This e-mail is subject to the State Retention Schedule and may be made available to the public.



- The subject site is well-suited for residential use, providing good access, views, and schools. Multi-family residential is a good use for transitional areas like the subject site which lays between low-density residential and commercial neighborhoods.
- The development as preliminarily designed would generate significant public benefits, including fees and system development charges at construction, and on-going tax generation. It would also have economic impacts on local job creation and household spending. This is a preliminary estimate of impacts:
 - \$572,500 in annual property tax
 - \$4.1 million in fees and SDC's
 - 170 jobs created or induced by construction and operation
 - \$12.3 million added through wages and economic activity related to these jobs
 - Up to \$9.3 million in household spending by new residents at the property
 - These estimates are preliminary and subject to change but provide indicators of general magnitude of benefits.
- As office development on the scale of the subject site is highly unlikely, and the topography is unfavorable for retail, the most likely scenario for the site under the OBC zone is to remain vacant indefinitely. This provides a very modest public benefit in terms of property tax, but no additional benefits in generating economic activity, providing housing choices, generating economic activity or bringing active use to this large dormant site.

Uses permitted outright and subject to design review	
Uses requiring conditional use permit and design review	A
Street Vacations	(per State statute requirements)
Variances:	
Class I (involves a small change with minor or no effect)	B
Class II (involves a significant change from code requirements)	A
Water Resource Area Permit (NDW)	A**
Willamette River Greenway:	
Development Permit	A**
Uses requiring conditional use permit and design review	A**
Zone Change	A

**Plus COE/DSL is notified

***Plus DLCD notice

(Ord. 1425, 1998; Ord. 1474, 2001; Ord. 1545, 2007; Ord. 1547, 2007; Ord. 1565, 2008; Ord. 1568, 2008; Ord. 1589 § 1 (Exh. A), 2010; Ord. 1613 § 25, 2013; Ord. 1614 § 16, 2013; Ord. 1621 § 25, 2014)

99.090 CONTENTS OF NOTICE

A. Notices mailed pursuant to this code shall comply with applicable provisions of the Oregon Revised Statutes (ORS). Except for expedited land

division review, for which Chapter 197 ORS shall apply, notice given to persons entitled to mailed or published notice pursuant to CDC 99.060 shall:

1. Explain the type of application and what proposed uses could be authorized.
2. List the applicable criteria from the ordinance and plan.
3. Set forth street address (if existing) and other easily understood geographical reference of the subject property.
4. State the date, time, and location of hearing or, for the Planning Director's decisions, the earliest date upon which the Director will make a decision.
5. State that failure to raise an issue in a hearing, in person, or by letter, or failure to provide sufficient specificity to afford the decision-maker an opportunity to respond to the issue, precludes appeal to LUBA on that issue.
6. Include the name of government contact and phone number.
7. State that the application, all documents or evidence relied upon by the applicant and applicable criteria are available for inspection at no cost, and copies at reasonable cost.
8. State that a copy of the staff report will be available for inspection at no cost at least 10 days prior to the hearing, and copies at reasonable cost.
9. A statement that public and written testimony are invited, and including a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

B. In addition to the ORS requirements, the notice shall identify the following:

1. The type of land use action proposed (e.g., "four-lot subdivision").
2. Community Development Department file number. (Ord. 1474, 2001; Ord. 1568, 2008; Ord. 1621 § 25, 2014)

99.100 MECHANICS OF GIVING NOTICE AND FAILURE TO RECEIVE NOTICE

197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures. The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

(1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(2)(a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

(B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

(b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(3) The notice provided by the jurisdiction shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; or

(B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

(g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

(h) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and

(j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(4)(a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.

(b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

(a) Lists the applicable substantive criteria;

(b) States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and

(c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.

(6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.

(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

(d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is requested or agreed to by the applicant.

(e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

(8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

(9) For purposes of this section:

(a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.

(b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision. [1989 c.761 §10a (enacted in lieu of 197.762); 1991 c.817 §31; 1995 c.595 §2; 1997 c.763 §6; 1997 c.844 §2; 1999 c.533 §12]

**Chapter 105
AMENDMENTS TO THE CODE AND MAP**

Sections:

- 105.010 PURPOSE
- 105.030 LEGISLATIVE AMENDMENTS TO THIS CODE AND MAP
- 105.040 QUASI-JUDICIAL AMENDMENTS AND PROCEDURES
- 105.050 QUASI-JUDICIAL AMENDMENTS AND STANDARDS FOR MAKING
DECISION
- 105.060 CONDITION OF APPROVAL
- 105.070 RECORD OF AMENDMENTS

105.010 PURPOSE

The purpose of this chapter is to set forth the standards and procedures for legislative amendments to this code and to the map and for the quasi-judicial changes to the map as provided by the code chapters setting forth the procedures and by the Comprehensive Plan. Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes or to address changes in the law.

105.030 LEGISLATIVE AMENDMENTS TO THIS CODE AND MAP

Legislative amendments to this code and to the map shall be in accordance with the procedures and standards set forth in Chapter 98 CDC.

105.040 QUASI-JUDICIAL AMENDMENTS AND PROCEDURES

Quasi-judicial amendments to this code and to the map shall be in accordance with the procedures set forth in this code and the following:

- A. The Planning Commission shall decide zone change applications which do not involve Comprehensive Plan Map amendments as provided by CDC 99.060
- (B). A petition for review by the Council may be filed as provided by CDC 99.240.
- B. The Planning Commission shall make a recommendation to the Council on an application for a Comprehensive Plan Map amendment. The Council shall decide the application on the record as provided by CDC 99.060(C).

C. The Planning Commission shall make a recommendation to the Council on a zone change application which also involves a concurrent application for a Comprehensive Plan Map amendment. The Council shall decide the applications on the record as provided by CDC 99.060(C). (Ord. 1401, 1997; Ord. 1613 § 26, 2013)

105.050 QUASI-JUDICIAL AMENDMENTS AND STANDARDS FOR MAKING DECISION

A decision to approve, approve with conditions, or to deny an application for a quasi-judicial amendment shall be based on all of the following standards:

A. The standards set forth in CDC 99.110(A), which provide that the decision shall be based on consideration of the following factors:

1. The applicable Comprehensive Plan policies as identified in subsection C of this section and map designation.
2. The applicable standards of any provision of this code or other applicable implementing ordinance.

B. The standards set forth in CDC 99.110(B), which provide that, in making the decision, consideration may also be given to the following:

1. Proof of change in the neighborhood or community or a mistake or inconsistency in the Comprehensive Plan or Zoning Map as it relates to the property which is the subject of the development application.
2. Factual oral testimony or written statements from the parties, other persons and other governmental agencies relevant to the existing conditions, other applicable standards and criteria, possible negative or positive attributes of the proposal or factors in sub-section A or (B)(1) of this section.

C. The Comprehensive Plan, Plan and Ordinance Revision Process, and Specific Policy No. 4, which provides that the decision shall be based on consideration of the following criteria:

1. Conformance with the Comprehensive Plan policies and criteria.
2. There is a public need for the change or the change can be demonstrated to be in the interest of the present and future community.

3. The changes will not adversely affect the health, safety and welfare of the community.

D. Transportation Planning Rule compliance.

1. Review of applications for effect on transportation facilities. When a development application, whether initiated by the City or by a private interest, includes a proposed comprehensive plan amendment zone change or land use regulation change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060 (the Transportation Planning Rule: "TPR"). "Significant" means the proposal would:

- a. Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- b. Change standards implementing a functional classification system; or
- c. As measured at the end of the planning period identified in the adopted transportation system plan:
 - 1) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - 2) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - 3) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

2. Amendments that affect transportation facilities. Amendments to the Comprehensive Plan and land use regulations that significantly affect a transportation facility shall ensure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in

the TSP. This shall be accomplished by one or a combination of the following:

- a. Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
 - b. Amending the TSP or Comprehensive Plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of OAR 660-012-0060 of the TPR.
 - c. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation.
 - d. Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
3. Traffic impact analysis. A traffic impact analysis shall be submitted with a plan amendment or land use district change application. (Ord. 1584, 2008)

105.060 CONDITION OF APPROVAL

A quasi-judicial decision may be for denial, approval, or approval with conditions as provided by CDC 99.110(E).

105.070 RECORD OF AMENDMENTS

The Planning Director shall maintain a record of amendments to the text and map of this code in a format convenient for the use of the public and in accordance with CDC 98.150.

The West Linn Community Development Code is current through Ordinance 1624, and legislation passed through June 16, 2014.

Disclaimer: The City Recorder's Office has the official version of the West Linn Community Development Code. Users should contact the City Recorder's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://westlinnoregon.gov/>
(<http://westlinnoregon.gov/>)

City Telephone: (503) 657-0331
Code Publishing Company
(<http://www.codepublishing.com/>)



POWELL DEVELOPMENT CO

P.O. Box 97070 Kirkland, WA 98083-9770
(425) 828-4334 Fax (425) 822-8297

September 25, 2014

City of West Linn
22500 Salamo Rd.
West Linn, OR 97068

**RE: Rezone & Comprehensive Plan Amendment
NWC of Tannler & Blankenship**

Dear Mayor, City Councilors, and Planning Commissioners,

We represent the owners of the River Falls Shopping Center, anchored by Albertson's immediately to the south of the above referenced property. We have been investors in the community for nearly 18 years after developing the property in 1996.

We believe the rezone of the property at the corner of Tannler & Blankenship from Office Business Center to R-2.1 would be beneficial to our current property and tenants which include: Biscuits Café, Chase, Providence Medical Center, Subway, Great Clips, Avenue Nails, Lux Tanning, and Jack-in-the-Box. While Albertson's owns their store more residents will also be favorable to their business and help the overall center to be more successful.

The current office users nearby create limited demand, but we believe the residential tenants would create substantial more demand for the daily needs that our shopping center provides. This economic benefit is certain to help improve the viability of the many hard working small business owners in our center. Furthermore, the walkability between the properties is high and will help minimize traffic that would otherwise be created.

We believe this project satisfies the applicable approval criteria and will create economic benefit not only for our property and tenants, but also for other small businesses in the area. We strongly encourage you to approve the rezone of the property to multifamily.

Sincerely,

Powell Development



Peter W. Powell
President

CC: West Linn Associates, LLC
Ron Morgan

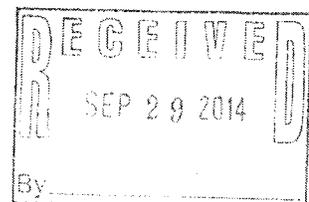


EXHIBIT 6