

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an Application for a Conditional)	Case File No.
Use Permit to Construct a Self-Storage)	Z0244-20-C
Facility.)	(Mulino Self Storage)

A. SUMMARY

1. The applicant is Tripod Holdings, LLC and AKS Engineering and Forestry, LLC. The owner is Tripod Holdings, LLC.
2. The subject property is located at 13814 South Mulino Road on the south side of South Mulino Road at the Highway 213 intersection. The legal description is T4S, R2E, Section 17DA, Tax Lots 3000, 3100, and 3200, W.M. The subject property is approximately 3.31 acres and is zoned RC—Rural Commercial.
3. On August 6, 2020, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing about this application on August 6, 2020. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually on the Zoom platform due to the corona virus. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, county planner Clay Glasgow discussed the staff report.
3. Melissa Slotemaker, John Christianson, and Chris Goodall testified in support of the application.

4. James Tapp testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer left the record open two weeks for the submission of new evidence, testimony, and argument; one additional week for responses to the new evidence, testimony, and argument; and one additional week for the applicant's final legal argument.

C. FACTS

The subject property is an approximately 3.31-acre parcel zoned RC. The subject property is located at 13814 South Mulino Road, on the south side of Mulino Road at the Highway 213 intersection in the Rural Service Center of Mulino. The subject property is currently occupied with a construction related business including two single family homes and various storage buildings. Land uses in the vicinity include a gas station and market across Mulino Road to the north, an elementary school and small businesses across Highway 213 to the east, and single family residences on the west side of Highway 213. The applicant proposes to construct a self-storage facility with related frontage improvements.

D. DISCUSSION

The staff report does a thorough job of explaining how most of the applicable approval criteria are satisfied. Most of the findings in the staff report are not challenged. It would be a waste of the County's money and resources to review and repeat all of the unchallenged findings in the staff report. I have reviewed the findings in the staff report and I agree with those findings. Therefore, I adopt and incorporate the findings in the staff report in this decision, except as discussed further.

The only opposition is from James Tapp (Tapp) who lives across Mulino Road to the north. Tapp initially is concerned about traffic. Clackamas County Zoning and Development Ordinance (ZDO) 1203.03 provides the approval criteria for conditional uses. ZDO 1203.03(C) requires that the "proposed use is consistent with Subsection 1007.09, and safety of the transportation system is adequate to serve the proposed use." ZDO 1007.09 requires that there is adequate transportation infrastructure to serve the proposed new use. The staff report explains that the proposed development is not estimated to exceed 20 peak vehicle hour trips, and therefore a traffic impact analysis is not required.

The staff report further explains that South Mulino Road operates during the mid-day one hour peak and first and second hours of the PM peaks at acceptable traffic levels, and the estimated increase of 130 more vehicle trips per day and 7-13 more vehicle trips during the AM and PM peak hours will not adversely impact the traffic levels. Tapp does not dispute the findings in the staff report or argue that the applicable traffic levels would be exceeded. I agree with the staff report that the ZDO 1007.09 and ZDO 1203.03(C) are satisfied.

Tapp is also concerned about potential stormwater impacts. Tapp is concerned that stormwater might flow north onto his property. The applicant explained that stormwater would be collected at the northeast corner of the property and enter Oregon Department of Transportation (ODOT) right-of-way before flowing into Mill Creek without going near Tapp's property. The staff report also explains that the application satisfies the stormwater requirements of ZDO 1006.06. I agree with the staff report that ZDO 1006.06 is satisfied.

Finally, Trapp is concerned about noise and having to view unattractive storage units. As discussed later, the applicant is required to comply with site and building design review requirements regarding the appearance of the proposed self-storage facility. ZDO 1203.03(D) requires that:

“The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.”

The character of the neighborhood is a rural commercial area with a mix of smaller commercial uses with residential uses nearby. A self-storage facility would not generate large amounts of traffic or noise. In fact, the proposed self-storage use would create substantially less traffic and noise than many other permitted uses in the zone. Even if there would be some increase in noise or traffic, I do not see that it would come close to substantially limiting, impairing, or precluding residential use across South Mulino Road. Additionally, even if the proposed self-storage facility is not an architectural wonder, it would hardly rise to the level of unattractiveness that would substantially limit, impair, or preclude residential use. ZDO 1203.03(D) is satisfied.

The main concern addressed in the staff report is whether the applicant's desire to construct metal buildings for the self-storage facility complies with the site and building design review requirements. ZDO 1203.03(F) requires that the proposed use comply with

any applicable requirements in, among other things, Section 1000. Section 1005 regarding site and building design is applicable. ZDO 1005.04(E)(3) provides the following requirement for exterior building materials:

“Walls shall be surfaced with brick, tile, masonry, stucco, stone or synthetic equivalent, pre-cast masonry, gypsum reinforced fiber concrete, wood lap siding, architecturally treated concrete, glass, wood, or a combination of these or other high-image materials.”

The applicant originally proposed to construct the self-storage facility with metal sided buildings. ZDO 1005.04(E)(3) does not list metal as one of the allowable exterior building materials. ZDO 1005.04(E)(4) provides:

“Notwithstanding Subsection 1005.04(E)(3) metal may be approved as an exterior building material through design review pursuant to Section 1102 for specific high-image surfaces, canopies, awnings, doors, screening of roof mounted fixtures, or other architectural features.”

While ZDO 1005.04(E)(4) allows metal to be used for certain limited parts of buildings, it does not allow an exception for the entire exterior siding to metal. During the open record period, the applicant submitted a revised building design plan that replaces the siding for the proposed new buildings with fiber cement lap siding (i.e. Hardiplank). The doors of the units would still be metal, but that is allowed by ZDO 1005.04(E)(4). With the applicant’s revised building plan, I agree that the proposed facility complies with ZDO 1005.04(E)(3).

The staff report also stated that additional information was required to demonstrate compliance with ZDO 1005.04(I)(7), which provides:

“In unincorporated communities, design structures to reflect and enhance the local character and to be in scale with surrounding development.”

With the revised building plan, the proposed facility would be similar to the surrounding commercial structures in the area. With siding that matches the existing home on site along with the large setbacks and landscaping, the site improvements would further complement the character of the surrounding neighborhood. ZDO 1005.04(I)(7) is satisfied.

All of the applicable approval criteria are satisfied.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** application Z0244-20-C, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

I. General Conditions:

- 1) Approval of this land use permit is based on the submitted written narrative and plan(s). No work shall occur under this permit other than which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting please contact Wendi Coryell, Clackamas County at (503) 742-4657.
- 3) **Prior to the issuance of building permits,** the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Engineering Division. Wendi Coryell may be contacted at (503) 742-4657 or wendicor@co.clackamas.or.us. The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.
- 4) **Prior to issuance of building permits,** County Septic and Onsite Wastewater Program shall approve septic for the facility, including the caretaker's residence.
- 4) If approved, the conditional use is valid for four (4) years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:

- a. A building permit for a new primary structure that was part of the conditional use approval; or
 - b. A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.
- 5) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.
- 6) The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

II. Planning and Zoning Conditions: Clay Glasgow, (503) 742-4520, clayg@clackamas.us

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.
- 2) Outdoor lighting shall be located and designed so that it does not shine onto adjacent properties or right-of-ways.
- 3) The buildings shall be constructed with fiber cement lap siding. Doors may be made of metal.

III. Building Code Division Conditions: Richard Carlson, (503) 742-4769, richardcar@co.clackamas.or.us

- 1) All construction shall comply with current Oregon Structural Specialty Code and any other relevant codes. All required building permits shall be obtained and received final occupancy approval.
- 2) All applicable development permits (grading and erosion control, etc.) shall be obtained prior to any construction.

IV. Engineering Division Conditions: Ken Kent, (503) 742-4763, kenken@clackamas.us

1. All on-site improvements shall be in compliance with *Clackamas County Roadway Standards*. Frontage improvements in, or adjacent to State of Oregon right-of-way, shall be in compliance with Oregon Department of Transportation standards.
2. The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.
3. Written approval shall be obtained from ODOT, in the form of a permit, for all work in the Highway 213 right-of-way.
4. The applicant shall grant an eight-foot wide easement for signs, slopes, sidewalks and public utilities along the entire S Mulino Road frontage.
5. The applicant shall design and construct improvements along the entire site frontage of S Mulino Road to arterial road standards, per Clackamas County Roadway Standards, Standard Drawing C140. The improvements shall consist of:
 - a. Up to a minimum 20-foot wide, one half street improvement shall be constructed along the entire site frontage. The structural section shall comply with Standard Drawing C100 for an arterial roadway. The applicant shall either dedicate additional right-of-way to accommodate the required improvements or realign S Mulino Road to the north, as approved by the Engineering Division.
 - b. Any widening proposed on the north side of S Mulino Road shall be a continuous paved section, east to west, constructed to arterial standards. Lane transitions shall comply with Section 250.6.4. A striping plan shall be provided.
 - c. Standard curb, or curb and gutter if curblin slope is less than one percent.
 - d. The existing driveway approaches shall be removed and replaced with curb and sidewalk. Any existing damaged curb sections shall be replaced to match.
 - e. The existing 6-foot wide sidewalk may remain on Highway 213 frontage and on the S Mulino Road frontage up to the westerly driveway approach. From the east side of the existing westerly driveway, a minimum 8-foot wide unobstructed, curb-tight sidewalk shall be constructed along the remaining site frontage of S Mulino Road to the west property line, per Standard Drawing S960.
 - f. A minimum 28-foot wide concrete driveway approach shall be constructed, per Drawing D600. Additional driveway width shall be provided as necessary to provide adequate turning radii for trucks to exist eastbound on S Mulino Road without crossing centerline. Truck turning movements shall be demonstrated on the plans.

- g. The curb ramp at the S Mulino Road intersection with Highway 213 shall be upgraded to meet current ADA standards, as required by ODOT.
 - h. A curb ramp shall be constructed at the west end of the sidewalk on S Mulino road, per applicable ODOT Standard Drawings (RD755, RD756 and RD757).
 - i. Appropriate off-site pavement tapers shall be provided, in accordance with Roadway Standards Section 250.6.4.
 - g. Storm drainage facilities in conformance with Clackamas County Roadway Standards Chapter 4.
 - h. Applicant shall provide and maintain adequate intersection sight distances at the driveway approach intersection with S Mulino Road in accordance with Roadway Standards section 240. Minimum intersection sight distances shall be 390 feet along S Mulino Road measured 14.5 feet back from the edge of the travel lane at the driveway intersection with S Mulino Road. In addition, no plantings at maturity, retaining walls, embankments, fences or any other objects shall be allowed to obstruct vehicular sight distance.
- 6 The applicant shall design and construct on-site parking and maneuvering areas as follows:
- a. Adequate on site circulation shall be provided for the parking and maneuvering of all vehicles anticipated to use the site. All parking and maneuvering areas shall be screened gravel of better, constructed per Standard Drawing R100.
 - b. Parking spaces shall meet minimum dimensional requirements of ZDO Section 1015, and Roadway Standards Drawing P100 or P200 as applicable. The plans shall list the number of parking spaces required and the number of parking spaces provided.
 - c. All curbs shall typically be type "C", or curb and gutter if curb line slope is less than one percent, if they carry, direct or channel surface water. Alternative curbs will be considered when it is determined by the Clackamas County Department of Transportation and Development that type "C" curbs or curb and gutter are not appropriate. Extruded curbs for carrying, directing or channeling surface water, or used as a vehicle wheel stop, shall not be allowed.
 - d. All traffic control devices on private property, located where private driveways intersect County facilities shall be installed and maintained by the applicant, and shall meet standards set forth in the Manual on Uniform Traffic Control Devices and relevant Oregon supplements.
- 7 Prior to the issuance of a Development Permit, the applicant shall submit to Clackamas County Engineering Office:

- a. Written approval from the Molalla Fire District #73 for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
- b. Written approval from Mulino Water District for adequate water service.
- c. Written approval from ODOT for all work within the Highway 213 right-of-way.
- d. A set of detailed street and site improvement construction plans, for review, in conformance with Clackamas County Roadway Standards Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.

Prior to certificate of occupancy, Substantial Completion shall be met, per Roadway Standards Section 190.2. For any other unfinished improvements required by conditions of approval, a performance surety shall be provided per Roadway Standards Section 190.3, based on an Engineer's cost estimate. The estimate shall be submitted for review and approval of quantities of asphalt concrete, aggregates, curbs, sidewalks and any other required improvements and associated construction costs

DATED this 22nd day of September, 2020.



Fred Wilson
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of the decision (which date appears above my signature).