BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON

Regarding an Appeal of a Planning Director Decision Approving an Application for Design Review for a Car Wash.	)))	**Case File No. Z0353-19-D Appeal (Washman)**

A. SUMMARY

1. The applicant is Symons Engineering, and the owners are Washman LLC and Rodgers Land Company.
2. The appellant is the Southgate Community Planning Organization.
3. The subject property is located at 8864 Southeast 82nd Avenue, Happy Valley, Oregon 97086. The legal description is T1S, R2E, Section 28BB, Tax Lots 12600, 12700, 13300, and 13400, W.M. The subject property is approximately 1.77 acres and is zoned CC – Corridor Commercial.
4. On January 23, 2020, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. At the conclusion of the public hearing, the record was left open one week for submission of new evidence, one additional week for responses to the new evidence, and one additional week for the applicant's final legal argument.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing on this application on January 23, 2020. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearings, 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 Planning Director's decision, 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 Anthony Riederer discussed the Planning Director's decision.
3. Numerous members of the applicant's team testified in favor of the application.
4. Numerous neighbors testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer left the record open one week for submission of new evidence, one additional week for responses to the new evidence, and one additional week for the applicant's final legal argument.

C. FACTS

This case involves the appeal of a Planning Director decision approving design review for a car wash. A design review application is subject to a type II procedure, whereby the decision is made by the Planning Director. The Planning Director approved the design review application.[1] This appeal followed.

The subject property is located at 8864 Southeast 82nd Avenue (82nd Avenue), Happy Valley, Oregon 97086, on the east side of 82nd Avenue between Southeast Cornwall Avenue (Cornwall) and Southeast Lindy Street (Lindy). The property is bordered by to the north, west, and south by commercially zoned and developed properties, including Ray's Auto Wash – which opposes the application. Properties to the east are zoned for and developed as medium-density and single-family residences, including a row of apartment buildings. The applicant proposes to construct a car wash with a 210 foot tunnel with 27 vacuum stations. Access to the car wash would be from Lindy Street.

D. DISCUSSION

The proposed car wash is a permitted use in the CC zone. The application is for design review of a permitted use. There are numerous applicable approval criteria that the Planning Director's decision finds are satisfied. Most of those findings are not challenged by opponents. It would be a waste of the County's money and resources to review and repeat all of the unchallenged findings. I have reviewed the Planning Director's decision,

[1] Under ZDO 1307.03(B), the Planning Director includes "any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]."

and I agree with his findings. Therefore, I adopt and incorporate the Planning Director's findings and conclusions in this decision, except as discussed further.

1. Whether the Proposed Car Wash is a Drive Thru Window Service

The planning director's decision explains that Table 510-1 lists "Retail Service – Car Wash" as a permitted use. Although that would seem to end the inquiry, opponents argue that the proposed use is a "Drive Thru Window Service" and therefore the standards of Clackamas County Zoning and Development Ordinance (ZDO) 827 apply to the application. "Drive Thru Window Services" are a permitted accessory use in the CC zone.[2]

The quest in interpreting an ordinance is to attempt to ascertain the intent of the legislature – in this case the Board of County Commissioners. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), *as modified by State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). The ZDO does not provide a definition of "Drive Thru Window Service." According to opponents, because the proposed car wash would have patrons remain in their cars and "drive through" the car wash, the proposed use is a "Drive Thru Window Service." While opponents are correct that technically car wash customers would drive through the car wash, opponents ignore the "window" component of "Drive Thru Window Services." As the County explains, drive thru *window* services are those businesses which provide their goods and service through a window, such as fast food, coffee, pharmacies, and banking. Perhaps if ZDO 827 applied to merely "Drive Thru Services" then opponents' interpretation would be more reasonable. ZDO 827, however, applies to "Drive Thru Window Services" and the proposed car wash does not provide services through any window, let alone a drive thru window.[3]

ZDO 827 is not applicable to the application.

2. Whether There is an Adequate Surface Management Plan

ZDO 1006.06 addresses surface water management. The Planning Director's findings addressing ZDO 1006.06 are brief:

> "No new streetlights are required to meet county requirements... County

[2] According to opponents, the standards of ZDO 827 would prohibit the proposed car wash.

[3] In a submittal that was received after the deadline for submitting responsive evidence, opponents submitted examples of other jurisdictions that purport to treat car washes as drive through businesses. Even if that evidence has been timely submitted, those examples do not include the "window" language of ZDO 827. Exhibits 88 and 89 were received after the 4:00 PM deadline and are not part of the record. Even if those documents had been accepted they would not have affected the outcome of this decision.

> Planning staff has received the required preliminary statements of feasibility from Water Environment Services and Clackamas River Water. Per the above findings and the applicant's submitted materials, the proposed development complies with the relevant standards of Section 1006. These standards are met." Planning Director Decision 24.

Opponents argue that the surface water management program is inadequate. According to opponents, there is often a large standing body of water along the northwest corner of the property along 82nd Avenue. Opponents are concerned the current drainage problems will only be exacerbated. The applicant's engineer explains:

> "The area where ponding occurs will now be redeveloped with frontage improvements. The storm drain on SE 82nd and Cornwell will be relocated to a new low point of this project. The basin of land that drains to that low point includes: A) portions of the project site, B) portions of SE Cornwell, and C) portions of the residential area eastward of SE Cornwell.
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> "Vegetated infiltration planters have been established as part of the project design to treat, infiltrate, and redirect stormwater so the project site (A) will no longer contribute any runoff to this location.
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> "The frontage improvements proposed along SE Cornwell will create stormwater management facilities to collect and treat runoff where, previously, no stormwater BMPs existed. Any flows from nearby SE Cromwell and the frontage improvements in the ROW (B) will be captured in the street swale, treated for water quality, infiltrated, and will no longer contribute any runoff to this location.
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> "Any flow from (C) from further away than the project site of the ROW (such as the residential neighborhood easterly of this location) may utilize the water quality and flow control stormwater management capacity remaining in the street swale. Any runoff beyond the capacity of the street swale will discharge to the relocated storm drain.
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> "The ponding discussed at the intersection of SE Cornwell and SE 82nd Ave is not related to Basin B in any way. Basin B is a stormwater planter on private property for private stormwater management. No overflows are expected from Basin B and is designed to overflow but only in events greater than the 100-year design storm. Emergency escape paths to the public ROW are encouraged by Water Environment Services (WES) design standards for events that exceed the design event. Water in such an event would pond in significant volume outside the confines of Infiltration Facility B but still remain onsite before it overtops the high point onsite and releases to SE Cornwall." Applicant's Engineer's January 21, 2020 Memorandum 2.

ZDO 1006.06(C) provides that "[a]pproval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority." WES is the applicable surface water regulatory authority, and WES submitted a preliminary statement of feasibility. As the applicant's engineer demonstrates, the proposed surface water management system satisfies all the applicable requirements. I agree with the applicant's engineer.

Opponents also argue that cleaners used in the car wash would enter the storm drain system and also be tracked out into the street. The applicant's engineer explains that this will not be the case:

> "Lastly, detergents used in the car wash process are biodegradable and are applied and rinsed off within the confines of the carwash tunnel and do not come into direct contact with stormwater runoff. Not only is the wash water recycled onsite, the final rinse is fresh water which is then collected and used in the recycled wash water. * * *
>
> "The proposed drainage system for onsite stormwater management utilizes a Low Impact Development (LID), non-structural control technique approved by WES – surface infiltration. There is no direct connection from onsite runoff to natural drainage ways. Currently, uncontrolled runoff from Lind and Cornwell will be treated and disposed of in new LID stormwater planters in the County ROW. These have been sized to mitigate for the runoff from the pavement widening on Se 82nd that cannot effectively be treated in the ODOT ROW. The proposed drainage system complies with Clackamas County, WES, and ODOT stormwater requirements.
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> "The carwash process does not add contaminated fluid to vehicles, it does however remove particulates from the vehicles that would otherwise be exposed to rain and spray mixing with the runoff in the public ROW, and processes it in environmentally responsive ways through proper sludge disposal and sanitary sewer discharge. The recycled wash water will be reused until it is no longer suitable, upon which, the unsuitable portion (as sludge) will be removed by an environmental disposal company.
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> "The 'tracking' of water by the tires after the rinse process is primarily fresh rinse water and does occur at every car wash. The facility uses 33 L.F of drip gates within the tunnel after the forced air dryers have removed the majority of the rinse water. Additionally, the egress path from the exit of the tunnel to the exit of the site is one of the longest in the region at approximately 206' and will be longer when the free vacuum stations are utilized by the patrons. Tracking is not going to be

> a detrimental issue for this site and is certainly a non-issue when raining." *Id*. at 2-3.

I agree with the applicant's engineer that detergents will not enter the public storm drain system and that tracking will not be an issue. ZDO 1006.06 is satisfied.

3. Whether the Applicant Has Satisfied Transportation Facility Requirements

The applicant's traffic engineer provided a traffic impact study (TIS) that concludes that the capacity of the transportation system is adequate to support the proposed development. Both Clackamas County Engineering and ODOT concurred with the applicant's traffic engineer's conclusions. Opponents raised a number of objections to the TIS, although many of those objections are not directly related to any approval criteria.

Opponents argue that the applicant should have used various different methods to measure traffic and intersections. The applicant's traffic engineer, however, performed the TIS as required by County and ODOT standards. I agree with the applicant that the County and ODOT scoping standards were the proper method to conduct the TIS.

Opponents raise various arguments regarding the amount of traffic and safety of 82nd Avenue. The applicant's traffic engineer persuasively explains why opponents' arguments are misplaced. Additionally, 82nd Avenue is a very busy road and as the applicant's traffic engineer explains the number of trips that would be generated by the proposed car wash are de minimus. The projected trips from the car wash would be less than 2% at the study intersection of 82nd Avenue and Lindy and less than 1% at the intersection of 82nd Avenue and Southeast Johnson Creek Boulevard. Daily traffic fluctuations at these intersections are typically greater than 2%. Therefore, the proposed development would have negligible effects on the transportation system. As the County and ODOT agree with this assessment, no mitigating improvements have been required. I agree with the County and ODOT that the proposed car wash can be adequately served by the existing transportation system.

The more pertinent issue regarding traffic seems to be the effect on Cornwell and Lindy. The access to the property from Cornwell on the north is gated and is only for emergency and limited delivery use. The car wash customers would not use the Cornwell access absent an emergency. While opponents question whether this would actually be the case, I am more than persuaded by the applicant's testimony that this would be the case. I

agree with the applicant's traffic engineer that there would not be any adverse traffic impacts to Cornwell.

The proposed car wash proposes to use Lindy as the ingress and egress point for customers. Customers would enter at the far eastern portion of the property, queue up to pay and enter the car wash tunnel, exit the car wash tunnel and potentially use the individual vacuum stations, and eventually exit the property on Lindy west of the entrance – all while moving in a counter clockwise manner. Lindy is a dead end street east of the subject property with a gated entrance to a mobile home park. Opponents argue the proposed car wash will cause cars to queue up on the property and spill out onto Lindy. Opponents also argue that customers leaving the proposed car wash will not have enough room to queue up on Lindy before turning onto 82nd Avenue.

The applicant's traffic engineer's TIS persuasively explains that there is more than sufficient room on the property for customers to queue up without backing up onto Lindy. Opponents' arguments are anecdotal and speculative. I agree with the applicant's traffic engineer (and the County and ODOT) that there is sufficient room to accommodate waiting customers and to allow exiting customers to access 82nd Avenue.[4]

Opponents devote a staggering amount of argument to the proposition that the applicant is planning to wash more cars per hour than they say they are and that therefore different number should have been used in the TIS for determining traffic impacts. To the extent that this even implicates an approval criterion, I agree with the applicant's traffic engineer that using the Institute of Traffic Engineers (ITE) Manual to determine the number of trips that would be generated is the appropriate method. In fact, it is required by County standards. Even if the applicant were not required to use the ITE Manual, the applicant's representatives, including in particular Dean Vanzee, were extremely persuasive in explaining why the number of customers per hour projected would be accurate. I agree

[4] There is apparently an ongoing property line dispute between the owners of the subject property and property to the east. If the owners of the subject property lose that dispute then the property line would move five feet to the west from the current boundary. If that occurs the applicant would have to reduce its numbers of customer rows by one row. The applicant provided an alternative site plan for this possibility. The only difference in the alternative site plan is one less row for customers. The applicant's traffic engineer explained that there would still be adequate room for customers to queue up while waiting for a car wash. I agree with the applicant's traffic engineer. A condition of approval to allow the alternative site plan would ensure that all traffic requirements are met for the alternative site plan.

with the applicant's traffic engineer's method for determining the number of customers per hour and the corresponding number of vehicle trips.

Opponents raise of number of other issues. To the extent those issues even address applicable approval criteria, the applicant's traffic engineer very persuasively rebuts opponents' arguments in his memoranda dated January 23, 2020, January 30, 2020, and February 6, 2020. I have reviewed those memoranda and I agree with the conclusions. I therefore adopt and incorporate those findings in this decision.

The applicant has satisfied all transportation and safety approval criteria.

4. Landscaping Requirements

ZDO 1009.04(D) provides:

> "Buffering shall be used to mitigate adverse visual impacts, dust, noise, or pollution, and to provide for compatibility between dissimilar adjoining uses. Special consideration shall be given to buffering between residential uses and commercial or industrial uses, and in visually sensitive areas."

ZDO 1009.04(E) provides:

> "Buffering shall be accomplished by one of the following:
>
> "* * * * *
>
> "(4) Another method that provides an adequate buffer considering the nature of the impacts to be mitigated."

The Planning Director found:

> "The proposed commercial use is directly adjacent to a residential community and may have significant operational externalities such as noise trespass. * * * Given the significant differences between the proposed use and the adjacent residential area staff feels that the height of the proposed CMU wall along the eastern property boundary should be increased to ten (10) feet." Planning Director Decision 25.

The Design Review Board (DRB) recommended the ten-foot wall, and the Planning Director included that condition in his decision. The applicant did not contest the ten-foot wall before the (DRB) or the Planning Director. On appeal, the applicant argues that the originally proposed six-foot wall would be more than adequate to buffer the adjoining residential area from noise, fumes, and views of the proposed car wash. The applicant also

explains that a ten-foot wall would be substantially more expensive than a six-foot wall and would implicate a potential takings under state and federal law.

The applicant provided a noise study (using multiple study dates) that persuasively shows that the proposed use would meet the applicable Department of Environmental Quality (DEQ) noise standards. As the applicant explains, the applicable standard is that a proposed use meet the applicable standard rather than the proposed use plus all background noise. The applicant's sound engineer explains that the proposed car wash includes noise mitigation measures such as the dryers being located 40 feet inside the car wash tunnel, the central vacuum for the individual vacuums being located inside a building rather than outside, and the proposed wall. The applicant's sound engineer explains that the proposed use would either reduce noise or keep noise very close to its current condition. The applicant's sound engineer persuasively explains that there would be no perceptible difference between a ten-foot wall and a six-foot wall.

I tend to agree with the applicant that there would not be much if any benefit regarding noise mitigation between a six-foot wall and ten-foot wall. The wall, however, also serves to block vapors and provide visual separation. The applicant agreed to a condition requiring a seven-foot wall, which is the same height as the wall for the nearby car wash. With a seven-foot wall, the application satisfies ZDO 1009.04(D) and 1009.04(E)(4).

5. Other Arguments

Opponents raise a number of arguments that do not apply to any applicable approval criteria. For instance, opponents argue that the proposed car wash does not comply with various purpose statements in the ZDO, such as the Development Standard and Site Design purpose statements of ZDO 1001 and 1005. Those purpose statements merely provide an explanation of the purpose of the subsequent approval standards and criteria. The purpose statements are not separately applicable approval standards. Opponents' arguments do not provide a basis to deny the application.

Opponents also argue that the proposed car wash does not satisfy various goals and policies of the comprehensive plan. This is a design review application. The comprehensive plan is not an applicable source of approval standards. Furthermore, there is nothing in any

of the actual approval standards or criteria that require compliance with the comprehensive plan. Opponents' arguments do not provide a basis to deny the application.

All of the applicable approval criteria are satisfied.

6. Conclusion

It is important to remember that the proposed car wash is a permitted use for the property. The current application is for design review – it is to make sure there is a proper design for an allowed use. Design review is not a process to determine whether a proposed use should be allowed in the first place or whether adverse impacts on neighboring properties should result in a denial as in a conditional use application. The applicant has demonstrated that the proposed car wash meets all of the applicable criteria and in many ways will improve the appearance and function of the property. While I can certainly understand that nearby residents could be concerned about potential impacts from the car wash such as traffic and noise, the applicant has demonstrated that such impacts will be minimal if noticeable at all. While the adjoining residential areas will hardly be bucolic, for better or worse those residential areas are located next to a Corridor Commercial zone and are a block away from 82nd Avenue – which results in a busy and noisy neighborhood. That does not mean that permitted uses should be denied.

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** the application for design review in Z0353-19-D, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

A. General Conditions:

1. Approval of this land use permit is based on the submitted revised written narrative and plan(s) filed with the County on September 9, 2019 and October 24, 2019. Depending upon the outcome of litigation regarding the boundary dispute, approval may also based on the alternative site plan submitted on November 14, 2019. 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 these document(s) and the limitation of any approval resulting from the recommendation described herein.

2. The applicant is advised that they may 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, 503-742-4657 or at wendicor@clcackamas.us.

3. Prior to the SUBMISSION of building permits, the applicant shall submit a statement of use form to Wendi Coryell. She can be contacted at 503-742-4657 or wendicor@clackamas.us . The statement of use is used to calculate the applicable System Development Charges. These SDC's are included in the final calculation of the building permit fees for new development projects.

4. The decision is valid for four 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 (ZDO 1102.05). 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 design review project. A "major development permit" is:

a. A building permit for the structure or

b. A permit issued by the County Engineering Division or ODOT as applicable, for frontage improvements required by this approval.

5. This Design Review 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 standards 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.

B. Planning and Zoning Conditions:

1. Prior to issuance of building permit, the applicant shall submit a site drawing demonstrating a landscape irrigation system which meets the standards of ZDO 1009.10(M).

2. Prior to the issuance of building permit, the applicant shall provide a site plan that specifies a 7-foot high CMU wall along the eastern edge of the property between Cornwell and Lindy. The wall shall be painted on the side facing the subject property with a durable and graffiti resistant sealer, and have a fast-growing evergreen species planted along its length on the subject property, to ensure proper buffering between the proposed use and adjacent residential development per ZDO 1009.04(E)(4).

3. Prior to issuance of certificate of occupancy, applicant shall submit a signed maintenance contract guaranteeing the landscape materials for one year from the date of installations or provide a performance surety pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance, covering the landscape maintenance costs for the one-year period, per ZDO 1009.10(F).

4. Prior to issuance of certificate of occupancy the landscaping installation and irrigation system shall be inspected to ensure compliance with submitted drawings and the standards of ZDO 1009.

5. Prior to issuance of certificate of occupancy, the trash and recycling enclosure shall be outfitted with a locking mechanism to prevent unauthorized access to materials and prevent materials scavenging. This mechanism shall comply with ZDO 1021 and the requirements of the local refuse/recycling hauler.

6. In accordance with the annotation of the submitted site plan, the site access point on the northern edge of the property (with SE Cornwall) shall be access controlled with a gate or fence and be restricted to emergency vehicles, maintenance vehicles, and as a bypass lane for site visitors who decide not to get a car wash once in the queue.

C. Building Code Division Conditions:

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 before final occupancy approval.

2. All applicable development permits (grading and erosion control, etc.) shall be obtained prior to any construction.

D. Clackamas County Engineering Conditions

1. All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with Clackamas County Roadway 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. The applicant shall dedicate approximately 21 feet of right-of-way along the entire SE 82nd Avenue site frontage to ODOT and verify by a professional survey that a 51-foot wide, one-half right-of way width exists.

4. The applicant shall dedicate 5 feet of additional right-of-way along the entire SE Lindy Street and SE Cornwell site frontages to Clackamas County or ODOT as appropriate and verify by a professional survey that a 30-foot wide, one-half right-of-way width exists.

5. The applicant shall design and construct improvements along the entire site frontage of SE 82nd Avenue to arterial roadway standards, consistent with Standard Drawing C140 and Figure X-CRC-2 of the Comprehensive Plan, and ODOT standards. These improvements shall consist of the following:

a. Up to a one minimum 37-foot wide, one half street improvement, as measured from the right of-way centerline. The structural section shall comply with Standard Drawing C100 for an arterial roadway.

b. Standard curb, or curb and gutter if curbline slope is less than one percent.

c. Dual Curb ramps shall be constructed at the SE Lindy Street and SE Cornwell Street intersections, designed per ODOT Standard Drawings. The curb radius shall be 20 feet. All curb ramps shall be designed with curb and gutter.

d. An 8-foot wide unobstructed sidewalk, consistent with Comprehensive Plan Figure X-CRC-2 shall be constructed along the entire site frontage. Where there is an active bus stop, sidewalk shall comply with ZDO Section 1007.04.H.2.

e. A minimum 5.5-foot wide landscape strip shall be provided between the sidewalk and curb. Street trees shall be provided within the landscape strip along the entire site frontage at 2540-foot spacing, based on tree species.

f. A signal modification for the SE 82nd Avenue/SE Lindy Street signal shall be approved by ODOT, including but not limited to signal pole locations lane configuration, signal detection and signal phasing.

g. Drainage facilities in conformance with Water Environment Services requirements and Clackamas County Roadway Standards Chapter 4.

6. The applicant shall design and construct improvements along the entire site frontage of SE Lindy Street and SE Cornwell Street to local commercial roadway standards, consistent with Standard Drawing C110. These improvements shall consist of the following:

a. Up to a minimum 16-foot wide one half street improvement, as measured from the right-of way centerline. The structural section shall comply with Standard Drawing C100 for a commercial local roadway.

b. Standard curb, or curb and gutter if curbline slope is less than one percent.

c. A 6-foot wide unobstructed sidewalk.

d. A minimum 5-foot wide landscape strip shall be provided between the sidewalk and curb. Street trees shall be provided within the landscape strip along the entire site frontage at 2540-foot spacing, based on tree species.

e. A maximum 28-foot wide concrete driveway approach, per Standard Drawing D600. The driveway approach shall intersect the road at an 80-90 degree angle, per Roadway Standards Section 250.8.2.

f. Signal loop detection shall be installed on SE Lindy Street, as required by ODOT for the SE Lindy Street/SE 82nd Avenue intersection.

g. The applicant shall provide and maintain adequate sight lines for minimum intersection sight distance of 280 feet at the driveway intersection with SE Lindy Street.

h. Drainage facilities in conformance with Water Environment Services requirements and Clackamas County Roadway Standards Chapter 4. Maintenance provisions for water quality facilities, such as planters or swales within and serving the public right-of-way, shall be addressed through a maintenance agreement.

7. The applicant shall design and construct on-site parking and maneuvering areas as follows:

d. The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the site, including, but not limited to:

i) A minimum of 24 feet of back up maneuvering room for all 90-degree parking spaces;

ii) The paths traced by the extremities of trucks and emergency vehicles shall be demonstrated.

e. 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.

f. Where the on-site ADA walkway intersects the public sidewalk, there shall be a minimum 5x5 foot wide landing.

g. Parking spaces shall meet minimum ZDO section 1015 and Roadway Standards, Standard Drawing P100 dimensional requirements. The plans shall list the number of

parking spaces required and the number of parking spaces provided. The applicant shall label all compact, carpool, disabled, and loading berth spaces on the plans.

8. 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.

9. A Fire Access and water supply plan shall be provided for subdivisions, commercial buildings over 1000 square feet in size or when required by Clackamas Fire District #1. The plan shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The applicant shall provide fire flow tests per NFPA 291 and shall be no older than 12 months. Work to be completed by experienced and responsible persons and coordinated with the local water authority.

10. Following completion of site construction activities of subdivisions, buildings over 1000 square feet or when required by Clackamas Fire District #1, the applicant shall provide as-built Fire Access and Water Supply pdf plans to the local Fire District and the County. The pdf plans shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The plans shall include any supporting details of the access, circulation, water vaults, fire lines, valves, fdc, backflow devices, etc.

11. Prior to certificate of occupancy, the applicant shall provide an Engineer's cost estimate to Clackamas County Engineering for any unfinished improvements required by conditions of approval. 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.

12. Prior to the issuance of a building permit, the applicant shall submit to Clackamas County Engineering Office:

d. Written approval from the Clackamas Fire District #1 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.

e. Proof that an ODOT frontage improvement permit has been applied for. Said permit shall be obtained prior to Certificate of Occupancy being issued by Clackamas County, or otherwise bonded to ensure completion.

f. Written approval from Clackamas River Water District for adequate water supply source to serve the development. The approval shall be in the form of utility plans stamped and signed by the Water District representative.

g. Written approval from Water Environment Services for surface water management facilities, surface water detention facilities, and erosion control measures. A set of street and site improvement construction plans, including a striping and signing plan, 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.

E. Oregon Department of Transportation Recommended Conditions:

1. .5ft Curb, 5.5ft planter, 8ft sidewalk, cross walk ramps, 8ft bike lane and roadway widening shall be constructed as necessary to be consistent with local, ODOT and ADA standards.

2. The applicant shall do the design and build the foundation for the relocation of the signal pole at Lindy St and 82nd Ave.

3. 21ft if right of way donated to ODOT as necessary to accommodate the planned cross section shall be provided. The deed must be to the State of Oregon, Oregon Department of Transportation. The ODOT District contact will assist in coordinating the transfer. ODOT should provide verification to the local jurisdiction that this requirement has been fulfilled. The property owner must be the signatory for the deed and will be responsible for a certified environmental assessment of the site prior to transfer of property to the Department.

F. Clackamas Fire District #1 Conditions:

1. The applicant must obtain a stamp of approval from Clackamas Fire District #1 that demonstrates fire apparatus access and water supply requirements will be satisfied.

2. A Fire Access and Water Supply plan for subdivisions and commercial buildings over 1000 square feet in size or when required by Clackamas Fire District #1. The plan shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, FDC location (if applicable), building square footage, and type of construction. The applicant shall provide fire flow tests per NFPA 291 or hydraulic model when applicable and shall be no older than 12 months. Work to be completed by experienced and responsible persons and coordinated with the local water authority. In addition, a pdf version shall be sent directly to CFD#1.

G. Clackamas County Sustainability Conditions:

1. As provided in the Land Use Application and corresponding supplemental documents, the proposed refuse and recycling enclosure can meet the requirements of ZDO 1021.

H. Water Environment Services Conditions: The following General Conditions shall apply:

1. The proposed development is located within the service area of Water Environment Services (WES) and shall be subject to WES Rules and Regulations, and Standards ("WES RR&S"), in accordance with the following adopted ordinances:

a. Water Environment Services Rules and Regulations, July 2018, Ordinance No. 03-2018

b. Sanitary Sewer Standards, Clackamas County Service District No. 1, July 1, 2013.

c. Stormwater Standards, Clackamas County Service District No. 1, July 1, 2013.

2. The applicant shall procure the necessary plan approvals, and permits in accordance with WES RR&S for sanitary sewer services and surface water management, including erosion control requirements.

3. Prior to plan approval, all submittals shall be reviewed for compliance with WES RR&S and Conditions of Approval. All sanitary and stormwater management plans and reports, which are submitted for review and approval, shall be stamped and signed by a civil engineer licensed by the State of Oregon. The project construction, specifications, and testing must be completed under the direction of the project engineer.

4. The applicant shall include the following materials with their plan review submittal to WES:

a. Two (2) sets of complete civil construction plans for all sanitary and stormwater improvements.

b. Two (2) copies of the final storm reports.

c. Two (2) copies of the geotechnical report, including infiltration testing.

d. One (1) Non-residential Questionnaire (available on WES website) e. $400 sanitary and $400 stormwater management plan review fees f. EPSC permit application and $460 erosion control permit fee.

5. The sanitary and storm systems shall be complete in all respects, in accordance with the approved plans, prior to Certificate of Occupancy approval by WES, or a performance bond shall be provided by the applicant to guarantee the construction of the infrastructure. WES shall inspect and approve the construction of the sanitary and storm systems in accordance with the approved plans.

6. Any requests to modify current WES Design Standards shall be made in accordance with Sanitary Standards, Section 1.7 or Stormwater Standards, Section 1.6. The applicant shall provide all necessary information to evaluate the request, as determined by WES.

7. The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid prior to issuance of building permits, and are subject to change without notice to the applicant. All costs associated with the design, construction and testing of the sanitary sewer and storm system shall be provided by and at the sole expense of the applicant.

For Sanitary Sewer, the following conditions shall apply:

8. All building(s) with sewer drains within the boundaries of the proposed development shall connect to the Public Sanitary Sewer System. (Sanitary Standards Section 3.2)

9. Prior to occupancy, a gravity sanitary sewer service connection shall be provided to the development. The service connection lateral shall be constructed with a clean out at the front edge of the Public Utility Easement (PUE)/Right-Of-Way.

10. Existing service laterals shall be used where feasible, as determined by WES. Unused laterals shall be capped at the property line.

11. Any on-site subsurface sewage disposal system shall be abandoned in accordance with Oregon DEQ and County Soils Department requirements. (Section 3.2.2)

12. Any uncovered trash enclosure shall drain to the storm system. Covered trash enclosures shall drain to the sanitary system and be hydraulically separated from the surrounding area.

13. With the first plan submittal, the applicant shall include a Non-Residential Questionnaire (NRQ) with an estimate of the development's discharge load and volume to the public sanitary sewer system.

14. Procedures shall be in place that prevent the discharge of any pollutant, substances, or wastewater that will interfere with the operation or performance of the public sewer system. (RR&S Section 3.1)

For Surface Water, the following conditions shall apply:

15. Surface Water Management Plan: All development that creates or modifies 5,000 square feet or more of impervious surface area shall be subject to WES RR&S. A Surface Water Management Plan and Storm Report (SWM Plan), Geotechnical Report and downstream conveyance report shall demonstrates how the development will conform to WES RR&S. The plans and reports shall be prepared by a licensed engineer and submitted to WES for review and approval.

16. A geotechnical report prepared by a qualified professional shall be included with the SWM Plan, in accordance with Appendix E of the Stormwater Standards. a. Infiltration tests shall correspond to the location and depth of each proposed infiltration facility. The applicant provided testing results for only 3 of the proposed 6 infiltration facilities. b. The applicant shall provide a site plan that clearly identifies the location of each test pit.

17. The applicant shall submit ODOT approval for any discharge into the SE 82nd Ave storm conveyance system.

18. The SWM Plan shall provide a design to mitigate the stormwater runoff from all proposed onsite permeable and impervious surface areas, all water entering the property from off-site, and any road frontage improvements.

19. The SWM Plan shall conform to the following general stormwater standards, as well as all other applicable stormwater requirements in accordance with WES RR&S:

a. Water Quality Standard - Water quality facilities shall be designed to capture and treat the first 1-inch of stormwater runoff from a 24-hour storm event using either vegetation (Appendix H) or a Basic Treatment proprietary device (Appendix F).

b. Infiltration Standard - The first ½ inch of runoff in a 24-hour period must be captured and retained onsite through an approved infiltration system.

c. Detention/Flow Control Standard in Areas with Limited Downstream Capacity (Section 5.4.4.3) – Additional flow control requirements are necessary in areas with limited downstream capacity that cannot be upgraded, and are in addition to all other water quality and infiltration requirements. Within these designated basins (see maps in Appendix G), onsite detention facilities shall be designed to reduce the 25-year post-developed runoff rate to a 2-year predeveloped discharge rate, AND, from the 2-year post-developed runoff rate to ½ of the 2-year pre-developed rate.

20. The conveyance system shall be sized for a minimum 25-year design storm.

21. The SWM Plan shall demonstrate the development has an acceptable downstream point of discharge to safely convey stormwater runoff from the entire boundary of the development.

22. A Downstream Conveyance Analysis shall be required. The analysis must extend a minimum of 1500' downstream or to the point where the development contributes less than 15% of the upstream drainage area, whichever is greater. WES may modify this condition if requirements for 25-year onsite retention and emergency overflow can be met.

23. Grading plans shall clearly identify an overflow pathway system by which the storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons in the event of any stormwater facility failure or bypass (Section 1.2)

24. Any storm facilities located within County ROW will be maintained by WES. These facilities shall be designed to only receive runoff from the ROW and shall provide adequate maintenance access and functionality, as determined by WES. A maintenance agreement with WES will not be required for these facilities.

25. Street planters shall be designed to meet current WES stormwater standards, including infiltration, water quality, and detention/flow control requirements. A detail for street planters is not currently available in the WES standards, therefore the project engineer shall provide an acceptable alternative detail from another local jurisdiction, as determined by WES.

a. Stormwater facilities shall be designed for the limiting infiltration rate in the vegetated facilities, namely the facility engineered media that is generally assumed to be no greater than 2" per hour (assuming the onsite native infiltration rates are greater).

b. Upon completion of the street planters, WES may require the engineer to perform infiltration testing of the facilities to assure the system will perform as designed. If applicable, testing shall be documented in a report stamped and signed by the project engineer and submitted to WES.

c. Planter details for facilities located on ODOT jurisdiction roads shall also be approved by ODOT.

26. The property owners shall be responsible to perpetually inspect and maintain all stormwater management systems, in accordance with WES Rules, Section 12.10. A WES 'Private Storm Drainage Facilities Maintenance Plan' (available on website) shall be submitted to WES prior to final plan approval.

27. For publicly maintained stormwater facilities, the following shall apply:

a. All publicly maintained stormwater systems must be designed and constructed to public standards and shall be located within a public right-of-way. (Section 5.5.11)

b. The developer shall maintain the stormwater facilities for a one-year warranty period; thereafter WES will be responsible for perpetual maintenance of the public stormwater facilities.

For Erosion Control, the following shall apply:

28. All construction sites, regardless of size, shall implement proper erosion prevention and sediment control measures. Erosion control site plans will be required for all development activities that accelerate erosion, including construction, grading, filling, excavating, and clearing.

29. Any development activity that results in over 800 sq ft of soil disturbance shall obtain a WES Erosion Prevention and Sediment Control (EPSC) Permit before the start of any grading or construction activities. The applicant shall submit an EPSC permit application, erosion control site plans, and applicable permit fees ($460 + $80/acre over 1 acre).

The following WES Fees and Charges shall apply:

30. Sanitary Sewer Plan Review fees shall apply. A $400.00 minimum shall be due with the first plan submittal.

31. Surface Water Plan Review fees shall apply. The total fee is equal to 4% of the construction cost for all stormwater management related facilities. A $400.00 minimum shall be due with the first plan submittal.

32. An Erosion Prevention and Sediment Control (EPSC) permit fee shall apply. A $460.00 minimum permit fee shall be due with the first plan submittal.

33. A Collection Sewer Charge shall apply in the amount of $3,191.69, due prior to plan approval. This amount applies only to service from Cornwell St. and will be revised if service is taken from Lindy St.

34. Surface Water System Development Charges (Storm SDC's) shall be applied for total impervious surface area, in accordance with WES RR&S. An estimate of the Equivalent Service Units (ESUs) will be determined after the stormwater management plan is reviewed. The final assignment of the ESUs shall be applied after the building permit application is received by Clackamas County Building Code Division.

a. Effective August 1, 2019, the surface water SDC rate is $211 per 2,500 sq ft of impervious surface. No ESU's have been paid previously, therefore no credits will apply.

35. Sanitary Sewer System Development Charges (Sanitary SDCs) shall be applied in accordance with WES RR&S. An estimate of the Equivalent Dwelling Units (EDUs) will be determined after the civil site plan is reviewed.

a. Effective August 1, 2019, the sanitary SDC rate is $7,850.00 per EDU.

b. Assignment of EDU's is in accordance with Table VII, Class 27 (Carwash) = 16 EDU's

c. An NCRA credit of $8,800.00 ($2,200.00 per tax lot) will apply towards the final Sanitary SDC amount.[5]

DATED this 5th day of March, 2020.

Fred Wilson
Clackamas County Hearings Officer

ENDANGERED SPECIES ACT NOTICE

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

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 mailing (which date appears on the last page herein).

[5] The applicant requested a number of amendments to the proposed conditions of approval. Those amendments have been made. The applicant also requested amendments to findings in the Planning Director's decision. I do not think it is necessary to make amendments to the Planning Director's decision as this decision is now the actual decision. As I have adopted and incorporated portions of the Planning Director's decision, to the extent it may matter I agree with the applicant's proposed changes to those findings.