

## DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT <i>JOHN BARD</i>	PROJECT NO(S). <i>AP-1501</i>	
NON-REFUNDABLE FEE(S) <i>400</i>	REFUNDABLE DEPOSIT(S) <i>0</i>	TOTAL <i>400</i>

**Type of Review (Please check all that apply):**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Annexation (ANX)                      | <input type="checkbox"/> Historic Review                                  | <input type="checkbox"/> Subdivision (SUB)                               |
| <input checked="" type="checkbox"/> Appeal and Review (AP) *   | <input type="checkbox"/> Legislative Plan or Change                       | <input type="checkbox"/> Temporary Uses *                                |
| <input type="checkbox"/> Conditional Use (CUP)                 | <input type="checkbox"/> Lot Line Adjustment (LLA) */**                   | <input type="checkbox"/> Time Extension *                                |
| <input type="checkbox"/> Design Review (DR)                    | <input type="checkbox"/> Minor Partition (MIP) (Preliminary Plat or Plan) | <input type="checkbox"/> Variance (VAR)                                  |
| <input type="checkbox"/> Easement Vacation                     | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures           | <input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP) |
| <input type="checkbox"/> Extraterritorial Ext. of Utilities    | <input type="checkbox"/> Planned Unit Development (PUD)                   | <input type="checkbox"/> Water Resource Area Protection/Wetland (WAP)    |
| <input type="checkbox"/> Final Plat or Plan (FP)               | <input type="checkbox"/> Pre-Application Conference (PA) */**             | <input type="checkbox"/> Willamette & Tualatin River Greenway (WRG)      |
| <input type="checkbox"/> Flood Management Area                 | <input type="checkbox"/> Street Vacation                                  | <input type="checkbox"/> Zone Change                                     |
| <input type="checkbox"/> Hillside Protection & Erosion Control |   |  |

Home Occupation, Pre-Application, Sidewalk Use, Sign Review Permit, and Temporary Sign Permit applications require different or additional application forms, available on the City website or at City Hall.

<b>Site Location/Address:</b> Northwest corner of Blankenship Road and Tannler Drive <i>2444 TANNER DR</i>	<b>Assessor's Map No.:</b> 21E35C
	<b>Tax Lot(s):</b> 100, 102, 200
	<b>Total Land Area:</b> approx. 10.1 acres

**Brief Description of Proposal:** Appeal of Planning Commission decision to deny Class II Design Review for a multi-use development of 180 multi-family dwelling units with commercial space and a property line adjustment (City File Nos. DR-15-11, LLA-15-01)

<b>Applicant Name:</b> ConAm Properties LLC, C/O Rob Morgan <small>(please print)</small>	<b>Phone:</b> 858-614-7378
<b>Address:</b> 3990 Ruffin Road, Suite 100	<b>Email:</b> rmorgan@conam.com
<b>City State Zip:</b> San Diego, CA 92123	

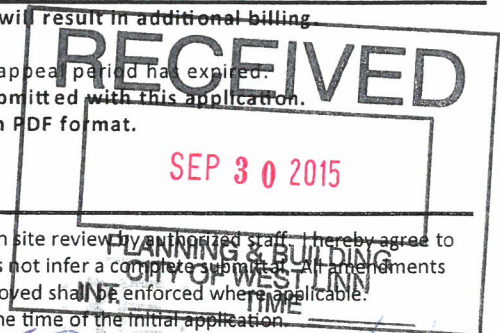
<b>Owner Name (required):</b> Jeffrey I. Parker and Diane Wilt <small>(please print)</small>	<b>Phone:</b> 503-742-1942
<b>Address:</b> 1800 Blankenship Road, #200	<b>Email:</b> jeff@parkerdev.com
<b>City State Zip:</b> West Linn, OR 97068	

<b>Consultant Name:</b> Michael C. Robinson, Perkins Coie LLP <small>(please print)</small>	<b>Phone:</b> 503-727-2264
<b>Address:</b> 1120 NW Couch Street, Tenth Floor	<b>Email:</b> mrobinson@perkinscoie.com
<b>City State Zip:</b> Portland, OR 97209	

1. All application fees are non-refundable (excluding deposit). Any overruns to deposit will result in additional billing.
2. The owner/applicant or their representative should be present at all public hearings.
3. A denial or approval may be reversed on appeal. No permit will be in effect until the appeal period has expired.
4. **Three (3) complete hard-copy sets (single sided) of application materials must be submitted with this application.**  
One (1) complete set of digital application materials must also be submitted on CD in PDF format.  
If large sets of plans are required in application please submit only two sets.

\* No CD required / \*\* Only one hard-copy set needed

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by Planning & Building staff. I hereby agree to comply with all code requirements applicable to my application. Acceptance of this application does not infer a complete review. All amendments to the Community Development Code and to other regulations adopted after the application is approved shall be enforced when applicable. Approved applications and subsequent development is not vested under the provisions in place at the time of the initial application.

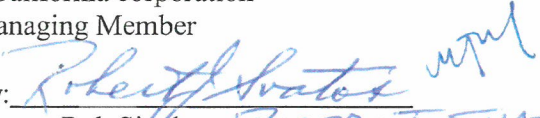


SEE ATTACHED	Date	Date
Applicant's signature	Date	Date
	Date	Date

Attached to City of West Linn Development Review Application

CONAM PROPERTIES LLC,  
a Delaware limited liability company

By: DJE Financial Corp.,  
a California corporation  
Managing Member

By:   
Name: Rob Singh *ROBERT J. SVATOS*  
Title: Vice President

September 30, 2015

Michael C. Robinson  
MRobinson@perkinscoie.com  
D. +1.503.727.2264  
F. +1.503.346.2264

**VIA HAND DELIVERY**

Mr. Chris Kerr, Director  
Community Development Department  
City of West Linn  
22500 Salamo Road, Suite 1000  
West Linn, OR 97068

**Re: Notice of Appeal of Planning Commission’s Denial of Applications by ConAm Properties LLC for Class II Design Review and Property Line Adjustment (City of West Linn File Nos. DR-15-11 and LLA-15-01)**

Dear Mr. Kerr:

This office represents ConAm Properties LLC (“ConAm”). This letter constitutes an appeal of the West Linn Planning Commission’s (“Planning Commission”) September 17, 2015 decision denying ConAm’s Class II Design Review and Property Line Adjustment applications. **Exhibit 1** is the appealed decision.

**I. The requirements for an appeal are satisfied.**

**A. West Linn Community Development Code (“CDC”) 99.240.A.**

Any decision made by the Planning Commission may be appealed to the West Linn City Council (the “City Council”).

**B. CDC 99.250.**

1. CDC 99.250.A.1. The decision sought to be appealed is the Planning Commission’s final decision denying ConAm’s Class II Design Review and Property Line Adjustment applications, which became final on September 17, 2015 (City File Nos. DR-15-11 and LLA-15-01) when the City mailed notice of the decision pursuant to CDC 99.230.A.

2. CDC 99.250.A.2. ConAm is the petitioner and qualifies as a party of standing as provided for in CDC 99.140.B because ConAm is the Applicant and appeared personally and through its representatives, orally and in writing, before the Planning Commission before the issuance of the final decision. ConAm and its representatives signed the testimony forms provided at the Planning Commission public hearings and provided its name and address

Mr. Chris Kerr, Director  
September 30, 2015  
Page 2

and the names and addresses of its representatives to the Community Development Director regarding the appealed decision.

3. CDC 99.250.3.a. For the reasons explained below in Part II of this letter, the grounds for the City Council to reverse the decision are that the Planning Commission misapplied the applicable approval criteria in reaching its final decision.

4. CDC 99.250.B. The required fee is \$400. **Exhibit 2** is the applicable page from the City's current fee schedule which shows that the required fee for an appeal of a Planning Commission decision to the City Council is \$400. ConAm has paid the fee to the City. See receipt for payment dated September 28, 2015 (**Exhibit 3**).

5. CDC 99.250.C. The appeal hearing for the City Council is confined to those issues set forth this notice of appeal pursuant to CDC 99.280.B.1 and confined to the record of the proceedings made by the Planning Commission pursuant to CDC 99.280.B.2.

ConAm does not request that the City Council reopen the record to consider new evidence pursuant to CDC 99.280.C. CDC 99.280.D provides that the City Council shall limit its review on appeal to determine if errors in law were committed by the Planning Commission. As explained in Part B of this letter, the Planning Commission committed multiple errors of law.

6. CDC 99.170.G. ConAm is filing this appeal with the Director on September 30, 2015. Therefore, this appeal is timely because it is filed within fourteen (14) days after the Planning Commission's final decision on September 17, 2015.

## **II. The Planning Commission Misapplied Applicable Approval Criteria and Committed Errors of Law in Reaching Its Final Decision.**

### **A. Errors of Law committed by the Planning Commission in denying the Class II Design Review Application that require the City Council reverse the Planning Commission decision. The issues raised in the appeal were raised in the proceedings before the Planning Commission.**

#### **1. Summary of Proposal and Planning Commission Decision.**

ConAm proposed seven (7) buildings, excluding the clubhouse, containing 180 multiple-family dwelling units and seven (7) commercial uses, one commercial use in each building. All of the commercial uses were proposed to be on the first floor of each building with all of the multiple-family units on the 2nd, 3rd or 4th floors, depending on the building. Each commercial space contained about 300 square feet.

The Planning Commission denied the Class II Design Review application for four (4) reasons. First, the Planning Commission found that CDC 21.050.2 requires that the entire first floor of each building be devoted to commercial uses.

Second, the Planning Commission found that the Class II Design Review application does not meet the prescribed conditions because residential parking garages are part of the multiple-family units and are prohibited on the first floor of each building since they are not commercial.

Third, the Planning Commission found that its conclusion that the entire first floor of each building be devoted to commercial uses is required by CDC 21.010, "Purpose", and applied this provision as an approval standard.

Fourth, the Planning Commission found that were it to approve the Application, a "vending machine" on the first floor would meet the prescribed conditions in CDC 21.050.2 because a vending machine would constitute "commercial development" and such a limited commercial use would not serve the purpose of the Office Business Center (OBC) zoning district.

**B. The City Council should find that the Planning Commission misapplied the applicable law and erred as a matter of law for the following reasons.**

**1. The Planning Commission's decision is inconsistent with the plain language of CDC 21.050.2.**

CDC 21.050.2 provides:

**"The following uses are allowed in the zone under prescribed conditions:**

...

**2. Multiple-family units, as a mixed use in conjunction with commercial development, only above the first floor of the structure."**

The plain language of CDC 21.050.2 provides that multiple-family units are allowed in the OBC zoning district as part of a mixed used development ("in conjunction"), provided they are located only above the first floor of the structure, which means that the commercial development must, at a minimum, be located on the first floor of each structure.

The Planning Commission's decision effectively re-writes CDC 21.050.2 by adding words not found in the text so that it reads as follows:

**"Multiple-family units, as a mixed use in conjunction with commercial development which shall occupy the entire first**

**floor, only above the first floor of the structure and residential parking garages are not allowed on the first floor.** (Added words underlined)

The Oregon Court of Appeals has held that a local government may neither add nor subtract language from a zoning ordinance provision. *Craven v. Jackson County*, 136 Or App 250, 898 P2d 809 (1995). The Planning Commission's decision ignores the plain and unambiguous language of CDC 21.050.2 by requiring that the entire first floor be devoted to commercial use. The decision further misreads CDC 21.050.2 by prohibiting residential parking garages on the first floor because they constitute, in the Planning Commission's opinion, part of the multiple-family use. Thus, the first reason that the City Council must reverse the Planning Commission is that it has misapplied the applicable law in CDC 21.050.2 by requiring the entire first floor be devoted to commercial use and by prohibiting residential parking garages on the entire first floor.

The City Council must conclude that the Planning Commission's reasoning misapplies the applicable law. The Planning Commission may not re-write the law. Moreover, there is no plain language requiring the entire first floor of each building to be completely devoted to commercial uses. Finally, legislative history demonstrates that the West Linn City Council once considered but rejected a requirement that would have specified the minimum amount of commercial space in the OBC zone.

**2. The City Council must also find that the Planning Commission's decision is incorrect because it is inconsistent with CDC 21.020 "Procedures and Approval Process." CDC 21.020.B provides:**

**"A use permitted under prescribed conditions, CDC 21.050, is a use for which approval will be granted provided all conditions are satisfied. . ."**

The only prescribed conditions contained in CDC 21.050.2 are that if multiple-family units are proposed, they must be part of a mixed use in conjunction with commercial development and are allowed only above the first floor of the structure. The prescribed conditions do not require a certain number of commercial units, do not require that the commercial units be of a certain size, do not require specific commercial uses, nor do they require that the entire first floor be devoted to commercial development.

**3. The prescribed conditions do not prohibit parking garages on the first floor of each building.**

The Planning Commission erred because it misapplied the defined term of "dwelling unit".

CDC 02.030 defines “Dwelling Unit” as:

**“One or more rooms, designed for occupancy by one family for living purposes providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.”  
(Exhibit 5)**

The definition of “multiple-family residential units” in CDC 2.030 is defined as:

**A structure containing three or more attached dwelling units in a vertical or horizontal arrangement. (Exhibit 4)**

The definition of “parking space” in CDC 2.030 is defined as:

**A space is defined by the standard set forth in Chapter 46 CDC. (Exhibit 6)**

The City Council must find that the Planning Commission misapplied the applicable law by determining that dwelling units includes parking spaces when the plain and unambiguous definitions of “dwelling unit” and “multiple-family residential units” do not include parking spaces and the definition of “parking space” is not defined as being part of a dwelling unit, or a multiple-family residential unit.

Finally, as an alternative to the above arguments, a parking space is a “accessory use” as that term is defined in CDC 2.030 as follows:

**A use which is incidental and subordinate to the principal use.  
(Exhibit 7)**

The City Council can find that parking spaces are incidental and subordinate to the principal use of the proposed Class II Design Review application, a mixed use project containing commercial spaces and multiple-family residential units. Because a parking space is an accessory use, it cannot be part of the principal use and, therefore, is not contemplated as part of a multiple-family residential unit. Notably, the City has concluded that garages can be accessory in nature. *See Exhibit 7.*

**4. The prescribed conditions do not require compliance with CDC 21.010, “Purpose.”**

The Planning Commission found, in part, that if a development does not devote the entire first floor of each building to commercial development, it is inconsistent with the purpose statement of the OBC zone in CDC 21.010.

CDC 21.010, “Purpose”, provides as follows:

**“The purpose of this zone is to provide for groups of business and offices in centers, to accommodate the location of intermediate uses between residential districts and areas of more intense development, to provide opportunities for employment and for business and professional services in close proximity to residential neighborhoods and major transportation facilities, to expand the City’s economic potential, to provide a range of compatible and supportive uses, and to locate office employment where it can support other commercial uses. The trade area will vary and may extend outside the community. This zone is intended to implement the policies and criteria set forth in the Comprehensive Plan.”**

The City Council must find that the Planning Commission erred as a matter of law and misapplied applicable law by adding the purpose statement as a prescribed condition to CDC 21.050.2 or, alternatively, applying the purpose statement as an approval criterion.

Compliance with CDC 21.010 is not a prescribed condition in CDC 21.050.2. None of the applicable approval criteria in CDC Chapter 55, “Design Review”, or the referenced chapters therein includes a requirement that the purpose statement of the OBC zone be satisfied. Applying the purpose statement has the effect of adding a prescribed condition not found in the plain language of CDC 21.050.2 and effectively prohibiting the intended mixed use project by requiring that the entire first floor be devoted to commercial uses. The Planning Commission’s interpretation is inconsistent with well-established case law concerning land use regulation purpose statements.

The final sentence in CDC 21.010 provides that “this zone is intended to implement the policies and criteria set forth in the Comprehensive Plan.” The Planning Commission’s reading of the Purpose as the erroneous basis for requiring that the entire first floor of each building be devoted to commercial use is inconsistent with the West Linn Comprehensive Plan (the “Plan”). The Plan is, as provided for in the definition of the phrase “Comprehensive Plan” in the



Comprehensive Plan “. . .the basis for zoning and subdivision ordinances and other regulations. A number of other City planning documents support and/or implement the plan.” Comprehensive Plan, page 4 (**Exhibit 8**). The City Council must find that the Plan is the primary document, which is implemented by the CDC, and the CDC must be carried out consistently with the Plan.

Comprehensive Plan Goal 2, “Land Use Planning, Section 3: Mixed Use Commercial Development”, contains goals and policies that require the City Council to find that the Planning Commission misapplied the applicable law. Goal 2, Land Use Planning, Section 3, Goal 1 provides:

**“Develop/redevelop commercial areas as mixed use/commercial districts that blend housing and commercial uses to: enhance the community’s identity; encourage strong neighborhoods; increase housing choices; promote socioeconomic diversity; promote alternative modes of transportation; promote civic uses; and improve community interaction and involvement.” (Exhibit 9)**

Goal 2, Section 3, Goal 1’s statement providing that commercial areas be developed as mixed use and emphasizing the blending of housing and commercial uses, and increasing housing choices supports a conclusion that residential units should constitute much more of the development than commercial uses. The City Council must find that the Planning Commission in its decision erred by failing to give full effect to Comprehensive Plan Goal 2, Section 3, Goal 1 emphasizing the importance of housing in a mixed use development.

**5. The City Council should find that the Planning Commission erred in analogizing ConAm's proposed spaces to vending machines.**

The Planning Commission found that a “vending machine” on the first floor of each building would meet the prescribed conditions of CDC 21.050.2 for “commercial development” but such a limited commercial use would not serve the purpose of the OBC zoning district.

The City Council should reverse the Planning Commission on this point for several reasons. First, the application did not propose a vending machine so that proposal was not before the Planning Commission. In fact, ConAm provided evidence of multiple small business permitted in the OBC zone, including realtors and insurance agents, that operate in the Portland area in spaces of about the same size as these proposed by ConAm. Second, even if the Planning Commission is correct that a vending machine might constitute “commercial development,” City Council can easily remedy that perceived harm by amending the OBC zone rather than denying

Mr. Chris Kerr, Director  
September 30, 2015  
Page 8

an application that meets the prescribed conditions of the use. CDC 21.010 "Purpose" is not applicable to the application.

**C. Conclusion.**

The City Council must reverse the Planning Commission and approve the Class II Design Review Application as requested because CDC 21.050.2 does not require that the entire first floor of each building be devoted to commercial development. CDC 21.010 is not an applicable approval criterion, but even if it were, the City Council must give effect to Comprehensive Plan Goal 2, Section 3, Goal 1 which emphasizes residential development in mixed-use zones. Finally, parking spaces are not part of a multiple-family residential unit nor does CDC 21.050.2 prohibit parking garages on the first floor.

**III. The City Council Must Reverse the Planning Commission's Denial of the Property Line Adjustment.**

The second application denied by the Planning Commission is the property line adjustment of three (3) lots of record. The Planning Commission's final decision offers no reason for denying the property line adjustment. Therefore, the City Council must find that the Planning Commission misapplied applicable law by denying the property line adjustment application which satisfied the City's clear and objective approval criteria. CDC 85.210.A and B. Because the Planning Commission failed to make findings for denial and there is no basis for such findings of denial, the City Council must approve the property line adjustment application.

**IV. Conclusion.**

For the reasons contained in this Notice of Appeal, ConAm requests that the City Council reverse the Planning Commission decision and approve the Class II Design Review for 180 multiple-family residential units and seven (7) commercial spaces and the Property Line Adjustment (City File Nos. DR-15-11 and LLA-15-11).

Very truly yours,



Michael C. Robinson

MCR:rsr  
Enclosures

cc: Mr. Jeff Parker (via email) (w/encls.)  
Mr. Mike Mahoney (via email) (w/encls.)

Mr. Chris Kerr, Director  
September 30, 2015  
Page 9

Mr. Rob Morgan (via email) (w/encls.)  
Mr. John Boyd (via email) (w/encls.)  
Ms. Megan Thornton (via email) w/encls.)  
Mr. Seth King (via email) (w/encls.)

Mr. Chris Kerr, Director  
September 30, 2015  
Page 10

### **Exhibits to Notice of Appeal**

- Exhibit 1 Planning Commission Decision
- Exhibit 2 City of West Linn 2015 Fee Schedule
- Exhibit 3 City of West Linn Receipt dated September 28, 2015
- Exhibit 4 CDC 2.030, Definition of “Dwelling Unit”
- Exhibit 5 CDC 2.030, Definition of “Multiple-Family Residential Unit”
- Exhibit 6 CDC 2.030, Definition of “Parking Space”
- Exhibit 7 CDC 2.030, Definitions of “Accessory Structure” and “Accessory Use”
- Exhibit 8 West Linn Comprehensive Plan, page 4
- Exhibit 9 West Linn Comprehensive Plan, Goal 2 “Land Use Planning,” Section 3, Goal 1

## **WEST LINN PLANNING COMMISSION**

### **FINAL DECISION AND ORDER**

**DR-15-11, LLA-15-01**

#### **IN THE MATTER OF A CLASS II DESIGN REVIEW FOR A MULTI-USE DEVELOPMENT OF 180 MULTI-FAMILY DWELLING UNITS WITH COMMERCIAL SPACE AND A PROPERTY LINE ADJUSTMENT**

##### **I. Overview**

CON AM Properties, LLC (Applicant), filed its application in July 2015, and it was deemed complete on July 20, 2015. The approval criteria for the applications are found in Community Development Code (CDC) Chapters 21, 34, 38, 41, 42, 44, 46, 48, 52, 54, 55, and 85. The hearings were conducted pursuant to the provisions of CDC Chapter 99.

The Planning Commission (Commission) held the initial evidentiary hearing on August 26, 2015. The hearing commenced with a staff report presented by John Boyd AICP, Planning Manager. Rob Morgan, CON AM Properties, LLC; Michael C. Robinson, Perkins Coie LLP; and Brent Ahrend, Mackenzie; presented for the applicant. The initial hearing was continued to September 2, 2015, for additional evidence and public testimony. At its September 2 hearing the Commission left the written record open until September 9, 2015, at noon, and it continued the hearing to September 9, 2015, for rebuttal and deliberations. The Commission heard public testimony from approximately 50 individuals over the course of the first two meetings and accepted many written submissions. The vast majority of the testimony was opposed to the application.

The hearing was closed on September 9, 2015, and a motion was made by Commissioner Knight and seconded by Commissioner Walvatne to deny the applications and direct staff to prepare a Final Decision and Order adopting findings consistent with the Commission's decision that specifically addressed the issue of mixed use under CDC 21.050. The motion passed unanimously to deny the application for the Class II Design Review of the seven structure mixed use development consisting of multiple-family dwelling units and commercial units and the property line adjustment.

##### **II. The Record**

The record was finalized at the September 9, 2015, hearing. The record includes the entire file for DR-15-11 and LLA-15-01, including submissions received by noon on September 9.

### III. Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The applicant is CON AM Properties, LLC.
- 3) The Commission finds that it has received all information necessary to make a decision based on the Staff Report; application; public comment; and the evidence in the whole record, including any exhibits received at the hearings.

### IV. Findings

The Commission is denying DR-15-11/LLA-15-01 because the development does not meet the prescribed conditions for mixed use in the Office Business Center Zone (OBC Zone). CDC 21.050 sets forth uses and developments permitted in the Office Business Center Zone under prescribed conditions. The Commission finds that the prescribed conditions in CDC 21.050(2) are not met for two reasons: 1) the CDC requires commercial use on the entire first floor and part of the first floor contains residential parking garages, and 2) residential parking garages are part of the multiple-family units, which are prohibited on the first floor.

First, the Commission finds that CDC 21.050(2) requires the entire first floor to be used for commercial purposes. CDC 21.050(2) allows “[m]ultiple-family units, as a mixed use in conjunction with commercial development, only above the first floor of the structure.” This is an unambiguous requirement. Moreover, requiring the entire first floor to be retained for commercial use is consistent with the purpose of the OBC Zone, which is to “provide for groups of business and offices in centers” because it would result in a number of businesses located adjacent to one another on the first floor. It also provides opportunities for larger commercial spaces and a wider variety of commercial uses.

The Commission understands the Applicant’s reading of CDC 21.050(2) to be that some commercial space on the first floor satisfies the condition that multiple-family units are “only above the first floor”. However, the Commission disagrees with this reading of the prescribed condition because it is inconsistent with the plain meaning of the text and it could lead to an absurd result. For example, under the Applicant’s interpretation the installation of a vending machine on the first floor would meet the prescribed condition that there is some commercial use on the first floor, but such a limited commercial use would not serve the purpose of the OBC zone. Therefore, the Commission finds that the CDC 21.050(2) requires the entire first floor to be comprised of commercial space.

The application proposes to build seven mixed use structures, each containing multiple-family dwellings above the first floor; the application only reserves a small portion, approximately 300 square feet, of the first floor of each of the seven mixed used buildings for commercial uses. The remainder of the first floor consists of residential parking garages, which are not a commercial use. The Commission finds that the application does not meet the requirement that the entire first floor is reserved for commercial use because a majority of the first floor

consists of residential parking garages, and residential parking garages are not a commercial use.

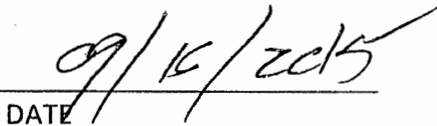
Second, in the alternative, the Commission finds that the application fails to meet the prescribed condition that multiple-family units are allowed "only above the first floor of the structure" because the residential parking garages serve the multiple-family units; therefore, the residential parking garages are essentially part of the multiple-family units, and the garages cannot be located on the first floor of the structure.

The Commission finds that either one of the reasons stated above is sufficient to deny this application for failure to meet the prescribed conditions in CDC 21.050(2). The Commission finds that the application cannot be conditioned to be approved because requiring the Applicant to provide commercial space on the entire first floor would substantially change the application because parking would have to be relocated and the trip generation counts would be different due to the increase in commercial space.

**V. Order**

The Commission concludes that DR-15-11 and LLA-15-01 are denied based on the Record, Findings of Fact and Findings above.

  
\_\_\_\_\_  
RYERSON SCHWARK, CHAIR  
WEST LINN PLANNING COMMISSION

  
\_\_\_\_\_  
DATE

This decision may be appealed to the City Council pursuant to the provisions of Chapter 99 of the Community Development Code and any other applicable rules and statutes. This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.

Mailed this 17<sup>th</sup> day of September, 2015.

Therefore, this decision becomes effective at 5 p.m., October 1, 2015.

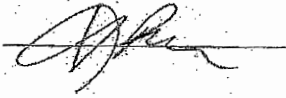
## 9. Planning Fees

<b>9.1. Annexation</b> (excludes election costs)	<u>Fee</u> \$15,000 + \$1,000 per acre up to a maximum of \$20,000
<b>9.2. Appeal</b>	<u>Fee</u>
Planning Director decision	\$ 400
Expedite partition/subdivision to Hearing Officer	400
Planning Commission decision	400
Appeal fee through Neighborhood Association	no charge
<b>9.3. Code Interpretation</b>	<u>Fee</u> \$ 850
<b>9.4. Conditional Use Permit</b>	<u>Deposit/Fee</u>
Deposit	\$ 4,500
Inspection Fee	200
<b>9.5. Design Review</b>	<u>Fee</u>
Class I	\$ 2,100
	<u>Deposit /Fee</u>
Class II Based on Construction Value (CV):	
Less than \$100,000 of CV	4% of CV (\$2,000 minimum deposit)
\$100,000 < \$500,000 of CV	4% of CV (\$8,000 maximum deposit)
\$500,000+ of CV	\$4,000 plus 4% of CV (\$20,000 maximum deposit)
Inspection Fee	\$ 300
<b>9.6. Enlarge/Alter Non-conforming Use/ Structure</b>	<u>Fee</u>
Single family residence	\$ 1,000
Other	\$ 3,000
<b>9.7. Environmental Overlay Zones</b>	<u>Fee</u>
Drainage /Wetland Protection Single Dwelling	\$ 2,600
Re-vegetation Plan/Inspection	\$ 250
Other Drainage/Wetland Protection determined by the Planning Director and Engineering to be:	<u>Deposit</u>
Less than \$5,000 in value	\$ 1,000
In excess of \$5,000 in value	1,850
Flood Plain	1,050
Tualatin River	1,700
Willamette River Greenway	1,700
<b>9.8. Historic Review</b>	<u>Fee</u>
Minor alterations and maintenance (subject to Section 25.100 or 26.060B)	no charge
Residential minor/major remodel or alteration (subject to Section 25.070 or 26.060C)	100
Residential new construction	1,500
Commercial minor alteration	250
Commercial major alteration	500



Commercial new construction	see design review fees
Demolition (less than 500 sq. ft.)	250
Demolition (greater than 500 sq. ft.)	600
Landmark or District Designation	no charge

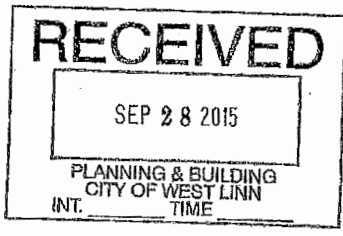
<b>9.9. Land Division</b>	<b>Deposit /Fee</b>
Lot Line Adjustment	\$ 800
Final Plats Lot Line Adjustment	200 Fee
Partition (includes expedited review)	\$2,800 deposit
Subdivision	\$4,200 plus \$200 per lot
Inspection	500 Fee
Expedited Subdivision	\$4,000 plus \$300 per lot plus referee costs
Modification to approval	50% original deposit
Planned Unit Development (PUD)	\$4,200 plus \$400 AC deposit
Inspection	500 Fee
<b>9.10. Pre-Application Conference</b>	<b>Fee</b>
Level I (Planning review only)	\$ 350
Level II (City-wide departmental review)	1,000
Historic Review	no charge
<b>9.11. Sidewalk Use Permit (Café)</b>	<b>Fee</b>
Fee	\$ 100
<b>9.12. Sign Review</b>	<b>Fee</b>
Face change	\$ 50
Temporary	50
Permanent	250
<b>9.13. Street Name Change</b>	<b>Fee</b>
Deposit	\$ 940
<b>9.14. Temporary Use Permit</b>	<b>Fee</b>
Administrative	\$ 280
Commission/Council	3,500
<b>9.15. Vacations</b>	<b>Fee</b>
Street	\$ 6,000
Tree Easement	1,000
<b>9.16. Variance</b>	<b>Fee</b>
Class I	\$ 825
Class II	2,900
After the initial charge for the first variance, subsequent variances will be charged one-half the fee when processed as one application.	
<b>9.17. Zone Change</b>	<b>Deposit</b>
Plan Map Amendment	\$ 3,000
<b>9.18. Land Use Declaration</b>	<b>Fee</b>
Responding to land use information requests	\$ 100

<b>Blackhawk LLC</b>		US Bank	5936
1800 Blankenship Road Suite 200		321 SW 6th Ave	
West Linn, OR 97068		Portland, OR 97204	09/28/15
		24-2271230	
TO THE ORDER OF	City of West Linn		\$400.00*****
**** FOUR HUNDRED AND 00/100 DOLLARS			
City of West Linn			
22500 Salamo Rd. # 600			
West Linn, OR 97068			
			

Details on back. Security Feature Included.

DATE: 09/28/15 CK#: 5936 TOTAL: \$400.00\*\*\*\*\* BANK: c01001us - Blackhawk LLC - US Bank  
 PAYEE: City of West Linn(wLinn)

Prop/Job/Categ/Acct	Invoice	Description	Amount
11162///401015-00	092815	Tannler Property City Council Appear	400.00
			400.00



## COMMUNITY DEVELOPMENT CODE

### SECTION 2.030 - "SPECIFIC WORDS AND TERMS"

**Dwelling unit.** One or more rooms designed for occupancy by one family for living purposes providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

## COMMUNITY DEVELOPMENT CODE

### SECTION 2.030 - "SPECIFIC WORDS AND TERMS"

**Multiple family residential units.** A structure containing three or more attached dwelling units in any vertical or horizontal arrangement.

**COMMUNITY DEVELOPMENT CODE**

**SECTION 2.030 - "SPECIFIC WORDS AND TERMS"**

**Parking space.** A space as defined by the standards set forth in Chapter 46 CDC.

## COMMUNITY DEVELOPMENT CODE

### SECTION 2.030 - "SPECIFIC WORDS AND TERMS"

**Accessory structure.** A subordinate structure with a maximum area of 1,500 square feet, except for agricultural buildings, located on a lot or parcel with a principal use, the use of which is clearly incidental to and associated with the principal use. Examples of accessory structures include, but are not limited to, the following:

1. Greenhouse or hothouse;
2. Swimming pools;
3. Children's playhouses and structures;
4. Sheds;
5. Barns;
6. Gazebos;
7. Solar and wind energy systems;
8. Garages;
9. Dog houses for up to four dogs, bird feeders, or other pet shelters;
10. Appurtenances such as mailboxes and heat pumps; and
11. Similar structures as determined by the Planning Director.

**Accessory use.** A use which is incidental and subordinate to the principal use.

**Cluster Development.** A development design technique that concentrates buildings on part of the site to allow the remaining land to be used for recreation, common open space, and/or preservation of environmentally sensitive features.

**Community Development Code.** A document adopted by the City of West Linn which is designed to set forth the standards and procedures governing the development and use of land in West Linn and to implement the West Linn Comprehensive Plan.

**Comprehensive Plan.** An official document of a local government that includes goals and policies that direct how the community will develop. It may also include action measures or strategies for implementing the goals and policies. Oregon Administrative Rules further define a Comprehensive Plan as a “generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including, but not limited to, sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs” (ORS 197.015). In Oregon, a comprehensive plan is adopted by ordinance, has the force of law, and is the basis for zoning and subdivision ordinances and other regulations. A number of other City planning documents support and/or implement the plan.

**Conditional Use.** A use which may be permitted. By the approval authority following a public hearing, upon findings by the authority that the approval criteria have been met or will be met upon satisfaction of conditions of approval.

**Density.** The number of families, individuals, dwelling units, households, or housing structures per unit of land.

**Design Review Guidelines.** Standards related to the appearance and construction of buildings and related facilities (e.g., trees, street lights, or sidewalks). The guidelines typically are applied to specific types of development or specific zones and reviewed by City staff (also see Review Process).

**Development.** Any activity that results in a change in land use, or the construction or modification of a structure, or a man-made substantial alteration of land and vegetation. This term is further defined in the West Linn Community Development Code.

**Drainageways.** Open linear depressions, whether natural or man-made, for collection and drainage of surface water. They may be permanently or temporarily filled with water.

In the 2040 Growth Concept, the Bolton District is designated as a “town center.” Town centers provide localized services to residents within a two- to three-mile radius. The Willamette District is designated a “main street,” described as a district with traditional commercial identity and a strong sense of neighborhood community. Both of these designations fit the characteristics of these centers. The Robinwood area is designated a corridor, while Tanner Basin does not have a designation in the 2040 Growth Concept. Designations on the 2040 Growth Concept map and in the City’s Comprehensive Plan will influence future funding decisions for transportation improvements and other financial support from grant-funding agencies.

The designations discussed above are tentative pending respective neighborhood plans. While West Linn recognizes the Metro land use designations, it is important that the ultimate evolution of these areas be further resolved through the neighborhood plan process. The decisions for these areas will be made primarily with the input of the residents and property owners within and adjacent to each of these commercial districts. Depending upon the outcome of these planning processes, the City may request an amendment to the Metro land use designations for West Linn.

---

**GOALS, POLICIES, AND RECOMMENDED ACTION MEASURES**

---

- GOALS**
1. Develop/redevelop commercial areas as mixed use/commercial districts that blend housing and commercial uses to: enhance the community’s identity; encourage strong neighborhoods; increase housing choices; promote socioeconomic diversity; promote alternative modes of transportation; promote civic uses; and improve community interaction and involvement.
  2. Consider the development of commercial and office facilities in West Linn that will increase employment opportunities, reduce dependence on services outside of the City, and promote energy-efficient travel and land use patterns, while recognizing that there will be limits imposed by West Linn’s topography and limited available land.
  3. Encourage retail commercial uses to be located in centers that facilitate one-stop shopping and discourage strip commercial development.
  4. Protect surrounding residential areas from adverse effects of commercial development in terms of loss of privacy, noise, lights, and glare.