

AMENDED AGENDA

**WILSONVILLE CITY COUNCIL MEETING
MARCH 17, 2014
7:00 P.M.**

**CITY HALL
29799 SW TOWN CENTER LOOP
WILSONVILLE, OREGON**

Mayor Tim Knapp

Council President Scott Starr
Councilor Susie Stevens

Councilor Richard Goddard
Councilor Julie Fitzgerald

CITY COUNCIL MISSION STATEMENT

To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

Executive Session is held in the Willamette River Room, City Hall, 2nd Floor

- | | | |
|------------------|---|-----------|
| 5:00 P.M. | EXECUTIVE SESSION | [15 min.] |
| A. | Pursuant to ORS 192.660(2)(f) Exempt Public Records
ORS 192.660(2)(h) Litigation | |
| 5:15 P.M. | REVIEW OF AGENDA | [5 min.] |
| 5:20 P.M. | COUNCILORS' CONCERNS | [5 min.] |
| 5:25 P.M. | PRE-COUNCIL WORK SESSION | |
| A. | Contract Approval Frog Pond CIP PSA (Kraushaar) | [15 min.] |
| B. | New City Websites Unveiled (Wolf/Miller) | [15 min.] |
| 6:50 P.M. | ADJOURN | |

CITY COUNCIL MEETING

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, Monday, March 17, 2014 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on March 4, 2014. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered therewith except where a time limit for filing has been fixed.

- 7:00 P.M. CALL TO ORDER**
- A. Roll Call
 - B. Pledge of Allegiance
 - C. Motion to approve the following order of the agenda and to remove items from the consent agenda.

7:05 P.M. MAYOR'S BUSINESS

- A. Proclamation declaring April Parkinson's Awareness Month
- B. Upcoming Meetings

7:10 P.M. COMMUNICATIONS

- A. Chief Duyck, TVF&R Annual State of the District
- B. Introduce Jeff Smith, Wilsonville Police Chief (staff – Captain Rhodes/Troha)

7:25 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

7:30 P.M. COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

- A. Council President Starr – (*Park & Recreation Advisory Board Liaison*)
- B. Councilor Goddard – (*Library Board Liaison*)
- C. Councilor Fitzgerald – (*Development Review Panels A & B Liaison*)
- D. Councilor Stevens – (*Planning Commission; CCI; Wilsonville Seniors Liaison*)

7:45 P.M. CONSENT AGENDA

- A. **Resolution No. 2454**
A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Professional Services Agreement With Angelo Planning Group, Inc. (Community Development Project #3001) Contract approval Frog Pond CIP PSA (staff - Kraushaar)
- B. **Resolution No. 2455**
A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Construction Contract With Signal Construction Group LLC For The 2013 Street Lighting Infill Project (Capital Improvement Project #4698).
- B. Minutes of the February 20, 2014 and March 3, 2014 Council Meetings. (staff – King)

7:50 P.M. PUBLIC HEARING

- A. **Resolution No. 2456**
Resolution To Issue An Order By The City Council Concerning The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W,

3/10/2014 11:27 AM Last Updated

Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC.
Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)

Or In The Alternative

Resolution No. 2457

Resolution To Issue An Order By The City Council Concerning The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC.
Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)

Or in the alternative

Resolution No. 2458

Resolution To Issue An Order By The City Council Concerning The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC.
Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)

- B. **Ordinance No. 735** – 1st hearing
An Ordinance Amending City Of Wilsonville Miscellaneous Code Provisions To Prohibit Smoking At Or Within Twenty Feet Of A Bus Stop Or Transit Shelter. (Staff – Lashbrook)
- C. **Ordinance No. 737** – 1st reading
An Ordinance Of The City Of Wilsonville Amending Chapter 10 Of The Wilsonville Code By Adding Section 10.240 Control of Dogs and Amending Section 10.430 Penalties. (staff – Kohlhoff)

8:30 P.M. CONTINUING BUSINESS

- A. **Ordinance No. 736** – 2nd Reading
An Ordinance Of The City Of Wilsonville Declaring And Authorizing The Vacation Of Three (3) Portions Of SW 110th Avenue Public Street Right Of Way Between SW Mont Blanc Street And SW Tooze Road/SW Boeckman Road In Villebois Legally Described In Attachment C. (Staff – Pauly)

8:50 P.M. CITY MANAGER'S BUSINESS

8:55 P.M. LEGAL BUSINESS

9:00 P.M. ADJOURN

An Urban Renewal Agency Meeting will follow.

3/10/2014 11:27 AM Last Updated

Time frames for agenda items are not time certain (i.e. Agenda items may be considered earlier than indicated. The Mayor will call for a majority vote of the Council before allotting more time than indicated for an agenda item.) Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting if required at least 48 hours prior to the meeting. The city will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting:- Qualified sign language interpreters for persons with speech or hearing impairments. Qualified bilingual interpreters. To obtain services, please contact the City Recorder, (503)570-1506 or king@ci.wilsonville.or.us

AGENDA

**WILSONVILLE CITY COUNCIL MEETING
MARCH 17, 2014
7:00 P.M.**

**CITY HALL
29799 SW TOWN CENTER LOOP
WILSONVILLE, OREGON**

Mayor Tim Knapp

Council President Scott Starr
Councilor Susie Stevens

Councilor Richard Goddard
Councilor Julie Fitzgerald

CITY COUNCIL MISSION STATEMENT

To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

Executive Session is held in the Willamette River Room, City Hall, 2nd Floor

- | | | |
|------------------|---|-----------|
| 5:00 P.M. | EXECUTIVE SESSION | [15 min.] |
| A. | Pursuant to ORS 192.660(2)(f) Exempt Public Records
ORS 192.660(2)(h) Litigation | |
| 5:15 P.M. | REVIEW OF AGENDA | [5 min.] |
| 5:20 P.M. | COUNCILORS' CONCERNS | [5 min.] |
| 5:25 P.M. | PRE-COUNCIL WORK SESSION | |
| A. | Contract Approval Frog Pond CIP PSA (Kraushaar) | [15 min.] |
| B. | New City Websites Unveiled (Wolf/Miller) | [15 min.] |
| 6:50 P.M. | ADJOURN | |
-

CITY COUNCIL MEETING

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, Monday, March 17, 2014 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on March 4, 2014. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered therewith except where a time limit for filing has been fixed.

- | | |
|------------------|--|
| 7:00 P.M. | CALL TO ORDER |
| A. | Roll Call |
| B. | Pledge of Allegiance |
| C. | Motion to approve the following order of the agenda and to remove items from the consent agenda. |

7:05 P.M. MAYOR'S BUSINESS

- A. Proclamation declaring April Parkinson's Awareness Month
- B. Upcoming Meetings

7:10 P.M. COMMUNICATIONS

- A. Chief Duyck, TVF&R Annual State of the District
- B. Introduce Jeff Smith, Wilsonville Police Chief (staff – Captain Rhodes/Troha)

7:25 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

7:30 P.M. COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

- A. Council President Starr – (*Park & Recreation Advisory Board Liaison*)
- B. Councilor Goddard – (*Library Board Liaison*)
- C. Councilor Fitzgerald – (*Development Review Panels A & B Liaison*)
- D. Councilor Stevens – (*Planning Commission; CCI; Wilsonville Seniors Liaison*)

7:45 P.M. CONSENT AGENDA

- A. **Resolution No. 2454**
A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Professional Services Agreement With Angelo Planning Group, Inc. (Community Development Project #3001) Contract approval Frog Pond CIP PSA (staff - Kraushaar)
- B. **Resolution No. 2455**
A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Construction Contract With Signal Construction Group LLC For The 2013 Street Lighting Infill Project (Capital Improvement Project #4698).
- B. Minutes of the February 20, 2014 and March 3, 2014 Council Meetings. (staff – King)

7:50 P.M. PUBLIC HEARING

- A. **Resolution No. 2456**
Resolution To Issue An Order By The City Council Concerning The Stage Ii Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County,

3/6/2014 4:30 PM Last Updated

Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)

Or In The Alternative

Resolution No. 2457

Resolution To Issue An Order By The City Council Concerning The Stage Ii Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)

Or in the alternative

Resolution No. 2458

Resolution To Issue An Order By The City Council Concerning The Stage Ii Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)

B. **Ordinance No. 735** – 1st hearing

An Ordinance Amending City Of Wilsonville Miscellaneous Code Provisions To Prohibit Smoking At Or Within Twenty Feet Of A Bus Stop Or Transit Shelter. (Staff – Lashbrook)

C. **Ordinance No. 737** – 1st reading

An Ordinance Of The City Of Wilsonville Amending Chapter 10 Of The Wilsonville Code. (staff – Kohlhoff)

8:30 P.M. CONTINUING BUSINESS

A. **Ordinance No. 736** – 2nd Reading

An Ordinance Of The City Of Wilsonville Declaring And Authorizing The Vacation Of Three (3) Portions Of SW 110th Avenue Public Street Right Of Way Between SW Mont Blanc Street And SW Tooze Road/SW Boeckman Road In Villebois Legally Described In Attachment C. (Staff – Pauly)

8:50 P.M. CITY MANAGER'S BUSINESS

8:55 P.M. LEGAL BUSINESS

9:00 P.M. ADJOURN

An Urban Renewal Agency Meeting will follow.

Time frames for agenda items are not time certain (i.e. Agenda items may be considered earlier than indicated. The Mayor will call for a majority vote of the Council before allotting more time than indicated for an agenda item.) Assistive Listening Devices (ALD) are

3/6/2014 4:30 PM Last Updated

available for persons with impaired hearing and can be scheduled for this meeting if required at least 48 hours prior to the meeting. The city will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting:- Qualified sign language interpreters for persons with speech or hearing impairments. Qualified bilingual interpreters. To obtain services, please contact the City Recorder, (503)570-1506 or king@ci.wilsonville.or.us

PROCLAMATION DECLARING APRIL PARKINSON'S AWARENESS MONTH

WHEREAS, Parkinson's disease is a progressive neurological movement disorder of the central nervous system, which has a unique impact on each patient; and

WHEREAS, there is no objective test or biomarker for Parkinson's disease and the symptoms of the disease vary from person to person resulting in a high rate of misdiagnosis; and

WHEREAS, although new medicines and therapies may enhance life for some time for people with Parkinson's, more work is needed for a cure; and

WHEREAS, there is no therapy or drug to slow or halt the progression of the disease and increased education and research is needed to find more effective treatments and ultimately a cure for Parkinson's disease; and

WHEREAS, a multidisciplinary approach to Parkinson's disease care includes local wellness, support, and caregiver groups; and

WHEREAS, local, regional and state volunteers, researchers and medical professionals are working to improve the quality of life of persons living with Parkinson's disease and their families;

NOW THEREFORE I, Tim Knapp, Mayor of the City of Wilsonville do hereby proclaim April 2014 as

Parkinson's Awareness Month.

Tim Knapp, Mayor

Signed this 17th day of March, 2014

Wilsonville Mayor Tim Knapp Talking Points Outline

Parkinson's Awareness Month

Monday, March 17, 2014, 7:15 pm City Council Chambers

- City Council wants to raises awareness about Parkinson's Disease
- We are proclaiming April as Parkinson's Awareness Month
- It is a disease that is estimated to affect 500,000 to 1,500,000 people in the United States
- Parkinson's disease is the 14th leading cause of death according to the Centers for Disease control and Prevention
- The economic burden of Parkinson's disease is estimated to be at least \$14.4 billion annually
- Research suggests the cause of Parkinson's disease is a combination of genetic c and environmental factors, but the exact cause and progression of the disease is still unknown.
- There is not objective test or biomarker for Parkinson's disease and the rate of misdiagnosis can be high.
- There is no cure, therapy, or drug to slow or halt the progression of Parkinson's disease.
- To learn more about Parkinson's disease visit the Parkinson's Disease Foundation website at www.pdff.org.
- We pleased to have Kevin Mansfield with us tonight. Kevin is the Oregon State Director for Parkinson's Action Network

King, Sandy

From: Cosgrove, Bryan
Sent: Saturday, January 25, 2014 5:03 PM
To: Mayor Tim Knapp
Cc: Ottenad, Mark; King, Sandy
Subject: Re: Proclamation Request - Parkinson's Awareness Month (April)

MARCH 17TH

I'll take care of it, Tim.

Sent from my iPhone

On Jan 25, 2014, at 11:53 AM, "Mayor Tim Knapp" <knapp@ci.wilsonville.or.us> wrote:

Hi All- This request sounds reasonable, but should be checked out. Do we have a protocol to handle? Maybe someone can handle, and coordinate with the requester, who I met at the Wyden Town Hall Friday. Thx/TK

Sent from my Verizon Wireless Droid

-----Original message-----

From: Kevin Mansfield <grandpakevin@msn.com>
To: Mayor Tim Knapp <knapp@ci.wilsonville.or.us>
Sent: Sat, Jan 25, 2014 19:34:56 GMT+00:00
Subject: Proclamation Request

1/25/2014

Office of Mayor : Tim Knapp
29799 SW Town Center Loop E
Wilsonville, Oregon 97070

Dear Mayor: Tim Knapp

I am inquiring how to get April proclaimed as "Parkinson's Awareness Month" by the city of Wilsonville.

I am the Oregon State Director for Parkinson's Action Network, headquartered in Washington D.C. I have Parkinson's Disease. Parkinson's Action Network is a nonprofit organization that advocates for better treatments and a cure for Parkinson's Disease. PAN is the one organization that handles all federal policy work and government affairs for the Parkinson's community making it a highly effective model. At the heart of PAN'S success as the unified voice for the community are thousand of grassroots leaders, advocates, and change makers who know what it means to live with Parkinson's.

The Federal Government has already proclaimed the month of April as "National Parkinson's Awareness Month". With so many people living with this devastating disease, this proclamation would play an important role in raising awareness about Parkinson's and how our fellow citizens can help in the search for a cure. It would mean so much to our community to have April locally

Kevin Mansfield
will be in
attendance

designated as Parkinson's Awareness Month.

Many great events are taking place every day in our communities to better the lives of those living with this devastating disease. While new technologies and treatments are being approved to benefit people living with the disease, we are still hoping for more effective treatments and a cure. Parkinson's disease affects not only the lives of the individual, but also those of their families and friends. Please let us know if you will be able to honor our request. You may contact me at 503-278-0516 with any questions. Your consideration is greatly appreciated. Sincerely,

Kevin Mansfield
Oregon State Director for Parkinson's Action Network
16343 NE Russell
Portland, Oregon 97230
grandpakevin@msn.com

<2014_CITYSTATE_Proclamation Template-1.doc>

A proclamation is a public statement or announcement giving notice of a government act. Receiving a proclamation from a Mayor, Governor, or City Council serves the purpose of increasing awareness about Parkinson's disease and the continued need for research for better treatments and a cure. When submitting your request, be sure to provide your name and contact information so they can reach out to you with any additional questions, invite you to an event, or send you the final proclamation!

2014 CITY/STATE PROCLAMATION TEMPLATE

Whereas Parkinson's disease is a chronic, progressive, neurological disease and is the second most common neurodegenerative disease in the United States;

Whereas there is inadequate data on the incidence and prevalence of Parkinson's disease, but it is estimated to affect 500,000 to 1,500,000 people in the United States and the prevalence will more than double by 2040;

Whereas Parkinson's disease is the 14th leading cause of death in the United States according to the Centers for Disease Control and Prevention and the age-adjusted death rate increased 2.9 percent from 2010 to 2011;

Whereas it is estimated that the economic burden of Parkinson's disease is at least \$14.4 billion annually, including indirect costs to patients and family members of \$6.3 billion;

Whereas research suggests the cause of Parkinson's disease is a combination of genetic and environmental factors, but the exact cause and progression of the disease is still unknown;

Whereas there is no objective test or biomarker for Parkinson's disease, and the rate of misdiagnosis can be high;

Whereas the symptoms of Parkinson's disease vary from person to person and can include tremors; slowness of movement and rigidity; difficulty with balance, swallowing, chewing, and speaking; cognitive impairment and dementia; mood disorders (such as depression and anxiety); constipation; skin problems; and sleep difficulties;

Whereas there is no cure, therapy, or drug to slow or halt the progression of Parkinson's disease;

Whereas local, regional, and state volunteers, researchers, and medical professionals are working to improve the quality of life of persons living with Parkinson's disease and their families;

Whereas increased education and research is needed to find more effective treatments with fewer side effects and, ultimately, a cure for Parkinson's disease;

NOW, THEREFORE, I/WE, _____, MAYOR/GOVERNOR/THE CITY COUNCIL of the City/State of _____, do hereby proclaim April as Parkinson's Awareness Month in _____.

Given under my hand in these free United States in the City of _____, on this day of twenty-fourteen, and to which I have caused the Seal of the City/State of to be affixed and have made this proclamation public.

Mayor/Governor/Council

Attest:

King, Sandy

From: Dukes, Stacey H. <Stacey.Dukes@tvfr.com>
Sent: Thursday, January 09, 2014 10:46 AM
To: King, Sandy
Subject: RE: Chief Duyck Presentation to City Council

Sandy,

Thank you for getting back to me so quickly! Chief Duyck's presentation normally reviews the past year as well as addresses issues in the upcoming year, so I think it would be beneficial to do it when the Mayor will be present. How about March 17th?

Chief Duyck will bring his iPad and adapter, so he just needs a projection system to plug in to.

Thanks,

Stacey

From: King, Sandy [mailto:king@ci.wilsonville.or.us]
Sent: Wednesday, January 08, 2014 3:31 PM
To: Dukes, Stacey H.
Subject: RE: Chief Duyck Presentation to City Council

Stacey,

March 3rd would work for Chief Duyck to make his presentation to Council. I should note that the Mayor will be out of town that evening – if this is an issue please let me know and we can select another date.

Please let me know if the Chief will need a laptop setup.

Sandra C. King, MMC
City Recorder
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070
503-570-1506

PUBLIC RECORDS LAW DISCLOSURE: Messages to and from this e-mail address is a public record of the City of Wilsonville and may be subject to public disclosure. This e-mail is subject to the State Retention Schedule.

From: Dukes, Stacey H. [mailto:Stacey.Dukes@tvfr.com]
Sent: Wednesday, January 08, 2014 3:24 PM
To: King, Sandy
Subject: Chief Duyck Presentation to City Council

Sandra,

I'd like to see if we can find a date for Chief Duyck to do his annual State of the District presentation at the City Council meeting. It appears that I worked with you last year to make the arrangements, however, feel free to let me know if there's someone else I should contact. I was looking at Monday, March 3rd; would that date work for the council?

Best regards,

Stacey Dukes | Executive Assistant

Tualatin Valley Fire & Rescue

Direct: 503-259-1503

www.tvfr.com

CITY COUNCIL ROLLING SCHEDULE

Board and Commission Meetings 2014-15

MARCH

DATE	DAY	TIME	MEETING	LOCATION
3/17	Monday	7 p.m.	City Council Meeting	Council Chambers
3/24	Monday	6:30 p.m.	DRB Panel B	Council Chambers
3/26	Wednesday	6:30 p.m.	Library Board	Library

APRIL

DATE	DAY	TIME	MEETING	LOCATION
4/7	Monday	7 p.m.	City Council Meeting	Council Chambers
4/9	Wednesday	6 p.m.	Planning Commission	Council Chambers
4/10	Thursday	6:30 p.m.	Parks and Recreation Advisory Board	Council Chambers
4/14	Monday	6:30 p.m.	DRB Panel A	Council Chambers
4/21	Monday	7 p.m.	City Council Meeting	Council Chambers
4/23	Wednesday	6:30 p.m.	Library Board	Library
4/28	Monday	630 p.m.	DRB Panel B	Council Chambers

COMMUNITY EVENTS



COMMUNITY GARDEN REGISTRATION OPENS

March 20, 2014 8 AM

Registration for the Community Garden opens at 8:00am. Gardeners must come to the Community Center to register in person and pick their plot. For more information please contact Brian Stevenson at 503-570-1523

TOURISM STRATEGY DEVELOPMENT TASK FORCE MEETING

March 20, 2014 6 PM

Wilsonville Tourism Development Strategy Task Force Meeting #5 is focused on reviewing public comments and accepting of and recommending to City Council a final Tourism Development Strategy. The Tourism Development Strategy is scheduled to be presented to the City Council in April 2014 for adoption as a component of the City's larger Economic Development Strategy. All meetings of the task force are open to public. For more information, contact Mark Ottenad, Public/Government Affairs Director, at 503-570-1505; ottenad@ci.wilsonville.or.us.

WILSONVILLE EGG HUNT – for those between 1 and 11 years of age

Saturday April 19th, 10 a.m.

Memorial Park – bring your basket and hunt for that perfect egg.



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: March 17, 2014	Subject: Resolution No. 2454 Professional Services Contract With Angelo Planning Group for the Frog Pond / Advance Road Planning Project Staff Member: Katie Mangle Department: Community Development	
Action Required <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input checked="" type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comments:	
Staff Recommendation: Approval of Resolution No. 2454.		
Recommended Language for Motion: I move to approve Resolution 2454.		
PROJECT / ISSUE RELATES TO:		
<input checked="" type="checkbox"/> Council Goals/Priorities Thoughtful Land Use 5.a. Complete a formal concept plan for Advance Road and Frog Pond Residential Areas. 7.b. Plan for successful integration of our existing living, working, and playing areas in existing planned development through TSP adoption, the launching of concept planning, and CIP.	<input type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

Professional Services Agreement (PSA) with Angelo Planning Group to support Community Development staff with the Frog Pond and Advance Road Planning project.

EXECUTIVE SUMMARY:

Community Development staff has selected a qualified consulting firm, Angelo Planning Group (APG), to support staff on the Frog Pond / Advance Road Planning Project. APG was selected out of a pool of three proposers, in accordance with all City and State procurement requirements that guarantee open and fair competition. The award was based on a weighted scoring of several factors, including price, experience, creativity, and expertise.

APG will be responsible for delivering plans for future urbanization of the Advance Road and Frog Pond development areas. Concept planning for the combined 497-acre area will resolve land use and infrastructure issues for future development. The Frog Pond/ Advance Road Planning Project will involve two phases:

1. **Create a Concept Plan for the whole area.** This broad plan will define the mix of land uses; location of schools, parks, and natural areas; water quality and ecosystem protection; transportation; public facilities location; and financial feasibility.
2. **Create a Master Plan for just the Frog Pond area.** This more detailed planning of Frog Pond will result in the adoption of Comprehensive Plan land use designations, more detailed public facility design and cost estimating, and drafting of zoning to be applied at the time of development. The intent of this phase is to set the stage for annexation, rezoning, and permitting for development.

The consultant scope of work is included with Attachment A, Exhibit A, the Professional Services Contract. See Attachment C for a conceptual schedule, showing the relationship between the various tasks, and key meetings.

EXPECTED RESULTS:

The project will result in three primary products:

1. A concept plan for the entire Frog Pond Advance Road study area, to comply with Metro Functional Plan Title 11. Developing a concept plan for the Advance Road Urban Reserve is required before this area may be considered to be added to the Metro UGB; to be eligible for the next round of nominations the plan must be completed by May 2015.
2. A Master Plan for the Frog Pond area.
3. Draft implementing ordinances, including amendments to the Comprehensive Plan, Transportation System Plan, and Development Code.

TIMELINE:

The project schedule will be driven by the milestones defined in the City's Intergovernmental Agreement with Metro accepting the grant that is funding the project. The City has committed to meeting the following key deadlines for the first phase of the project:

- | | |
|---|------------------|
| • Public Involvement Plan and Site Analysis | April 31, 2014 |
| • Selection of one development alternative | October 31, 2014 |
| • Final Concept Plan | April 30, 2015 |

CURRENT YEAR BUDGET IMPACTS:

In August, Metro awarded the City of Wilsonville a \$341,000 grant for this project. The City has committed to provide an \$80,000 cash match (funded through SDCs) and dedicate significant staff resources to the project.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: NJK Date: 3-5-2014

Funding for the project is programmed in the adopted 2013-14 Budget and the draft 2014-15 Budget.

LEGAL REVIEW / COMMENT:

Reviewed by: MEK Date: 3/7/14

Resolution is approved as to form.

COMMUNITY INVOLVEMENT PROCESS:

Property owners and others in the community will be invited to participate in the planning process; staff is currently preparing a detailed Public Involvement Plan for how this will happen. As illustrated in Attachment D, staff is proposing to create a Task Force to advise project staff on key aspects of the project, allowing property owners and other citizens to engage in dialogue with decision-makers. This will enable the Planning Commission to focus on the big picture and function of the plans. Staff will use multiple tools to involve and inform community members about the project.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY

By leading the planning effort, the City will balance public interests with feasibility of implementation. Planning for both areas together is the best way to ensure cost effective provision of infrastructure. Additionally, the project will resolve questions related to design, infrastructure, and land uses that will make it more likely that the Frog Pond area will be ready to construct when the market is ready to support it. These planning efforts will help further the City Council's goal to plan for successful integration of living, working, and playing areas throughout the existing and future Wilsonville community.

ALTERNATIVES:

1. Council may direct staff to renegotiate the scope of work and budget that is outlined in the PSA.
2. Council may reject staff's recommendation and direct staff to re-open the consultant selection process.

CITY MANAGER COMMENT:

ATTACHMENTS

- A. Resolution No. 2454
Exhibit A. Professional Services Contract
- C. Conceptual schedule diagram
- D. Public involvement diagram

RESOLUTION NO. 2454

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH ANGELO PLANNING GROUP, INC. (COMMUNITY DEVELOPMENT PROJECT #3001)

WHEREAS, the City has received grant funds and has budgeted funds in order to develop Title 11-compliant plans supportive of the 2040 growth concept for two adjacent areas of land immediately east of Wilsonville, setting the stage for further public and private investment and development; and

WHEREAS, the two areas are known as Frog Pond, which is in the Urban Growth Boundary, and Advance Road, which is a designated Urban Reserve; and

WHEREAS the Project will create one joint Concept Plan for the Frog Pond and Advance Road areas, and a Master Plan with implementing ordinances for the Frog Pond area only; and

WHEREAS, the City solicited Requests for Proposals from qualified consultants in compliance with the City of Wilsonville Municipal Code and Oregon Public Contracting laws to assist City staff with the foregoing tasks; and

WHEREAS City staff has determined that Angelo Planning Group, Inc. submitted the most qualified proposal at a competitive fee for services;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The procurement process for the Project duly followed Oregon Public Contracting Rules, and Angelo Planning Group, Inc. proposal ranked highest when considering experience, project understanding and approach, and cost.
2. City Council authorizes the City Manager to execute the Professional Services Agreement with Angelo Planning Group, Inc., in the form attached hereto as **Exhibit A.**
3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this ____ day of _____, 2014, and filed with the Wilsonville City Recorder this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

CITY OF WILSONVILLE PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made and entered into on this ____ day of March, 2014 ("Effective Date") by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the "City"), and **Angelo Planning Group, Inc.**, an Oregon corporation (hereinafter referred to as "Consultant").

RECITALS

WHEREAS, the City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Term

The term of this Agreement shall be from the Effective Date until all services required to be performed hereunder ("Services") are completed and accepted, unless earlier terminated in accordance herewith. Consultant shall diligently perform the Services according to the requirements and deliverable dates identified in the Scope of Work, attached hereto as **Exhibit A** and incorporated by reference herein. Except in the event of an extension of time, agreed to in writing by the City, all Services must be completed no later than August 30, 2016.

Section 2. Consultant's Services and Responsibilities

2.1. Consultant will perform the Scope of Work, more particularly described on **Exhibit A**, for the Frog Pond/Advance Road Planning Project ("Project").

2.2. Interpretation of plans and answers to questions regarding the Services or Scope of Work given by Consultant's Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Consultant's Project Manager will provide such written documentation.

2.3. Consultant will not be responsible for damages, be in default, or be deemed to be in default by reason of delays in performance due to reasons beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

2.4. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Work described herein.

2.5. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to work on the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

2.6. To prevent an actual conflict of interest or the appearance of a potential conflict of interest, Consultant hereby agrees that, as additional consideration for the award of this Agreement, Consultant, including any of its subcontractors, will not perform any work or negotiate to perform any work related to or on any property located within one quarter mile of the designated Study Area for the duration of this Agreement without written permission of the City Project Manager, in the Project Manager's sole reasonable discretion. The properties covered by this provision include, but are not limited to, the West Linn-Wilsonville School District properties. Consultant may contract to perform work for Study Area property owners if work is related to land outside of the study area, but only with prior written permission from the City's Project Manager. Consultant will include this clause in all of its subcontractor agreements for the Project. Breach of this provision will result in automatic termination of this Agreement and, in addition, the City shall be entitled to seek any and all remedies available to it for breach of contract, including but not limited to immediate injunctive relief, all as more particularly set forth in **Section 12**.

Section 3. City's Responsibilities

3.1. The scope of the City's responsibilities, including those of the City's Project Manager, are also set forth in the Scope of Work. The City will designate a Project Manager to facilitate day-to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

3.2. The City hereby certifies that sufficient funds are available and authorized to finance the Compensation Amount set forth in **Section 4** of this Agreement.

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant a not to exceed price of TWO HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED THIRTY-ONE DOLLARS (\$297,931) for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Change Order to be executed between the City and Consultant.

4.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work described on **Exhibit A**, Consultant shall provide such additional services and bill the City at the hourly rates outlined on Consultant's Rate Schedule, as set forth in **Exhibit B**. Compensation above the amount shown in **Subsection 4.1** above requires a written Change Order executed in compliance with the provisions of **Section 19**.

4.3. Unless expressly set forth on Consultant's Rate Schedule as a reimbursable expense item that is not included in the Compensation Amount of **Subsection 4.1**, or as an additional charge for

which a written Change Order has been approved, in accordance with **Subsection 4.2** and the requirements of **Section 19**, Consultant shall only be entitled to the Compensation Amount specified in **Subsection 4.1**.

4.4. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

4.5. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit A**.

4.6. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related expenses, salaries or wages plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, office expenses, and all other indirect and overhead charges.

Section 5. City's Project Manager

The City's Project Manager is Katie Mangle. The City shall give Consultant prompt written notice of any redesignation of its Project Manager.

Section 6. Consultant's Project Manager

Consultant's Project Manager is Joe Dills. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such redesignation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

Section 7. Project Information

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 8. Duty to Inform

If, at any time during the performance of this Agreement or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults, or defects in the Project or Scope of Work, or any portion thereof; or of any nonconformance with

federal, state, or local laws, rules, or regulations; or if Consultant has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Consultant shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Consultant shall neither constitute agreement with nor acquiescence to Consultant's statement or claim, nor constitute a waiver of any of the City's rights.

Section 9. Consultant Is Independent Contractor

9.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

9.2. Consultant may request that some consulting Services be performed on the Project by persons or firms other than Consultant, through a subcontract with Consultant. Consultant acknowledges that if such Services are provided to the City pursuant to a subcontract(s) between Consultant and those who provide such services, Consultant may not utilize any subcontractor(s), or in any way assign its responsibility under this Agreement, without first obtaining the express written consent of the City, which consent may be given or denied in the City's sole discretion. Once the City has approved a subcontractor, Consultant shall not change that subcontractor or propose a replacement subcontractor without obtaining permission from the City. It is important that for the sake of consistency and continuity during this rather long and complex Agreement, the City expects Consultant to select and retain good qualified subcontractors and not to change them, except for good cause. For all Services performed under subcontract to Consultant, as approved by the City, Consultant shall only charge the compensation rates shown on an approved Rate Schedule. Rate Schedules for named or unnamed subcontractors, and Consultant markups of subcontractor billings, will only be recognized by the City as set forth in Consultant's Rate Schedule, unless documented and approved, in writing, by the City pursuant to a modification to Consultant's Rate Schedule, per **Section 19** of this Agreement. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant. As used in this Agreement, the term subcontractor includes all subconsultants.

9.3. Consultant shall be responsible for, and defend, indemnify and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with and be subject to the provisions of this **Section 9** and meet the same insurance requirements of Consultant under this Agreement.

9.4. Consultant shall make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement, as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the subcontractor furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

9.5. Consultant must comply with all wage and hour laws. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully

responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on **Exhibit B** as a reimbursable expense item, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Consultant's Compensation Amount is based.

9.6. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the grounds of sex, gender, race, color, creed, marital status, age, disability, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City.

9.7. References to "subcontractor" mean a subcontractor at any tier.

Section 10. Indemnity and Insurance

10.1. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct provided pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 10.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant.

10.2. Consultant's Standard of Care and Insurance Requirements.

10.2.1. Standard of Care: In the performance of professional services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any services not meeting this standard without additional compensation. Consultant's re-performance of any services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

10.2.2. Insurance Requirements: Consultant shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. The amount of insurance carried is in no way a limitation on Consultant's liability

hereunder. The policy or policies of insurance maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

10.2.2.1. Commercial General Liability Insurance. Consultant shall obtain, at Consultant's expense, and keep in effect during the term of this Agreement, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: must be carried and maintained at all times: The coverage shall be in the amount of **\$1,000,000** for each occurrence and **\$2,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

10.2.2.2. Professional Errors and Omissions Coverage. Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$1,000,000** per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years thereafter.

10.2.2.3. Business Automobile Liability Insurance. If Consultant will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

10.2.2.4. Workers Compensation Insurance. Consultant and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

10.2.2.5. Insurance Carrier Rating. Coverages provided by Consultant must be underwritten by an insurance company deemed acceptable by the City with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

10.2.2.6. Additional Insured and Termination Endorsements. Additional Insured coverage under Consultant's Commercial General Liability, Pollution Liability and Excess Liability Policy(ies), as applicable, will be provided by endorsement.

Additional insured coverage shall be for both on-going operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO form CG 2404 or its equivalent shall be provided. The following is included as additional insured: The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers. An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder.

10.2.2.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

10.2.3. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. In the event a dispute arises between the City and Consultant for which Consultant has obtained insurance, the maximum amount that may be withheld by the City for all such claims shall be no more than the amount of the applicable insurance deductible. If insurance policies are "Claims Made" policies, Consultant will be required to maintain such policies in full force and effect through any warranty period.

Section 11. Payment, Performance, and Completion Bonding Requirements

No bonds are required for this Project.

Section 12. Early Termination; Default

12.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

12.1.1. By mutual written consent of the parties;

12.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; and

12.1.3. By Consultant, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

12.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including,

but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

12.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

12.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 16**, for which Consultant has received payment or the City has made payment. The City retains the right to elect whether or not to proceed with actual construction of the Project.

Section 13. Suspension of Work

The City may suspend, delay, or interrupt all or any part of the work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within Consultant's control. The City shall not be responsible for work performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the work and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

Section 14. Subcontractors and Assignments

The City shall have the right to enter into other agreements for the Project, to be coordinated with this Agreement. Consultant shall cooperate with the City and other firms, engineers or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Consultant shall furnish other engineers, subcontractors and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

Section 15. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Consultant as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of four (4) years, unless within that time the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 16. Property of the City

16.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports, and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property

of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to the City upon request without additional compensation. Upon the City's approval, and provided the City is identified in connection therewith, Consultant may include Consultant's work in its promotional materials. Drawings may bear a disclaimer releasing Consultant from any liability for changes made on the original drawings and for reuse of the drawings subsequent to the date they are turned over to the City.

16.2. Consultant shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all work performed by Consultant pursuant to this Agreement without the express written permission of Consultant.

Section 17. Laws of Oregon

This Agreement shall be governed by the laws of the State of Oregon. All contractual provisions required by ORS Chapter 279A and 279C to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

Section 18. Adherence to Law

In the performance of this Agreement, Consultant shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform work described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

Section 19. Modification/Change Orders

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Consultant's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. If Consultant incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Compensation Amount. The Change Order must be signed and dated by both Consultant and the City before the Change Order may be implemented.

Section 20. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States

mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
Attn: Katie Mangle
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Consultant: Angelo Planning Group, Inc.
Attn: Joe Dills
921 SW Washington Street, Suite 468
Portland, OR 97205

Section 21. Miscellaneous Provisions

21.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.

21.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

21.3. No Assignment. Consultant may not delegate the performance of any obligation to a third party unless mutually agreed, in writing.

21.4. Governing Law/Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon. Venue for any dispute will be in Clackamas County Circuit Court.

21.5. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

21.6. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

21.7. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

21.8. Modification. This Agreement may not be modified except by written instrument executed by Consultant and the City.

21.9. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

21.10. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

21.11. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

21.12. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

21.13. Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

21.14. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

21.15. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorneys' fees and costs, whether incurred in a court of law or otherwise.

21.16. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

21.17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

21.18. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

CONSULTANT:

ANGELO PLANNING GROUP, INC.

By: _____

(Print Name) _____

As Its: _____

Employer I.D. No. _____

CITY:

CITY OF WILSONVILLE

By: _____

(Print Name) _____

As Its: _____

APPROVED AS TO FORM:

Barbara A. Jacobson, Assistant City Attorney
City of Wilsonville, Oregon

ATTESTED TO:

Sandra C. King, MMC, City Recorder
City of Wilsonville, Oregon

I:_contract\doc\frog pond 3001\psa frog pond-adv rd planning-angelo

Exhibit A

Frog Pond-Advance Road Concept and Master Plan

City of Wilsonville

Scope of Work for Angelo Planning Group Team

Phase 1: Concept Plan for Frog Pond and Advance Road Areas

Task 1. Project Setup.

1.1: Kick-off meeting. The City and Angelo Planning Group (APG)¹ will plan and facilitate a kick-off meeting. The meeting will cover City expectations, project objectives, key issues, and ideas for successful collaboration. The city will provide the venue and invite attendees.

1.2: Acquire data and review GIS. The City will compile and provide relevant background data and studies for use by the APG team. The files will be provided electronically on a project file-sharing site. City will provide a GIS geo-database for APG to use, along with any required protocols/limitations on the use of the data. City will provide a map template for use on the project. APG will download and review the GIS data.

Note: As a general guideline, APG will identify opportunities for City GIS staff to support the team. This is intended to supplement this scope and integrate City expertise and resources.

1.3: Stakeholder interviews and summary. APG will conduct up to 6 1-hour stakeholder meetings to discuss key issues, community values, and successful outreach and communication. Interviewees will be from a mix of city elected and appointed officials, neighborhood and local business interests, and other interest groups. The city will: identify appropriate interviewees from the groups identified above; make initial contact with interviewees to describe the process and request their participation; provide contact information for interviewees to APG; and provide meeting space, as needed, for interviews at city hall. APG will prepare a memorandum summarizing comments and themes, without ascribing comments to individuals. (Developers will be interviewed in Task 2.)

1.4: Public involvement plan and online outreach platforms. The City will prepare a public involvement plan. APG will review it and provide edits and comments. The City will host the project web site and any social media sites. APG will participate in a brainstorming meeting on branding for the project.

¹ APG is the lead consultant. Team members and abbreviations are DKS Associates (DKS), Leland Consulting Group (LCG), Murray, Smith & Associates (MSA), Pacific Habitat Services (PHS), and Walker Macy (WM). References to team members in this scope are informational; lead and support roles for deliverables are established in the Responsibility Matrix.

1.5: Prepare detailed project schedule for Phase 1. APG will prepare a detailed project schedule in MS Project.

Deliverables:

- 1.1: Kick-off meeting*
- 1.2: No deliverable. Budgeted time is for review and coordination.*
- 1.3: Stakeholder interviews and summary report.*
- 1.4: Review, edits, comments on City-prepared public involvement plan.*
- 1.5: Detailed project schedule for Phase 1.*

Task 2: Context and Site Analysis.

Note: This task assumes the buildable lands inventory will be completed by the city prior to task 2.1, and the GIS files and calculation spreadsheets will be provided.

2.1a: Field trip – APG, WM and PHS will walk the planning area (where access is available) with the City. Field work will include a walk up Boeckman Creek and visit to Meridian and Newland Creeks where possible. City will arrange for access.

2.1b: Team work session – context and site analysis. APG will plan and facilitate a team work session to discuss context, existing conditions, opportunities and constraints. Team members will have reviewed background materials and come prepared to discuss and sketch. APG and Walker Macy will bring annotated base maps or diagrams to support team discussion of how Frog Pond and Advance Road relate to the rest of the city (now and in the future), urban reserves, rural reserves, and broader landscape.

2.2: Opportunities and constraints maps and memo. APG and WM will prepare a minimum of two opportunities and constraints maps and diagrams: contextual scale; and planning area scale. These may be formatted into several maps and diagrams. This task includes time to establish the map template that the APG team will use in the project. MSA will review and provide input for Opportunities and Constraints Map and will prepare a rough estimate of area required for storm water detention and treatment to assist in determining the available lands for development. A memo will accompany the maps which documents the team's observations on the context, inventories and site analysis. The memo will include diagrams, maps and images as needed to support the context and site analysis.

2.3: Developer interviews. LCG will meet with up to six developers and real estate professionals to discuss market dynamics, factors that will affect land development decisions, and what land uses/densities they see as feasible in the short and long term. A memorandum will be prepared summarizing comments and themes, without ascribing them to individuals. The city will provide contact information and an introductory email to interviewees that they will be contacted by APG.

2.4: Market analysis and land use program. A market analysis will be conducted to review demographic and income trends of relevance to the planning area, particularly Advance Road. LCG expects to draw on recent market work conducted by the City, particularly the Housing Needs Analysis (HNA), and thus will take a "light touch" to this task by adjusting and applying the citywide HNA findings to the subject areas. In addition, the feasibility of neighborhood commercial development will be evaluated. Based on the

developer interviews, market analysis, and contextual opportunities, a land use program for the planning area will be recommended in a memorandum. Ranges or alternatives may be suggested. Prior to writing the memo, LCG, APG and the city will have a conference call or meeting at APG to discuss working findings.

Deliverables:

- 2.1a: Field trip, no deliverable.*
- 2.1b: Team work session – context and site analysis.*
- 2.2: Opportunities and constraints maps and memo.*
- 2.3: Developer interviews and summary.*
- 2.4: Market analysis and land use program.*

Task 3 - Vision, objectives and evaluation criteria.

3.1: Joint Advisory Committee and Technical Advisory Committee Meeting – kick-off and vision. The city and APG will plan and facilitate a kick-off meeting for the Advisory Committee (AC), Technical Advisory Committee (TAC), and interested parties (Meeting 1 for both committees). APG will prepare a draft agenda and meeting plan. The city will prepare a presentation about the project background, planning area and process. APG will present working results from the context and site analysis. APG will facilitate a discussion about the vision for the area. The city will prepare a meeting summary.² The City is lead for the establishment and support of all project committees.

Note: for the purposes of this document “Advisory Committee” is a general term referring to a volunteer committee providing review and advice on the project. It may take the form of a Task Force, Citizen Advisory Committee, or the Planning Commission, as determined by the Public Involvement Plan.

3.2a: Vision statement, guiding principles, and evaluation criteria. APG will prepare a draft vision statement and guiding principles for the plan, incorporating the outcomes from task 3.1. The vision statement will be a short paragraph capturing the overall goals for the project. The guiding principles will be short statements capturing key elements of the vision. The guiding principles will be used as starting point to develop more specific evaluation criteria in Task 5 for narrowing plan alternatives and options identified in the process.

3.2b: Project kick-off meeting with community. The City will plan, set up, and host an informal kick-off meeting for the community. This meeting will include refreshments and other elements that vary from the typical public meeting atmosphere. The city is in the lead for planning and conducting the meeting – the APG project manager and assistant project manager will attend.

3.3: AC Meeting 2 – vision and guiding principles. AC Meeting 2 will include discussion and approval of the vision and guiding principles. Other agenda items tbd.

Deliverables:

² The city will prepare a meeting summaries for all meetings of the TAC, Advisory Committee, City Council and similar public meetings.

- 3.1: *Joint AC-TAC meeting.*
- 3.2a: *Vision statement and guiding principles.*
- 3.2b: *Attend community kick-off meeting*
- 3.3: *AC meeting 2.*

Task 4 – Major Infrastructure Evaluation

The purpose of this task is to evaluate major selected infrastructure improvements and investments early in the planning process. Using the outcomes of this task, all infrastructure needs will be determined as part of Tasks 5 and 6.

4.1: Land use assumptions for Task 4. Using the Buildable Lands Inventory (BLI) prepared by the city, APG will create preliminary assumptions for growth in the Frog Pond and Advance Road areas, and coordinate the assumptions with the city. Coordination will include assumptions for any natural resource areas that fall outside of the City-mapped SROZ areas. The land use assumptions will be estimates of potential maximum build-out, to be used solely for planning level infrastructure analysis and pipe sizing. Following approval of assumptions by the City, APG will estimate dwellings and employment, and allocate those numbers geographically (in GIS) by transportation analysis zone (TAZ) and sanitary sewer basin (SSB). TAZ and SSB shape files will be geo-coded by the city, based on maps or electronic data from DKS and MSA. MSA will review the land use assumptions.

4.2: Off-site infrastructure analysis. This task will address the major off-site sanitary sewer trunk lines, water transmission mains and stormwater conveyance piping needed to serve the project area. Under this task, MSA will coordinate the Frog Pond Development concepts with the sewer system evaluation associated with the Wastewater Master Plan (WWMP). The WWMP work will be conducted by MSA for the City under a separate contract. As part of this task, MSA will coordinate early concepts developed under the concept planning with the pipe routing up to the site developed in the WWMP work.

Under this task MSA will coordinate sanitary sewer routing related to the proposed bridge improvements along Boeckman Road. It is anticipated that evaluation of the sewer routing related to the bridge improvements will be conducted under the WWMP that MSA is currently preparing for the City.

Under this task, MSA will review the City's existing water and storm water master plans and preliminary development assumptions. We will determine if densities estimated in water master plan are consistent with the development planning assumptions made in Task 4.1. We will evaluate whether offsite storm system improvements are needed. It is anticipated that the previous water master plan accurately estimated the development densities in the Frog Pond and Advance Road development areas and no modifications of the water master plan assumptions are required. If any water system modeling is required, it is anticipated that the City will perform this work. Any adjustments to off-site water piping that may be needed will be completed outside this scope of work. If improvements are needed for the storm system, MSA will evaluate alternatives to serve the planning area. For budgeting purposes, it is anticipated that MSA will review up to 2 alternatives for storm drainage. It is anticipated that MSA will

use the City's existing hydraulic and hydrologic models (InfoSWMM) for storm system analysis. The WES stormwater manual requirements will be addressed in concept designs and the City's LID policies will be incorporated.

For budgeting purposes, it is anticipated that MSA will use preliminary rough estimates of development layout and densities to route and size offsite piping. If multiple versions of layout and densities are desired to be reviewed relative to offsite piping, this work will be conducted outside this scope of work.

MSA will review the storm drainage improvements relative to proposed bridge improvements along Boeckman Road. For budgeting purposes it is anticipated MSA will attend one meeting associated with the proposed bridge improvement concepts and it is anticipated that the existing storm water detention dam will remain essentially in its current configuration.

MSA will assist the City in identifying potential funding sources for the offsite trunk sewer and any offsite water system and storm water system improvements.

It is anticipated the layout for piping and coordination with roadway routing in the Frog Pond and Advance Road areas will be conducted under Task 5.6.

4.3: Baseline transportation analysis and I-5 interchange sensitivity. DKS will conduct a high level transportation analysis of the major intersections on the east side of Wilsonville. These 12 study intersections are the most likely be impacted by the Frog Pond and Advance Road project area:

1. SW Advance Road-Boeckman Road/SW Stafford Road-Wilsonville Road
2. SW Stafford Road/SW 65th Avenue
3. SW Stafford Road/Frog Pond Lane
4. SW Advance Road/SW 60th Avenue
5. Boeckman Road/Canyon Creek Road
6. Wilsonville Road/Town Center Loop West
7. Wilsonville Road/I-5 Northbound Ramp
8. Wilsonville Road/I-5 Southbound Ramp
9. SW Elligsen Road/SW Parkway Center Drive
10. SW Elligsen Road/SW Parkway Avenue
11. SW Elligsen Road/I-5 Northbound Ramp
12. SW Elligsen Road/I-5 Southbound Ramp

As part of this Task, Consultant shall obtain new weekday PM peak hour traffic counts at intersections #5-#12 listed above. The City has collected recent counts at intersections #1, 3, 4, and 5 that will be used as part of the analysis.

The above intersections will be evaluated for each of the following scenarios:

- Existing Conditions (2014) – Based on new traffic counts and existing geometries

- Future Baseline (2035) – Using volume forecasts from Wilsonville TSP and geometries associated with High Priority Projects

In addition, DKS will perform a sensitivity analysis of the I-5 Interchange areas assuming varying levels of traffic growth to determine the approximate capacity that would be available for future land use from this project. The resulting information will be used to guide the land use concepts for both Frog Pond and Advance Road.

4.3a: Boeckman Creek bridge coordination. As noted above in Task 4.2, MSA will coordinate sanitary sewer routing related to the proposed bridge improvements along Boeckman Road. It is anticipated that evaluation of the sewer routing related to the bridge improvements will be conducted under the WWMP that MSA is currently preparing for the City.

4.4 Preliminary Funding Review. LCG will meet with City public works, planning, and finance staff, and review City documents, in order to assemble a “funding toolkit” for the study areas. The purpose is to document both quantitatively and qualitatively the revenue sources that are likely to pay for the majority of capital improvements in the study areas. These funding sources are likely to include systems development charges (SDCs), capital improvement plans (CIPs, typically linked to citywide SDC receipts), intergovernmental transfers and grants, urban renewal, general fund reserves, and bonds among others. This task will provide the project team with a baseline understanding of revenues generated on site through SDCs, and major improvements that will receive some citywide support. LCG will complete a Funding Toolkit memorandum and associated spreadsheets. LCG will prepare a high level gap analysis of funding revenues and costs for major off-site infrastructure for which costs are known at the time this task is conducted.

Deliverables:

- 4.1: Land use assumptions for Task 4.*
- 4.2: Off-site infrastructure analysis.*
- 4.3: Baseline transportation analysis and sensitivity analysis for I-5 interchanges.*
- 4.3a: Boeckman Creek bridge coordination.*
- 4.4: Preliminary funding review.*

Task 5 – Preliminary Concept Plans

Note: Task 5 and Task 6 are iterative tasks. Integrated elements are referenced below.

5.1: Work sessions with city – sketch and formulate alternatives. The APG team will meet up to 2 times with city staff to discuss and sketch alternatives. These sessions are intended to explore a range of ideas and integrated design. The first session will address the question: what are the parameters that define potential alternatives – what should differentiate them and what is the range of possibilities? The discussion and sketching will cover both the city context and planning area scales. After the meeting, the APG team will follow-up by preparing rough alternatives based on the direction in meeting 1. The goal of the second work session is to discuss the working ideas and identify the

alternatives (up to 3) to be drawn in task 5.2. This work will include initial discussion of the transportation frameworks – is there one that is common to all alternatives or multiple frameworks. The city will provide the meeting room (large, flexible space with internet) and invite city staff and others.

5.2: Prepare first draft of alternatives. Prepare a plan set and introductory memo describing up to three alternatives. The plan set will include framework drawings for city context, land use, streets, pedestrian and bicycle framework (including trails), and open space (including parks and resource areas). Infrastructure team members will participate, but infrastructure plans and analysis will be conducted subsequent to task 5.2. The preliminary plan set components are listed below and may be combined or refined in coordination with the city project manager:

- 1-2 diagrams of city-wide context. If the opportunities and constraints diagrams fulfill this need, they will be used.
- Up to 3 generalized alternatives for land use in the planning area.
- Up to 3 transportation frameworks, integrated with the land use, showing preliminary arterial, collector, neighborhood route hierarchy and connectivity.
- Street design concepts sheet. This sheet will include a plan view diagram annotated/colored to describe concepts for specific streets. Examples include potential pedestrian/bicycle elements for Boeckman Road, gateway elements for Stafford Road, and streets intended as safe routes to schools. The emphasis is concepts – cross-sections will be prepared during the Phase 2 Master Plan.
- One framework drawing each for the pedestrian and bicycle framework (including trails), and open space (including parks and resource areas). The frameworks may include notes or call-outs for variations attributable to the land use alternatives.
- Up to 4 site studies. These drawings will be zoom in sketches addressing specific opportunities, such as a focal point park, intersection, or neighborhood commercial center. As part of the alternatives set, they will be conceptual and a rough sketch level of detail.
- Up to 5 sheets of general character images (e.g. neighborhoods, range of housing, walkable streets, open spaces, green infrastructure)
- Land use and housing metric tables summarizing estimated capacity for each land use alternative.
- A memo will accompany the plan set which describes, in matrix or other concise format, the pros, cons, and issues for the alternatives relative to the guiding principles and other performance measures (i.e. evaluation criteria) which are identified by team. The purpose of the memo is to support review and narrowing of the alternatives by the TAC, AC and others.

Task 6 integration – Tasks 6.1, 6.2, 6.3, 6.4, and 6.5 and 6.6 will be completed prior to the review meetings with the TAC and AC.

5.3: Review alternatives with TAC and AC. Plan and facilitate one meeting each with the TAC and AC to review the draft plan set from Task 5.2. The TAC and AC will identify preferred plans and elements from plans to support creation of the preferred draft concept plan.

5.4: Open House 1 – alternatives. Open House 1 will provide an opportunity for the community to learn about the plan, provide their vision for the area, and comment on the draft task 5 and 6 deliverables. APG will: prepare a meeting plan, meeting materials by APG identified in the meeting plan, and provide four team members to assist with the event. City will prepare announcements and materials by city identified in the meeting plan. A summary report will be prepared by the city. The city will arrange/prepare the venue, refreshments, press release, distribution of notice and invitations, and additional staff to help successfully implement the meeting plan and interact with participants. APG will prepare an on-line version of the Open House. The on-line pages will display the drawings and provide rating or comment opportunities for them. The city will summarize the feedback received on-line.

5.5: Work session with city – Open House outcomes and narrowed alternatives. APG will plan and facilitate a work session with the city to review open house outcomes, discuss findings from task 6, and narrow the alternatives to a preferred concept plan. There may be elements or issues that are carried to the TAC and AC as site-specific or issue-specific options within the preferred alternative. Following the work session, APG will prepare a meeting summary capturing the direction for a working draft concept plan. City staff will brief the CC and PC on preliminary recommendations that emerge from the work sessions.

5.6: Updated plan set for working draft concept plan. The task 5.2 task set will be updated to be a plan set of the working draft concept plan drawings. Remaining options and issues will be clearly identified in the plan set or supporting memo. The preliminary plan set components are listed below (final list to be coordinated with city project manager):

- 1-2 diagrams of city-wide context
- Working draft concept plan for integrated land use and transportation in the planning area.
- One framework drawing each for the pedestrian and bicycle framework (including trails), and open space (including parks and resource areas) – updated.
- Street designs concepts (assumption is that previous set – updated).
- Up to 4 site studies - updated. The site studies from task 5.2 will be updated as needed to reflect changes and be more rendered as part of the recommendations.
- Up to 5 sheets of character images (e.g. neighborhoods, range of housing, open spaces)
- Land use and housing metric tables - updated.

- Sanitary sewage layout and cost estimate – update of map and cost from task 6.3.
- Water system layout and cost estimate – update of map and cost from task 6.4.
- Storm water layout or diagram and cost estimate - update of map and cost from task 6.5.
- 1 sheet of character images for storm water facilities.
- One page summary of the concept plan level infrastructure funding strategy, including remaining issues to be resolved.
- MSA will provide updated plans for sewer, water and storm.
- A memorandum will be prepared to document the preferences expressed in Task 5.3 and 5.4, and the rational for the choices made for the working draft concept plan. The evaluation criteria will be referenced in the memo.

5.7: Review working draft concept plan drawings with TAC and AC. Plan and facilitate one meeting each with the TAC and AC to review the 5.6 plan set and recommendations.

5.8: Joint Planning Commission-City Council work session. Facilitate a work session for joint session of the Planning Commission and City Council. The goals of this work session is for the PC and CC to understand the alternatives and preferences from Tasks 5.3-5.6, and select the working draft concept plan to use as the basis for Task 7.

5.9 Reserved.

Deliverables:

- 5.1a: Work session 1 with city – alternatives*
- 5.1b: Follow-up design work and preparation of rough alternatives.*
- 5.1c: Second work session with city – discussion and sketching of alternatives .*
- 5.2: First draft of alternatives - plan set.*
- 5.3a: Meeting 2 with TAC - alternatives*
- 5.3b: Meeting 3 with AC - alternatives.*
- 5.4a: Open house 1 meeting plan.*
- 5.4b: Open house materials and event.*
- 5.4c: On-line version of open house.*
- 5.5: Work session with city – open house outcomes and narrowed alternatives.*
- 5.6: Updated plan set for working draft concept plan.*
- 5.7a: TAC meeting 3 - Review working draft concept plan drawings.*
- 5.7b: AC meeting 4 - Review working draft concept plan drawing.*
- 5.8: Joint Planning Commission and City Council work session.*

Task 6 – Concept Plan infrastructure and financing analysis

Note: each of the deliverables below will identify the infrastructure and project costs needed, individually, for the Frog Pond and Advance Road areas.

6.1: Prepare future transportation analysis, with planning level cost estimates.

Using the land use alternatives based on different land use densities prepared for the Frog Pond and Advance Road areas in Task 5, DKS will perform future transportation analysis to evaluate the impact each development alternative would have on the transportation system. The Wilsonville Transportation System Plan (TSP) and associated Comprehensive Plan will be used to determine the initial assumptions about traffic demand from the Frog Pond area based on the land use assumptions that were the basis for the TSP's future analysis. Additional traffic volume post processing will be performed to adjust the volumes based on how the alternatives vary from the TSP assumptions. The future 2035 horizon year has been selected to maintain consistency with the City's adopted TSP.

The High Priority Projects proposed in the City's TSP will be assumed as part of the 2035 baseline transportation network. Applicable City and ODOT performance criteria will be assessed for each future transportation scenario. Should the study intersections not meet performance standards or safety/operational criteria, DKS shall propose mitigation/improvements to address the specific deficiency.

Future analysis shall evaluate the impact to the I-5/Elligsen Road and I-5/Wilsonville Road interchanges (ramp terminals and junctions) as well as the remaining study intersections. ODOT performance targets and City mobility standards shall be applied in the evaluation of alternatives.

DKS will evaluate the street and trail layouts for the all proposed concept plans to assure pedestrian and bicycle connectivity has been addressed. We will make connectivity recommendations for all modes to assure the proposed neighborhoods are connected to existing and future schools and parks.

DKS shall provide planning level cost estimates for any transportation mitigations and/or improvements identified in the transportation analysis noted above.

6.2: Reserved.

6.3: Prepare sanitary sewer technical memorandum, with planning level cost estimates. Under this task, MSA will coordinate onsite sanitary sewer layout with the planning work including the roadway layout and the development configuration. Where possible, sewers will be located in proposed roadway or trail rights-of-way but, may be located in easements where necessary. The sewer layout for the planning area will be coordinated with the offsite piping layout developed as part of the WWMP work. For budgeting purposes, it is anticipated that the roadway, trail and development layout will be established to a level at which the sewer layout can be established based on the initial configuration and significant modifications will not be required.

MSA will prepare a planning level cost estimate for the sanitary sewer system improvements under this task. For budgeting purposes, it is anticipated the technical memorandum will be succinct and one figure will be provided with the memorandum for sanitary sewer system improvements.

6.4: Prepare water technical memorandum, with planning level cost estimate. Under this task, MSA will coordinate the onsite water piping layout with the planning work relative to roadway layout and development configuration. Where possible, waterlines will be located in proposed roadway or trail rights-of-way but, may be located in easements where necessary. The waterline layout for the planning area will be coordinated with the offsite piping layout developed as part of the task for offsite work described above. For budgeting purposes, it is anticipated that the roadway, trail and housing layout will be established to a level at which the waterline layout can be established based the initial layout and significant subsequent modifications will not be required. Waterlines will be sized using the City's exiting hydraulic model and based on preliminary development concepts. If any hydraulic modeling is required, the City will perform this work.

MSA will prepare a planning level cost estimate for the water system improvements under this task.

For budgeting purposes, it is anticipated the technical memorandum will be brief and one figure will be provided with the memorandum for water system improvements.

6.5: Prepare storm water technical memo, with planning level cost estimate. Under this task, MSA will coordinate the onsite storm drainage piping layout with the planning work relative to roadway layout and development configuration. Where possible, storm drainage lines will be located in proposed roadway or trail rights-of-way but, may be located in easements where necessary. It is anticipated that storm water will be routed to the natural drainage ways in and adjacent to the planning area including Boeckman, Meridian, and Newland Creeks. The storm water concept planning will include an identification of the drainage basins, estimate of impervious areas, estimate of land area required for detention facilities and tool kit (within the technical memo) describing methods for conveying storm water runoff and incorporate low impact development techniques. Low impact development concepts will be based on the City's NPDES/MS4 permit, master plan and 2014 Public Works Standards. The onsite storm water management concepts will be coordinated with the offsite storm water conveyance concepts developed in Task 4.2. The onsite storm water hydrology and the drainage system will be modeled using the City's existing InfoSWMM hydraulic model. For budgeting purposes, it is anticipated that the roadway, trail and housing layout will be established to a level at which the storm piping layout can be established based the initial layout and significant subsequent modifications will not be required.

This task will include a brief review of the existing storm water detention facility on Boeckman Creek north of Boeckman and evaluate impacts of the proposed development on this facility.

MSA will prepare a planning level cost estimate for the storm water management improvements under this task.

For budgeting purposes, it is anticipated the technical memorandum will be succinct and one figure will be provided with the memorandum for storm water management.

6.6: Infrastructure Funding Plan. During this task, LCG will combine infrastructure costs generated in Tasks 6.1 – 6.6 for transportation, sewer, water, stormwater, and parks, with information about infrastructure revenues collected during Task 4.4. Costs and revenues will be broken shown for the FP and AR areas separately. This will provide the team with a preliminary projection for how each type of infrastructure will be paid for. At this point, some infrastructure categories may show a funding gap, in which costs exceed revenues. In this event, LCG will provide several gap-closing recommendations for further analysis (e.g., redesign with cost reduction, push to later phase, increase citywide funding sources, or other) and discuss those with city staff. Conservative and aggressive build-out scenarios will be developed, since some funding sources (e.g. SDCs) can vary depending on the pace and density of development.

Deliverables:

- 6.1: Future transportation analysis, with planning level cost estimates.*
- 6.2: Reserved*
- 6.3: Sewer technical memorandum, with planning level cost estimates.*
- 6.4: Water technical memorandum, with planning level cost estimates.*
- 6.5: Storm water technical memorandum, with planning level cost estimates.*
- 6.6: Infrastructure Funding Plan.*

Task 7 – Draft and final Concept Plan report

7.1: Reserved.

7.2: Prepare Metro Title 11 and Functional Plan analysis. APG will prepare a checklist describing Title 11 criteria and how the working recommendations meet the criteria. Affordable housing per Title 7 will be addressed. APG will contact Metro and identify what the City needs to do to demonstrate compliance with other Functional Plan Titles – a list will be provided.

7.3: Update Infrastructure Funding Plan. Based on input from APG team members and the city, LCG will revise the Infrastructure Funding Plan to show various gap-closing measures or revised cost figures. For example, following Task 6, we may adjust the funding plan to show increased funding from a CIP, increased local-area SDC, or other measure.

7.4a: Prepare comprehensive plan/zoning review and strategy. APG will review the existing plan and code and identify two examples from other communities on how similar master plan areas are regulated. APG and the city will meet to discuss options and identify (1) the direction for the comprehensive plan policies to be written in Task 7..11a; and (2) a zoning strategy for the planning area. With regard to regulating use and design, the review and discussion will examine Wilsonville’s two existing approaches (planned developments and Villebois model), and potential for a hybrid approach for Frog Pond. During this task the City will also develop a strategy for updating the SROZ map. The plan amendment direction and zoning strategy will be described in a memorandum.

7.4b: Input on urban service provider agreements. APG will review the existing urban service provider agreement with TVFR, provide advice on updates needed to be consistent with the Concept Plan. City is lead for updating the agreement and finalizing with TVFR.

7.5a: Work session with staff - Concept Plan recommendations. APG will plan and facilitate a work session to discuss the recommendations to be prepared for TAC, AC and Open House review, and ultimately the Concept Plan report. The focus of this session is to identify those recommendations that are “good to go” from Task 5.7, and which are updated or new and need finalized and to be highlighted as such for the TAC, AC and Open House.

7.5b: Prepare draft Concept Plan recommendations for reviews and Open House. This task will provide the revised and supplemental sheets to integrate direction from the AC in Task 5.7 and new information from task 7. At minimum, the updates will include the Title 11 compliance, funding plan, and zoning strategy.

7.6: Reserved.

7.7: Meet with TAC and AC- concept plan recommendations. Plan and facilitate one meeting each with the TAC and CAC to review the task 7.5b plan recommendations.

7.8 and 7.9: Reserved.

7.10: Open House 2 – concept plan recommendations. Open House 2 will provide an opportunity for the community to learn about and comment on the draft concept plan recommendations. APG will: prepare a meeting plan, meeting materials by APG identified in the meeting plan, and provide four team members to assist with the event. The city will prepare announcements and meeting materials identified for city in the meeting plan, arrange/prepare the venue and provide refreshments, press release, distribution of notice and invitations, and additional staff to help successfully implement the meeting plan and interact with participants. The city will prepare a summary report. APG will prepare an on-line version of the Open House. The on-line pages will display the drawings and provide rating or comment opportunities for them. The City will summarize feedback received on-line.

7.11a: Draft Concept Plan report. Prepare a draft report incorporating the key products and plan recommendations from tasks 1-7. Topics will include but not be limited to: housing types, housing capacities, funding plan, zoning strategy, affordable housing, infrastructure plans and strategies, street designs, the BPA powerline, neighborhood commercial uses, stormwater management, urban service agreements, police and fire service, schools, trails, and parks.

7.11b: Draft comprehensive plan policies. Prepare draft comprehensive plan policies to implement the Concept Plan report. Policies and implementation measures will be written, similar in style and level of detail to the current Compact Urban Development text that implements Villebois and the Areas of Special Concern L text. TSP amendments will be prepared in Phase 2. City staff will lead the adoption of the plan policies.

7.12: Meet with AC – Concept Plan report. Plan and participate in one meeting with the AC to review the draft concept plan report. The goal of this meeting to obtain feedback and forward a recommendation to the City Council.

7.12a: Joint Planning Commission-City Council briefing. Participate in a briefing for a joint session of the Planning Commission and City Council.

7.13: City Council work session and meeting – Concept Plan report. Plan and participate in one work session with the City Council on the concept plan report. Subsequent to the work session, the Council will meet to discuss and adopt the Concept Plan report by resolution.

Deliverables

- 7.1: Reserved.*
- 7.2: Title 11 analysis*
- 7.3: Updated Infrastructure Funding Plan.*
- 7.4a: Comprehensive plan/zoning review and strategy.*
- 7.4b: Input on urban service provider agreements.*
- 7.5a: Work session with staff - Concept Plan recommendations.*
- 7.5b: Draft Concept Plan recommendations for reviews and Open House.*
- 7.6: Reserved.*
- 7.7a: TAC meeting 4 - concept plan recommendations.*
- 7.7b: AC meeting 5 - concept plan recommendations.*
- 7.8 and 7.9: Reserved.*
- 7.10a: Open house 2 meeting plan.*
- 7.10b: Open house materials and event.*
- 7.10c: On-line version of open house*
- 7.11a: Draft Concept Plan report.*
- 7.11b: Draft Comprehensive Plan policies.*
- 7.12a: Meeting 6 with AC – Concept Plan report.*
- 7.12b: Planning Commission and City Council work session.*
- 7.13: City Council meeting to adopt Concept Plan report.*
- 7.14: Final Concept Plan Report, as adopted by the City Council.*

Task 8 – Scope and schedule review for Master Plan

8.1: APG and the City will meet to assess outcomes from Phase 1 and how/if scope and budget changes should be made for Phase 2. If major scope and budget changes are identified, a revised scope will be prepared.

Deliverable:

- 8.1: Detailed project schedule for Phase 2.*

Phase 2: Master Plan for Frog Pond

Task 9 - Master Plan for Frog Pond Area.

9.1a: Master plan field trip. Task 9 will begin with a field trip to re-examine the area and help inform the transition from concept plan to master plan. APG, WM, PHS and city staff will walk the area, traversing north-south and east-west. Notes and pictures will be taken in the field. The city will obtain permission for property access, and arrange for several meetings with property owners on-site.

9.1b-c: Work sessions with staff – master plan recommendations. APG will plan and facilitate a two work sessions with staff to collaborate on the more detailed design for the Frog Pond master plan. The first session will focus on sketches and ideas. The second session will follow the preparation of draft drawings in task 9.2.

9.2: Prepare updated designs at Frog Pond scale. The task will prepare/compile:

- Land use plan - draft property-specific comprehensive plan and zoning maps, and estimate housing capacities and net densities.
- Open space plan – SROZ mapping will be provided by the City, as well as other natural resource recommendations related to any natural resource priority and opportunity areas not regulated by the SROZ. APG will integrate the resource mapping with the other open space elements such as parks.
- Street plan – street hierarchy consistent with the Concept Plan, local street connectivity plan (may be illustrative demonstration plan or diagram), and safe routes to school diagram
- Street cross sections and streetscape amenities.
- Pedestrian-bicycle circulation plan (including trails).
- Two site studies illustrating neighborhood character.
- Up to 5 sheets of character images illustrating the character and ideas intended for Frog Pond (housing types, open space,
- Land use and housing metric tables, based on the zoning. Net densities will be reported consistent with Title 11.

9.3: Evaluate infrastructure costs and costs attributable to Frog Pond development. Evaluate infrastructure layouts and costs from Task 6, and update if needed to coordinate with the Frog Pond Master Plan. MSA will provide input regarding infrastructure cost and layout updates.

9.4: Prepare final funding plan for Frog Pond. Update revenue projections and prepare a final funding plan. Include analysis for potential under-build.

9.5: Prepare TPR findings and TPR update amendments. Using and referencing the technical work from Task 6, prepare TPR compliance findings and amendments to update the TSP. DKS will provide updated modal maps and transportation project list. DKS will also provide a memorandum identifying the text changes required for update of the TSP (City to make actual changes).

9.6 – 9.8: Reserved.

9.9: TAC and AC meetings – master plan recommendations. Plan and participate in one meeting with the TAC (Mtg 5) and one meeting with the AC (Mtg 7) to review the master plan recommendations.

9.10: Reserved.

9.11: On-line Open House 3 – master plan recommendations. Open House 3 will provide an opportunity for the community to learn about and comment on the draft master plan recommendations. It will be an on-line open house. APG will prepare the on-line materials. The on-line pages will display the drawings and provide rating or comment opportunities for them. The city will summarize the feedback received on-line.

9.12: Prepare draft Master Plan report. The master plan report will include selected drawings and descriptions from the Concept Plan Report, and Frog Pond scale drawings prepared in task 9. APG will prepare an outline of the report organization and content for city review. The narrative will address (preliminary list, subject to refinement): provision for annexation to Wilsonville in coordination with land development; capacities, types, forms and density of housing; natural resource protection areas; parks and trails; location of mixed use or commercial area(s); urban design; provisions for affordable housing in compliance with Title 7; emergency services; transit services; infrastructure funding plan and strategies; safe routes to schools; transportation improvements needed to support development and comply with the TPR; water, sewer, and storm water plans.

9.13a-b: AC meetings – draft master plan report. Meet up to 2 times with the AC (Mtg 8, 9) to review the master plan report. APG will catalog revisions, so they can be incorporated into a proposed draft #2 for Council review.

9.13c: Joint Planning Commission-City Council work session. Participate in a briefing for a joint session of the Planning Commission and City Council.

9.14: City Council work sessions and meetings – final master plan report. Participate in one work session and one adoption meeting of City Council. APG will catalog revisions, and prepare a “draft 2” master plan report. A final master report will be prepared, as adopted by City Council.

Deliverables

9.1a: Master plan field trip, no deliverable.

9.1b: Work session 1 with staff – master plan recommendations.

- 9.1c: *Work session 2 with staff – master plan recommendations.*
- 9.2: *Updated designs at Frog Pond scale.*
- 9.3: *Evaluate infrastructure costs and layouts, update.*
- 9.4: *Final infrastructure funding plan for Frog Pond.*
- 9.5: *TPR findings and TPR update amendments and memo.*
- 9.6 – 9.8: *Reserved.*
- 9.9a: *TAC meeting 5 – master plan recommendations.*
- 9.9b: *AC meeting 7 – master plan recommendations.*
- 9.10: *Reserved.*
- 9.11: *On-line Open House 3.*
- 9.12: *Draft Master Plan report.*
- 9.13a: *AC meeting 8 – master plan review*
- 9.13b: *AC meeting 9 – master plan review*
- 9.13c: *Joint Planning Commission-City Council work session*
- 9.14a: *Prepare draft 2 Master Plan, incorporating AC direction and recommendation to Council.*
- 9.14b: *City Council work session – master plan report*
- 9.14c: *City Council meeting to adopt Master Plan report.*
- 9.14d: *Final Master Plan report, as adopted.*

Task 10 – Code Amendments for Frog Pond

10.1: Review comprehensive plan and code, prepare memo. Review each document and prepare a memorandum listing areas to amend to implement the Concept Plan and Master Plan.

10.2: Work sessions with staff – plan and code amendments. Plan and facilitate two work sessions with staff on potential plan and code amendments.

10.3: 80% code – Prepare an 80% level code, with annotations for rationale, options and issues.

10.3a: Prepare findings. Prepare findings of compliance for the Frog Pond Master Plan that address the Statewide Planning Goals, Transportation Planning Rule requirements, and Metro Title 11 requirements. City staff will prepare all other required findings.

10.4: Planning Commission and Council reviews – code. Participate in two work sessions of the Planning Commission and one work session of the Council to discuss the code to regulate development in Frog Pond.

10.5: Reserved.

Deliverables

- 10.1: *Memo identifying amendments to plan, TSP and code.*
- 10.2a: *Work session with staff – code.*
- 10.2b: *Work session with staff – code.*
- 10.3: *80% level code.*
- 10.3a: *Findings for statewide planning goals and Metro Title 11.*

- 10.4a: PC work session.
- 10.4b: Second PC work session.
- 10.4c: Council work session.

Task 11 – Adoption Process

The City will lead the adoption process.

Task 12 – Outreach Meetings

12.1: Outreach Meetings. This task anticipates that, throughout both phases of the project, there will be a need and opportunity to meet with stakeholder groups, key property owners, developers, decision-makers, and other community groups as part of the public involvement process. The City will be in the lead for identifying these opportunities and all meeting planning and follow-up. APG team members will attend meetings as directed by the City project manager. The time and materials budget assumes approximately 8 outreach meetings, depending on the issues and groups involved, during the two-phase project.

Assumptions for the Scope of Work

1. The tasks and deliverables set forth above may be refined by the City Project Manager in consultation with the Consultant's Project Manager. It is jointly recognized that flexibility to refine and repurpose tasks and deliverables will benefit the project by tailoring the tasks and deliverables to the needs of the project. All repurposing and refinements of tasks and deliverables are subject to the written approval of the City Project Manager and compliance with the Change Order protocol set forth in the Contract with respect to time and budget. Provided, however, minor refinements that add no cost or time delay may be informally agreed upon between the City Project Manager and the Consultant's Project Manager
2. Deliverables will be provided in draft and final form. City will provide comments which are reconciled, meaning a single direction for change.
3. The consultant team will provide native files in MS Office, Adobe Suite, InDesign, GIS, or other formats approved by the City.
4. The deliverables outlined in this scope of work will be completed on a schedule designed to meet the City's grant milestones as outlined in the City's Community Development & Planning Grant IGA with Metro, Exhibit A, Frog Pond / Advance Road Concept Plan Milestone and Deliverables Schedule for Release of Funds.

FROG POND and ADVANCE ROAD CONCEPT PLAN AND MASTER PLAN

HOURLY RATE SCHEDULE

Angelo Planning Group	DKS Associates	Leland Consulting Group	Murray Smith & Associates	Pacific Habitat Services	Walker Macy
Principal-in-Charge \$143 - \$186	Project Manager \$150	Principal \$150	Principal Eng. 2 \$180	Env. Proj. Mgr. \$180	Principal \$165
Sr. Project Manager \$180	Project Engineer \$100	Financial Advisor \$175	Engineer 9 \$164	Senior Biologist \$105	Planner \$110
Project Manager \$109 - \$156	Project Eng. 2- \$75	Associate \$120	Engineer 7 \$148 Engineer 5 \$132		Support \$75
Project Planner \$62 - \$75	Transp. Modeler \$115		Design Eng. 2 \$108		
Administration \$110	Graphics \$90		Technician 4 \$120		

COSTS FOR REIMBURSABLE EXPENSES

In-house Printing

B/W copies – 10 cents each

Color copies – 50 cents each

Outside Printing – At Cost

Zipcar – At Cost

Mileage - 56 cents per mile

Parking – at cost

Meeting Supplies – At Cost

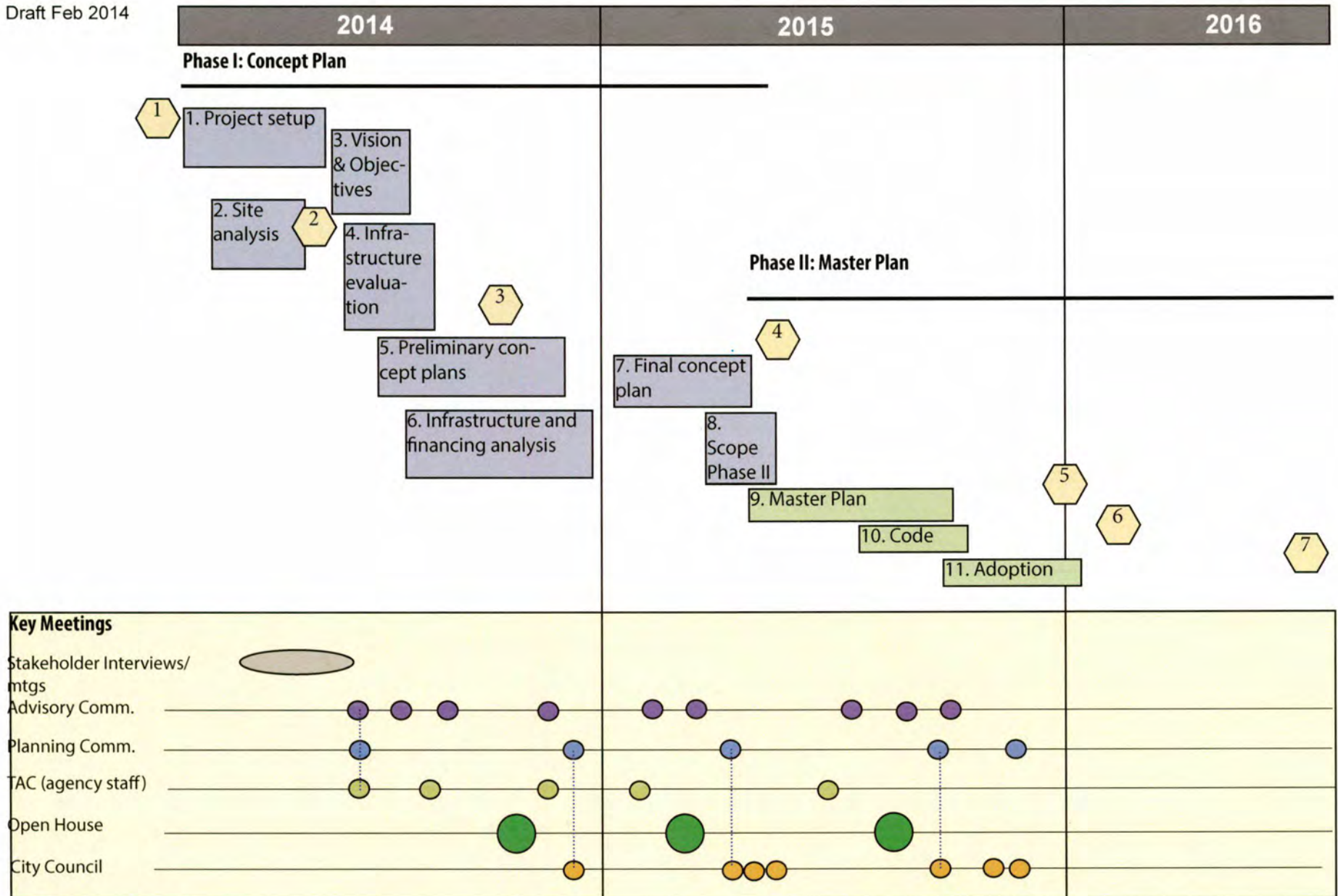
Traffic Counts – At Cost

Conference call/Telephone charges – at cost

Miscellaneous expenses approved by City project manager – at cost

Frog Pond / Advance Rd Planning Project - Conceptual Schedule

Draft Feb 2014

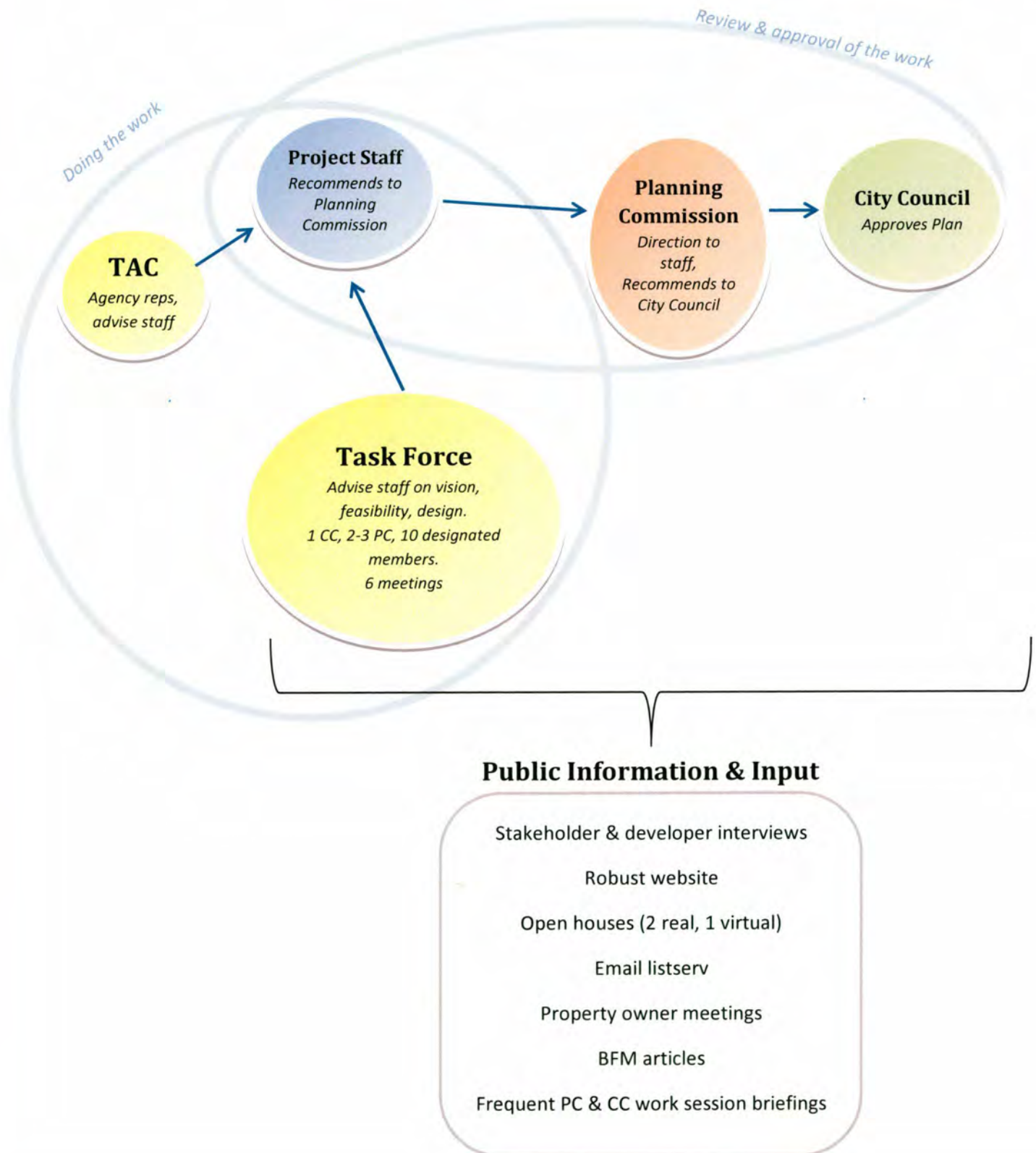


= Grant milestone

Note: City staff will lead additional, regular briefings for Planning Commission and City Council.

Decision Making and Public Involvement Diagram

Frog Pond/ Advance Road Planning Project



King, Sandy

From: Celko, Corinne S. (Perkins Coie) <CCelko@perkinscoie.com>
Sent: Monday, March 10, 2014 4:50 PM
To: King, Sandy
Cc: Pfeiffer, Steven L. (Perkins Coie)
Subject: Appeal of DRB Decision; DB 13-0046, 0047, 0048
Attachments: Appeal of Denial.pdf

Sandy,

As we discussed this afternoon, attached please find the Appellant's submittal to City Council. Please forward this submittal to the Mayor and City Councilors prior to the appeal hearing, and make hard copies available to them at the hearing. Please also include this submittal in the official record of this proceeding.

Thank you for your time and assistance.

Corinne S. Celko | Perkins Coie LLP
1120 N.W. Couch Street
Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2177
FAX: 503.346.2177
E-MAIL: ccelko@perkinscoie.com

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained in this communication (including any attachments) is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.



1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128

PHONE: 503.727.2000

FAX: 503.727.2222

www.perkinscoie.com

Steven L. Pfeiffer

PHONE: (503) 727-2261

FAX: (503) 346-2261

EMAIL: SPfeiffer@perkinscoie.com

March 10, 2014

*Rec'd 3/10/14
4:50 PM
PCA*

VIA E-MAIL

Mr. Tim Knapp, Mayor
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070-6499

**Re: Appeal of Denial of The Human Bean Coffee Kiosk;
DB 13-0046, DB 13-0047, DB 13-0048**

Dear Mayor Knapp and City Councilors:

This office represents Wilsonville Devco, LLC ("Applicant"), the applicant in the above-referenced applications (the "Applications"), and the appellant in this appeal of the February 13, 2014 decision by the City of Wilsonville Development Review Board ("DRB"). The DRB denied the request for modification of an earlier Stage II Final Plan approval on the site to replace the approved 3,150 square foot multi-tenant retail building with a 450 square foot The Human Bean coffee kiosk at the corner of Boones Ferry Road and 95th Avenue. The DRB's denial of the Applications was predicated on Wilsonville City Code ("WCC") Sections 4.400.02 and 4.421C and its concerns with site traffic circulation, congestion and safety. As discussed in more detail below, the DRB misapplied and misinterpreted WCC 4.400.02 and 4.421C, thereby improperly denying the Applications. Further, the DRB decision is contrary to, and not supported by, substantial evidence in the record as a whole. For the reasons explained below, the City Council should reverse the DRB's decision and approve the Applications. Please include this letter and its attachments in the official record of this appeal proceeding.

I. Description of the Project.

At the outset, it is important to note that the Applicant had previously obtained Stage II Final Plan approval for a 3,150 square foot multi-tenant retail commercial building on the site. Such approval is still valid, and the retail building remains authorized for construction as approved. Notably, no one, not even the opponent in the present matter ("LaPoint"), appealed the approval of the 3,150 square foot retail building or the approval of the Carl's Jr. on the site. In fact, the

LEGAL120046823.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

Perkins Coie LLP

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 2

Applicant, LaPoint, Holiday Inn, and the City negotiated and entered into a Development Agreement, dated August 2012, which established the rights and responsibilities of each party respecting site access and circulation. The Development Agreement contemplated both a Carl's Jr. and a "other yet to be determined retail" use on the Applicant's property. It also called for the system of easements that are in place today and clearly evidences the parties' mutual understanding of how vehicle circulation would work on the site. This understanding was further developed as part of the previous Stage II Planned Development and Site Plan reviews (DB 12-0074, 0075, and 0076) that were approved early last year, and for which LaPoint was a co-applicant. In short, LaPoint's participation in the Development Agreement and as a co-applicant in the previous application demonstrate that LaPoint believed on-site circulation was safe and adequate to serve the Carl's Jr. and a then-unnamed future retail use.

Moreover, in reviewing the previous Stage II Final Plan for the 3,150 square foot multi-tenant commercial building, the DRB was provided the opportunity to review site circulation and expressly found that there was adequate on-site circulation in compliance with WDC 4.154. Additionally, Tualatin Valley Fire and Rescue ("TVFR") reviewed the prior master plan (case file DB 12-0074, 0075, and 0076) and indicated that "Tualatin Valley Fire and Rescue endorses this proposal."

The current proposal seeks to replace the approved, but unbuilt, retail commercial building with a new 450 square foot drive-through coffee kiosk, resulting in a 2,700 square foot reduction in the size of the building and an attendant reduction in overall traffic on the site. Given the size of the approved retail building and the various retail uses that could occupy the larger building, the traffic, site-circulation, and fire/life/safety impacts of the current proposal are much less than the originally-proposed, and approved, retail building.

II. Substantial Evidence Shows On-Site Circulation is Adequate and Safe.

In its decision, the DRB denied the proposed coffee kiosk and found that the Applications failed to comply with WCC requirements pertaining to safety and on-site circulation. One of the main concerns expressed by the DRB at the hearing was the worst case scenario of an occasional delivery truck in excess of 30 feet serving the coffee kiosk, and the perceived risk that such infrequent delivery truck would not be able to maneuver from the shared driveway onto the site without hitting the curb. In response to such concern, the Applicant has confirmed with The Human Bean and with its vendor, Umpqua Dairy, that deliveries to the coffee kiosk will be made in a box truck not to exceed an overall length of 30 feet. Attached as **Exhibit A** is an email from Scott Sayre at The Human Bean, dated February 14, 2014, and an email from Marty Weaver at Umpqua Dairy, dated February 26, 2014, confirming the size of the delivery truck. The Applicant has also obtained a Truck Turning and Circulation Analysis ("Truck Turning Analysis") performed by transportation engineering firm, Kittelson & Associates, Inc., dated March 2, 2014, and which is attached as **Exhibit B**. The Truck Turning Analysis analyzes a

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 3

30 foot Umpqua box truck with a wheelbase of 18.6 feet, which is the largest vehicle that would perform deliveries to the coffee kiosk. The Truck Turning Analysis concludes that the studied Umpqua delivery truck can successfully access the site in a safe and efficient manner.

Furthermore, the Applicant has provided evidence of safe and convenient circulation on the site in compliance with WCC Sections 4.400.02, 4.421C, 4.154 and 4.155. First of all, the Applicant's site plan demonstrates a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings. Specifically, the site plan shows the following:

- Two separate pedestrian connections to the 95th Avenue sidewalk, each with its own striped drive aisle crossing;
- Circulation and stacking patterns for vehicles visiting the coffee kiosk, with safe stacking for at least seven (7) vehicles;
- Directional arrows separating traffic flow;
- Eight (8) adjacent parking spaces;
- Paved walkways with striped drive aisle crossings connecting the coffee kiosk to parking, the trash enclosures, and the Chevron property to allow, if desired, those who are fueling their cars to walk to the coffee kiosk; and
- A patio area near the coffee kiosk to provide pedestrians with a safe space to drink their coffee other than the parking lot.

For ease of visual reference, attached as **Exhibit C** is a copy of the site plan showing the multiple safe pedestrian pathways highlighted in red.

At the DRB hearing, LaPoint rejected the Applicant's offer to develop pedestrian improvements on his property in order to better connect the adjacent properties. Accordingly, the Applicant has revised the proposed site plan to eliminate all such proposed improvements on LaPoint's property. As shown on the attached **Exhibit D**, all improvements to Applicant's property will be stubbed to, and end at, LaPoint's property. The only remaining additional proposed improvements are two (2) new directional signs directing customers of the coffee kiosk to exit using the drive aisle in front of Carl's Jr. to the shared driveway.

As discussed in detail above, site plans show a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings necessary to connect the proposed coffee kiosk with its associated parking, the sidewalk, and adjacent properties, as well as adequate access for passenger vehicles and delivery trucks. The Applicant has provided substantial evidence that access and circulation serving the coffee kiosk will be safe and adequate as proposed, and City Council can find that the proposed development is consistent with all applicable approval criteria.

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 4

III. Conclusion.

For the reasons discussed above and in the Applicant's submittals in the record below, the Applicant has met all applicable approval criteria. Therefore, the City Council should overturn the DRB's denial of the Applications and approve the requested Applications in their entirety.

Very truly yours,



Steven L. Pfeiffer

SLP:crl

Enclosures

cc: Ben Altman, SFA Design Group (via email) (with encls.)
Craig Anderson, CB Anderson Architects (via email) (with encls.)
Wallace Lien, Esq.(via email) (with encls.)
Client (via email) (with encls.)
George J. Gregores, Esq. (via email) (with encls.)

From: Scott Sayre [<mailto:Scott@thehumanbean.com>]
Sent: Friday, February 14, 2014 5:58 PM
To: josh@pdvco.com
Subject: RE: Wilsonville Truck Sizes

Howdy!

So, Core-Mark will deliver in a Twenty-two foot long box van. Umpqua Dairy will deliver in a twenty-six foot box van.

Have a great weekend!

Scott Sayre
Director of Franchise & Vendor Development
541-608-0564
Fax: 541-608-3757
thehumanbean.com



Visit The Human Bean Website [thehumanbean.com]

'Like' us on Facebook [facebook.com] | Connect with us on Instagram [instagram.com] | Follow us on Twitter [twitter.com]



From: Marty Weaver [<mailto:Martyw@umpquadairy.com>]
Sent: Wednesday, February 26, 2014 3:39 PM
To: josh@pdvco.com; Scott Sayre
Subject: RE: Human bean info

Gents-

Ok, I think we have this figured out. Box truck overall length bumper to bumper 30', height is 11' and wheelbase is 18.6' w/single axle. We will deliver around 4:00 a.m. before Carls Jr opens. May need to get a key to the HB if no employees there this early. Please let me know your thoughts on this.

Sincerely,
Marty Weaver
Umpqua Dairy Products Co
Director of Sales & Marketing
Phone 541-672-2638
Fax 541-673-0256
martyw@umpquadairy.com

EXHIBIT A



KITTELSON & ASSOCIATES, INC.

TRANSPORTATION ENGINEERING / PLANNING

610 SW Alder Street, Suite 700, Portland, OR 97205 • 503.228.5230 • 503.273.8169

March 2, 2014

Project #: 17656.0

Josh Veentjer
Pacific Development Ventures
4188 SW Greenleaf Dr.
Portland, OR 97221

RE: Human Bean Wilsonville Truck Turning and Circulation Analysis - Wilsonville, OR

Dear Josh,

Pursuant to your request, Kittelson & Associates, Inc. has prepared a truck turning and circulation analysis of the proposed Human Bean development project located in Wilsonville, Oregon. This truck turning analysis focuses on the ability of the standard 30-foot Umpqua delivery truck to access the Human Bean site. The remainder of this letter addresses the turning and circulation movements for trucks entering and exiting the site.

TRUCK TURNING MOVEMENT ANALYSIS

Figure 1 shows the site plan of the Human Bean, located at the corner of SW Boones Ferry Road and SW Commerce Circle. Truck turning movements were performed using AutoTurn Version 8, using a 30' Umpqua box truck as the model vehicle. With a total vehicle length of 30 feet and a wheelbase of 18.6 feet, the Umpqua box truck was determined to be the largest vehicle that would perform deliveries to the proposed Human Bean development. Figure 2 shows the turning and circulation movements for trucks entering the site, and Figure 3 shows the turning and circulation movements for trucks exiting the site. For trucks exiting the site, it is possible for the vehicles to back up in two ways. Figure 3 the truck demonstrates a maneuver to use the internal circulation aisle in the lower parking lot, and it is also possible for a truck to use the internal circulation aisle in the upper parking lot adjacent to Carls Junior. Under all three scenarios, the trucks are capable of successfully entering and exiting from the proposed Human Bean development.

CONCLUSION

Based on the truck turning and circulation analysis of the proposed Human Bean development contained herein, we have determined that the identified 30-foot Umpqua delivery truck can successfully access the site in a safe and efficient manner. As the Umpqua truck will be the largest delivery vehicle to the site, all other delivery vehicles will also have sufficient access to the Human Bean building.

FILENAME: H:\PROJFILE\17656 - WILSONVILLE TRUCK TURNING STUDY\REPORT\FINAL\HUMANBEANTRUCKTURNINGASSESSMENT-030214.DOCX

EXHIBIT B

We trust this truck turning and circulation analysis adequately addresses the delivery feasibility of the proposed Human Bean development. Please let us know if you have any additional questions

Sincerely,
KITTELSON & ASSOCIATES, INC.

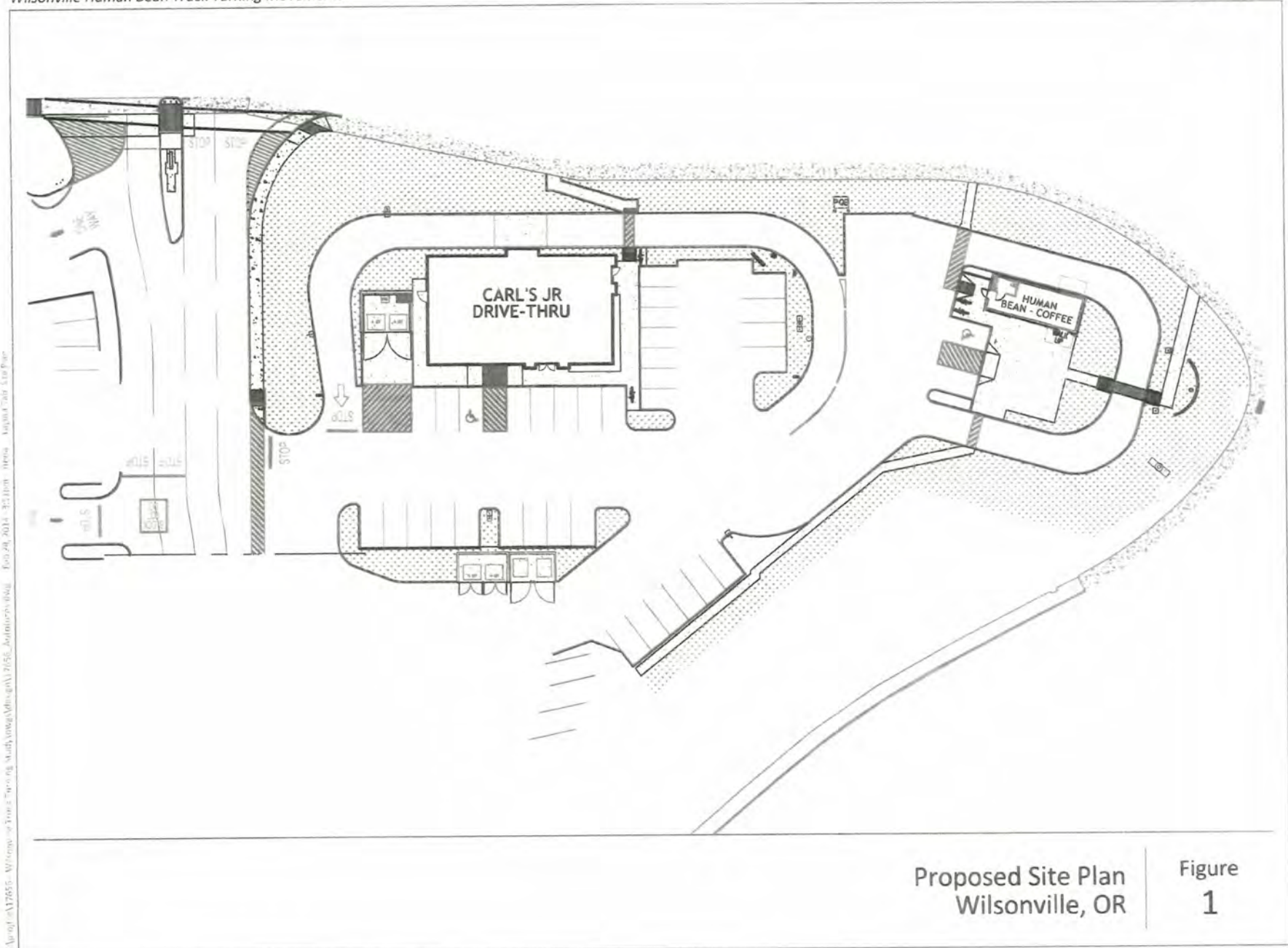


Marc Butorac, P.E., P.T.O.E.
Principal Engineer



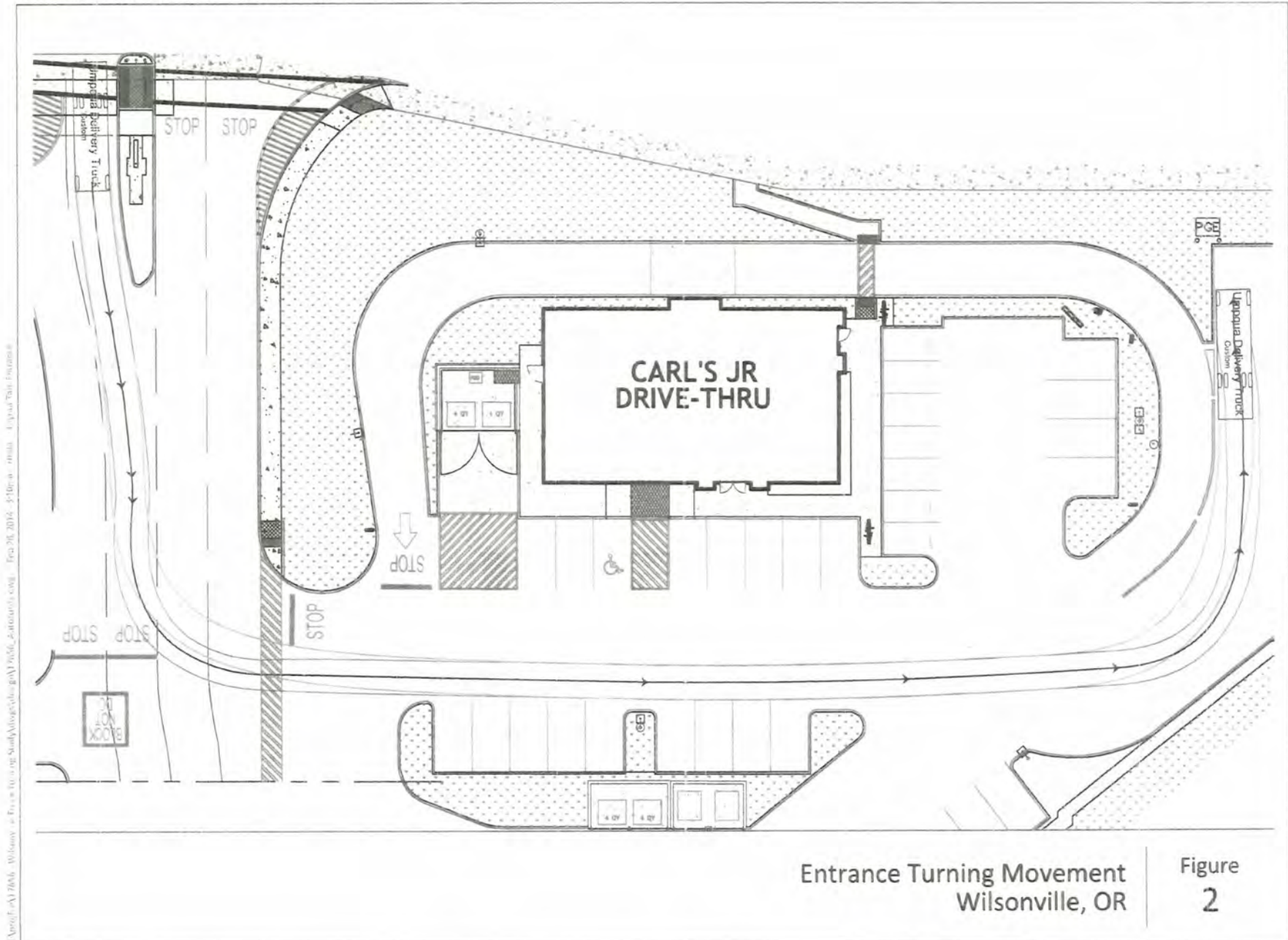
Ribeka Toda
Transportation Analyst

Attachments: 1 – Proposed Site Plan
2 – Entrance Turning Movement
3 – Exit Turning Movement



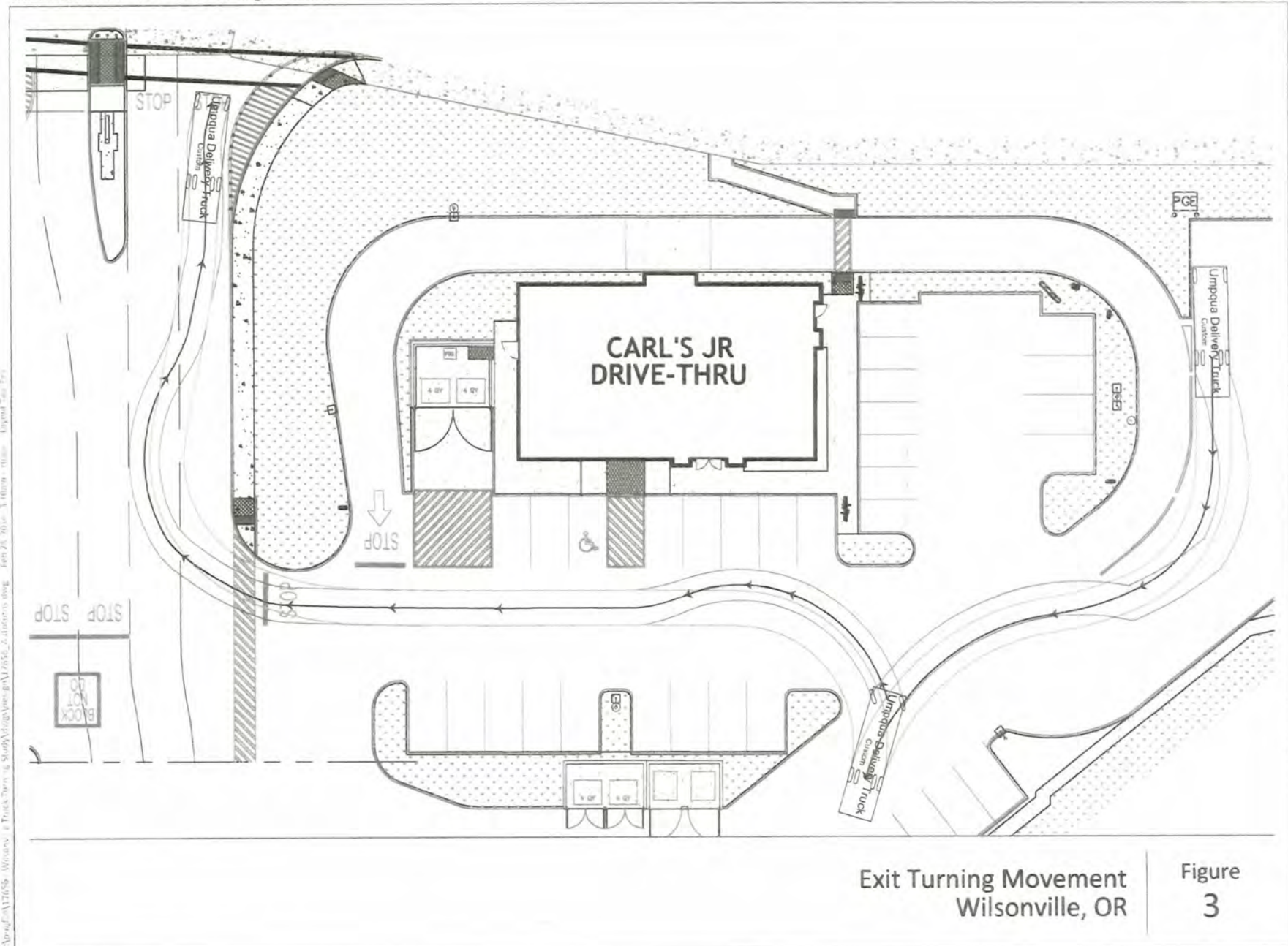
Proposed Site Plan
Wilsonville, OR

Figure
1



Entrance Turning Movement
Wilsonville, OR

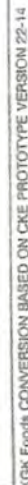
Figure
2



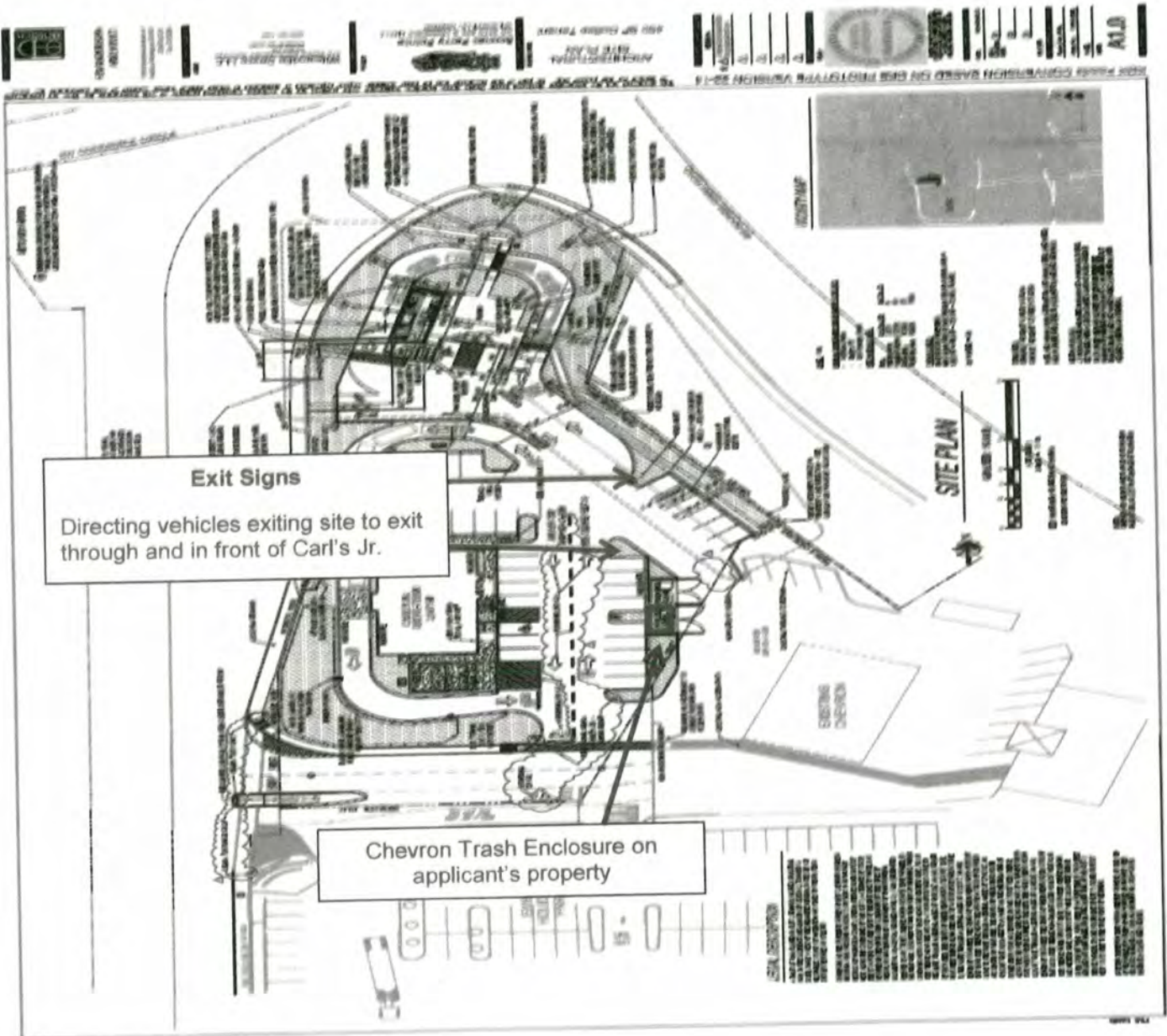
Exit Turning Movement
Wilsonville, OR

Figure
3

EXHIBIT C

[illegible]

Revised Site Plan





Garry LaPoint <garrylapoint@gmail.com>

Chevron vs Human Bean

gl@eoni.com <gl@eoni.com>
To: Steven.High@core-mark.com


Mon, Feb 10, 2014 at 9:22 AM

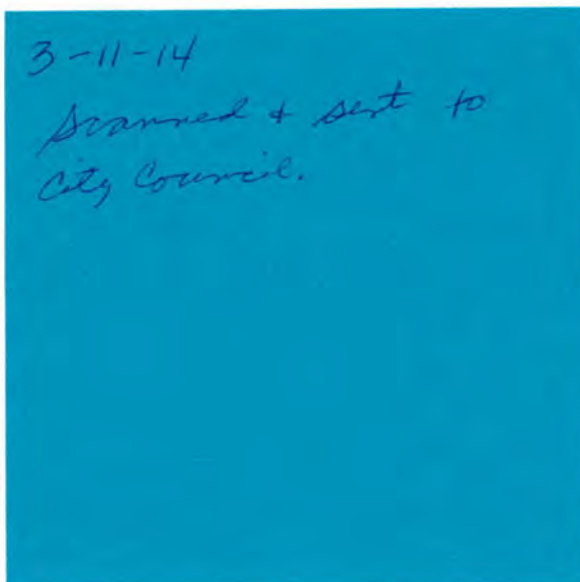
Hi Steve,

Would you look at this Journey Plan for the Core-Mark truck and call me back at 503-720-0341.

Thanks,

Garry LaPoint

 **Exhibit B8 Truck Turning Movement 2.3.2014 (1).pdf**
123K



RECEIVED

MAR 10 2014

4:16 PM
ack

CITY OF WILSONVILLE

Pg 1



Garry LaPoint <garrylapoint@gmail.com>

Chevron vs Human Bean

Mon, Feb 10, 2014 at 1:37 PM

High, Steven <Steven.High@core-mark.com>

To: "gl@eoni.com" <gl@eoni.com>

Cc: "Aiello, Anthony" <AAiello@core-mark.com>, "Rhodes, Doug" <DRhodes@core-mark.com>

Gary,

I have forwarded your attachment to, and discussed the matter with my associates. We are still looking at it. However, at this point, we see no significant reason to be alarmed, as our delivery procedure at your location, La Point Chevron, will remain unaltered. As far as the Human Bean is concerned, it is highly doubtful that we would adhere to the side-noted instructions, that include anything regarding 'backing out' or 'backing up into a loop'. Our delivery protocol mandates that we keep backing to a minimum, and especially, backing 'up into a loop'. We don't compromise when it comes to safety. We would look for an alternative delivery position at this location....one that minimizes or eliminates backing. That being said, however, it sounds like you have a lot of good, safety related information and concerns that should definitely help your case.

I wish you good luck with your meeting. Keep safety at the top of your agenda and you should do well; it is always our top priority, here at Core-Mark International, Inc.

Sincerely,

Steve High

Night Transportation Supervisor

Core-Mark Portland

503-786-4227 direct

503-652-0200 x4227

503-652-1079 fax

From: gl@eoni.com [mailto:gl@eoni.com]

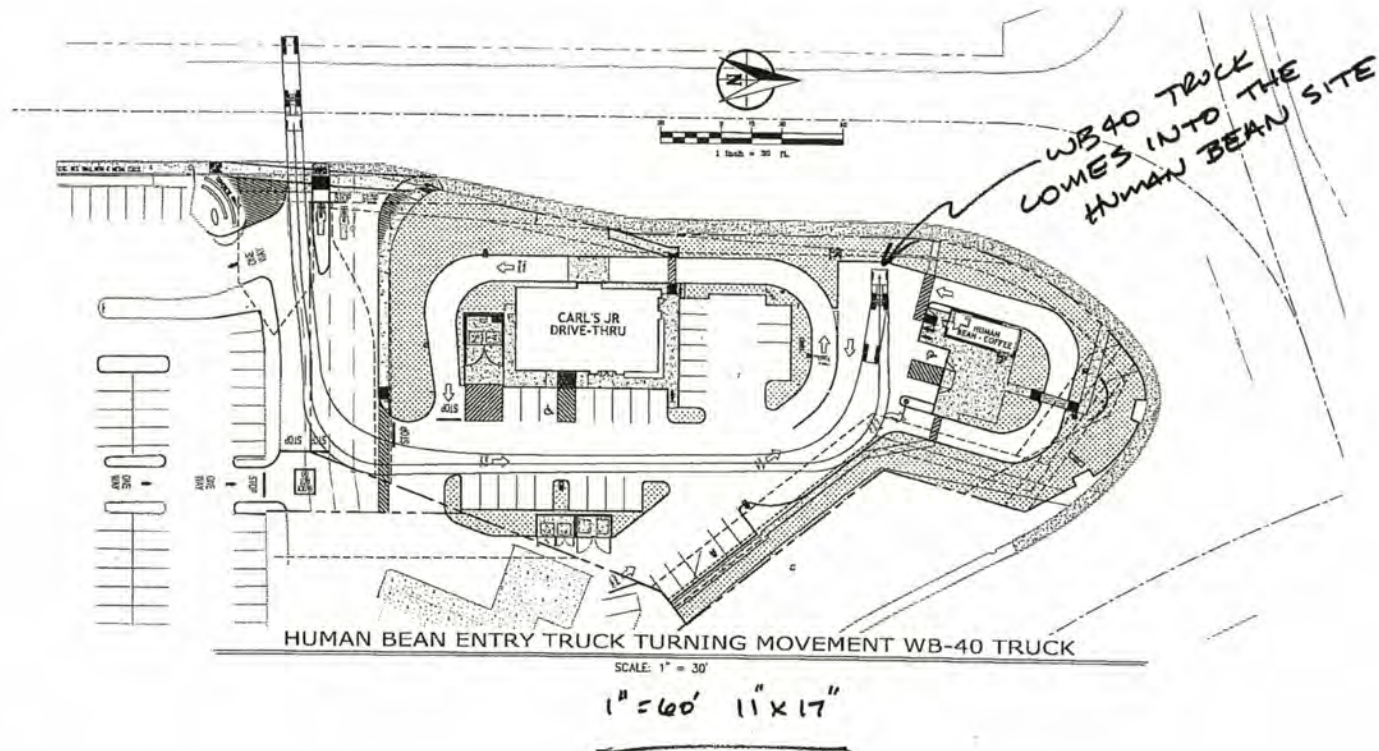
Sent: Monday, February 10, 2014 9:22 AM

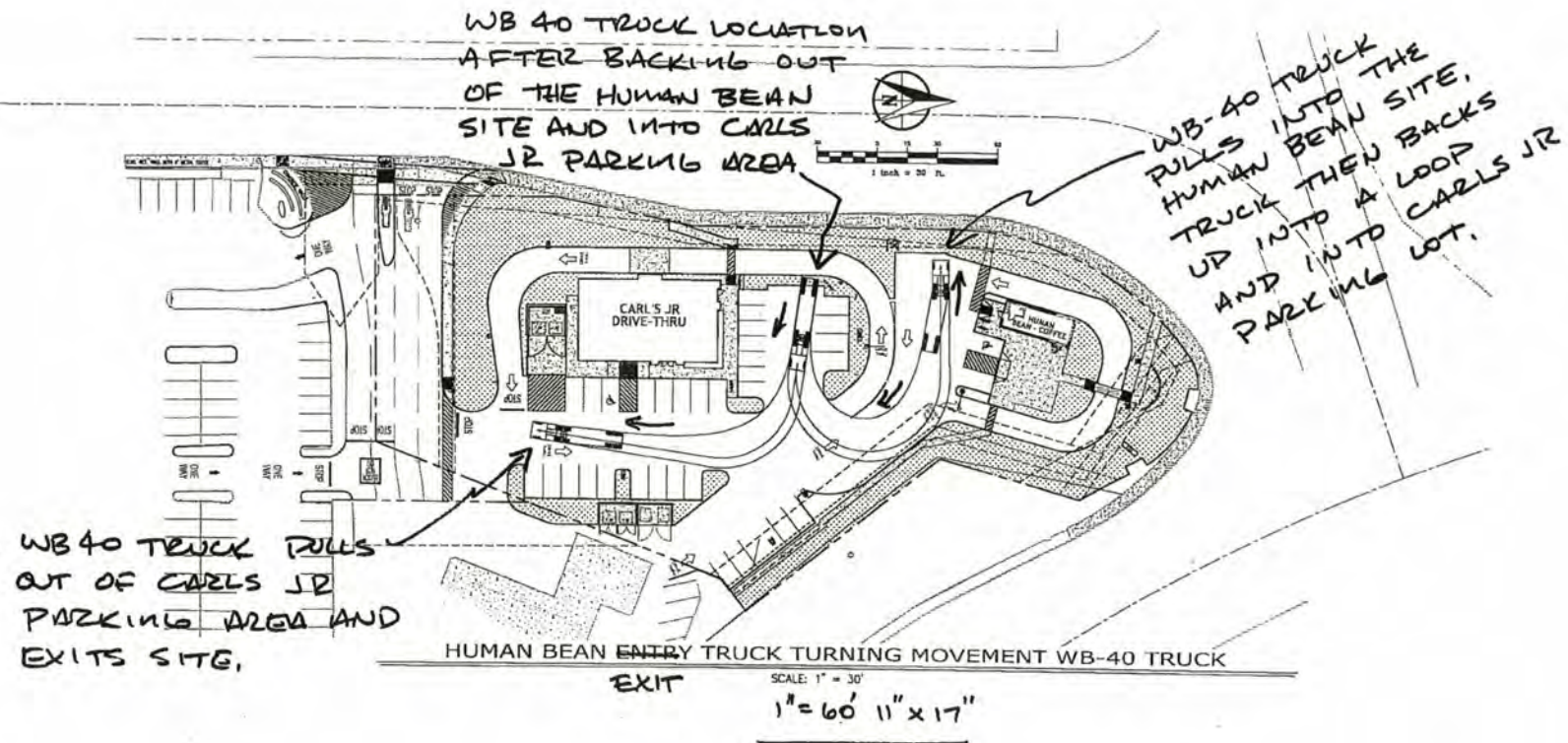
To: High, Steven

Subject: Chevron vs Human Bean

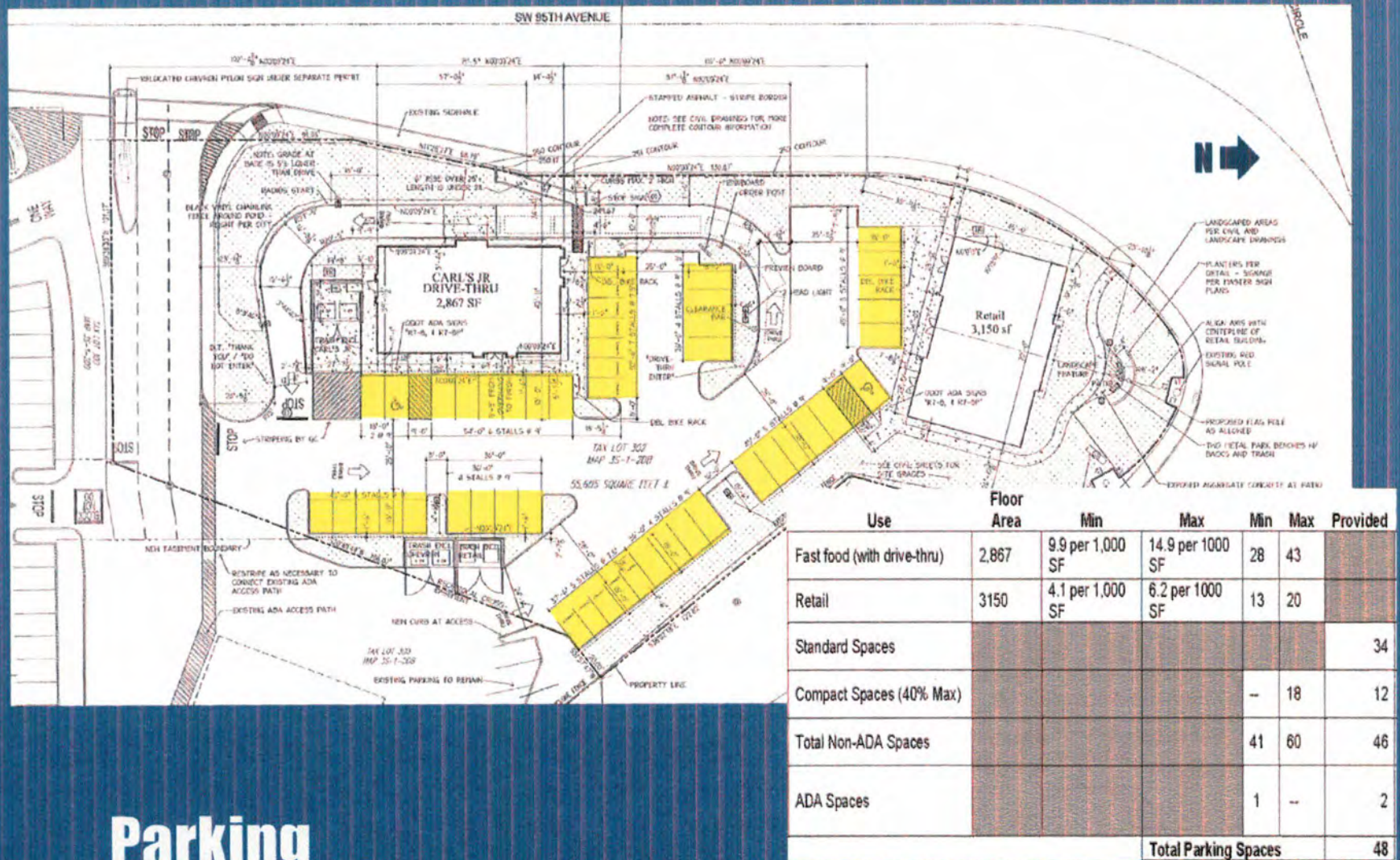
[Quoted text hidden]

Pg. 2





Boones Ferry Pointe: Stage II Final Plan



Parking

Recommended Additional Conditions of Approval

- 1. No vehicles greater than thirty feet (30') in length shall be used to make inventory deliveries to The Human Bean, or future tenant of the kiosk, unless an easement is granted by the neighboring property owner or found to exist by the appropriate legal authority that would allow the maneuvering of larger delivery vehicles.**
- 2. Site circulation to The Human Bean or future tenant of the kiosk, including inventory deliveries and typical customer traffic, shall be accomplished without the use of the curb cut along the property line between the trash enclosures and SW Boones Ferry Road unless an easement is granted by the neighboring property or found to exist by the appropriate legal authority that would allow use of the curb cut and circulation on the neighboring property.**
- 3. The following shall be installed and maintained to aid in site safety and circulation:**
 - A stop line and stop sign for northbound traffic directly east of the north building line of the Carl's Jr. Restaurant building. The stop sign shall meet ASHTO dimension standards.**
 - A "DO NOT BLOCK" area at the entrance of the Carl's Jr. drive-thru lane sufficient to allow traffic through exiting from the north.**



1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

PHONE: 503.727.2000

FAX: 503.727.2222

www.perkinscoie.com

Steven L. Pfeiffer

PHONE: (503) 727-2261

FAX: (503) 346-2261

EMAIL: SPfeiffer@perkinscoie.com

March 10, 2014

VIA E-MAIL

Mr. Tim Knapp, Mayor
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070-6499

**Re: Appeal of Denial of The Human Bean Coffee Kiosk;
DB 13-0046, DB 13-0047, DB 13-0048**

Dear Mayor Knapp and City Councilors:

This office represents Wilsonville Devco, LLC ("Applicant"), the applicant in the above-referenced applications (the "Applications"), and the appellant in this appeal of the February 13, 2014 decision by the City of Wilsonville Development Review Board ("DRB"). The DRB denied the request for modification of an earlier Stage II Final Plan approval on the site to replace the approved 3,150 square foot multi-tenant retail building with a 450 square foot The Human Bean coffee kiosk at the corner of Boones Ferry Road and 95th Avenue. The DRB's denial of the Applications was predicated on Wilsonville City Code ("WCC") Sections 4.400.02 and 4.421C and its concerns with site traffic circulation, congestion and safety. As discussed in more detail below, the DRB misapplied and misinterpreted WCC 4.400.02 and 4.421C, thereby improperly denying the Applications. Further, the DRB decision is contrary to, and not supported by, substantial evidence in the record as a whole. For the reasons explained below, the City Council should reverse the DRB's decision and approve the Applications. Please include this letter and its attachments in the official record of this appeal proceeding.

I. Description of the Project.

At the outset, it is important to note that the Applicant had previously obtained Stage II Final Plan approval for a 3,150 square foot multi-tenant retail commercial building on the site. Such approval is still valid, and the retail building remains authorized for construction as approved. Notably, no one, not even the opponent in the present matter ("LaPoint"), appealed the approval of the 3,150 square foot retail building or the approval of the Carl's Jr. on the site. In fact, the

LEGAL120046823.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

Perkins Coie LLP

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 2

Applicant, LaPoint, Holiday Inn, and the City negotiated and entered into a Development Agreement, dated August 2012, which established the rights and responsibilities of each party respecting site access and circulation. The Development Agreement contemplated both a Carl's Jr. and a "other yet to be determined retail" use on the Applicant's property. It also called for the system of easements that are in place today and clearly evidences the parties' mutual understanding of how vehicle circulation would work on the site. This understanding was further developed as part of the previous Stage II Planned Development and Site Plan reviews (DB 12-0074, 0075, and 0076) that were approved early last year, and for which LaPoint was a co-applicant. In short, LaPoint's participation in the Development Agreement and as a co-applicant in the previous application demonstrate that LaPoint believed on-site circulation was safe and adequate to serve the Carl's Jr. and a then-unnamed future retail use.

Moreover, in reviewing the previous Stage II Final Plan for the 3,150 square foot multi-tenant commercial building, the DRB was provided the opportunity to review site circulation and expressly found that there was adequate on-site circulation in compliance with WDC 4.154. Additionally, Tualatin Valley Fire and Rescue ("TVFR") reviewed the prior master plan (case file DB 12-0074, 0075, and 0076) and indicated that "Tualatin Valley Fire and Rescue endorses this proposal."

The current proposal seeks to replace the approved, but unbuilt, retail commercial building with a new 450 square foot drive-through coffee kiosk, resulting in a 2,700 square foot reduction in the size of the building and an attendant reduction in overall traffic on the site. Given the size of the approved retail building and the various retail uses that could occupy the larger building, the traffic, site-circulation, and fire/life/safety impacts of the current proposal are much less than the originally-proposed, and approved, retail building.

II. Substantial Evidence Shows On-Site Circulation is Adequate and Safe.

In its decision, the DRB denied the proposed coffee kiosk and found that the Applications failed to comply with WCC requirements pertaining to safety and on-site circulation. One of the main concerns expressed by the DRB at the hearing was the worst case scenario of an occasional delivery truck in excess of 30 feet serving the coffee kiosk, and the perceived risk that such infrequent delivery truck would not be able to maneuver from the shared driveway onto the site without hitting the curb. In response to such concern, the Applicant has confirmed with The Human Bean and with its vendor, Umpqua Dairy, that deliveries to the coffee kiosk will be made in a box truck not to exceed an overall length of 30 feet. Attached as **Exhibit A** is an email from Scott Sayre at The Human Bean, dated February 14, 2014, and an email from Marty Weaver at Umpqua Dairy, dated February 26, 2014, confirming the size of the delivery truck. The Applicant has also obtained a Truck Turning and Circulation Analysis ("Truck Turning Analysis") performed by transportation engineering firm, Kittelson & Associates, Inc., dated March 2, 2014, and which is attached as **Exhibit B**. The Truck Turning Analysis analyzes a

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 3

30 foot Umpqua box truck with a wheelbase of 18.6 feet, which is the largest vehicle that would perform deliveries to the coffee kiosk. The Truck Turning Analysis concludes that the studied Umpqua delivery truck can successfully access the site in a safe and efficient manner.

Furthermore, the Applicant has provided evidence of safe and convenient circulation on the site in compliance with WCC Sections 4.400.02, 4.421C, 4.154 and 4.155. First of all, the Applicant's site plan demonstrates a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings. Specifically, the site plan shows the following:

- Two separate pedestrian connections to the 95th Avenue sidewalk, each with its own striped drive aisle crossing;
- Circulation and stacking patterns for vehicles visiting the coffee kiosk, with safe stacking for at least seven (7) vehicles;
- Directional arrows separating traffic flow;
- Eight (8) adjacent parking spaces;
- Paved walkways with striped drive aisle crossings connecting the coffee kiosk to parking, the trash enclosures, and the Chevron property to allow, if desired, those who are fueling their cars to walk to the coffee kiosk; and
- A patio area near the coffee kiosk to provide pedestrians with a safe space to drink their coffee other than the parking lot.

For ease of visual reference, attached as **Exhibit C** is a copy of the site plan showing the multiple safe pedestrian pathways highlighted in red.

At the DRB hearing, LaPoint rejected the Applicant's offer to develop pedestrian improvements on his property in order to better connect the adjacent properties. Accordingly, the Applicant has revised the proposed site plan to eliminate all such proposed improvements on LaPoint's property. As shown on the attached **Exhibit D**, all improvements to Applicant's property will be stubbed to, and end at, LaPoint's property. The only remaining additional proposed improvements are two (2) new directional signs directing customers of the coffee kiosk to exit using the drive aisle in front of Carl's Jr. to the shared driveway.

As discussed in detail above, site plans show a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings necessary to connect the proposed coffee kiosk with its associated parking, the sidewalk, and adjacent properties, as well as adequate access for passenger vehicles and delivery trucks. The Applicant has provided substantial evidence that access and circulation serving the coffee kiosk will be safe and adequate as proposed, and City Council can find that the proposed development is consistent with all applicable approval criteria.

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 4

III. Conclusion.

For the reasons discussed above and in the Applicant's submittals in the record below, the Applicant has met all applicable approval criteria. Therefore, the City Council should overturn the DRB's denial of the Applications and approve the requested Applications in their entirety.

Very truly yours,



Steven L. Pfeiffer

SLP:crl

Enclosures

cc: Ben Altman, SFA Design Group (via email) (with encls.)
Craig Anderson, CB Anderson Architects (via email) (with encls.)
Wallace Lien, Esq.(via email) (with encls.)
Client (via email) (with encls.)
George J. Gregores, Esq. (via email) (with encls.)

From: Scott Sayre [<mailto:Scott@thehumanbean.com>]
Sent: Friday, February 14, 2014 5:58 PM
To: josh@pdvco.com
Subject: RE: Wilsonville Truck Sizes

Howdy!

So, Core-Mark will deliver in a Twenty-two foot long box van. Umpqua Dairy will deliver in a twenty-six foot box van.

Have a great weekend!

Scott Sayre
Director of Franchise & Vendor Development
541-608-0564
Fax: 541-608-3757
thehumanbean.com



Visit The Human Bean Website [thehumanbean.com]

'Like' us on Facebook [facebook.com] | Connect with us on Instagram [instagram.com] | Follow us on Twitter [twitter.com]



From: Marty Weaver [<mailto:Martyw@umpquadairy.com>]
Sent: Wednesday, February 26, 2014 3:39 PM
To: josh@pdvco.com; Scott Sayre
Subject: RE: Human bean info

Gents-

Ok, I think we have this figured out. Box truck overall length bumper to bumper 30', height is 11' and wheelbase is 18.6' w/single axle. We will deliver around 4:00 a.m. before Carls Jr opens. May need to get a key to the HB if no employees there this early. Please let me know your thoughts on this.

Sincerely,
Marty Weaver
Umpqua Dairy Products Co
Director of Sales & Marketing
Phone 541-672-2638
Fax 541-673-0256
martyw@umpquadairy.com

EXHIBIT A



KITTELSON & ASSOCIATES, INC.
TRANSPORTATION ENGINEERING / PLANNING

610 SW Alder Street, Suite 700, Portland, OR 97205 503.228.5230 503.273.8169

March 2, 2014

Project #: 17656.0

Josh Veentjer
Pacific Development Ventures
4188 SW Greenleaf Dr.
Portland, OR 97221

RE: Human Bean Wilsonville Truck Turning and Circulation Analysis - Wilsonville, OR

Dear Josh,

Pursuant to your request, Kittelson & Associates, Inc. has prepared a truck turning and circulation analysis of the proposed Human Bean development project located in Wilsonville, Oregon. This truck turning analysis focuses on the ability of the standard 30-foot Umpqua delivery truck to access the Human Bean site. The remainder of this letter addresses the turning and circulation movements for trucks entering and exiting the site.

TRUCK TURNING MOVEMENT ANALYSIS

Figure 1 shows the site plan of the Human Bean, located at the corner of SW Boones Ferry Road and SW Commerce Circle. Truck turning movements were performed using AutoTurn Version 8, using a 30' Umpqua box truck as the model vehicle. With a total vehicle length of 30 feet and a wheelbase of 18.6 feet, the Umpqua box truck was determined to be the largest vehicle that would perform deliveries to the proposed Human Bean development. Figure 2 shows the turning and circulation movements for trucks entering the site, and Figure 3 shows the turning and circulation movements for trucks exiting the site. For trucks exiting the site, it is possible for the vehicles to back up in two ways. Figure 3 the truck demonstrates a maneuver to use the internal circulation aisle in the lower parking lot, and it is also possible for a truck to use the internal circulation aisle in the upper parking lot adjacent to Carls Junior. Under all three scenarios, the trucks are capable of successfully entering and exiting from the proposed Human Bean development.

CONCLUSION

Based on the truck turning and circulation analysis of the proposed Human Bean development contained herein, we have determined that the identified 30-foot Umpqua delivery truck can successfully access the site in a safe and efficient manner. As the Umpqua truck will be the largest delivery vehicle to the site, all other delivery vehicles will also have sufficient access to the Human Bean building.

We trust this truck turning and circulation analysis adequately addresses the delivery feasibility of the proposed Human Bean development. Please let us know if you have any additional questions

Sincerely,
KITTELSON & ASSOCIATES, INC.

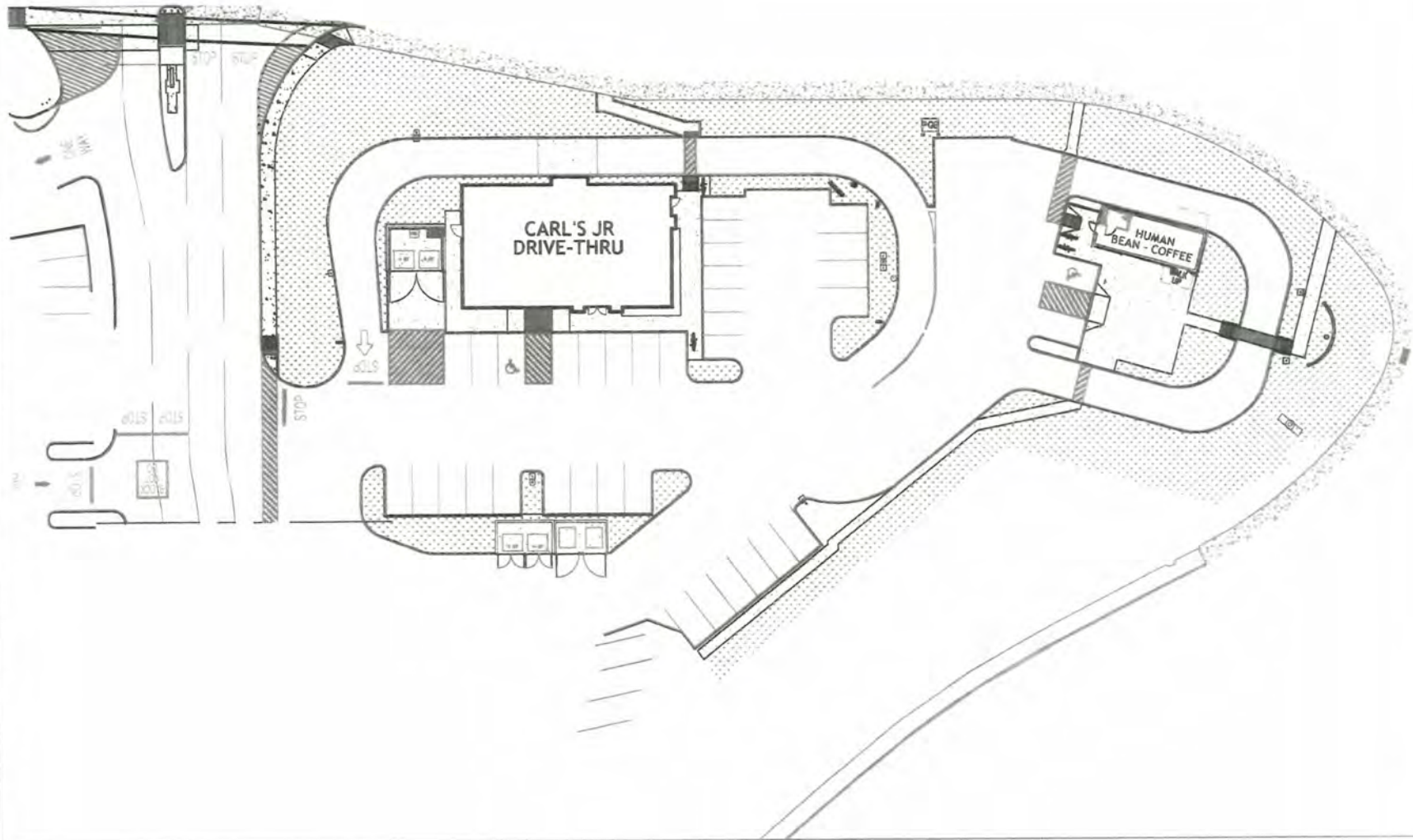


Marc Butorac, P.E., P.T.O.E.
Principal Engineer



Ribeka Toda
Transportation Analyst

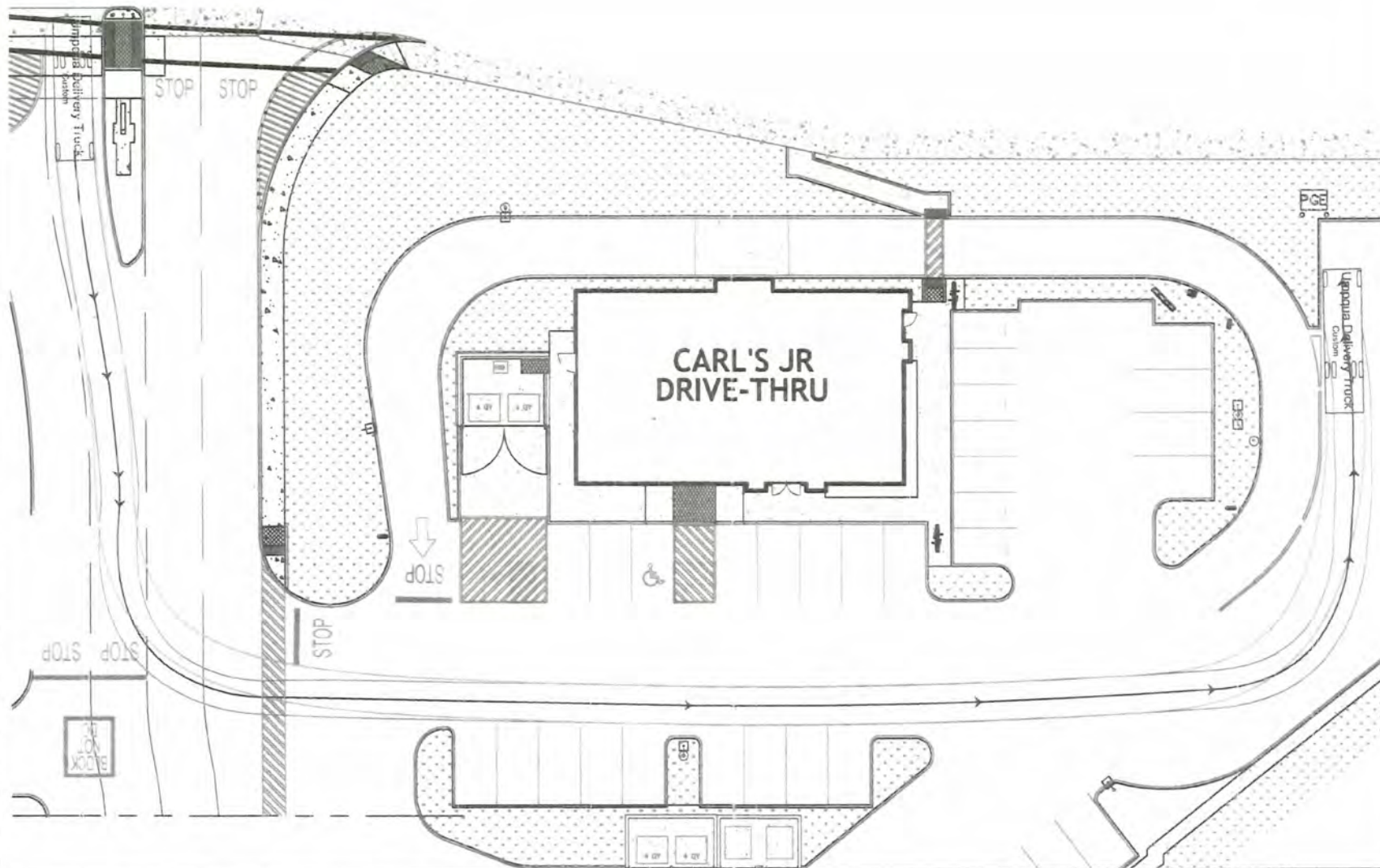
Attachments: 1 – Proposed Site Plan
2 – Entrance Turning Movement
3 – Exit Turning Movement



Proposed Site Plan
Wilsonville, OR

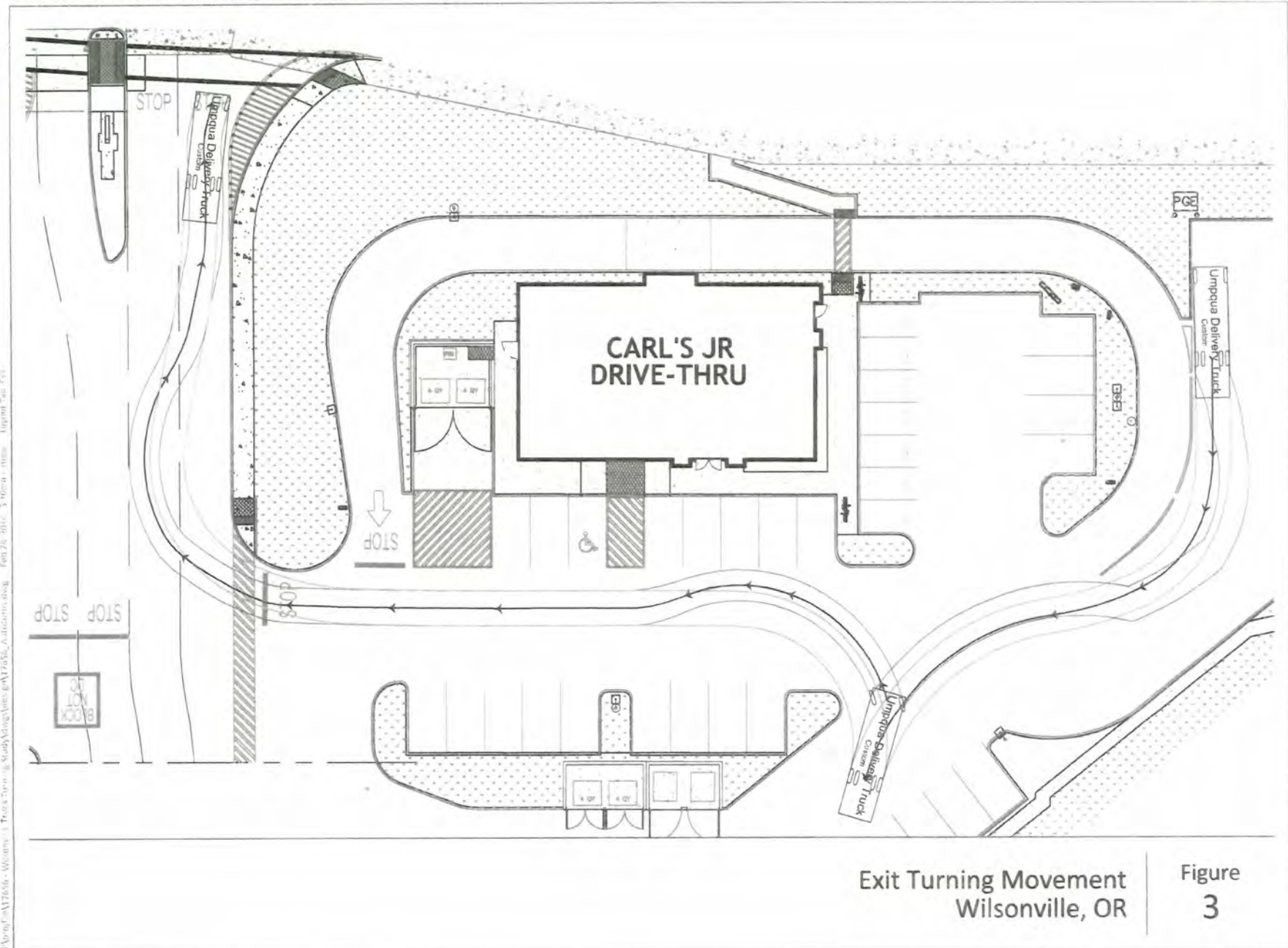
Figure
1

(A) Project: A11656, Wilsonville - a Truck Turning Study (Xing) (dws) (A11656) - a truck turning study
 Date: Feb 20, 2014 - 3:10 p.m. - Hous. - Wilsonville, OR



Entrance Turning Movement
Wilsonville, OR

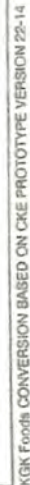
Figure
2



Exit Turning Movement
Wilsonville, OR

Figure
3

PLZ 0000



**ARCHITECTURAL
SITE PLAN**

430 SE Collins Twp

Blooms Ferry Prints
One Village & Commerce Circle
Wilmington, Oregon

Wilsonville Demco LLC
A Family Development Venture
9801 N.
Central Ave. #200
97136-1500

**CB ANDERSON
ARCHITECT**

2000 Galloway Avenue SE
Seattle, Washington 98148
206-344-0511
Fax 206-344-1024

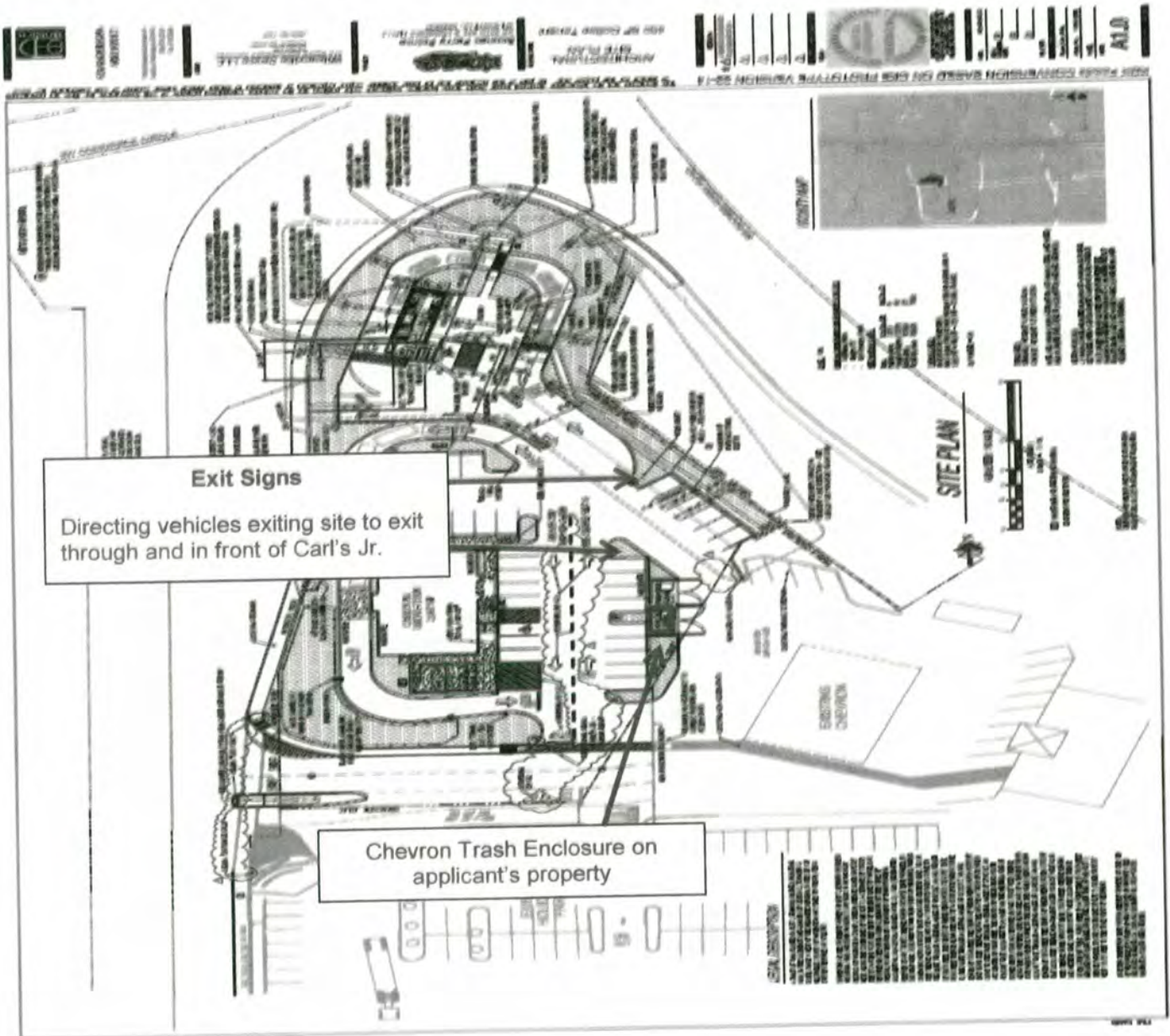
RECEIVED

DATE

PROJECT NO.

SHEET NO.

Revised Site Plan



INDEX OF RECORD

Appeal by the Applicant, Wilsonville Devco, LLC of a decision by the Development Review Board Panel "A", dated February 10, 2014, Denying the Application for a Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision (City File No. DB13-0046, DB13-0047, and DB13-0048).

Document Number	Title	Date of Document
1	<p>Staff Report Development Review Board Coffee Kiosk Application Appeal</p> <p><u>Resolution No. 2456</u> Resolution To Issue An Order By The City Council Concerning The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)</p> <p><u>Resolution No. 2457</u> Resolution To Issue An Order By The City Council Concerning The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)</p> <p><u>Resolution No. 2458</u> Resolution To Issue An Order By The City Council Concerning The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)</p>	March 17, 2014 Council Meeting
2	Notice of DRB Decision and Resolution No. 270	February 13, 2014
3	Notice of Intent to Appeal filed by Steven Pfeiffer, Perkins Coie on behalf of Wilsonville Devco, LLC	February 21, 2014

Document Number	Title	Date of Document
4	Objection to Appeal filed by Wallace Lien, PC, on behalf of LaPoint Business Group, LLC	February 28, 2014
5	City Council Meeting Staff Report dated March 3, 2014 re: Order Establishing Scope of Review of Appeal of DRB Panel A Decision Regarding the Human Bean Coffee Kiosk	March 3, 2014
6	Letter from Stephen Pfeiffer outlining reasons the opponents objection should be rejected in its entirety.	March 3, 2014
7	Email message from Barbara Jacobson, Assistant City Attorney to Wallace Lien, Steven Pfeiffer re: Appeal Hearing	March 4, 2014
8	Letter to Wallace Lien and Steven Pfeiffer from Barbara Jacobson, Assistant City Attorney, re: appeal of DRB decision regarding the Human Bean	March 5, 2014
9	Wilsonville Code Chapter 2, Section 2.560 Evidentiary Hearing Procedures	
10	<p>Compact Disk containing the entire Development Review Board Panel "A" Record as listed <i>except</i> for YouTube videos:</p> <ul style="list-style-type: none"> • Land Use Application Boones Ferry Pointe The Human Bean Drive-up Coffee Kiosk dated November 6, 2013 • Development Plans • Staff Report for January 13, 2014 DRB Panel "A" Hearing. Date of Report January 6, 2014 • February 20, 2014 DRB Panel "A" meeting record • January 13, 2014 DRB Panel "A" meeting Minutes as corrected • Draft February 10, 2014 DRB Panel "A" meeting Minutes <p>Two (2) DVD disks showing traffic circulation at LaPoint Chevron</p>	

1.


**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: March 17, 2014	Subject: Resolutions No. 2456, 2457 and 2458 Development Review Board Coffee Kiosk Application Appeal Staff Member: Daniel Pauly & Barbara Jacobson Department: Planning	
Action Required <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: Action is to issue an Order, either approving or denying the Applications. Alternative may be to remand to DRB, but only with the Applicant's approval. See additional comments contained within staff report.	
Staff Recommendation: N/A		
Recommended Language for Motion: I move to approve Resolution No. ___ authorizing issuance of an Order on Appeal for the Human Bean Drive Through Coffee Kiosk Stage II Final Plan Revision Application Nos. DB 13-0046, DB 13-0047, and DB 13-0048.		
PROJECT / ISSUE RELATES TO: <i>[Identify which goal(s), master plans(s) issue relates to.]</i>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

Applicant Wilsonville Devco LLC has appealed the Development Review Board's denial of its applications to modify its already approved Stage II Final Plan to allow for a drive through Human Bean Coffee Kiosk.

EXECUTIVE SUMMARY:

The DRB denied Wilsonville Devco's applications for a Stage II Final Plan Revision that would have replaced the already approved small mall project with a drive through coffee kiosk and store due to concerns about safety and internal traffic circulation, given the tight nature of the site and the adjoining development's drive through, coupled with traffic to and from the Chevron station. City Council granted the Appeal at the March 3, 2014 City Council meeting. The City Council determined that the appeal would be based on review of the DRB record, with allowance for limited new evidence and testimony relating only to on-site traffic congestion; adequacy, efficiency and safety of on-site pedestrian and vehicle circulation, inclusive of delivery and other larger format vehicles; and Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A and 4.421(.01)C of the Wilsonville City Code.

EXPECTED RESULTS:

The Order will be final action by the City Council on the Appeal.

CURRENT YEAR BUDGET IMPACTS:

None.

FINANCIAL REVIEW / COMMENTS: NA

Reviewed by: _____ Date: _____

LEGAL REVIEW / COMMENT:

Reviewed by: MEK Date: 3/6/14

It should be noted that the three attached draft Resolutions are in the alternative, depending on the decision reached by the City Council. It is also important to note that the attached Findings attached to each Resolution are simply proposed Findings to aid the Council as to what the Findings might look like, based on current evidence, without knowing what new evidence might be presented during the Hearing that could lead to a different outcome. Thus, Council members must form their own opinions and reach their own Findings of Fact, Determinations and Conclusions, which may or may not be as written on the draft Resolutions enclosed. If the Council's Findings are significantly different or complex, staff will be tasked with creating new Findings, as directed by Council, which will be brought back before City Council at the next City Council meeting for final review and approval. The next meeting is April 7, 2014 and the 120-day period will expire on April 8, 2014. Thus, unless the Applicant agrees to toll the time period, the remand option is not viable.

COMMUNITY INVOLVEMENT PROCESS:

N/A

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups:
Resolution of the Applications.

ALTERNATIVES:

The Council has the following options for consideration:

- 1) To deny the Appeal and Applications, upholding the DRB decision;
- 2) To approve the Applications, overturning or modifying the DRB decision and adopting the original staff report to the DRB, with or without modifications;
- 3) To remand to the DRB (understanding that this is not an option unless the Applicant agrees to extend the deadline for final action by the City).

Option 1 or 2 is recommended by staff given the time constraints for final decision, unless the Applicant voluntarily waives this time limit. Please take special note of the City Attorney's comments with respect to how Council's final Order may be framed.

CITY MANAGER COMMENT:**ATTACHMENTS**

- A. Draft Order Denying the Appeal and Applications
Draft Order Reversing the DRB Decision and Approving the Applications
Draft Order Remanding the Applications back to the DRB for further consideration

**RESOLUTION NO. 2456
AND ORDER**

RESOLUTION TO ISSUE AN ORDER BY THE CITY COUNCIL CONCERNING THE APPEAL OF THE THE STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW, AND MASTER SIGN PLAN REVISION AND SIGN WAIVER OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. APPLICANT/APPELLANT/OWNER WILSONVILLE DEVCO, LLC. APPLICATION NOS. DB 13-0046, DB 13-0047, AND DB 13-0048.

WHEREAS, City Council received a timely filed appeal from Appellant/Applicant Wilsonville Devco LLC of the decision of the Development Review Board, Panel A ("DRB"), denying the above captioned project applications ("Applications") made pursuant to Wilsonville City Code 4.022(.02), following a denial of said Applications at the public hearing held on February 2014; and

WHEREAS, after granting the Appeal at a public meeting held on March 3, 2014, setting the date for public hearing of the appeal for March 17, 2014, and limiting the record on appeal to evidence already in the DRB record and limited new evidence and testimony relating only to on-site traffic congestion; adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation, inclusive of delivery vehicles and other larger format vehicles; and Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C of the Wilsonville City Code requirements; and

WHEREAS, having conducted the appeal hearing and having reviewed all of the evidence in the DRB record, including DRB member reasoning and findings for denial or approval; and having heard new evidence, as allowed, from both the appellant/applicant and opponents to the Applications at the appeal hearing; and

WHEREAS, having considered all of the foregoing evidence and following all applicable requirements of the Wilsonville Development Code pertaining to the Applications and appeal, the City Council hereby orders as follows:

1. The City Council hereby orders that the decision of the DRB on the above referenced Applications is hereby reversed and the Applications approved, adopting the Staff Report, dated January 6, 2014, as amended by the Planning

Division memorandum, dated February 10, 2014, which is incorporated by reference herein, and as modified by the City Council's Findings of Fact, Determinations and Conclusions, attached hereto as **Exhibit A**, and incorporated by reference herein.

2. City Council authorizes the City staff to implement this Order as directed by the Findings of Fact, Determinations and Conclusions.
3. This Order is subject to the rights of appeal, as set forth in Oregon law. If you desire to appeal this decision to the Oregon Land Use Board of Appeals you must make application stating the grounds for appeal with the Land Use Board of Appeals, as proscribed by State law and within the timeframe proscribed by State Law.

IT IS HEREBY ORDERED by the Wilsonville City Council at a regular meeting thereof this ____ day of _____, 2014, to be effective immediately and filed with the Wilsonville City Recorder on this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

WILSONVILLE CITY COUNCIL

FINDINGS OF FACT, DETERMINATIONS AND CONCLUSIONS

APPROVING APPLICATION

1. City Council hereby adopts the Staff Report, dated January 6, 2014, as amended by the Planning Division memorandum, dated February 10, 2014, but modifies and amends them as follows:

RESOLUTION NO. 2457

RESOLUTION TO ISSUE AN ORDER BY THE CITY COUNCIL CONCERNING THE APPEAL OF THE STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW, AND MASTER SIGN PLAN REVISION AND SIGN WAIVER OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. APPLICANT/APPELLANT/OWNER WILSONVILLE DEVCO, LLC. APPLICATION NOS. DB 13-0046, DB 13-0047, AND DB 13-0048.

WHEREAS, City Council received a timely filed appeal from Appellant/Applicant Wilsonville Devco LLC of the decision of the Development Review Board, Panel A ("DRB"), denying the above captioned project applications ("Applications") made pursuant to Wilsonville City Code 4.022(.02), following a denial of said Applications at the public hearing held on February 2014; and

WHEREAS, after granting the Appeal at a public meeting held on March 3, 2014, setting the date for public hearing of the appeal for March 17, 2014, and limiting the record on appeal to evidence already in the DRB record and limited new evidence and testimony relating only to on-site traffic congestion; adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation, inclusive of delivery vehicles and other larger format vehicles; and Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C of the Wilsonville City Code requirements; and

WHEREAS, having conducted the appeal hearing and having reviewed all of the evidence in the DRB record, including DRB member reasoning and findings for denial or approval; and having heard new evidence, as allowed, from both the appellant/applicant and opponents to the Applications at the appeal hearing; and

WHEREAS, having considered all of the foregoing evidence and following all applicable requirements of the Wilsonville Development Code pertaining to the Applications and appeal, the City Council hereby orders as follows:

1. The City Council hereby orders that the decision of the DRB on the above referenced Applications is hereby affirmed and upheld, incorporating the Staff Report, dated January 6, 2014, as amended by the Planning Division

memorandum, dated February 10, 2014, and as further amended and modified by the City Council's Findings of Fact, Determinations and Conclusions, attached hereto as **Exhibit A**, and incorporated by reference herein.

2. City Council authorizes the City staff to implement this Order as directed by the Findings of Fact, Determinations and Conclusions.
3. This Order is subject to the rights of appeal, as set forth in Oregon law. If you desire to appeal this decision to the Oregon Land Use Board of Appeals you must make application stating the grounds for appeal with the Land Use Board of Appeals, as proscribed by State law and within the timeframe proscribed by State Law.

IT IS HEREBY ORDERED by the Wilsonville City Council at a regular meeting thereof this ____ day of _____, 2014, to be effective immediately and filed with the Wilsonville City Recorder on this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

WILSONVILLE CITY COUNCIL

FINDINGS OF FACT, DETERMINATIONS AND CONCLUSIONS

DENYING APPLICATION

On-site Pedestrian Access and Circulation

Subsection 4.154 (.01) B. 1. Continuous Pathway System

- A1. **Review Criterion:** "A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has provided a network a network of pathways from the proposed location of the coffee kiosk to support a continuous pathway system throughout the site. This includes two connections to the 95th Avenue sidewalk which then connects to Carl's Jr. and Holiday Inn as well as a pathway connection to the east to provide access to parking and trash enclosures. See sheet A1.0 in Exhibit B2. This is the last phase of a development, and though adjoining development may not meet these standards, they were developed prior to adoption of the current on-site pedestrian regulations including this subsection.

Subsection 4.154 (.01) B. 2. Safe, Direct, and Convenient Pathways

- A2. **Review Criteria:** "Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:

- a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.
- b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.
- c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.
- d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)(B.)(3.)(d.)."

Finding: These criteria are satisfied.

Explanation of Finding:

- All proposed pathways are of smooth and consistent concrete and no hazards are evident on the site plan.
- All proposed pathways are reasonably direct. The path from Carl's Jr. to the 95th Avenue sidewalk then across to the coffee kiosk is reasonably direct. The path from the intersection of 95th Avenue/Boones Ferry is reasonably direct. A direct path is provided from the parking stalls and trash enclosure serving the coffee kiosk.
- Where required, pathways meet ADA requirements or will be required to by the building code.
- The parking lot is not larger than 3 acres in size.

Subsection 4.154 (.01) B. 3. Vehicle/Pathway Separation

- A3. **Review Criterion:** "Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards."

Finding: This criterion is satisfied.

Explanation of Finding: All pathways affected by this review are separated consistent with this subsection. Staff notes pathways marked during previous phases of development do not meet this standard. This is a new standard was adopted after the approval of adjoining development.

Subsection 4.154 (.01) B. 4. Crosswalks

- A4. **Review Criterion:** "Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light-color concrete inlay between asphalt, or similar contrast)."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has proposed crosswalks meeting this standard.

Subsection 4.154 (.01) B. 5. Pathway Width and Surface

- A5. **Review Criteria:** "Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five (5) feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA."

Finding: These criteria are satisfied.

Explanation of Finding: Primary pathways are the required width. The pathway from the parking area/trash enclosure near Chevron is not a primary pathway and is allowed to be less than five (5) feet in width.

Subsection 4.154 (.01) B. 6. Signs for Pathways

A6. **Review Criteria:** "All pathways shall be clearly marked with appropriate standard signs."

Finding: These criteria are satisfied.

Explanation of Finding: No pathways requiring signs are proposed.

Parking and Loading

Subsection 4.155 (.02) General Parking Provisions

A7. **Review Criteria:** This subsection lists a number of general provisions for parking.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the provisions in this subsection applicable to State II Final Plan review. Among the information provided are parking calculations on sheet A1.0. of Exhibit B2. Staff specifically points out the following:

- In relation to provision B. all parking areas are accessible and usable for parking
- In relation to provisions D. the provided parking meets the sum of the minimum parking for the fast food restaurant and the coffee kiosk.
- In relation to provision J. a note on sheet A1.0 of Exhibit B2 states this requirement will be met.
- In relation to provision K. the parking area is paved and provided with adequate drainage. See Sheets A1.0 and DD102 in Exhibit B2.
- In relation to provision L. the parking lot lighting is fully shielded as to not shine into adjoining structures or the eyes of passerby's.
- In relation to provision N. 6 compact parking spaces are proposed, which is less than forty (40) percent of the proposed parking spaces. They are shown appropriately marked on Sheet A1.0 of Exhibit B2.

Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas

A8. **Review Criteria:** "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

Finding: These criteria are **NOT** satisfied.

Explanation of Finding: For a development of the proposed size Wilsonville Development Code does not require a separate loading/delivery area. As is typical of fast food and coffee kiosk type uses in general, the deliveries by necessity happen in the customer/employee parking and circulation areas. The parking, loading, and delivery areas are the same for this project. The first criterion in this subsection relates to access and maneuvering areas requiring them to be "adequate to serve the functional needs of the site". Analysis of compliance for this criterion first must identify the functional needs of the site. As identified by the applicant and in testimony at the DRB hearing functional needs include but are not limited to: traffic circulation and parking for customers of the proposed coffee kiosk including those with larger vehicles, and deliveries of inventory to the coffee kiosk. Once identifying what the functional needs are compliance must next look at what is adequate to serve these needs. No specific definition of adequate is offered in Wilsonville's Development Code therefore the dictionary definition is relied upon. As defined in Webster's New Collegiate Dictionary "adequate" means "sufficient for a specific requirement", "especially barely sufficient or satisfactory" or "lawfully and reasonably sufficient." In looking at adequacy for compliance sufficient compliance is reviewed rather than optimal compliance.

Delivery Vehicles

In relation to deliveries Exhibit B8 shows the movement of a WB40 truck on the site, which requires significant backing and appears to drive over the curb. As demonstrated by the difficult maneuverings indicated in Exhibit B8 the site is not adequate to provide the functional need of potential delivery trucks. The trucks are not able to operate in a reasonable manner that would minimize backing and avoid obstacles on the site, including pedestrians. Proposed backing up maneuvers within this tightly constrained site raise safety concerns for other vehicles and pedestrians traveling within the site. The applicant has not provided any other on-site design alternatives that would enable sufficient maneuvering areas for this size of delivery truck.

Alternative Circulation Plan for Delivery Vehicles

Exhibit E of Exhibit B6 shows access and maneuvering areas for inventory deliveries using portions of the adjacent LaPoint property. This eliminates a great deal of the backing and does

not show close proximity to obstacles on the site. However, it requires the use of a reciprocal cross easement. The parties to the easement disagree on the extent of the easement and whether it would allow delivery truck access for the Human Bean Development. The City is not in a situation to arbitrate or interpret the meaning of this private easement without clarity on whether the adjoining property is available for access and maneuvering and must assume that it is not available.

Customer Traffic Generally

Testimony has been received and shown on Exhibits D3 and D6, traffic videos, of difficult traffic patterns with surrounding development that shares access and maneuvering areas. While it is replacing a previously approved commercial use, testimony was given that the peak nature of the coffee kiosk operation would worsen traffic for access and maneuvering areas in a manner not anticipated with the previous planned use in the subject portion of the site. The applicant has failed in their duty to provide sufficient evidence demonstrating the access and maneuvering areas for customers, including queuing area are adequate to serve the expected peak volume. Where there is substantial testimony and evidence that it is not adequate creates a special burden on the applicant to prove otherwise. Of chief concern is volume. While site plans show sufficient turning radii for the typical customer vehicle, no volume to capacity or level of service information is provided for the internal site to demonstrate adequacy for expected traffic volume at peak times. In addition, insufficient evidence has been submitted to demonstrate how queuing vehicles may conflict with the vehicles queuing for the adjacent fast food drive-through causing gridlock on the site and not allowing use of key access and maneuvering areas.

Council finds a lack of access and maneuvering areas adequate to serve the functional needs for inventory delivery to the site which is grounds for denying the proposed revision to the Stage II Final Plan. As addition ground for denying the requested revision to the Stage II Final Plan, Council finds a lack of sufficient evidence relating to adequate access and maneuvering areas, including queuing areas, especially when viewed in concert with queuing requirements for Carl's Jr., located on the same parcel, for the expected customer volume.

Because minimum criteria were not met for the Stage II Final Master Plan Revision, it was not necessary to address Site Design Revision criteria.

**RESOLUTION NO. 2458
AND ORDER**

RESOLUTION TO ISSUE AN ORDER BY THE CITY COUNCIL CONCERNING THE APPEAL OF THE STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW, AND MASTER SIGN PLAN REVISION AND SIGN WAIVER OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. APPLICANT/APPELLANT/OWNER WILSONVILLE DEVCO, LLC. APPLICATION NOS. DB 13-0046, DB 13-0047, AND DB 13-0048.

WHEREAS, City Council received a timely filed appeal from Appellant/Applicant Wilsonville Devco LLC of the decision of the Development Review Board, Panel A ("DRB"), denying the above captioned project applications ("Applications") made pursuant to Wilsonville City Code 4.022(.02), following a denial of said Applications at the public hearing held on February 2014; and

WHEREAS, after granting the Appeal at a public meeting held on March 3, 2014, setting the date for public hearing of the appeal for March 17, 2014, and limiting the record on appeal to evidence already in the DRB record and limited new evidence and testimony relating only to on-site traffic congestion; adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation, inclusive of delivery vehicles and other larger format vehicles; and Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C of the Wilsonville City Code requirements; and

WHEREAS, having conducted the appeal hearing and having reviewed all of the evidence in the DRB record, including DRB member reasoning and findings for denial or approval; and having heard new evidence, as allowed, from both the appellant/applicant and opponents to the Applications at the appeal hearing; and

WHEREAS, having considered all of the foregoing evidence and following all applicable requirements of the Wilsonville Development Code pertaining to the Applications and appeal, the City Council hereby orders as follows:

1. The City Council hereby orders that the decision of the DRB on the above referenced Applications is hereby remanded to the DRB for further consideration

of new evidence placed on the record, and the City Council's Findings of Fact, Determinations, and Conclusions is attached hereto as **Exhibit A**.

2. This Order is subject to the rights of appeal, as set forth in Oregon law. If you desire to appeal this decision to the Oregon Land Use Board of Appeals you must make application stating the grounds for appeal with the Land Use Board of Appeals, as proscribed by State law and within the timeframe proscribed by State Law.

IT IS HEREBY ORDERED by the Wilsonville City Council at a regular meeting thereof this ____ day of _____, 2014, to be effective immediately and filed with the Wilsonville City Recorder on this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

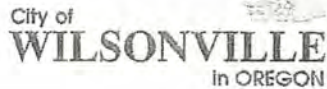
WILSONVILLE CITY COUNCIL

FINDINGS OF FACT, DETERMINATIONS AND CONCLUSIONS

REMANDING APPLICATION

1. City Council hereby adopts the Staff Report, dated January 6, 2014, as amended by the Planning Division memorandum, dated February 10, 2014, but modifies and amends them as follows:

2.



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

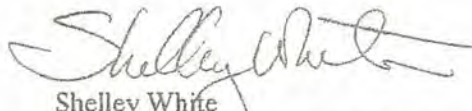
VIA: Certified Mail, Return Receipt Requested

February 13, 2014

Josh Veentjer
Wilsonville Devco LLC
P.O. Box 6437
La Quinta, CA 92248

Re: Case File DB13-0046 et seq

The Development Review Board's Decision and Resolution No. 270 are attached, denying your request for a Stage II Final Plan revision, Site Design Review, and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk. Thank you.



Shelley White
Planning Administrative Assistant

CC: Ben Altman - SFA Design Group
Craig Anderson - CB Anderson Architects
Tom Berg
Garry LaPoint
Jason LaPoint
Steve Pfeiffer - Perkins Coie

CC via e-mail: Wallace W. Lien
George Gregory

February 13, 2014

DEVELOPMENT REVIEW BOARD PANEL A

NOTICE OF DECISION

Project Name: Boones Ferry Pointe – The Human Bean Drive-Up Coffee Kiosk

Case File Nos.: DB13-0046 – Stage II Final Plan revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan revision and Sign Waiver

Applicant/Owner: Josh Veentjer – Wilsonville Devco LLC

**Authorized
Representatives:** Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects

Property Description: Tax Lots 302, Section 2DB; T3S R1W; Washington County;
Wilsonville, Oregon

Location: Corner of 95th Avenue and Boones Ferry Road

On February 10, 2014, at the meeting of the Development Review Board the following action was taken on the above-referenced proposed development applications:

Denied

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022(.02).*

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this **13th day of February 2014** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022(.09)*

Written decision is attached

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960

Attachments: DRB Resolution No. 270, Copy of proposed DRB Resolution No. 268 which was rejected.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 270**

A RESOLUTION REJECTING PROPOSED RESOLUTION NO. 268 AND DENYING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits, exhibits, and staff report were duly considered by the Development Review Board Panel A at a scheduled meetings conducted on January 13 and February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

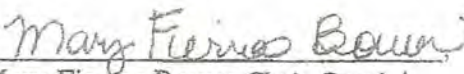
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject, and


WHEREAS citing concerns about on site traffic circulation, congestion and safety in general and referring specifically to Wilsonville City Code Section 4.400.02 and 4.421 C, the Development Review Board moved, seconded and passed a motion, by a vote of 4 to 1, rejecting proposed Resolution No. 268, and by reference the staff report dated January 6, 2014, finding that the Application did not satisfy Wilsonville Code requirements pertaining to safety and circulation.

NOW, THEREFORE, BE IT RESOLVED THAT THE City of Wilsonville Development Review Board does hereby reject proposed Resolution No. 268, thereby denying the above described Application for reasons stated herein and with more particularity in the record of decision.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10th day of February, 2014 and filed with the Planning Administrative Assistant on February 13, 2014. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022(.09) unless appealed per WC Sec 4.022(.02) or called up for review by the council in accordance with WC Sec 4.022(.03).


Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:


Shelley White, Planning Administrative Assistant

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.068 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record; and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13th day of January, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.02)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

3.



1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

PHONE: 503.727.2000

FAX: 503.727.2222

www.perkinscoie.com

Steven L. Pfeiffer

PHONE: (503) 727-2261

FAX: (503) 346-2261

EMAIL: SPfeiffer@perkinscoie.com

February 21, 2014

BY HAND DELIVERY

Sandra C. King, MMC

City Recorder

City of Wilsonville

29799 SW Town Center Loop E

Wilsonville, OR 97070


*Rec'd 2/21/14
\$800.00 Ser
paid. check #10049*

Re: City Files DB 13-0046, BD 13-0047, and DB 13-0048, Wilsonville Devco, LLC

Dear Ms. King:

This office represents Wilsonville Devco, LLC the Applicant in the above-referenced matter. Enclosed please find a Notice of Intent to Appeal the above-referenced matter to City Council, as well as a check in the amount of \$800.00 as the appeal fee. Please process this Notice of Intent to Appeal and advise me of the scheduled hearing date. Please also include me on the notice list for all correspondence related to this appeal.

Very truly yours,


Steven L. Pfeiffer

SLP:GHS

Enclosures

Cc: Client (w/encls.) (via email)

Wallace Lein (w/encls.) (via email)

112634-0001/LEGAL29527672.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

Perkins Coie LLP

CITY OF WILSONVILLE

29799 SW Town Center Loop East

Wilsonville, OR 97070

Phone: 503.682.4960

Fax: 503.682.7025

Web: www.ci.wilsonville.or.us

Pre-Application meeting date:

TO BE COMPLETED BY APPLICANT:

Please PRINT legibly

Planning Division Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

Applicant:

Josh Veentjer

Address: 4188 SW Greenleaf Dr. Portland, OR 97221

Phone: 503.201.1309

Fax:

E-mail: josh@pdvco.com

Authorized Representative:

Stephen L. Pfeiffer

Address: 1120 NW Couch Street, Tenth Flr., Portland, OR 97209

Phone: 503.727.2261

Fax:

E-mail: spfeiffer@perkinscoie.com

Property Owner:

Josh Veentjer, Wilsonville Devco, LLC

Address: 4188 SW Greenleaf Dr. Portland, OR 97221

Phone: 503.201.1309

Fax:

E-mail: josh@pdvco.com

Property Owner's Signature:

Printed Name: Josh Veentjer Date: 2/20/14

Applicant's Signature (if different from Property Owner):

Printed Name: Date:

Site Location and Description:

Project Address if Available: 25250 SW 95th Avenue Suite/Unit

Project Location: Northern portion of Boones Ferry Pointe, adjacent to Carl's Jr. and Chevron Station.

Tax Map #(s): 2DB Tax Lot #(s): 302 County: ☒ Washington ☐ Clackamas

Request: Appeal of DRB Decision in DB 13-0047, and DB 13-0048

Project Type: Class I ☐ Class II ☐ Class III ☐

☐ Residential

☐ Commercial

☐ Industrial

☐ Other (describe below)

Application Type:

☐ Annexation

☐ Final Plat

☐ Plan Amendment

☐ Request for Special Meeting

☐ SROZ/SRIR Review

☐ Type C Tree Removal Plan

☐ Villebois SAP

☐ Zone Map Amendment

☒ Appeal

☐ Major Partition

☐ Planned Development

☐ Request for Time Extension

☐ Staff Interpretation

☐ Tree Removal Permit (B or C)

☐ Villebois PDP

☐ Other

☐ Comp Plan Map Amend

☐ Minor Partition

☐ Preliminary Plat

☐ Signs

☐ Stage I Master Plan

☐ Temporary Use

☐ Villebois PDP

☐ Conditional Use

☐ Parks Plan Review

☐ Request to Modify Conditions

☐ Site Design Review

☐ Stage II Final Plan

☐ Variance

☐ Waiver

**BEFORE THE CITY COUNCIL
FOR THE CITY OF WILSONVILLE, OREGON**

In the Matter of an Appeal by the)	
Applicant, Wilsonville Devco, LLC of a	)	WRITTEN NOTICE OF INTENT TO
Decision by the Development Review	)	APPEAL
Board, dated February 10, 2014, Denying)	
the Application for a Stage II Final Plan)	
Revision, Site Design Review, and Master)	
Sign Plan Revision (City File Nos. DB13-)	
0046, DB13-0047, and DB 13-0048))	

1. Introduction.

Wilsonville Devco, LLC ("Appellant"), the Applicant in the above-referenced application, submits this appeal of the February 10, 2014 decision by the Development Review Board ("DRB") of the City of Wilsonville ("City"), which denied the request for a Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision (City File Nos. DB13-0046, DB13-0047, and DB 13-0048) ("Proposed Development"). Appellant applied for these land use permits on November 12, 2013 and the DRB considered them at public hearings held on January 13, 2014 and February 10, 2014. Despite City staff's recommendation for approval in which it stated the Proposed Development met all applicable criteria as proposed and with recommended conditions of approval (**Exhibit 1**), as well as additional memoranda from staff indicating that the proposed circulation on the site was sufficient (**Exhibit 2**), the DRB denied the application. Specifically, the DRP denied the application based on concerns "about on-site traffic circulation, congestion and safety in general and referring specifically to Wilsonville Code Section 4.400.02 and 4.421C." (**Exhibit 3**).

In denying the application, the DRB misapplied and misinterpreted WDC 4.400.02 and 4.421C. Moreover, its determination that these provisions were not satisfied is not supported by, and is contrary to, the substantial evidence in the record. For the reasons explained below, the City Council should reverse the DRC's decision and find that the Proposed Development satisfies site circulation requirements specified in WDC 4.400.02 and 4.432C. It should therefore approve Appellant's application in its entirety.

This appeal is timely filed prior to the February 27, 2014 deadline.

2. Reason for Appeal.

Wilsonville Devco, LLC is the owner of the subject property and the Applicant in the above-referenced application. As demonstrated by substantial evidence in the record and contrary to the DRB findings, Appellant has demonstrated that the Proposed Development meets all applicable criteria. With respect to the specific issue of internal vehicle circulation, the Appellant has demonstrated adequate and safe turning movements, vehicle stacking, and truck

access, as discussed in the Planning Division Memorandum of February 10, 2014. **Exhibit 2.**

3. Procedural History.

Appellant applied for these land use permits on November 12, 2013. The application was deemed incomplete on November 20, 2013. Appellant submitted additional materials on December 4 and December 7, 2013. The application was deemed complete on December 19, 2013. An initial DRB hearing was conducted on January 13, 2014. The record of this hearing was held open until January 27, 2014. A second DRB hearing and final consideration of the Proposed Development was held on February 10, 2014. Notice of the DRB's decision was mailed on February 13, 2014. Under the 120-day rule, the City must issue a final decision by April 8, 2014.

4. Compliance with Appeal Requirements.

Wilsonville's procedures for an appeal of a DRB decision are set forth in WDC 4.022(.02). This appeal is consistent with that section, as discussed below:


Section 4.022 Appeal and Call-up Procedures.

(.02) Board Action. A decision of the Development Review Board may be appealed to the Council by any affected party who participated in the hearing before the Board by filing an appeal within fourteen (14) calendar days of the posting of the notice of decision, or by the call-up procedures listed below. The notice of appeal shall indicate the decision that is being appealed.

RESPONSE: The City mailed its notice of the DRB's decision on February 13, 2014. Exhibit 3. The deadline for appeal is February 27, 2014. This Notice of Intent to Appeal, dated February 21, 2014, is therefore timely. This Notice of Intent to Appeal also indicates the decisions being appealed, which are stated in **Exhibit 3**. Therefore, this Notice of Intent to Appeal meets the requirements of WDC 4.022(.02).

5. Conclusion.

For the reasons stated herein, which will be supplemented prior to the hearing on this appeal, the City Council should reverse the February 10, 2014 decision of the DRB and approve Appellant's application in its entirety.



Steven L. Pfeiffer, Appellant's Representative
Perkins Coie LLP
1120 NW Couch St., 10th Floor
Portland, OR 97209-4128
Phone: (503)-727-2261

Dated: _____

2/21/14

EXHIBITS

- Exhibit 1: DRB Staff Report
- Exhibit 2: Staff Memorandum (February 10, 2014)
- Exhibit 3: Notice of DRB Decision

DEVELOPMENT REVIEW BOARD MEETING

MONDAY, JANUARY 13, 2014
6:30 PM

VIII. Public Hearing:

B. Resolution No. 268. Boones Ferry Pointe – The Human Bean Drive-up Coffee Kiosk: SFA Design Group and CB Anderson Architects – Representatives for Wilsonville Devco LLC – Applicant/Owner. The applicant is requesting approval of a Stage II Final Plan revision, Site Design Review and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk at the corner of 95th Avenue and Boones Ferry Road. The subject site is located on Tax Lot 302 of Section 2DB, T3S, R1W, Washington County, Oregon. Staff: Daniel Pauly

Case Files: DB13-0046 – Stage II Final Plan Revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan Revision
and Sign Waiver

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13th day of January, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.09)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

Exhibit A1
STAFF REPORT
WILSONVILLE PLANNING DIVISION

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

DEVELOPMENT REVIEW BOARD PANEL 'A'
QUASI-JUDICIAL PUBLIC HEARING
STAFF REPORT

HEARING DATE	January 13, 2014
DATE OF REPORT:	January 6, 2014

APPLICATION NOS.: DB13-0046 Stage II Final Plan Revision
DB13-0047 Site Design Review
DB13-0048 Master Sign Plan Revision and Sign Waiver

REQUEST/SUMMARY: The Development Review Board is being asked to review a revised Stage II Final Plan, Site Design Review, and revised Master Sign Plan for the development of a new 450 square foot drive-thru coffee shop to replace an approved but un-built 3,150 square foot multi-tenant commercial building at the corner of 95th Avenue and Boones Ferry Road in North Wilsonville.

LOCATION: The proposed coffee shop location is on the southeast corner of the 95th Avenue/ Boones Ferry Road intersection near Elligsen Road/I-5 Interchange. The property is specifically known as Tax Lot 0302, Section 2DB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon.

OWNER/APPLICANT: Josh Veentjer
Wilsonville Devco LLC

APPLICANT'S REPS.: Ben Altman
SFA Design Group

Craig Anderson
CB Anderson Architects

COMPREHENSIVE PLAN MAP DESIGNATION: Commercial

ZONE MAP CLASSIFICATION: PDC (Planned Development Commercial)

STAFF REVIEWERS: Daniel Pauly AICP, Associate Planner
Steve Adams PE, Development Engineering Manager
Don Walters, Building Plans Examiner

STAFF RECOMMENDATION: Approve with conditions the requested revised Stage II Final Plan, Site Design Review request, and revised Master Sign Plan.

Development Review Board Panel „A’ Staff Report January 6, 2014
Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk
DB13-0046, DB13-0047, DB13-0048

Exhibit A1

Page 1 of 50

APPLICABLE REVIEW CRITERIA

Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Section 4.031	Authority of the Development Review Board
Subsection 4.035 (.04)	Site Development Permit Application
Subsection 4.035 (.05)	Complete Submittal Requirement
Section 4.110	Zones
Section 4.116	Standards Applying to Commercial Development in All Zones
Section 4.118	Standards Applying to Planned Development Zones
Section 4.131	Planned Development Commercial Zone (PDC)
Section 4.140	Planned Development Regulations
Section 4.154	On-site Pedestrian Access and Circulation
Section 4.155	Parking, Loading, and Bicycle Parking
Sections 4.156.01 through 4.156.11	Sign Regulations
Section 4.167	Access, Ingress, and Egress
Section 4.171	Protection of Natural Features and Other Resources
Section 4.175	Public Safety and Crime Prevention
Section 4.176	Landscaping, Screening, and Buffering
Section 4.177	Street Improvement Standards
Section 4.179	Mixed Solid Waste and Recyclables Storage
Sections 4.199.20 through 4.199.60	Outdoor Lighting
Sections 4.300 through 4.320	Underground Utilities
Sections 4.400 through 4.450 as applicable	Site Design Review

Vicinity Map



BACKGROUND/SUMMARY:

Approved Stage I Master Plan/Site History

The subject property is part of the Edwards Business Center Industrial Master Plan. This master plan envisioned a variety of industrial and commercial uses. The Master Plan designated the subject site as commercial, but did not specify the type of commercial use. Previously the City received an application for an office building on the site, which was never built. In March 2013 the Development Review Board approved an application to construct a fast-food restaurant and a multi-tenant commercial building consistent with the designation of the property in the Master Plan. The restaurant building has been built, but the property owner determined they were unable to find appropriate tenants and finance the commercial building. The applicant is now requesting to replace the multi-tenant commercial building portion of the development with a drive-thru coffee kiosk which remains consistent with the Stage I Master Plan commercial designation.

Stage II Final Plan (DB13-0046)

The Stage II Final Plan looks at the function and overall aesthetics of the proposed development, including traffic, parking, and circulation.

The proposed revised master plan includes a 450 square foot drive-thru coffee kiosk, and associated site improvements including parking, circulation, and landscaping. The coffee kiosk development replaces a multi-tenant commercial building approved by the DRB in March 2013

at the same time the adjacent Carl's Jr. restaurant was approved. The development site sits just north of the recently completed Carl's Jr. restaurant at the southeast corner of SW 95th Avenue and SW Boones Ferry Road. The kiosk building has a flat roof with a parapet to screen view of mechanical equipment. The north end of the building has a tower featuring the sign bands. A drive through lane wraps around the east, north, and west side of the kiosk and the adjoining patio and parking area. Parking is to the south and southeast.

Vehicle access to the coffee kiosk is via an existing shared driveway with Holiday Inn, Chevron, and Carl's Jr.

The Modified Stage II Final Plan for Boones Ferry Point, which will include Carl's Jr. and the proposed coffee kiosk, proposes approximately 15569 square feet of landscaping, 37 parking spaces (35 required), maneuvering and circulations areas, and mixed solid waste and recyclables storage. The total gross area of the site covered by the Stage II Master Plan is 55,605 square feet or 1.28 acres.

Site Design Review (DB13-0047)

Architectural Design

In the application for the original Boones Ferry Point (DB12-0074 et. seq.) the applicant explained how the design goal was to identify with the general environment of commercial development at Argyle Square and along Wilsonville Road while also adding a unique personality to the development and proper identity to the planned tenants. Smaller scale wood-frame structures using traditional exterior materials intended to reinforced their location in Wilsonville's small town setting. The approved buildings featured brick, horizontal lap siding, and board and batten materials. The proposed coffee kiosk follows this same architectural theme previously proposed and approved. The building features brick around the base, with a mix of lap siding and horizontal siding on the main body of the building. The tower design has similar shape as the Carl's Jr. building towers, but uses different material and colors. The Carl's Jr. building and the proposed coffee kiosk incorporate similar architectural elements, but have enough differences to be unique and complementary.

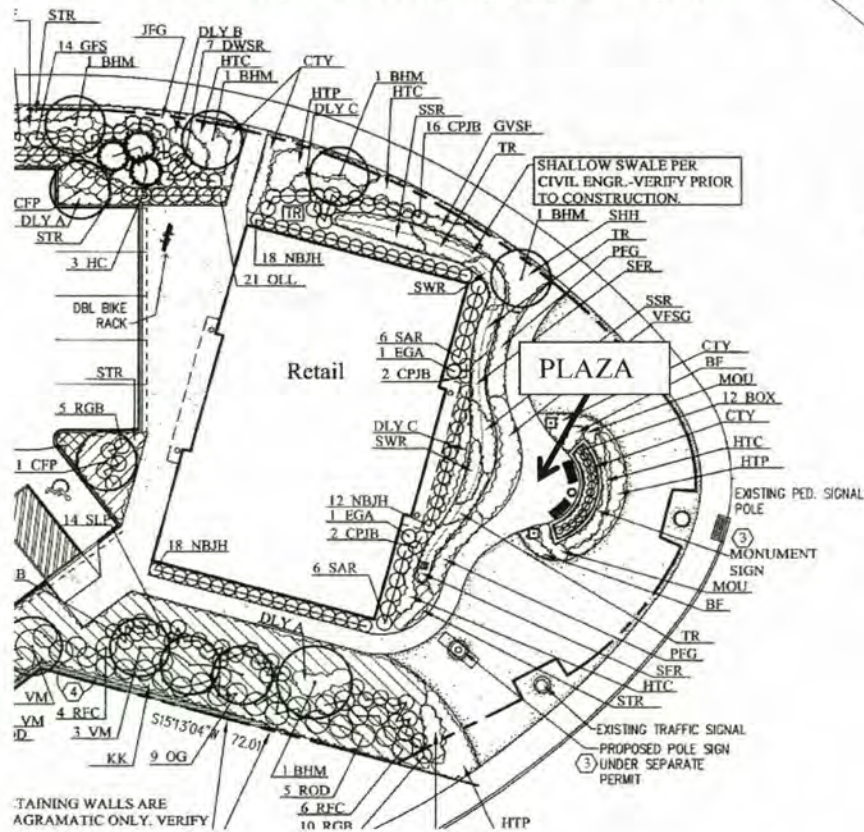
Proposed Drive-thru Coffee Kiosk Rendering



Landscape and Hardscape Design

In the design of Boones Ferry Pointe previously approved by the DRB a planter and plaza are featured at the north of the site to acknowledge the gateway at a prominent intersection on the northern edge of the City. The remainder of the landscaping is typical of parking lots and commercial areas in Wilsonville. In the proposed revised plan the planter and gateway sign with flag remain, but the plaza has been replaced with a patio area adjacent to the coffee kiosk. The remainder of the area around the coffee kiosk accommodates the drive-thru lane and otherwise remains typical of parking lots and commercial areas in Wilsonville.

Landscape Plan Previously Approved by DRB



Building Signs

All three facades of the coffee kiosk where signs are proposed are eligible for building signs, with the allowed area based on the length of the different facades. The building signs will be wall mounted internally illuminated logo cabinets, like Carl's Jr., or individual internally illuminated channel letters. The signs will be appropriately placed on the buildings either centered in architectural features or centered above doors or windows. The sign design and placement is similar to other commercial retail developments in Wilsonville including Argyle Square and Old Town Square. Due to the narrow length of the north façade of the building, the applicant is requesting a waiver to allow a sign of the same size as the east and west facades, providing consistency on each of the three facades of the northern portion of the building, which are very similar architecturally.

Page 6 of 50

DISCUSSION TOPICS:

Bicycle Parking

While the required number of bicycle parking spaces is provided, a couple requirements for bicycle parking are not met. The requirements not met include the spacing between bike parking and the kiosk building and the distance of the bike parking from the pedestrian service window. Condition of Approval PDA 2 requires the bicycle parking to be relocated within the plaza area or otherwise modified to meet these requirements.

Existing Hardscape and Landscape Improvements

Most of the hardscape and landscape for the proposed development has already been installed. This was done by the developer at their own risk. While, staff recommends approval, with modifications, of the hardscape and landscape as installed, the Development Review Board has full authority to require changes to the hardscape and landscape as if none had yet been installed.

Tables and Other Furnishings for Patio Area

The applicant has not provided information on tables or other furnishings for the patio area adjacent to the coffee kiosk. While none are currently proposed, it is understood furnishings will be placed in this area. Condition of Approval PDB 9 ensures the design of these furnishings will be durable and match or complement to the neighboring building thus helping to meet the site design review standards.

Restrictive Covenant Legal Dispute

As described in Exhibit D1 a legal dispute is ongoing regarding whether a restrictive covenant on the property prevents the operation of the proposed coffee kiosk. This is a private matter to be resolved between the parties. Staff does not see a reason to delay City approval with conditions of the proposed development. See letter regarding this matter from Barbara Jacobson, Assistant City Attorney, Exhibit C3.

CONCLUSION AND CONDITIONS OF APPROVAL:

Staff has reviewed the applicant's analysis of compliance with the applicable criteria. The Staff report adopts the applicant's responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, staff recommends that the Development Review Board approve the proposed application (DB13-0046, DB13-0047, DB13-0048) with the following conditions:

REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION

Planning Division Conditions:

- PDA 1.** The approved final plan schedule shall control the issuance of all building permits and shall restrict the nature, location and design of all uses. Minor changes to the approved final development plan may be approved by the Planning Director through administrative review pursuant to Section 4.030 if such changes are consistent with the purposes and general character of the plan. All other modifications shall be processed in the same manner as the original application and shall be subject to the same procedural requirements.
- PDA 2.** The applicant shall modify or relocate the bicycle parking spaces to meet the following standards identified in Subsection 4.155 (.04) B. while continuing to meet all other applicable standards:
- An aisle at least 5 feet wide shall be maintained behind all required bicycle parking to allow room for bicycle maneuvering.
 - Each space be located within 30 feet of the pedestrian service window.

REQUEST B: DB13-0047 SITE DESIGN REVIEW

Planning Division Conditions:

- PDB 1.** Construction, site development, and landscaping shall be carried out in substantial accord with the Development Review Board approved plans, drawings, sketches, and other documents. Minor revisions may be approved by the Planning Director through administrative review pursuant to Section 4.030. See Findings B3.
- PDB 2.** All landscaping required and approved by the Board shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping as determined by the Planning Director is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City will be returned to the applicant. See Finding B9.

PDB 3.	The approved landscape plan is binding upon the applicant/owner. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, pursuant to the applicable sections of Wilsonville's Development Code. See Finding B10.
PDB 4.	All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved by the Board, unless altered as allowed by Wilsonville's Development Code. See Findings B11 and B12.
PDB 5.	<p>The following requirements for planting of shrubs and ground cover shall be met:</p> <ul style="list-style-type: none"> • Non-horticultural plastic sheeting or other impermeable surface shall not be placed under landscaping mulch. • Native topsoil shall be preserved and reused to the extent feasible. • Surface mulch or bark dust shall be fully raked into soil of appropriate depth, sufficient to control erosion, and shall be confined to areas around plantings. • All shrubs shall be well branched and typical of their type as described in current AAN Standards and shall be equal to or better than 2-gallon containers and 10" to 12" spread. • Shrubs shall reach their designed size for screening within three (3) years of planting. • Ground cover shall be equal to or better than the following depending on the type of plant materials used: gallon containers spaced at 4 feet on center minimum, 4" pot spaced 2 feet on center minimum, 2-1/4" pots spaced at 18 inch on center minimum. • No bare root planting shall be permitted. • Ground cover shall be sufficient to cover at least 80% of the bare soil in required landscape areas within three (3) years of planting. • Appropriate plant materials shall be installed beneath the canopies of trees and large shrubs to avoid the appearance of bare ground in those locations. • Compost-amended topsoil shall be integrated in all areas to be landscaped, including lawns. <p>See Finding B22.</p>
PDB 6.	Plant materials shall be installed to current industry standards and be properly staked to ensure survival. Plants that die shall be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City. See Finding B27.
PDB 7.	Outdoor lighting associated with the coffee kiosk use shall be dimmed at 10:00 p.m. by an automatic system. See Finding B38.
PDB 8.	All non-exempt luminaires shall be limited to down lighting. Non-exempt luminaires, except luminaire DD, shall be mounted and aimed consistent with their fully shielded classification. See Finding B35 and B37.
PDB 9.	Furnishings for the patio area shall be of durable materials that can withstand multiple years of outdoor exposure and remain in a like-new condition. Furnishings for the patio area shall be colors matching or complementary to the coffee kiosk building. Furnishings are not approved to have any signage. Final design and

placement of furnishings shall be approved by the Planning Division through the Class I Administrative Review process.
--

REQUEST C DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER

PDC 1.	Non-exempt signs shall be issued a Class I Sign Permit through the Planning Division prior to installation to ensure compliance with the approved Master Sign Plan.
PDC 2.	This action only changes the components of the Master Sign Plan explicitly noted. All other aspects of the Master Sign Plan and Conditions of Approval of Case File DB12-0076 remain in effect.
PDC 3.	The illuminated directional signs at internal circulation drive intersections shall be limited to six (6) square feet. See Finding C24.

CONDITIONS OF APPROVAL FROM THE ENGINEERING AND BUILDING DIVISIONS FOR ALL REQUESTS

The following Conditions of Approval are provided by the Engineering and Building Divisions of the City's Community Development Department which have authority over development approval. A number of these Conditions of Approval are not related to land use regulations under the authority of the Development Review Board or Planning Director. Only those Conditions of Approval related to criteria in Chapter 4 of Wilsonville Code and the Comprehensive Plan, including but not limited to those related to traffic level of service, site vision clearance, and concurrency, are subject to the Land Use review and appeal process defined in Wilsonville Code and Oregon Revised Statutes and Administrative Rules. Other Conditions of Approval are based on City Code chapters other than Chapter 4, state law, federal law, or other agency rules and regulations. Questions or requests about the applicability, appeal, exemption or non-compliance related to these other Conditions of Approval should be directed to the City Division with authority over the relevant portion of the development approval.

Engineering Division Conditions:	
Specific Comments:	
PF 1.	Engineering Public Facilities Conditions of Approval (PF conditions) for DB12-0074 and DB12-0075 remain in effect for this project except as further modified below.
PF 2.	At the request of Staff, DKS Associates completed a Trip Generation memo dated September 5, 2013 revising a previously completed Carl's Jr. Traffic Impact Study that was completed in May 2012. The proposed use is expected to generate 13 fewer new primary trips than the previously approved use. The project is hereby limited to no more than the following impacts. <div style="display: flex; justify-content: space-between; width: 100%;"> Estimated New PM Peak Hour Trips 117 </div>
PF 3.	Stormwater detention and storm water quality for this site will be handled via the stormwater facility constructed with the Boones Ferry Pointe project.
PF 4.	The project shall connect to the existing Storm lateral constructed with the Boones Ferry Pointe project.
PF 5.	The project shall connect to the existing Sanitary Sewer stub constructed with the

	Boones Ferry Pointe project.
PF 6.	The project shall connect to the existing Water service constructed with the Boones Ferry Pointe. project.

<u>Building Division Conditions:</u>	
BD 1.	ACCESSIBLE. At least one of the walk-up service windows shall be accessible.

MASTER EXHIBIT LIST:

The following exhibits are hereby entered into the public record by the Development Review Board as confirmation of its consideration of the application as submitted. This is the exhibit list that includes exhibits for Planning Case Files DB13-0046, DB13-0047, DB13-0048.

- A1.** Staff report and findings (this document)
- A2.** Staff's public hearing presentation slides (not available until public hearing)
- B1.** Applicant's Notebook:
 - 1. Notice of Complete Application Dated December 9, 2013
 - 2. Response to Letter of Incomplete Application Dated December 4, 2013
 - 3. Notice of Incomplete Application Dated November 20, 2013
 - 4. Application Form Signed by Josh Ventjeer, Managing Member of Wilsonville Devco LLC
 - 5. Compliance Report
 - 6. DKS Traffic Memo
 - 7. Site Plans Approved by DRB in Case Files DB12-0074 through DB12-0076
 - 8. Signage (Proposed)
 - 9. Lighting Detail & Photometrics (Proposed)
 - 10. Revised Site & Architectural Plans (Proposed)
- B2.** Plan Sets and Architectural Drawings:
 - Color Architectural Renderings (Proposed)
 - C105 Previous Approved Grading Plan (DB12-0074 through DB12-0076)
 - A1.0 Architectural Site Plan (Proposed)
 - DD101 Composite Utility Plan (Proposed)
 - DD102 Grading Plan (Proposed)
 - L2.0 Landscape Planting Plan (Proposed)
 - L1.0 Landscape Irrigation Plan (Proposed)
 - A-1 Coffee Kiosk Floor Plan and Upper Wall Framing Plan from Pacific Mobile
 - A-3 Coffee Kiosk Wall Elevations from Pacific Mobile
 - E-1 Coffee Kiosk Electrical Plan from Pacific Mobile
 - SE1.0 Photometric Site Plan (Proposed)
 - Sign Drawings
- B3.** Materials Boards for Coffee Kiosk (available at public hearing)
- C1.** Engineering Division Comments and Conditions
- C2.** Building Division Comments and Conditions
- C3.** January 3, 2014 Letter from Barbara Jacobson, Assistant City Attorney, to Alec Laidlaw RE: The Human Bean Coffee Store Legal Dispute
- D1.** Written Testimony Received January 3, 2014 on behalf of Garry Lapoint

Development Review Board Panel „A’ Staff Report January 6, 2014
Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk
DB13-0046, DB13-0047, DB13-0048

Exhibit A1

Page 11 of 50

January 3, 2014 email from Terra Burns, Laidlaw and Laidlaw Paralegal, to Daniel Pauly, Associate Planner

January 3, 2014 Letter from Alec Laidlaw to Daniel Pauly, Associate Planner

Copy of Washington County Circuit Court Case No. C138125CV Defendants' ORCP 21 Motions

Copy of Washington County Circuit Court Case No. C138125CV Declaration of Garry L. Lapoint in Support of Defendants' ORCP 21 Motions

Copy of Washington County Circuit Court Case No. C138125CV Defendants' Counsel's Certificate of Compliance (UTCR 5.010)

FINDINGS OF FACT:

1. The statutory 120-day time limit applies to this application. The application was received on November 12, 2013. On November 20, 2013, staff conducted a completeness review within the statutorily allowed 30-day review period, and, on December 4, 2013, the Applicant submitted new materials. Additional materials were submitted on December 7, 2013. On December 9, 2013 the application was deemed complete. The City must render a final decision for the request, including any appeals, by April 8, 2014.
2. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	PDI	95 th /Boones Ferry Intersection/ Riverwood Industrial Campus
East:	PDC	Chevron/Boones Ferry Rd.
South:	PDC	Holiday Inn
West:	PDC	95 th Avenue/AGC Center

3. Prior land use actions include:

Edwards Business Center Industrial Park Plat-Stage I

97DB28 Stage II, Site Design Review, LaPoint Center

DB06-0041, DB06-0043, DB06-0057, DB06-0042 Stage II Final Plan, Site Design Review, Waiver to Building Height, Master Sign Plan for Brice Office Building (Expired)

DB12-0074 through DB12-0076 Stage II Final Plan, Site Design Review, and Master Sign Plan for fast food restaurant and multi-tenant commercial building.

DB13-0027 Site Design Review for accent lighting on fast food restaurant.

4. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

CONCLUSIONARY FINDINGS:

NOTE: Pursuant to Section 4.014 the burden of proving that the necessary findings of fact can be made for approval of any land use or development application rests with the applicant in the case.

GENERAL INFORMATION

Section 4.008 Application Procedures-In General

Review Criteria: This section lists general application procedures applicable to a number of types of land use applications and also lists unique features of Wilsonville's development review process.

Finding: These criteria are met.

Explanation of Finding: The application is being processed in accordance with the applicable general procedures of this Section.

Section 4.009 and Subsection 4.140 (.03) Who May Initiate Application and Ownership

Review Criterion: "Except for a Specific Area Plan (SAP), applications involving specific sites may be filed only by the owner of the subject property, by a unit of government that is in the process of acquiring the property, or by an agent who has been authorized by the owner, in writing, to apply." "The tract or tracts of land included in a proposed Planned Development must be in one (1) ownership or control or the subject of a joint application by the owners of all the property included."

Finding: This criterion is satisfied.

Explanation of Finding: The application has been submitted on behalf of the property owner, Wilsonville Devco LLC. The application form is signed by Josh Veentjer, Managing Member.

Subsection 4.010 (.02) Pre-Application Conference

Review Criteria: This section lists the pre-application process

Finding: These criteria are satisfied.

Explanation of Finding: A pre-application conference was held on August 22, 2013 in accordance with this subsection.

Subsection 4.011 (.02) B. Lien Payment before Application Approval

Review Criterion: "City Council Resolution No. 796 precludes the approval of any development application without the prior payment of all applicable City liens for the subject property. Applicants shall be encouraged to contact the City Finance Department to verify that there are no outstanding liens. If the Planning Director is advised of outstanding liens while an application is under consideration, the Director shall advise the applicant that payments must be made current or the existence of liens will necessitate denial of the application."

Finding: This criterion is satisfied.

Explanation of Finding: No applicable liens exist for the subject property. The application can thus move forward.

Subsection 4.035 (.04) A. General Site Development Permit Submission Requirements

Review Criteria: “An application for a Site Development Permit shall consist of the materials specified as follows, plus any other materials required by this Code.” Listed 1. through 6. j.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided all of the applicable general submission requirements contained in this subsection.

Section 4.110 Zoning-Generally

Review Criteria: “The use of any building or premises or the construction of any development shall be in conformity with the regulations set forth in this Code for each Zoning District in which it is located, except as provided in Sections 4.189 through 4.192.” “The General Regulations listed in Sections 4.150 through 4.199 shall apply to all zones unless the text indicates otherwise.”

Finding: These criteria are satisfied.

Explanation of Finding: This proposed development is in conformity with the applicable zoning district and general development regulations listed in Sections 4.150 through 4.199 have been applied in accordance with this Section.

REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION

Planned Development Regulations

Subsection 4.140 (.01) Purpose of Planned Development Regulations

- A1. **Review Criterion:** The proposed Stage II Final Plan shall be consistent with the Planned Development Regulations purpose statement.

Finding: This criterion is satisfied.

Explanation of Finding: Based on the information provided by the applicant in their narrative, staff is of the professional opinion that the purpose of the planned development regulations is met by the proposed Stage II Final Plan.

Subsections 4.140 (.02) and (.05) Planned Development Lot Size and Permit Process

- A2. **Review Criteria:** "Planned Development may be established on lots which are suitable for and of a size to be planned and developed in a manner consistent with the purposes and objectives of Section 4.140." "Any site designated for development in the Comprehensive Plan may be developed as a Planned Development, provided that it is zoned ,PD.' All sites which are greater than two (2) acres in size, and designated in the Comprehensive Plan for commercial, residential, or industrial use shall be developed as Planned Developments, unless approved for other uses permitted by the Development Code."

"All parcels of land exceeding two (2) acres in size that are to be used for residential, commercial or industrial development, shall, prior to the issuance of any building permit:

1. Be zoned for planned development;
2. Obtain a planned development permit; and
3. Obtain Development Review Board, or, on appeal, City Council approval."

Finding: These criteria are satisfied.

Explanation of Finding: The development site is less than two (2) acres. However, it is previously been zoned for Planned Development. The property is designated for commercial development in the Comprehensive Plan, and is zoned Planned Development Commercial. The property is of sufficient size and will be developed as a planned development in accordance with this subsection.

Subsection 4.140 (.04) Professional Design Team Required for Planned Developments

- A3. **Review Criteria:** "The applicant for all proposed Planned Developments shall certify that the professional services of the appropriate professionals have been utilized in the planning process for development. One of the professional consultants chosen by the applicant shall be designated to be responsible for conferring with the planning staff with respect to the concept and Explanation of the plan."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant's compliance narrative lists the appropriate professionals involved in the planning and permitting process. Ben Altman of SFA Design Group has been designated the coordinator for the planning portion of the project.

Stage II Final Plan Submission Requirements and Process

Subsection 4.140 (.09) A. Timing of Submission

- A4. **Review Criterion:** “Unless an extension has been granted by the Development Review Board, within two (2) years after the approval or modified approval of a preliminary development plan (Stage I), the applicant shall file with the City Planning Department a final plan for the entire development or when submission in stages has been authorized pursuant to Section 4.035 for the first unit of the development”

Finding: This criterion is satisfied.

Explanation of Finding: A previous Stage I approval identified the subject property as a future commercial stage. A Stage II Final Plan was approved consistent with the previous Stage I Master Plan in March 2013. This application requests revision of the Stage II Final plan.

Subsection 4.140 (.09) C. Conformance with Stage I and Additional Submission Requirements

- A5. **Review Criteria:** “The final plan shall conform in all major respects with the approved preliminary development plan, and shall include all information included in the preliminary plan plus the following:” listed 1. through 6.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant states, and staff concurs, that the Stage II plans substantially conforms to the Stage I Master plan. The applicant has provided the required drawings and other documents showing all the additional information required by this subsection.

Subsection 4.140 (.09) D. Stage II Final Plan Detail

- A6. **Review Criterion:** “The final plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development or phase of development.”

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has provided sufficiently detailed information to indicate fully the ultimate operation and appearance of the development, including a detailed site plan, landscape plans, floor plans, elevation drawings, and material information.

Subsection 4.140 (.09) E. Submission of Legal Documents

- A7. **Review Criterion:** “Copies of legal documents required by the Development Review Board for dedication or reservation of public facilities, or for the creation of a non-profit homeowner’s association, shall also be submitted.”

Finding: This criterion is satisfied.

Explanation of Finding: No additional legal documentation is required for dedication or reservation of public facilities.

Subsection 4.140 (.09) J. Planned Development Permit Requirements

- A8. **Review Criteria:** "A planned development permit may be granted by the Development Review Board only if it is found that the development conforms to all the following criteria, as well as to the Planned Development Regulations in Section 4.140:" listed J. 1. through 3. Includes traffic level of service requirements.

Finding: These criteria are satisfied.

Explanation of Finding: Proposed is a coffee kiosk in an area designated for commercial in the Comprehensive Plan. The proposed use is at a corner and clustered with commercial uses similarly serving the travelling public, thus being part of a commercial center rather than strip commercial development. As demonstrated in the DKS Traffic Memo in the applicant's notebook, Exhibit B1, specifically page 2 of 3 of the memo, the required traffic level of service is being maintained. All utilities and services are available to serve the development.

Commercial Development in Any Zone

Subsection 4.116 (.01) Commercial Development to be in Centers and Complexes

- A9. **Review Criterion:** "Commercial developments shall be planned in the form of centers or complexes as provided in the City's Comprehensive Plan. As noted in the Comprehensive Plan, Wilsonville's focus on centers or complexes is intended to limit strip commercial development."

Finding: This criterion is satisfied.

Explanation of Finding: The approved Boones Ferry Pointe commercial development is in the form of a center clustered at an intersection with other commercial development.

Subsection 4.116 (.05) All Commercial Activity to be Completely Enclosed

- A10. **Review Criteria:** "All businesses, service or processing, shall be conducted wholly within a completely enclosed building; except for:" Listed A. through G.

Finding: These criteria are satisfied.

Explanation of Finding: All commercial activity other than exempt activities will be within in the proposed buildings. The only exceptions from the list given noted by the applicant are off-street parking for customers and employees, and outdoor seating. Staff notes there is the possibility as well for temporary outside sales.

Subsection 4.116 (.07) Uses Limited to those Meeting Industrial Performance Standards

- A11. **Review Criteria:** "Uses shall be limited to those which will meet the performance standards specified in Section 4.135(.05), with the exception of 4.135(.05)(M.)(3.)."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development facilitates commercial uses meeting these performance standards. It is understood that all uses will need to continue to meet these standards over time.

Subsection 4.116 (.08) Vision Clearance Standards for Corner Lots

A12. **Review Criteria:** “Corner lots shall conform to the vision clearance standards set forth in Section 4.177.”

Finding: These criteria are satisfied.

Explanation of Finding: Vision clearance has been reviewed by the City’s Engineering Division and the City’s Public Works standards for vision clearance are met.

Subsection 4.116 (.10) Commercial Development Generally

A13. **Review Criteria:** This subsection lists a number of requirements for commercial development such as setback, lot size, lot coverage, and street frontage requirements.

Finding: These criteria are satisfied.

Explanation of Finding: All the applicable standards listed in this subsection are met.

Subsection 4.116 (.14) B. Prohibited Uses

A14. **Review Criteria:** “Any use that violates the performance standards of Section 4.135(.05), other than 4.135(.05)(M.)(3.) is prohibited within commercial developments.”

Finding: These criteria are satisfied.

Explanation of Finding: No uses prohibited by this subsection are proposed.

Standards Applying in All Planned Development Zones

Subsection 4.118 (.01) Additional Height Guidelines

A15. **Review Criterion:** “In cases that are subject to review by the Development Review Board, the Board may further regulate heights as follows:

A. Restrict or regulate the height or building design consistent with adequate provision of fire protection and fire-fighting apparatus height limitations.

B. To provide buffering of low density developments by requiring the placement of three or more story buildings away from the property lines abutting a low density zone.

C. To regulate building height or design to protect scenic vistas of Mt. Hood or the Willamette River.”

Finding: This criterion is satisfied.

Explanation of Finding: Staff does not recommend the Development Review Board require a height less than the applicant proposes as the proposed height provides for fire protection access, does not abut a low density zone, and does not impact scenic views of Mt. Hood or the Willamette River.

Subsection 4.118 (.03) Waivers

A16. **Review Criteria:** “Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may” waive a number of standards as listed in A. through E.

Finding: These criteria are satisfied.

Explanation of Finding: No planned development waivers have been requested by the applicant or are necessary to approve the application as proposed.

Subsection 4.118 (.03) E. Other Requirements or Restrictions

A17. **Review Criteria:** "Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may adopt other requirements or restrictions, inclusive of, but not limited to, the following:" Listed 1. through 12.

Finding: These criteria are satisfied.

Explanation of Finding: No additional requirements or restrictions are recommended pursuant to this subsection.

Subsection 4.118 (.04) Effect of Determination of Compliance and Conditions of Approval on Development Cost

A18. **Review Criteria:** "The Planning Director and Development Review Board shall, in making their determination of compliance in attaching conditions, consider the effects of this action on availability and cost. The provisions of this section shall not be used in such a manner that additional conditions, either singularly or cumulatively, have the effect of unnecessarily increasing the cost of development. However, consideration of these factors shall not prevent the Board from imposing conditions of approval necessary to meet the minimum requirements of the Comprehensive Plan and Code."

Finding: These criteria are satisfied.

Explanation of Finding: It is staff's professional opinion that the determination of compliance or attached conditions do not unnecessarily increase the cost of development, and no evidence has been submitted to the contrary.

Subsection 4.118 (.05) Requirements to Set Aside Tracts for Certain Purposes

A19. **Review Criteria:** "The Planning Director, Development Review Board, or on appeal, the City Council, may as a condition of approval for any development for which an application is submitted, require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated for the following uses:" Recreational Facilities, Open Space Area, Easements."

Finding: These criteria are satisfied.

Explanation of Finding: No additional tracts are being required for the purposes given.

Subsection 4.118 (.09) Habitat Friendly Development Practices

A20. **Review Criteria:** "To the extent practicable, development and construction activities of any lot shall consider the use of habitat-friendly development practices, which include:

A. Minimizing grading, removal of native vegetation, disturbance and removal of native soils, and impervious area;

B. Minimizing adverse hydrological impacts on water resources, such as using the practices described in Part (a) of Table NR-2 in Section 4.139.03, unless their use is prohibited by an applicable and required state or federal permit, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;

C. Minimizing impacts on wildlife corridors and fish passage, such as by using the practices described in Part (b) of Table NR-2 in Section 4.139.03; and

D. Using the practices described in Part (c) of Table NR-2 in Section 4.139.03.”

Finding: These criteria are satisfied.

Explanation of Finding: As stated by the applicant and adopted by DRB for the previous Stage II approval, “The site has previously been rough graded and there is no significant native vegetation. The site does not contain any SROZ and no fish or wildlife habitats are associated with this property. The site has been designed consistent with the Habitat-Friendly practices. The storm system design provides for on-site water quality and volume control which protects the downstream wetland area south of the AGC building.” The proposal does not significantly alter compliance as previously found.

Planned Development Commercial Zone

Subsection 4.131 (.01) A. 1. Uses Typically Permitted

A21. **Review Criteria:** This subsection lists the uses that are typically permitted in the PDC Zone.

Finding: These criteria are satisfied.

Explanation of Finding: The proposal replaces an approved but un-built multi-tenant commercial building with drive-thru coffee kiosk which is an allowed service establishment use.

Subsection 4.131 (.02) Prohibited Uses

A22. **Review Criteria:** This subsection lists the prohibited uses in the PDC Zone.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has not proposed any prohibited uses for the site.

Subsection 4.131 (.03) 1. Block and Access Standards: Connectivity for Different Modes

A23. **Review Criteria:** “The Development Review Board shall determine appropriate conditions of approval to assure that adequate connectivity results for pedestrians, bicyclists, and motor vehicle drivers. Consideration shall be given to the use of public transit as a means of meeting access needs.”

Finding: These criteria are satisfied.

Explanation of Finding: No new blocks are proposed, and the proposed development proposes to use the existing shared private driveway on 95th Avenue partially on the subject property. A development agreement has been agreed upon between the owner of the subject property, neighboring properties, and the City ensuring appropriate access from the shared driveway.

On-site Pedestrian Access and Circulation

Subsection 4.154 (.01) B. 1. Continuous Pathway System

A24. **Review Criterion:** “A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable.”

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has provided a network a network of pathways from the proposed location of the coffee kiosk to support a continuous pathway system

throughout the site. This includes two connections to the 95th Avenue sidewalk which then connects to Carl's Jr. and Holiday Inn as well as a pathway connection to the east to provide access to parking, trash enclosures, and the Chevron property. See sheet A1.0 in Exhibit B2.

Subsection 4.154 (.01) B. 2. Safe, Direct, and Convenient Pathways

A25. **Review Criteria:** "Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:

- a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.
- b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.
- c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.
- d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)(B.)(3.)(d.)."

Finding: These criteria are satisfied.

Explanation of Finding:

- All proposed pathways are of smooth and consistent concrete and no hazards are evident on the site plan.
- All proposed pathways are reasonably direct. The path from Carl's Jr. to the 95th Avenue sidewalk then across to the coffee kiosk is reasonably direct. The path from the intersection of 95th Avenue/Boones Ferry is reasonably direct. A direct path is provided from the parking stalls and trash enclosure serving the coffee kiosk.
- Where required, pathways meet ADA requirements or will be required to by the building code.
- The parking lot is not larger than 3 acres in size.

Subsection 4.154 (.01) B. 3. Vehicle/Pathway Separation

A26. **Review Criterion:** "Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards."

Finding: This criterion is satisfied.

Explanation of Finding: All pathways affected by this review are separated consistent with this subsection. Staff notes pathways marked during previous phases of development do not meet this standard.

Subsection 4.154 (.01) B. 4. Crosswalks

A27. **Review Criterion:** "Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light-color concrete inlay between asphalt, or similar contrast)."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has proposed crosswalks meeting this standard.

Subsection 4.154 (.01) B. 5. Pathway Width and Surface

A28. **Review Criteria:** "Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five (5) feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA."

Finding: These criteria are satisfied.

Explanation of Finding: Primary pathways are the required width. The pathway from the parking area/trash enclosure near Chevron is not a primary pathway and is allowed to be less than five (5) feet in width.

Subsection 4.154 (.01) B. 6. Signs for Pathways

A29. **Review Criteria:** "All pathways shall be clearly marked with appropriate standard signs."

Finding: These criteria are satisfied.

Explanation of Finding: No pathways requiring signs are proposed.

Parking and Loading

Subsection 4.155 (.02) General Parking Provisions

A30. **Review Criteria:** This subsection lists a number of general provisions for parking.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the provisions in this subsection applicable to State II Final Plan review. Among the information provided are parking calculations on sheet A1.0. of Exhibit B2. Staff specifically points out the following:

- In relation to provision B. all parking areas are accessible and usable for parking
- In relation to provisions D. the provided parking meets the sum of the minimum parking for the fast food restaurant and the coffee kiosk.
- In relation to provision J. a note on sheet A1.0 of Exhibit B2 states this requirement will be met.
- In relation to provision K. the parking area is paved and provided with adequate drainage. See Sheets A1.0 and DD102 in Exhibit B2.
- In relation to provision L. the parking lot lighting is fully shielded as to not shine into adjoining structures or the eyes of passerby's.
- In relation to provision N. 6 compact parking spaces are proposed, which is less than forty (40) percent of the proposed parking spaces. They are shown appropriately marked on Sheet A1.0 of Exhibit B2.

Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas

A31. **Review Criteria:** "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet DD5 "Proposed Truck Turning Movements" of Exhibit B2 of DB12-0074 through 0076 demonstrates sufficient access and maneuvering areas for delivery trucks, both for the Chevron fuel and Carl's Jr. and the coffee kiosk. Staff notes fuel off-loading, and restaurant other commercial delivery parking are in the same area of the site separating these operations from the general employee and customer parking and pedestrian areas. The access and maneuvering areas for passenger vehicle parking areas appears sufficient providing adequate space for two-way travel. The applicant states in their compliance narrative in their notebook, Exhibit B1, that "care has been given to the extent practicable to separate vehicle and pedestrian traffic." Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic.

Subsection 4.155 (.03) B. 1.-3. Parking Area Landscaping

A32. **Review Criteria:** "Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:" Listed 1. through 3.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the planting plans (applicant's sheet L1.0), the required amount of landscaping and trees are provided.

Subsection 4.155 (.03) C. Parking and Loading Areas-Safe and Convenient Access

A33. **Review Criterion:** "Be designed for safe and convenient access that meets ADA and ODOT standards. All parking areas which contain ten (10) or more parking spaces, shall for every fifty (50) standard spaces., provide one ADA-accessible parking space that is constructed to building code standards, Wilsonville Code 9.000."

Finding: This criterion is satisfied.

Explanation of Finding: The required ADA space for the coffee kiosk is provided.

Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation

A34. **Review Criteria:** "Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses as well as the existing Chevron and Holiday Inn share a common driveway off 95th Avenue and their access and parking areas are interconnected.

Joint use of many the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations, and direct vehicle and pedestrian paths between destinations with limited choke points. To the extent practicable parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron a direct pedestrian path is provided to the coffee kiosk. Multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site.

Subsection 4.155 (.03) G. Parking Minimum and Maximum

A35. **Review Criteria:** “Tables 5, below, shall be used to determine the minimum and maximum parking standards for various land uses. The minimum number of required parking spaces shown on Tables 5 shall be determined by rounding to the nearest whole parking space.”

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the table below, the proposed parking is consistent with Table 5: Parking Standards. Staff notes the parking count differs from the submitted drawings and narrative, Exhibits B1 and B2, and this finding corrects the inaccurate counts provided in those documents.

Use	Floor Area	Min	Max	Min	Max	Provided
Fast food (with drive-thru)	2,867	9.9 per 1,000 SF	14.9 per 1000 SF	29	43	
Coffee Kiosk	450	9.9 per 1,000 SF	14.9 per 1000 SF	4	7	
Standard Spaces						29
Compact Spaces (40% Max)				--	18	6
Total Non-ADA Spaces				33	50	35
ADA Spaces				2	--	2
Total Parking Spaces						37

Subsection 4.155 (.04) A. Bicycle Parking-General Provisions

A36. **Review Criteria:** This subsection lists general provisions for bicycle parking, listed 1. through 4., including required number of spaces.

Finding: These criteria are satisfied.

Explanation of Finding: A minimum of four (4) spaces are required for the drive-thru coffee kiosk, and four (4) are provided.

Subsection 4.155 (.04) B. Bicycle Parking-Standards

A37. **Review Criteria:** This subsection lists standards for required bicycle parking, listed 1. through 5., including size, access aisle size, spacing between racks, anchoring of lockers and racks, and location standards.

Finding: These criteria are satisfied.

Explanation of Finding: As shown on sheet A1.0 of Exhibit B2 each of the 4 required parking stalls exceeds the minimum dimensions of 2 feet by 6 feet. There is sufficient space to use the bicycle racks without obstructions. Bicycle racks will be securely fastened. Five (5) feet of spacing is not provided between the bicycle racks and the kiosk. The bicycle racks are further than 30 feet from the primary entrance, which in this case staff understands to be the service window open to pedestrians. Condition of Approval PDA 2 will ensure bicycle parking is placed to meet all requirements of this subsection including the spacing from the building and distance from the service window.

Subsection 4.155 (.05) Minimum Off-street Loading Requirements

A38. **Review Criteria:** This subsection defines the requirements for loading berths including when loading berths are required and size requirements.

Finding: These criteria are not applicable.

Explanation of Finding: No loading berths are required for commercial uses of the proposed floor area.

Subsection 4.155 (.06) Carpool and Vanpool Parking Requirements

A39. **Review Criteria:** This subsection defines the requirements for carpool and vanpool parking.

Finding: These criteria are not applicable.

Explanation of Finding: No carpool or vanpool parking is required for commercial parking lots of the proposed size.

Section 4.167 Access, Ingress, and Egress

A40. **Review Criterion:** "Each access onto streets or private drives shall be at defined points as approved by the City and shall be consistent with the public's health, safety and general welfare. Such defined points of access shall be approved at the time of issuance of a building permit if not previously determined in the development permit."

Finding: This criterion is satisfied.

Explanation of Finding: The access points for the development site are existing and approved by the City. No change in access is proposed.

Natural Features

Section 4.171 Protection of Natural Features and Other Resources

A41. **Review Criteria:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.

Finding: These criteria are satisfied.

Explanation of Finding: None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

Public Safety and Crime Prevention

Subsection 4.175 (.01) Design to Deter Crime and Ensure Public Safety

A42. **Review Criterion:** "All developments shall be designed to deter crime and insure public safety."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant asserts, and staff concurs, that attention has been given to site design to deter crime and allow natural surveillance. Staff has no evidence that the proposed development would otherwise negatively impact public safety.

Subsection 4.175 (.02) Addressing and Directional Signing

A43. **Review Criteria:** "Addressing and directional signing shall be designed to assure identification of all buildings and structures by emergency response personnel, as well as the general public."

Finding: These criteria are satisfied.

Explanation of Finding: The design of the site provides for appropriate addressing and directional signage to assure easy identification.

Subsection 4.175 (.03) Surveillance and Police Access

A44. **Review Criterion:** "Areas vulnerable to crime shall be designed to allow surveillance. Parking and loading areas shall be designed for access by police in the course of routine patrol duties."

Finding: This criterion is satisfied.

Explanation of Finding: The parking and loading areas are easily assessable to law enforcement.

Subsection 4.175 (.04) Lighting to Discourage Crime

A45. **Review Criterion:** "Exterior lighting shall be designed and oriented to discourage crime."

Finding: This criterion is satisfied.

Explanation of Finding: While exterior lighting has been minimized it was previously found to discourage crime and continues to do so.

Landscaping Standards

Subsection 4.176 (.01) Purpose of Landscape, Screening, and Buffering

A46. **Review Criteria:** "This Section consists of landscaping and screening standards and regulations for use throughout the City. The regulations address materials, placement, layout, and timing of installation. The City recognizes the ecological and economic value of landscaping and requires the use of landscaping and other screening or buffering to:" Listed A. through K.

Finding: These criteria are satisfied.

Explanation of Finding: In complying with the various landscape standards in Section 4.176 the applicant has demonstrated the proposed Stage II Final Plan is in compliance with the landscape purpose statement.

Subsection 4.176 (.02) B. Landscaping Standards and Code Compliance

A47. **Review Criteria:** “All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length”

Finding: These criteria are satisfied.

Explanation of Finding: No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent

A48. **Review Criteria:** “The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees.”

Finding: These criteria are satisfied.

Explanation of Finding: The applicant’s submitted landscape plans (applicant’s sheets L 1.0 and L2.0) show a variety of plant materials and placement consistent with the general landscape standard, specifically along the frontage with SW 95th Avenue and SW Boones Ferry Road.

Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials

A49. **Review Criteria:** “Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

- a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.
- b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet.”

Finding: These criteria are satisfied.

Explanation of Finding: The planting plan (applicant’s sheet L2.0) shows landscaping meeting the functional requirements of this subsection.

Subsection 4.176 (.02) E. 1. High Screen Landscape Standard-Intent

A50. **Review Criterion:** “The High Screen Landscaping Standard is a landscape treatment that relies primarily on screening to separate uses or developments. It is intended to be applied in situations where visual separation is required.”

Finding: This criterion is satisfied.

Explanation of Finding: No development related to the coffee kiosk requires the high screen standards be applied, especially as menu boards are oriented as to not be visible off site. If menu boards are relocated so the face of the sign faces Boones Ferry Road or 95th Avenue, then additional review will be needed to provide landscaping that provides appropriate screening such as the planting screening the Carl's Jr. menu board.

Subsection 4.176 (.03) Landscape Area and Locations

- A51. **Review Criteria:** "Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable."

Finding: These criteria are satisfied.

Explanation of Finding: According to the applicant twenty-eight percent (28%) of the site is proposed to be in landscaping. The landscaping is in a variety of areas throughout the site, including the street frontage areas. Landscaping is placed along the streets to soften the look of off-street parking areas. As shown on the applicant's sheet L 2.0 a variety of landscape materials are being used.

Subsection 4.176 (.04) Buffering and Screening

- A52. **Review Criteria:** "Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.

C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.

D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.

E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.

F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval."

Finding: These criteria are satisfied.

Explanation of Finding: The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.

Subsection 4.176 (.09) Landscape Plans

- A53. **Review Criteria:** "Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated."

Finding: These criteria are satisfied.

Explanation of Finding: Applicant's sheets L1.0 and L2. in Exhibit B2 provide the required information.

Subsection 4.176 (.12) Mitigation Standards

A54. **Review Criteria:** "A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants."

Finding: This criterion is satisfied.

Explanation of Finding: No existing native plans are being removed requiring a mitigation plan pursuant to this subsection.

Other Standards

Section 4.177 Street Improvement Standards

A55. **Review Criteria:** This section establishes improvement standards for public streets, along with private access drives and travel lanes.

Finding: These criteria are satisfied.

Explanation of Finding:

- Access is provided to the proposed development clear of any obstructions.
- The travel lanes are proposed to be asphalt and have been constructed to City standards.
- All access lanes are a minimum of 12 feet.
- The development will comply with requirements of the Fire District.
- No construction is proposed in the public right-of-way

Section 4.179 Mixed Solid Waste and Recyclables Storage

A56. **Review Criteria:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

Finding: These criteria are satisfied.

Explanation of Finding: No changes to the mixed solid waste facilities are proposed. The proposed coffee kiosk replaces a larger multi-tenant commercial building. The mixed-solid waste enclosure designed and built for the multi-tenant building is adequately sized for the smaller coffee kiosk.

Sections 4.199.20 Outdoor Lighting

A57. **Review Criteria:** This section states that the outdoor lighting ordinance is applicable to "Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas" and "Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas." In addition the exempt luminaires and lighting systems are listed.

Finding: These criteria are satisfied.

Explanation of Finding: All the outdoor lighting for the new development on the site is being required to comply with the outdoor lighting ordinance. A photometric site plan has been provided, sheet SE1.0 (Exhibit B2), showing the functional effect of the proposed

lighting on the site. Detailed requirements for site lighting are being reviewed as a component of Request B, Site Design Review, of this application. See Findings B32 through B39.

Sections 4.300-4.320 and Subsection 4.118 (.02) Underground Installation of Utilities

A58. **Review Criteria:** These sections list requirements regarding the underground installation of utilities.

Finding: These criteria are satisfied.

Explanation of Finding: There are no existing overhead facilities that require undergrounding as part of this development. All new utilities associated with the development are proposed to be installed underground.

REQUEST B: DB13-0047 SITE DESIGN REVIEW

Site Design Review

Subsection 4.400 (.01) and Subsection 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.

- B1. **Review Criteria:** "The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards." "Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant provides a response to this subsection on pages 18-20 of the compliance narrative in their notebook, Exhibit B1. Staff summarizes the compliance with this subsection as follows:

Excessive Uniformity: The design of the coffee kiosk is different from the Carl's Jr. building, yet complementary, and has an architectural character unique from other surrounding development preventing uniformity. The coffee kiosk uses the same brick around the base as used on the Carl's Jr. building. lap siding and board and baton siding are used similarly as with the Carl's Jr. building, only painted different colors.

Inappropriate or Poor Design of the Exterior Appearance of Structures: The coffee kiosk is professionally designed with a unique historic "small-town" theme indicative of other commercial development in Wilsonville including Old Town Square (Fred Meyer development). The result is a professional design appropriate for Wilsonville.

Inappropriate or Poor Design of Signs: Signs are typical of the type of development proposed and meet applicable City standards. See Request C, Master Sign Plan.

Lack of Proper Attention to Site Development: The appropriate professional services have been used to design the site incorporating unique features of the site including site size and shape and available access, demonstrating appropriate attention being given to site development.

Lack of Proper Attention to Landscaping: Landscaping is provided exceeding the area requirements, has been professionally designed by a landscape architect, and includes a variety of plant materials, all demonstrating appropriate attention being given to landscaping.

Subsection 4.400 (.02) and Subsection 4.421 (.03) Purposes of Objectives of Site Design Review

- B2. **Review Criteria:** "The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards." "The City Council declares that the purposes and objectives of site development requirements and the site design review procedure are to:" Listed A through J.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant provides a response to design on pages 18-20 of the compliance narrative in their notebook, Exhibit B1, demonstrating compliance with the listed purposes and objectives. In short, the proposal provides a high quality design appropriate for the site and its location in Wilsonville.

Section 4.420 Development in Accordance with Plans

- B3. **Review Criteria:** The section states that development is required in accord with plans approved by the Development Review Board.

Finding: These criteria will be satisfied by Condition of Approval PDB 1.

Explanation of Finding: A condition of approval has been included to ensure construction, site development, and landscaping are carried out in substantial accord with the Development Review Board approved plans, drawings, sketches, and other documents. No building permits will be granted prior to development review board approval.

Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards

- B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the applicant's notebook, Exhibit B1. Staff notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met.

Subsection 4.421 (.05) Site Design Review-Conditions of Approval

- B5. **Review Criterion:** "The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code."

Finding: This criterion is satisfied.

Explanation of Finding: No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

Subsection 4.421 (.06) Color or Materials Requirements

- B6. **Review Criterion:** "The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City."

Finding: This criterion is satisfied.

Explanation of Finding: All material and color information has been provided by the applicant.

Section 4.430 Design of Trash and Recycling Enclosures

- B7. **Review Criteria:** "The following locations, design and access standards for mixed solid waste and recycling storage areas shall be applicable to the requirements of Section 4.179 of the Wilsonville City Code." Listed (.02) A. through (.04) C.

Finding: These criteria are satisfied.

Explanation of Finding: No design to the trash and recycling enclosures are proposed as part of this application.

Section 4.440 Site Design Review-Submittal Requirements

- B8. **Review Criteria:** This section lists additional submittal requirements for Site Design Review in addition to those listed in Section 4.035.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted the required additional materials, as applicable.

Subsection 4.450 (.01) Landscape Installation or Bonding

- B9. **Review Criterion:** "All landscaping required by this section and approved by the Board shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping as determined by the Planning Director is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City shall be returned to the applicant."

Finding: This criterion will be satisfied by Condition of Approval PDB 2.

Explanation of Finding: The condition of approval will assure installation or appropriate security at the time occupancy is requested.

Subsection 4.450 (.02) Approved Landscape Plan Binding

- B10. **Review Criterion:** "Action by the City approving a proposed landscape plan shall be binding upon the applicant. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, as specified in this Code."

Finding: This criterion will be satisfied by Condition of Approval PDB 3.

Explanation of Finding: The condition of approval shall provide ongoing assurance this criterion is met.

Subsection 4.450 (.03) Landscape Maintenance and Watering

B11. **Review Criterion:** “All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved by the Board, unless altered with Board approval.”

Finding: This criterion will be satisfied by Condition of Approval PDB 4.

Explanation of Finding: The condition of approval will ensure landscaping is continually maintained in accordance with this subsection.

Subsection 4.450 (.04) Addition and Modifications of Landscaping

B12. **Review Criterion:** “If a property owner wishes to add landscaping for an existing development, in an effort to beautify the property, the Landscape Standards set forth in Section 4.176 shall not apply and no Plan approval or permit shall be required. If the owner wishes to modify or remove landscaping that has been accepted or approved through the City’s development review process, that removal or modification must first be approved through the procedures of Section 4.010.”

Finding: This criterion will be satisfied by Condition of Approval PDB 4.

Explanation of Finding: The condition of approval shall provide ongoing assurance that this criterion is met by preventing modification or removal without the appropriate City review.

On-site Pedestrian Access and Circulation

Subsection 4.154 (.01) B. Standards for On-site Pedestrian Access and Circulation

B13. **Review Criteria:** This subsection lists standards for on-site pedestrian access and circulation, listed 1. through 6.

Finding: These criteria are satisfied.

Explanation of Finding: The design of the on-site pedestrian access and circulation described and illustrated in the applicant’s submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review and the proposed revised Stage II Final Plan for the site. See Findings A24 through A29 under Request A.

Parking

Subsection 4.155 (.02) Provision and Maintenance of Off-Street Parking

B14. **Review Criteria:** This subsection lists general provisions for parking, A. through O.

Finding: These criteria are satisfied.

Explanation of Finding: The design of the parking described and illustrated in the applicant’s submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review and the proposed revised Stage II Final Plan for the site. See Finding A30 under Request A.

Subsection 4.155 (.03) B. 1.-3. Landscaping of Parking Areas

B15. **Review Criteria:** “Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:” Listed 1. through 3.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the planting plans, sheet L2.0 of Exhibit B2, landscape screening is provided between the proposed parking and the public right-of-way. Trees are provided for the proposed parking spaces as required by this subsection. Tree planting areas generally meet the minimum size requirements. However, the planting area with a tree between a parking stall and the entry to the coffee drive-thru queuing area is less than 8 feet wide. Staff has examined other site design option to make this a wider planting area, but site constraints prevent making it wider. It is desirable to have a tree and other plantings at this location and the planter is as wide a practicable balancing competing design requirements and site restraints.

Section 4.171 Protection of Natural Features and Other Resources

B16. **Review Criterion:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.

Finding: This criterion is satisfied.

Explanation of Finding: None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

Landscaping

Subsection 4.176 (.02) B. Landscape Standards and Compliance with Code

B17. **Review Criterion:** "All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length"

Finding: This criterion is satisfied.

Explanation of Finding: No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent

B18. **Review Criteria:** "The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant's sheet L2.0 of Exhibit B2 shows a variety of plant materials and placement consistent with the general landscape standard.

Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials

B19. **Review Criteria:** "Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General

Development Review Board Panel „A’ Staff Report January 6, 2014

Exhibit A1

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

DB13-0046, DB13-0047, DB13-0048

Page 35 of 50

Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.

b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet.”

Finding: These criteria are satisfied.

Explanation of Finding: The planting plan, sheet L2.0 of Exhibit B2, shows landscaping meeting the requirements of this subsection.

Subsection 4.176 (.03) Landscape Area and Locations

B20. **Review Criteria:** “Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable.”

Finding: These criteria are satisfied.

Explanation of Finding: Consistent with the proposed revised Stage II Final Plan for the site, the proposed design of the site provides for more than the required amount of landscaping and landscaping in at least three separate and distinct areas, including the area along SW 95th Avenue and SW Boones Ferry Road. See Finding A51 of Request A. The planting plans, sheet L2.0 of Exhibit B2, show landscape placed in areas that will define, soften, and screen the appearance of buildings and off-street parking areas.

Subsection 4.176 (.04) Buffering and Screening

B21. **Review Criteria:** “Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.

C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.

D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.

E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.

F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval.”

Finding: These criteria are satisfied.

Explanation of Finding: The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.

Subsection 4.176 (.06) A. Plant Materials-Shrubs and Groundcover

B22. **Review Criteria:** This subsection establishes plant material and planting requirements for shrubs and ground cover.

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 5.

Explanation of Finding: The condition of approval requires that the detailed requirements of this subsection are met.

Subsection 4.176 (.06) B. Plant Materials-Trees

B23. **Review Criteria:** This subsection establishes plant material requirements for trees.

Finding: These criteria are satisfied.

Explanation of Finding: The plants material requirements for trees will be met as follows:

- The applicant's planting plan, sheet L2.0 of Exhibit B2, shows all trees as B&B (Balled and Burlapped)
- Landscaping is being required to meet ANSI standards.
- The applicant's planting plan lists tree sizes required by code.

Subsection 4.176 (.06) D. Plant Materials-Street Trees

B24. **Review Criteria:** This subsection establishes plant material requirements for street trees.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in their planting plan, sheet L2.0 of Exhibit B2, the applicant proposes Bowhall Maple street trees (*Acer rubrum* "Bowhall"). The proposed trees are a cultivar of *Acer rubrum*, which is listed as a satisfactory street tree in this subsection. The trees are proposed to be planted at 3" caliper, the required size for arterial streets.

Subsection 4.176 (.06) E. Types of Plant Species

B25. **Review Criteria:** This subsection discusses use of existing landscaping or native vegetation, selection of plant materials, and prohibited plant materials.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information showing the proposed landscape design meets the standards of this subsection. See sheet L2.0 of Exhibit B2.

Subsection 4.176 (.06) G. Exceeding Plant Material Standards

B26. **Review Criterion:** "Landscape materials that exceed the minimum standards of this Section are encouraged, provided that height and vision clearance requirements are met."

Finding: This criterion is satisfied.

Explanation of Finding: The selected landscape materials do not violate any height or visions clearance requirements.

Subsection 4.176 (.07) Installation and Maintenance of Landscaping

B27. **Review Criteria:** This subsection establishes installation and maintenance standards for landscaping.

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 6.

Explanation of Finding: The installation and maintenance standards are or will be met as follows:

- Plant materials are required to be installed to current industry standards and be properly staked to ensure survival
- Plants that die are required to be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City.
- Sheet L1.0 of Exhibit B2 shows a permanent built-in irrigation system with an automatic controller satisfying the related standards of this subsection.

Subsection 4.176 (.09) Landscape Plans

B28. **Review Criterion:** "Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated."

Finding: This criterion is satisfied.

Explanation of Finding: Sheets L1.0 and L2.0, of Exhibit B2 provide the required information.

Subsection 4.176 (.10) Completion of Landscaping

B29. **Review Criterion:** "The installation of plant materials may be deferred for a period of time specified by the Board or Planning Director acting on an application, in order to avoid hot summer or cold winter periods, or in response to water shortages. In these cases, a temporary permit shall be issued, following the same procedures specified in subsection (.07)(C)(3), above, regarding temporary irrigation systems. No final Certificate of Occupancy shall be granted until an adequate bond or other security is posted for the completion of the landscaping, and the City is given written authorization to enter the property and install the required landscaping, in the event that the required landscaping has not been installed. The form of such written authorization shall be submitted to the City Attorney for review."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has not requested to defer installation of plant materials.

Subsection 4.176 (.12) Mitigation and Restoration Plantings

B30. **Review Criterion:** "A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants."

Finding: This criterion is satisfied.

Explanation of Finding: Consistent with the proposed revised Stage II Final Plan, the proposed landscape design involves no removal of existing native plants requiring a mitigation plan pursuant to this subsection.

Other Standards

Section 4.179 Mixed Solid Waste and Recyclables Storage

B31. **Review Criterion:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

Finding: This criterion is satisfied.

Explanation of Finding: The design of the mixed-solid waste and recycling enclosures is not proposed to be changed by this application.

Outdoor Lighting

Section 4.199.20 Applicability of Outdoor Lighting Standards

B32. **Review Criterion:** This section states that the outdoor lighting ordinance is applicable to "Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas" and "Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas." In addition the exempt luminaires and lighting systems are listed.

Finding: This criterion is satisfied.

Explanation of Finding: Non-exempt new outdoor lighting proposed for the development site is being required to comply with the outdoor lighting ordinance.

Section 4.199.30 Outdoor Lighting Zones

B33. **Review Criterion:** "The designated Lighting Zone as indicated on the Lighting Overlay Zone Map for a commercial, industrial, multi-family or public facility parcel or project shall determine the limitations for lighting systems and fixtures as specified in this Ordinance."

Finding: This criterion is satisfied.

Explanation of Finding: The development site is within LZ 2 and the proposed outdoor lighting systems are being reviewed under the standards of this lighting zone.

Subsection 4.199.40 (.01) A. Alternative Methods of Outdoor Lighting Compliance

B34. **Review Criterion:** "All outdoor lighting shall comply with either the Prescriptive Option or the Performance Option below."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has submitted information to comply with the performance option.

Subsection 4.199.40 (.01) C. Performance Option for Outdoor Lighting Compliance

"If the lighting is to comply with the Performance Option, the proposed lighting design shall be submitted by the applicant for approval by the City meeting all of the following:" Listed 1. through 3.

Subsection 4.199.40 (.01) C. 1. Weighted Average of Direct Uplight Lumens Standard

B35. **Review Criteria:** "The weighted average percentage of direct uplight lumens shall be less than the allowed amount per Table 9."

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 8.

Explanation of Finding: As shown in the revised sheet SE1.0 provided with the applicant's notebook, Exhibit B1, the only luminaires that are not fully shielded are the landscape bollards. The luminaires are such that the weighted average percentage of direct uplight lumens will be less than five percent (5%). A condition of approval limits all wall mounted fixtures to down lighting.

Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines

B36. **Review Criteria:** "The maximum light level at any property line shall be less than the values in Table 9, as evidenced by a complete photometric analysis including horizontal illuminance of the site and vertical illuminance on the plane facing the site up to the mounting height of the luminaire mounted highest above grade."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet SE1.0 shows the horizontal foot candles comply with Table 9. The applicant states on page 18 of their compliance narrative, the vertical foot candles remain substantially the same as previously approved as compliant with Table 9.

Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines

B37. **Review Criteria:** "Luminaires shall not be mounted so as to permit aiming or use in any way other than the manner maintaining the shielding classification required herein:"

Finding: These criteria are satisfied.

Explanation of Finding: The mountings will be in a downward position. Condition of Approval PDB 8 helps ensure this

Subsection 4.199.40 (.01) D. Outdoor Lighting Curfew

B38. **Review Criterion:** "All prescriptive or performance based exterior lighting systems shall be controlled by automatic device(s) or system(s) that:" Listed 1. through 3.

Finding: This criterion is satisfied or will be satisfied by Condition of Approval PDB 7.

Explanation of Finding: As previously approved, Carl's Jr. is exempt from lighting curfew as a 24/7 operation. However, the coffee kiosk is not. A condition of approval requires lighting associated with this building and supporting parking shall be dimmed at 10:00 p.m. pursuant to Table 10.

Subsection 4.199.50 Submittal Requirements

B39. **Review Criteria:** "Applicants shall submit the following information as part of DRB review or administrative review of new commercial, industrial, multi-family or public facility projects:" Listed A. through F. "In addition to the above submittal requirements, Applicants using the Prescriptive Method shall submit the following information as part of the permit set plan review:

A. A site lighting plan (items 1 A - F, above) which indicates for each luminaire the 3 mounting height line to demonstrate compliance with the setback requirements. For luminaires

mounted within 3 mounting heights of the property line the compliance exception or special shielding requirements shall be clearly indicated.”

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted sufficient information to review the application.

REQUEST C: DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER

Subsection 4.031 (.01) M. and Subsection 4.156.02 (.07) and (.07) C. Review Process

- C1. **Review Criteria:** These subsections establish that Master Sign Plans are reviewed by the Development Review Board and that modifications to Master Sign Plans other than minor and major adjustments are reviewed the same as a new Master Sign Plan.

Finding: These criteria are satisfied.

Explanation of Finding: Due to the request for a waiver the request does not qualify as a minor or major adjustment and is therefore being reviewed the same as a new Master Sign Plan.

Subsection 4.156.02 (.07) A. Master Sign Plan Submission Requirements

- C2. **Review Criteria:** This subsection identifies submission requirements for Master Sign Plans

Finding: These criteria are satisfied.

Explanation of Finding: As indicated in the table below the applicant has either satisfied the submission requirements, or has been granted a waiver under Subsection 4.156.02 (.10).

Requirement	Submitted	Waiver Granted		Condition of Approval	Not Applicable	Additional findings/notes
		Info Already Available to City	Info Not Necessary for Review			
Completed Application Form	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sign Drawings or Descriptions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Documentation of Building/Tenant Space Lengths	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Drawings of Sign Placement of Building Facades	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Project Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Subsection 4.156.02 (.05) E. Class II Sign Permit Review Criteria: Generally and Site Design Review

- C3. **Review Criteria:** "Class II Sign Permits shall satisfy the sign regulations for the applicable zoning district and the Site Design Review Criteria in Sections 4.400 through 4.421," Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: As indicated in Findings C25 through C31 these criteria are met.

Subsection 4.156.02 (.05) E. 1. Class II Sign Permit Review Criteria: Compatibility with Zone

- C4. **Review Criteria:** "The proposed signage is compatible with developments or uses permitted in the zone in terms of design, materials used, color schemes, proportionality, and location, so that it does not interfere with or detract from the visual appearance of surrounding development;" Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: The proposed signage is typical of and compatible with development within the PDC zones. This includes a design and colors reflecting corporate identity, illuminated channel letters and logo on a raceway, freestanding cabinet signs, and individual non-illuminated letters on an architectural wall. The placement of signs on buildings is in recognizable sign bands, and proportional to the building facades. No evidence exists nor has testimony been received that the subject signs would detract from the visual appearance of the surrounding development.

Subsection 4.156.02 (.05) E. 2. Class II Sign Permit Review Criteria: Nuisance and Impact on Surrounding Properties

- C5. **Review Criteria:** "The proposed signage will not create a nuisance or result in a significant reduction in the value or usefulness of surrounding development;" Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: There is no evidence and no testimony has been received that the subject signs would create a nuisance or negatively impact the value of surrounding properties.

Subsection 4.156.02 (.05) E. 3. Class II Sign Permit Review Criteria: Items for Special Attention

- C6. **Review Criteria:** "Special attention is paid to the interface between signs and other site elements including building architecture and landscaping, including trees." Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: The building signs are within an architectural feature identifiable as a sign band with a buffer within the sign band around the sign, which demonstrates consideration of the interface between the signs and building architecture. No sign-tree conflicts have been noted.

Subsection 4.156.02 (.06) B. Class III Sign Permit Review Criteria

- C7. **Review Criteria:** "The review criteria for Class II Sign Permits plus waiver or variance criteria when applicable." Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: A waiver is being requested and responses to the waiver criteria have been provided.

Subsection 4.156.02 (.07) B.1. Master Sign Plan Review Criteria: Consistent and Compatible Design

- C8. **Review Criteria:** "The Master Sign Plan provides for consistent and compatible design of signs throughout the development."

Finding: These criteria are satisfied.

Explanation of Finding: The channel letter/logo design is similar to what was previously approved for the multi-tenant commercial building. The coffee kiosk signs are consistent with the design of the signs approved and installed on the Carl's Jr. building. No additional freestanding signs are proposed. Directional signs are similar in character to the Carl's Jr. directional signs and are typical of drive-thru establishments.

Subsection 4.156.02 (.07) B.2. Master Sign Plan Review Criteria: Future Needs

- C9. **Review Criteria:** "The Master Sign Plan considers future needs, including potential different configuration of tenant spaces and different sign designs, if allowed."

Finding: These criteria are satisfied.

Explanation of Finding: Staff recommends increasing the sign allowance to 25.4 square feet on each façade to allow flexibility of sign design over time within a rectangle that the proposed sign fits within.

Subsection 4.156.02 (.08) A. Sign Waiver

Subsection 4.156.02 (.08) A. Waivers in General

- C10. **Review Criteria:** "The DRB may grant waivers for sign area, sign height from ground (no waiver shall be granted to allow signs to exceed thirty-five (35) feet in height), number of signs, or use of electronic changeable copy signs in order to better implement the purpose and objectives of the sign regulations as determined by making findings that all of the following criteria are met:" Listed 1.-4. See Findings C12 through C15 below.

Finding: These criteria are satisfied.

Explanation of Finding: A waiver is being requested for sign area consistent with this subsection.

Subsection 4.156.02 (.08) A. 1. Waivers Criteria: Improved Design

- C11. **Review Criteria:** "The waiver will result in improved sign design, in regards to both aesthetics and functionality."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed coffee kiosk is a particularly long narrow building at only 12' 10" wide with a length of 35' 4". According to the table showing the sign area allowed in Subsection 4.156.08 (.02) B. 1. the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The waiver allows signs of equal size to be placed on three facades that are of a consistent size and design creating a consistent look for portions of the buildings that are otherwise architecturally similar. The applicant in their narrative requests 15.83 square feet of signage for each of three facades. Staff notes the applicant's method of measurement does not follow the measurement method prescribed in Section 4.156.03. Staff additionally notes greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Staff recommends a waiver be approved for the allowed sign area to be increased to 25.4 square feet on the 12.83 long facade.

Subsection 4.156.02 (.08) A. 2. Waivers Criteria: More Compatible and Complementary

C12. **Review Criteria:** "The waiver will result in improved sign design, in regards to both aesthetics and functionality."

Finding: These criteria are satisfied.

Explanation of Finding: The waiver will provide for more consistent signs around the building and neighboring buildings providing for compatible and complementary design.

Subsection 4.156.02 (.08) A .3. Waivers Criteria: Impact on Public Safety

C13. **Review Criteria:** "The waiver will result in a sign or signs that improve, or at least do not negatively impact, public safety, especially traffic safety."

Finding: These criteria are satisfied.

Explanation of Finding: If anything, the added readability of the sign facing the intersection will aid drivers in making decisions on maneuvers earlier. No negative impacts on safety have been noted.

Subsection 4.156.02 (.08) A .4. Waivers Criteria: Content Neutrality

C14. **Review Criteria:** "Sign content is not being considered when determining whether or not to grant a waiver."

Finding: These criteria are satisfied.

Explanation of Finding: Sign content is not being considered in granting the waiver. Similar consideration on building shape would occur regardless of the tenant or message.

Section 4.156.03 Sign Measurement

Subsection 4.156.03 (.01) B. Measurement of Individual Element Signs

C15. **Review Criteria:** "The area for signs constructed of individual elements (letters, figures, etc.) attached to a building wall or similar surface or structure shall be the summed area of up to three squares, rectangles, circles, or triangles drawn around all sign elements."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed signs have not been measured consistent with this subsection. However, as recommended by Staff the proposed Master Sign Plan revision allows for the proposed signs measured according to this subsection.

Subsection 4.156.03 (.03) A.-B. Measurement of Sign Height and Length

C16. **Review Criteria:** “Height of a sign is the vertical distance between the lowest and highest points of the sign.”

Length of a sign is the horizontal distance between the furthest left and right points of the sign.”

Finding: These criteria are satisfied.

Explanation of Finding: The proposed signs have been measured consistent with this subsection.

Subsection 4.156.08 (.01) L. Design of Sign Based on Initial Tenant Configuration and Size

C17. **Review Criteria:** “When a sign is designed based on the number of planned tenant spaces it shall remain a legal, conforming sign regardless of the change in the number of tenants or configuration of tenant spaces.”

Finding: These criteria are satisfied.

Explanation of Finding: The master sign plan is proposed based on the number of planned tenants, and it is understood the sign plan will be valid regardless on the number of future tenants.

Subsection 4.156.08 (.02) Building Signs in the PDC, PDI, and PF Zones

Subsection 4.156.08 (.02) A. Sign Eligible Facades

C18. **Review Criteria:** “Building signs are allowed on a facade of a tenant space or single tenant building when one or more of the following criteria are met:

1. The facade has one or more entrances open to the general public;
2. The facade faces a lot line with frontage on a street or private drive with a cross section similar to a public street, and no other buildings on the same lot obstruct the view of the building facade from the street or private drive; or
3. The facade is adjacent to the primary parking area for the building or tenant.”

Finding: These criteria are satisfied.

Explanation of Finding: All facades of the proposed coffee kiosk are sign eligible. The north, east, and west face lot lines with frontages of public streets. The south facade faces the primary parking area.

Subsection 4.156.08 (.02) B. Building Sign Area Allowed

C19. **Review Criteria:** This subsection includes a table identifying the sign area allowed for facades based on the linear length of the façade. Exception are listed 2. through 5.

Finding: These criteria are satisfied.

Explanation of Finding: There are no changes to the previously approved sign allowance for the Carl's Jr. building. The following are the allowances for the proposed coffee kiosk.

Coffee Kiosk				
Façade	Linear Length	Sign Area Allowed	Proposed Max	Staff Recommendation
North	12.83 feet	12.83 sf	15.86 sf	25.4 sf
East	34.33 feet	34.33 sf	15.86 sf	25.4 sf
South	12.83 feet	12.83 sf	0 sf	0 sf
West	34.33 feet	34.33 sf	15.86 sf	25.4 sf

The proposed coffee kiosk in a particularly long narrow building at only 12' 10" wide with a length of 35' 4". According to the table showing the sign area allowed in Subsection 4.156.08 (.02) B. 1. the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The applicant in their narrative requests 15.83 square feet of signage for each of three facades, which includes a waiver to increase the sign area on the north facade. Staff notes the applicant's method of measurement does not follow the measurement method prescribed in Section 4.156.03. Staff additionally notes greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Staff recommends the DRB approve 25.4 square feet on the east, west, and north facades. See also Finding C11 regarding waiver request.

Subsection 4.156.08 (.02) B. 6. Calculating Linear Length to Determine Sign Area Allowed.

C20. **Review Criteria:** "For facades of a single tenant building the length the facade measured at the building line, except as noted in a. and b. below. For multi-tenant buildings the width of the façade of the tenant space shall be measured from the centerline of the party walls or the outer extent of the exterior wall at the building line, as applicable, except as noted in a. and b. below. Applicants shall provide the dimensions needed to calculate the length. Each tenant space or single occupant building shall not be considered to have more than five (5) total facades."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has supplied the required measurements used to determine linear lengths according to this subsection.

Subsection 4.156.08 (.02) C. Building Sign Length Allowed

C21. **Review Criterion:** "The length of individual tenant signs shall not exceed seventy-five (75) percent of the length of the facade of the tenant space."

Finding: This criterion is satisfied.

Explanation of Finding: None of the proposed sign bands exceed seventy-five (75) percent of the length of the façade.

Subsection 4.156.08 (.02) D. Building Sign Height Allowed

C22. **Review Criteria:** “The height of building signs shall be within a definable sign band, fascia, or architectural feature and allow a definable space between the sign and the top and bottom of the sign band, fascia, or architectural feature.”

Finding: These criteria are satisfied.

Explanation of Finding: All of the proposed sign bands are within a definable architectural feature and have a definable space between the sign and the top and bottom of the architectural feature.

Subsection 4.156.08 (.02) E. Building Sign Types Allowed

C23. **Review Criterion:** “Types of signs permitted on buildings include wall flat, fascia, projecting, blade, marquee and awning signs. Roof-top signs are prohibited.”

Finding: This criterion is satisfied.

Explanation of Finding: All the proposed buildings signs are wall flat, which is an allowable type.

Subsection 4.156.08 (.03) A. Additional Signs: Directional Signs

C24. **Review Criteria:** “Notwithstanding the signs allowed based on the site in (.01) and (.02) above, the following signs may be permitted, subject to standards and conditions in this Code:” “In addition to exempt directional signs allowed under Subsection 4.156.05 (.02) C. freestanding or ground mounted directional signs six (6) square feet or less in area and four (4) feet or less in height:

1. The signs shall be designed to match or complement the architectural design of buildings on the site;
2. The signs shall only be placed at the intersection of internal circulation drives; and
3. No more than one (1) sign shall be placed per intersection corner with no more than two (2) signs per intersection.”

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDC 3.

Explanation of Finding: Two (2) illuminated double faced directional signs are proposed as part of the Master Sign Plan. The signs are shown in the applicant’s sign section of their notebook, Exhibit B1. Exhibit B1 shows the signs slightly larger than 6 square feet. A condition of approval requires they be limited to six (6) square feet. The signs are shown at 4’ tall. The signs match the design of other signs on the property and complement the architecture of the building similarly. The signs are placed at the intersection of internal circulation drives, and only one sign is placed per intersection.

Site Design Review

Subsections 4.400 (.01) and 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.

C25. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the

desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor.”

Finding: These criteria are satisfied.

Explanation of Finding:

Excessive Uniformity: The sign plan allows for a variety of sign shapes, fonts, and colors chosen by different tenants so as to avoid excessive uniformity.

Inappropriate or Poor Design of Signs: Signs are typical of the type of development proposed found to be appropriate throughout the City. As issuance of the Class I Sign Permits consistent with the Master Sign Plan the City will ensure quality design of signs.

Lack of Proper Attention to Site Development: The appropriate professional services have been used to design the site incorporating unique features of the site including site size and shape, and available access, demonstrating appropriate attention being given to site development and sign placement.

Lack of Proper Attention to Landscaping: Landscaping around the monument sign and freestanding sign is consistent with other landscaping on the property and is of an acceptable quality and design.

Subsections 4.400 (.02) and 4.421 (.03) Purposes of Objectives of Site Design Review

- C26. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “The City Council declares that the purposes and objectives of site development requirements and the site design review procedure are to:” Listed A through J. including D. which reads “Conserve the City’s natural beauty and visual character and charm by assuring that structures, signs and other improvements are properly related to their sites, and to surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to exterior appearances of structures, signs and other improvements;”

Finding: These criteria are satisfied.

Explanation of Finding: It is staff’s professional opinion that the signs comply with the purposes and objectives of site design review, especially objective D. which specifically mentions signs. The proposed signs are of a scale and design appropriately related to the subject site and the appropriate amount of attention has been given to visual appearance.

Subsection 4.421 (.01) Site Design Review-Design Standards

- C27. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Only F. is applicable to this application, which reads, “Advertising Features. In addition to the requirements of the City’s sign regulations, the following criteria should be included: the size, location, design, color, texture, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.”

Finding: These criteria are satisfied.

Explanation of Finding: There is no indication that the size, location, design, color, texture, lighting or material of the proposed signs would detract from the design of the building and the surrounding properties.

Subsection 4.421 (.02) Applicability of Design Standards to Signs

C28. **Review Criteria:** “The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures.”

Finding: These criteria are satisfied.

Explanation of Finding: Design standards have been applied to exterior signs, as applicable, see Finding C27 above.

Subsection 4.421 (.05) Site Design Review-Conditions of Approval

C29. **Review Criterion:** “The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code.”

Finding: This criterion is satisfied.

Explanation of Finding: No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

Subsection 4.421 (.06) Color or Materials Requirements

C30. **Review Criterion:** “The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City.”

Finding: This criterion is satisfied.

Explanation of Finding: Staff does not recommend any additional requirements for materials or colors for the proposed signs.

Section 4.440 Site Design Review-Procedures

C31. **Review Criteria:** “A prospective applicant for a building or other permit who is subject to site design review shall submit to the Planning Department, in addition to the requirements of Section 4.035, the following:” Listed A through F.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted a sign plan as required by this section.

**EXHIBIT C1
PLANNING DIVISION
STAFF REPORT**

BOONES FERRY POINTE – HUMAN BEAN COFFEE KIOSK

**DEVELOPMENT REVIEW BOARD PANEL ‘ ___ ’
QUASI JUDICIAL HEARING**

Public Hearing Date:

Date of Report:

Application Numbers:

Request A: DB13-0046

Request B: DB13-0047

Request C: DB13-0048

Property

Owners/Applicants:

PD = Planning Division conditions

BD – Building Division Conditions

PF = Engineering Conditions.

NR = Natural Resources Conditions

TR = SMART/Transit Conditions

FD = Tualatin Valley Fire and Rescue Conditions



City of Wilsonville
EXHIBIT C1 DB13-0046 et seq

Specific Comments:

PF 1.	Engineering Public Facilities Conditions of Approval (PF conditions) for DB12-0074 and DB12-0075 remain in effect for this project except as further modified below.
PF 2.	At the request of Staff, DKS Associates completed a Trip Generation memo dated September 5, 2013 revising a previously completed Carl's Jr. Traffic Impact Study that was completed in May 2012. The proposed use is expected to generate 13 fewer new primary trips than the previously approved use. The project is hereby limited to no more than the following impacts. Estimated New PM Peak Hour Trips 117
PF 3.	Stormwater detention and storm water quality for this site will be handled via the stormwater facility constructed with the Boones Ferry Pointe project.
PF 4.	The project shall connect to the existing Storm lateral constructed with the Boones Ferry Pointe project.
PF 5.	The project shall connect to the existing Sanitary Sewer stub constructed with the Boones Ferry Pointe project.
PF 6.	The project shall connect to the existing Water service constructed with the Boones Ferry Pointe. project.

Development Review Template

DATE: 12/12/13
TO: DAN PAULY AICP, ASSOCIATE PLANNER
FROM: DON WALTERS
SUBJECT: DEVELOPMENT REVIEW # DB13-46, -47, -48

WORK DESCRIPTION: NEW HUMAN BEAN DRIVE/WALK-UP COFFEE KIOSK

Building Division Conditions:

BD 1. ACCESSIBLE. At least one of the walk-up service windows shall be accessible.



City of Wilsonville
EXHIBIT C2 DB13-0046 et seq



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

January 3, 2014

Alec J. Laidlaw
Laidlaw & Laidlaw
21590 Willamette Dr
West Linn OR 97068

Re: The Human Bean Coffee Store

Dear Mr. Laidlaw:

The City is in receipt of your letter dated January 3, 2014. Although we appreciate knowing that the dispute exists, it has no bearing on the application made by the property owner to the Wilsonville Development Review Board, which will be considered as scheduled. I trust that if you and your client believe that approval of the application, if granted, will violate a contractual agreement and cause your client harm, you will seek the proper legal recourse with the Washington County Circuit Court before which this matter is being heard, as and when needed to protect your client's interests.

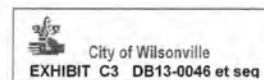
Sincerely,



Barbara A. Jacobson
Assistant City Attorney

baj:tec

cc: Wallace W. Lien
Daniel Pauly



"Serving The Community With Pride"

Pauly, Daniel

From: Terra Burns <Terra@laidlawandlaidlaw.com>
Sent: Friday, January 03, 2014 1:55 PM
To: Pauly, Daniel
Cc: Alec Laidlaw; wallace.lien@lienlaw.com; garrylapoint@gmail.com; gl@eoni.com
Subject: Development Review Board Public Hearing- The Human Bean
Attachments: Ltr to DRB re Devco public hearing submittal 2014.01.03.pdf; ORCP 21 Motions 2013.12.27.pdf; Dec of Garry LaPoint in Support 2013.12.30.pdf; UTCR 5.010 CERT OF COMPLAINCE 2013.12.27.pdf

Hello Mr. Pauly—

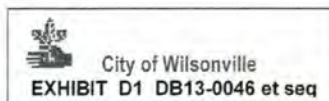
Attached please find the letter and referenced pleadings regarding the Public Hearing set for January 13, 2014 regarding The Human Bean.

Thank you,
Terra Jane Burns
Paralegal

Laidlaw & Laidlaw, PC
21590 Willamette Drive
West Linn, Oregon 97068
Tel. 503.305.6894
Fax. 888.287.4840
www.laidlawandlaidlaw.com
Terra@laidlawandlaidlaw.com

Terra Burns is not an attorney and not licensed to practice law. She does not intend to give legal advice to anyone, and no information in this email should be construed as such.

CONFIDENTIALITY STATEMENT: This electronic message contains information that may be confidential or privileged. The information contained herein is intended solely for the use of the people named above. If you are not the intended recipient of this message, you are hereby advised that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please notify me immediately by telephone at (503) 305-6894 or by e-mail reply, and delete this message.





January 3, 2014

BY EMAIL (pauly@ci.wilsonville.or.us) AND U.S. MAIL

Daniel Pauly
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070

Re: *The Human Bean Coffee Store*

Our Client: LaPoint Business Group, LLC; Garry LaPoint
Case No.: Washington County Circuit Court – C138125CV

Dear Mr. Pauly:

This firm, along with the law firm of Wallace W. Lien, P.C., represents LaPoint Business Group, LLC. LaPoint Business Group, LLC, is the owner of the adjoining parcel of property, and of the Chevron Fuel Station/Fountain Mart Convenience Store situated thereon.

As you may be aware, there is an action currently pending in Washington County Circuit Court (Case No. C138125CV), between LaPoint Business Group, LLC, and Wilsonville Devco, LLC, ("owner/applicant"). Enclosed herein for your and the Panel's review is a copy of a Motion that was filed yesterday against owner/applicant's complaint. Please note that a full and complete copy of owner/applicant's complaint, filed on December 16, 2013, is marked and attached as Exhibit A to our clients' Motion.

There is a dispute between the parties as to the breadth and scope of a restrictive covenant affecting owner/applicant's property. It is LaPoint Business Group, LLC's, position that the restrictive covenant prohibits the construction of the Human Bean Coffee Store. Owner/applicant believes otherwise.

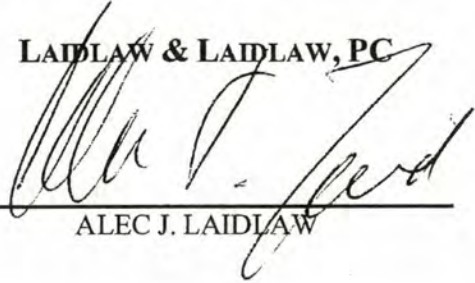
The case pending in Washington County is less than one month old. LaPoint Business Group, LLC, anticipates that this matter will not be resolved without amendment to the pleadings, significant discovery, and perhaps even a trial on the merits. As such, it is LaPoint Business Group, LLC's, position that any consideration of the change proposed by owner/applicant is premature. LaPoint Business Group, LLC, respectfully requests that this matter be setover for further consideration for at least 90 days.

Mr. Lien and/or I plan on appearing at the hearing set for Monday, January 13, 2014. In the meantime, please direct all inquiries regarding this matter to me, at 503.305.6894, or Mr. Lien,

at: Wallace W. Lien PC, 1775 32nd Place NE, Ste. A, Salem, OR 97301; Phone: 503.585.0105;
Fax: 503.585.0106; Email: wallace.lien@lienlaw.com. Thank you.

Sincerely,

LIDLAW & LIDLAW, PC

A handwritten signature in black ink, appearing to read "Alec J. Laidlaw", is written over a horizontal line.

ALEC J. LAIDLAW

Enclosures: Defendant's ORCP 21 Motions (w/ exhibits)

Cc: Wallace W. Lien

LaPoint Business Group, LLC

Garry LaPoint

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON
6

7 WILSONVILLE DEVCO, LLC, and NW) Case No. C138125CV
8 COFFEE GROUP, LLC,)
9 Plaintiffs,) **DEFENDANTS' ORCP 21 MOTIONS**
10 v.) **Oral Argument Requested**
11 LAPOINT BUSINESS GROUP, LLC and)
12 GARRY LAPOINT,)
13 Defendant)

14
15 Defendants LaPoint Business Group, LLC, and Garry LaPoint (collectively
16 "Defendants") move the Court for an Order dismissing Plaintiffs Wilsonville Devco, LLC and
17 NW Coffee Group, LLC's (collectively "Plaintiffs") Complaint in that it fails to state ultimate
18 facts sufficient to constitute a claim against Garry LaPoint, pursuant to ORCP 21A(8).
19 Alternatively, and without waiving the above motion, LaPoint Business Group, LLC, moves the
20 court for an Order striking Plaintiffs' Complaint, pursuant to ORCP 21E.

21 Official court reporting services are not requested. The estimated time for hearing is 30
22 minutes.

23 Defendants' motions are supported by the attached Memorandum, the Exhibits,
24 Defendant's counsel's UTCR 5.010 Certificate of Compliance, and the records and file herein.
25 The portions of the Complaint to be stricken is shown in parentheses, as required by UTCR
26 5.020, is marked as Exhibit A, is attached hereto, and incorporated herein.

Page 1 – DEFENDANTS' ORCP 21 MOTIONS

LAIDLAW & LAIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840
58 of 92

1
2 Dated: December 30, 2013

3
4 LAIDLAW & LAIDLAW, PC

5
6 Alec J. Laidlaw, OSB #055154
7 Jason Janzen, OSB #063790
8 Attorneys for Defendants
9 alec@laidlawandlaidlaw.com
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Page 2 – DEFENDANTS’ ORCP 21 MOTIONS

LAIDLAW & LAIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840
59 of 92

1 **MEMORANDUM**

2 **Legal Argument**

3 1. Plaintiffs' Complaint Should Be Dismissed As To Defendant Garry LaPoint Because It
4 Fails To State Ultimate Facts Sufficient To Constitute A Claim For Relief.

5 ORCP 21 A(8) provides for a motion to dismiss for "failure to state ultimate facts
6 sufficient to constitute a claim." To survive a motion for failure to state facts constituting a
7 claim for relief, a complaint must include some allegation of material fact regarding each and
8 every material element of the claim. *Suess Builders v. City of Beaverton*, 294 Or 254, 656 P2d
9 306 (1982).

10 The debts, obligations and liabilities of a limited liability company, whether arising in
11 contract, tort or otherwise, are solely the debts, obligations and liabilities of the limited liability
12 company. ORS 63.165(1). A member or a manager of an LLC is not personally liable for any
13 debt, obligation, or liability of the LLC merely by reason of being a member, a manager, or both.
14 *Id.*

15 Defendant LaPoint Business Group, LLC ("LaPoint Business Group") is a Limited
16 Liability Company, duly organized under the laws of the state of Oregon. A copy of the
17 Business Entity Data, from the Oregon Secretary of State's website, is marked as Exhibit B,
18 attached hereto, and incorporated herein. LaPoint Business Group is the sole owner of the
19 property benefitted by the Restrictive Covenant at issue in this matter. A copy of the deed to the
20 benefitted property is marked as Exhibit C, attached hereto, and incorporated herein.

21 At all times relevant, Defendant Garry LaPoint ("LaPoint") was a member of, and
22 registered agent for, LaPoint Business Group. He holds no interest in the befitted property in his
23 *personal capacity*. On these issues there is no factual dispute¹.

24
25 ¹ See *Complaint for Declaratory Relief*, page 1, line 26 ("Garry LaPoint is a member of and the registered agent for
26 LaPoint, LLC"); page 2, line 22 ("[t]he Restrictive Covenant benefits a neighboring parcel owned by LaPoint, LLC").

1 The Complaint contains no ultimate facts which could be construed as sufficiently stating
2 a claim against Defendant LaPoint, in his personal capacity. The Court should therefore dismiss
3 any claim(s) against Defendant LaPoint personally.
4

5 2. Paragraphs 16 Through 21 of The Complaint Are Frivolous And Should Be Stricken.

6 In pertinent part, ORCP 21E provides that the Court may order stricken any frivolous or
7 irrelevant pleading. A frivolous plea, while true in its allegations, is completely insufficient in
8 substance. *Andrysek v. Andrysek*, 280 Or 61 (1977). A frivolous plea has been characterized as
9 not raising any issue in the proceeding. *Kashmir Corp. v. Nelson*, 37 Or App 887 (1978).

10 There is no dispute that a controversy exists between Plaintiffs and Defendant LaPoint
11 Business Group as to the scope and construction of the Restrictive Covenant. Paragraphs 1
12 through 15, and 23 through 27 allege as much.

13 Paragraphs 16 through 22 do not raise any issues in this matter. They are repetitive to
14 Plaintiffs' sole claim for relief: that a dispute exists, between owners of adjoining parcels of real
15 property, as to the breadth and scope of a Restrictive Covenant, which benefits one parcel, and
16 burdens the other.

17 Paragraphs 16 through 22 add nothing to the Complaint, save for volume of text. They
18 should therefore be stricken.

19 **Conclusion**

20 Defendant LaPoint's only connection to this matter is his status as a member and
21 registered agent of LaPoint Business Group. Plaintiffs' Complaint states no ultimate facts
22 sufficient to constitute a claim against Defendant LaPoint. Plaintiffs' claim against Defendant
23 LaPoint therefore fails as a matter of law.

24 //

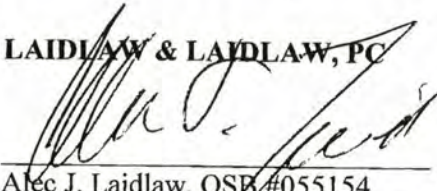
25 //

26 //

1 Alternatively, and without waiving the foregoing motion to dismiss, the Court should
2 strike paragraphs 16 through 21 of the Complaint in that they are frivolous and raise no issues in
3 this case.

4
5 Dated: December 30, 2013

LAIDLAW & LAIDLAW, PC



Alec J. Laidlaw, OSB #055154
Jason Janzen, OSB #063790
Attorneys for Defendants
alec@laidlawandlaidlaw.com

COPY

COPY
10:09

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

WILSONVILLE DEVCO, LLC, and NW
COFFEE GROUP, LLC,

Plaintiffs,

v.

LAPoint BUSINESS GROUP, LLC; and
GARRY LAPoint,

Defendants.

Case No. ~~2132601 CV~~ C138125CV

COMPLAINT FOR DECLARATORY
RELIEF (ORS 28.010 ET SEQ.)

CASE NOT SUBJECT TO MANDATORY
ARBITRATION

Plaintiffs Wilsonville Devco, LLC ("Wilsonville Devco") and NW Coffee Group, LLC
("NW Coffee"), allege as follows:

Parties

1.

Plaintiff Wilsonville Devco is a limited liability company incorporated in the state of
Oregon.

2.

Plaintiff NW Coffee is a limited liability company incorporated in the state of Oregon.

3.

Defendant LaPoint Business Group, LLC ("LaPoint, LLC") is a limited liability company
incorporated in the state of Oregon.

4.

Defendant Garry LaPoint is an individual residing, upon information and belief, in the
state of Oregon. Garry LaPoint is a member of and the registered agent for LaPoint, LLC.

Page 1 - COMPLAINT FOR DECLARATORY RELIEF

HOLLAND & KNIGHT LLP
111 S.W. Fifth Avenue
2300 U.S. Bancorp Tower
Portland, Oregon 97204
Telephone: 503.243.2300

#26839050 v1

COPY

EXHIBIT A
PAGE 1

Facts

5.

Wilsonville Devco owns a parcel of land in the City of Wilsonville, County of Washington, and state of Oregon (the "Property"). The Property's legal description is fully set forth in Exhibit A, which is incorporated here by reference.

6.

The Property is subject to a restrictive covenant recorded in the Washington County property records on March 10, 2005 under recording number 2005-025345 (the "Restrictive Covenant"). The Restrictive Covenant provides that the Property

... shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

The Restrictive Covenant is fully set forth in Exhibit B, which is incorporated here by reference.

7.

The Restrictive Covenant was executed on or about March 8, 2005 by South Sea, LLC. The Restrictive Covenant states that it is binding upon South Sea, LLC, its successors and assigns forever.

8.

On or about May 24, 2012, Wilsonville Devco purchased the Property from South Sea, LLC. Wilsonville Devco is the current owner of the Property.

9.

The Restrictive Covenant benefits a neighboring parcel owned by LaPoint, LLC. LaPoint, LLC and Garry LaPoint operate a Chevron gasoline station and Fountain Mart convenience store on the benefitted parcel.

///

///

1

10.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Wilsonville Devco and NW Coffee have begun the process of constructing The Human Bean coffee restaurant on the Property. The Human Bean coffee restaurant is a drive-through coffee shop that primarily sells different kinds of coffee drinks, as well as tea, frozen drinks, and bottled water.

11.

Wilsonville Devco has fully negotiated the terms of a build to suit lease agreement with NW Coffee. The build to suit lease agreement contemplates that Wilsonville Devco will construct and NW Coffee will operate The Human Bean coffee restaurant upon a portion of the Property.

12.

NW Coffee has fully negotiated a franchise agreement under which NW Coffee will operate The Human Bean coffee restaurant on the Property.

13.

Wilsonville Devco has completed and submitted its project submittal for construction of The Human Bean coffee restaurant on the Property to the City of Wilsonville. The submittal is complete and is scheduled for public hearing on January 13, 2014.

14.

Wilsonville Devco has expended approximately \$80,000 to date in site work improvements in preparation for construction of The Human Bean coffee restaurant on the Property. The project is expected to be complete and the restaurant open in April 2014.

15.

LaPoint, LLC and Garry LaPoint have asserted that the development and operation of The Human Bean coffee restaurant on the Property is prohibited by the Restrictive Covenant.

///

///

1

16.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

(On or about November 19, 2013, Garry LaPoint's counsel sent a letter to Josh Veentjer, who is Wilsonville Devco's managing member, asserting that the development and operation of The Human Bean coffee restaurant violates the Restrictive Covenant (the "November 19, 2013 Letter"). The November 19, 2013 Letter is fully set forth in Exhibit C, which is incorporated here by reference.)

17.

(The November 19, 2013 Letter asserted that the Restrictive Covenant prohibits the Property from being used to sell any products normally sold in a convenience store, including coffee.)

18.

(The November 19, 2013 Letter demanded that Wilsonville Devco "immediately CEASE and DESIST all activities relative to the siting and construction of The Human Bean facility on [the Property].")

19.

(On or about November 27, 2013, Wilsonville Devco's counsel sent a letter to Garry LaPoint's counsel explaining that under Oregon law, the Restrictive Covenant's language does not bar development and operation of The Human Bean coffee restaurant on the Property. Wilsonville Devco's counsel's November 27, 2013 letter is fully set forth in Exhibit D, which is incorporated here by reference.)

20.

(On or about December 10, 2013, Wilsonville Devco's counsel sent an email to Garry LaPoint's counsel again explaining that the Restrictive Covenant does not bar development and operation of The Human Bean coffee restaurant on the Property. Wilsonville Devco's counsel's December 10, 2013 email is fully set forth in Exhibit E, which is incorporated here by reference.)

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

21.

(On or about December 10, 2013, Garry LaPoint's counsel sent an email responding to Wilsonville Devco's counsel and stating his client's intention to enforce the Restrictive Covenant in court. Garry LaPoint's counsel's December 10, 2013 email is fully set forth in Exhibit F, which is incorporated here by reference.)

Claim for Declaratory Relief

22.

Plaintiffs incorporate by reference and reallege paragraphs 1-21 above.

23.

Wilsonville Devco and NW Coffee claim that the Restrictive Covenant does not prevent development and operation of The Human Bean coffee restaurant on the Property.

24.

LaPoint, LLC and Garry LaPoint claim that the Restrictive Covenant prevents development and operation of The Human Bean coffee restaurant on the Property.

25.

Development of The Human Bean coffee restaurant on the Property is underway. The agreements necessary to develop and operate The Human Bean coffee restaurant on the Property have been fully negotiated. The necessary approval process with the City of Wilsonville is also near completion. Preliminary site work improvements are also ongoing.

26.

The dispute between Plaintiffs and Defendants regarding the effect of the Restrictive Covenant upon development and operation of The Human Bean coffee restaurant on the Property is an actual and substantial controversy between parties with adverse interests, and arises from present facts. The dispute is accordingly appropriate for judicial disposition and resolution by binding decree.

///

The Court is specifically authorized under Oregon law to declare the parties' rights, status, and other legal relations under the Restrictive Covenant. ORS 28.020 provides, in part:

Any person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under any such . . . contract . . . and obtain a declaration of rights status or other legal relations thereunder.

WHEREFORE, Plaintiffs Wilsonville Devco and NW Coffee request the following relief:

1. Judgment declaring that the Restrictive Covenant does not prohibit the development or operation of The Human Bean coffee restaurant on the Property;
2. Plaintiffs' costs and disbursements incurred in this action; and
3. Any other relief that the Court deems just and proper.

DATED this 16 day of December, 2013.

HOLLAND & KNIGHT LLP

By: 

Louis A. Santiago, OSB # 783610
E-mail: louis.santiago@hklaw.com
Garrett S. Garfield, OSB # 093634
E-mail: garrett.garfield@hklaw.com
111 SW Fifth Avenue
2300 U.S. Bancorp Tower
Portland, Oregon 97204
Telephone: 503.243.2300
Fax: 503.241.8014

Attorneys for Plaintiffs Wilsonville Devco, LLC and NW Coffee Group, LLC

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'10", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.03 feet to a point on the Westerly line of Doones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

#25841631 v1

EXHIBIT A
Page 1 of 1

EXHIBIT A
PAGE 1

Washington County, Oregon 2005-025345
03/10/2008 03:14:18 PM
0-RUB 0m=1 0m=4 A DUYCK
\$26.00 \$6.00 \$11.00 - Total = \$27.00



00738070700300253450040010

I, Jerry M. LaPoint, Director of Assessments and Taxation
and Washington County Clerk for Washington County,
Oregon, do hereby certify that the within instrument of
selling your interest and proceeds to the bank of
records of said county.
Jerry M. LaPoint, Director of Assessments and Taxation
Washington County Clerk



AFTER RECORDING MAIL TO:

Name Garry M. LaPoint
Address 10618 Crosby Road NE
City/State Woodburn, OR 97071

Document Title(s) (for transactions contained therein):
1. Restrictive Covenant

20
16
37

FAYCO NE NLS-M677-0A

Title Data, Inc. CH FOR10583 WN 2005025345.001

EXHIBIT B
Page 1 of 4

EXHIBIT A
PAGE 8



RESTRICTIVE COVENANT

FOR GOOD AND VALUABLE CONSIDERATION, the undersigned, hereby creates and imposes upon the real property described in Exhibit A attached hereto and by this reference made a part hereof, to be binding upon itself, its successors and assigns forever, the following restriction on use of the property:

The property described in Exhibit A attached hereto and by this reference, incorporated herein, shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

IN WITNESS WHEREOF, the undersigned, being the owner of the real property described above, has executed this restrictive covenant on the 8th day of March, 2005.

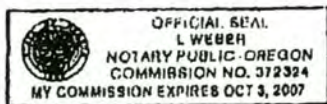
SOUTH SEA, LLC, an Oregon Limited Liability Company

BY George F. Brice III
George F. Brice III, Member

BY Zsuzsanna Brice
Zsuzsanna Brice, Member

STATE OF OREGON }
County of Multnomah } "

Before me, a notary public in and for the State of Oregon, personally appeared George F. Brice, III and Zsuzsanna Brice and acknowledged the foregoing to be their voluntary act and deed.



[Signature]
Notary Public for Oregon
My commission expires: 12/3/07



EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1. In Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 341.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to Exxon Wilsonville, LLC, an Oregon limited liability company, by instrument recorded June 19, 2000 as Fee No. 2000-46397 and being more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Title Data, Inc. CH 20R10583 WF 2008025345.003

EXHIBIT B
Page 3 of 4

EXHIBIT A
PAGE 10



Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet to the true point of beginning; thence North $89^{\circ}38'33''$ East parallel to said South line of Lot 7, 95.10 feet; thence South $20^{\circ}29'49''$ West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North $00^{\circ}09'24''$ East parallel to said East line, 6.00 feet to the true point of beginning.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet; thence North $89^{\circ}38'33''$ East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North $20^{\circ}29'49''$ East, 170.00 feet; thence North $57^{\circ}57'47''$ East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South $38^{\circ}02'13''$ East, 2.34 feet; thence leaving said Westerly line South $51^{\circ}57'47''$ West, 20.00 feet; thence South $20^{\circ}40'49''$ West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

WALLACE W. LIEN

A PROFESSIONAL CORPORATION



Wallace W. Lien

Attorney at Law

Contact by e-mail at
wallace.lien@lienlaw.com

November 19, 2013

Mr. Josh Veenjer
President
Pacific Development Ventures
P. O. Box 6437
La Quinta, CA 92248

By Certified Mail No. 7012 1010 0000 0856 6155
Return Receipt Requested
Copy by Regular Mail

Re: Wilsonville Proposed Human Bean Coffee Shop

Dear Mr. Veenjer:

Please be advised that I represent Garry LaPoint, and his Chevron station and Fountain Mart. Mr. LaPoint has been advised that it is your intention to construct a Human Bean Coffee Shop with drive through, which would serve all kinds of coffee drinks, fountain drinks, bottled water, frozen drinks, fruit and baked goods among other convenience food products.

You should be advised that when Mr. LaPoint sold your property to George Brice (South Sea LLC) a Restrictive Covenant was imposed on the property you now own that strictly prohibits your property from being used for the sale of any products that would normally occur in a convenience store business. All of the products that are proposed to be sold at this Human Bean location are products that are currently for sale in Mr. LaPoint's Fountain Mart.

This Restrictive Covenant was recorded as Document No. 2005-025345, on March 12, 2005, and it binds successors to Brice/South Sea, such as yourself. Documents related to the creation of the Restrictive Covenant clearly show the intent was to prohibit anything that competes with my client's Fountain Mart. My client believes strongly that your proposed Human Bean facility will be in direct competition with his Fountain Mart, and therefore is prohibited by the Restrictive Covenant.

You should immediately CEASE and DESIST all activities relative to the siting and construction of the Human Bean facility on the property subject to the above-referenced Restrictive Covenant. This must include the immediate withdrawal of any permit applications with the City of Wilsonville.

This is a serious matter for my client, as a large portion of the revenue for the Fountain Mart comes from the sale of products your proposed Human Bean would be offering. In the event you do not CEASE and DESIST, and provide evidence to my office by the close of business on November 29, 2013 that you have done so, I will assume that you intend to violate the Restrictive Covenant, and I will file a Complaint in Clackamas County Circuit Court to obtain an injunction to enforce the prohibitions in the covenant.

1775 32nd Place NE, Suite A • Salem, Oregon 97301-8774

(503) 585-0103 office • (503) 585-0106 fax

Web site at <http://www.lienlaw.com>

EXHIBIT C
Page 1 of 2

EXHIBIT A
PAGE 12

Mr. Josh Veentjer

November 19, 2013

Page 2

If you are represented by legal counsel, please refer this letter to your attorney and have that attorney contact me with any questions.

Otherwise, I will expect to hear from you by November 29, 2013, that you have taken all steps necessary to come into compliance with the Restrictive Covenant.

Yours truly,

WALLACE W. LIEN, P.C.

/s/ Wallace W. Lien

By: Wallace W. Lien

cc: Garry LaPoint
Daniel Pauly, City of Wilsonville ✓
Josh Veentjer (Copy by Regular Mail)

EXHIBIT C
Page 2 of 2

Holland & Knight

111 S.W. Fifth Avenue, 2300th St. Barclay Tower Portland, OR 97204 : (503) 243-2500 : F 503.241-1014
Holland & Knight LLP : www.hkllw.com

November 27, 2013

GEORGE J. GREGORES
503.243.5879
george.gregores@hkllw.com

Wallace.lien@lienlaw.com

Wallace W. Lien
Attorney at Law
1773 32nd Place SE, Suite A
Salmon, Oregon 97301-8774

Re: Our Client: Wilsonville Devco, LLC

Dear Mr. Lien:

This firm represents Wilsonville Devco, LLC, the owner of the real property and improvements located adjacent to Mr. LaPoint's Chevron gas station and Fountain Mart in Wilsonville, Oregon. I am in receipt of your November 19, 2013 letter directed to Josh Veentjer of Pacific Development Ventures in which you reference the Restrictive Covenant recorded as Document No. 2005-025345 against the Wilsonville Devco property. You contend in your letter to Mr. Veentjer that operation of a Human Bean Coffee restaurant on the Wilsonville Devco property is prohibited by the Restrictive Covenant. We believe that you have engaged in a tortured analysis to reach this conclusion, and in connection therewith, seek to expand the scope of the restriction well beyond the clear text of the provision.

You state in the second paragraph of your November 19 letter that the Restrictive Covenant strictly prohibits the Wilsonville Devco property "from being used for the sale of any products that would normally occur in a convenience store business." The Restrictive Covenant prohibits "the operation of a convenience store business" only, not the sale of products that are sold in a convenience store as you suggest. The only way to construe the Restrictive Covenant as you contend would require reading into the provision language that simply does not exist in the recorded document, something a court will not do. There is no ambiguity in the text of the covenant, the language is clear. In the case of a restrictive covenant, the appropriate maxim of construction provides that the covenant is to be construed strictly against the restriction. Unless the use complained of is plainly within the provisions of the covenant, it will not be restrained. Yogman v. Parrot, 325 Or 358 (1997). In analyzing contractual language, a court is "to ascertain and declare what is, in terms or in substance, contained therein, not to omit what has been inserted."

The dictionary definition of "convenience store" is a small retail store that stocks a range of everyday items such as groceries, toiletries, alcoholic and soft drinks, tobacco products,

EXHIBIT D
Page 1 of 2

November 27, 2013
Page 2

newspapers and sometimes gasoline. The fact that a few of the products sold in your client's convenience store will also be sold in the Human Bean Coffee restaurant doesn't fall within the prohibition of the Restrictive Covenant. The operation of a Human Bean Coffee restaurant is not the "operation of a convenience store business."

Our client intends to proceed with the leasing of the property to the operator of the Human Bean Coffee restaurant and respectfully rejects your request that it cease and desist all activities in that regard. With respect to your threat of litigation, please be advised that we have been instructed to vigorously defend any claims that you bring on behalf of your client under the Restrictive Covenant. In that regard, given the clear and unambiguous language of the Restrictive Covenant and the law applicable to it, we would view the filing of any claim as spurious and will respond appropriately.

If you have any questions or wish to discuss this matter further, please advise.

Very truly yours,

HOLLAND & KNIGHT LLP

George J. Oregores

#26639028 v1

EXHIBIT D
Page 2 of 2

EXHIBIT A
PAGE 15

Gregores, George J (POR - X55879)

To: wallace.lten@ltenlaw.com
Cc: josh@pdvco.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lten: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulia & Arlas Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an Injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

George Gregores (Hathorn & Knight)
Partner
2000 NE 28th Avenue, Suite 1110 Portland, Oregon 97232
Phone: 503.243.5811 Fax: 503.243.6019
ggregores@hathornknight.com
www.hathornknight.com

EXHIBIT E
Page 1 of 1

EXHIBIT A
PAGE 16

Gregores, George J (POR - X55879)

From: Wallace Lien (WLLien@lienlaw.com)
Sent: Tuesday, December 10, 2013 2:30 PM
To: Gregores, George J (POR - X55879)
Cc: Wallace Lien
Subject: RE: Our Client: Wilsonville Devco, LLC

It is our intention to enforce the covenant in court. Are you authorized to accept service?

Wallace W. Lien
Wallace W. Lien, P.C.
1775 32nd Place NE, Suite A
Salem, OR 97301-8774
phone: 503-585-0105 ext. 311
fax: 503-585-0106
<http://www.lienlaw.com>

CONFIDENTIALITY NOTICE:

If you have received this communication in error, please notify us immediately. This message is intended only for the use of the person or firm to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is prohibited.

From: George.Gregores@hklaw.com [mailto:George.Gregores@hklaw.com]
Sent: Tuesday, December 10, 2013 2:25 PM
To: Wallace Lien
Cc: josh@pdvco.com; louis.santoggo@hklaw.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lien: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulla & Arias Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an Injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

1

EXHIBIT F
Page 1 of 1

Gregores, George J (POR - X55879)

From: Wallace Lien (WLi@lienlaw.com)
Sent: Tuesday, December 10, 2013 2:30 PM
To: Gregores, George J (POR - X55879)
Cc: Wallace Lien
Subject: RE: Our Client: Wilsonville Devco, LLC

It is our intention to enforce the covenant in court. Are you authorized to accept service?

Wallace W. Lien

Wallace W. Lien, P.C.
1775 32nd Place NE, Suite A
Salem, OR 97301-8774
phone: 503-585-0105 ext. 311
fax: 503-585-0108
<http://www.lienlaw.com>

CONFIDENTIALITY NOTICE:

If you have received this communication in error, please notify me immediately. This message is intended only for the use of the person or firm to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is prohibited.

From: George.Gregores@hklaw.com (mailto:George.Gregores@hklaw.com)
Sent: Tuesday, December 10, 2013 2:25 PM
To: Wallace Lien
Cc: josh@pdvco.com; louis.santlago@hklaw.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lien: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulia & Arias Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

EXHIBIT F
Page 1 of 1

HOME

OREGON SECRETARY OF STATE
► **Corporation Division**

business information center **business name search** oregon business guide

referral list business registry/renewal forms/fees notary public

uniform commercial code uniform commercial code search documents & data services

Business Name Search[New Search](#) [Printer Friendly](#)**Business Entity Data**

01-02-2014

11:57

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
628887-80	DLLC	ACT	OREGON	04-16-1998	04-16-2014	
Entity Name LAPOINT BUSINESS GROUP, LLC						
Foreign Name						

[New Search](#) [Printer Friendly](#)**Associated Names**

Type	PPB	PRINCIPAL PLACE OF BUSINESS		
Addr 1	25410 SW 95TH			
Addr 2				
CSZ	WILSONVILLE	OR	97070	Country UNITED STATES OF AMERICA

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	04-16-1998	Resign Date	
Name	GARRY	L	LAPOINT			
Addr 1	850 LAWSON AVE					
Addr 2						
CSZ	WOODBURN	OR	97071	Country	UNITED STATES OF AMERICA	

Type	MAL	MAILING ADDRESS		
Addr 1	10618 CROSBY RD			
Addr 2				
CSZ	WOODBURN	OR	97071	Country UNITED STATES OF AMERICA

Type	MEM	MEMBER		Resign Date	
Name	KATHERINE	M	LAPOINT		
Addr 1	10618 CROSBY RD				
Addr 2					
CSZ	WOODBURN	OR	97071	Country	UNITED STATES OF AMERICA

Type	MEM	MEMBER			Resign Date	
Name	GARRY	L	LAPOINT			
Addr 1	10618 CROSBY RD					
Addr 2						
CSZ	WOODBURN	OR	97071		Country	UNITED STATES OF AMERICA

New Search Printer Friendly Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
LAPOINT BUSINESS GROUP, LLC	EN	CUR	04-16-1998	

Please read before ordering Copies.

New Search Printer Friendly Summary History



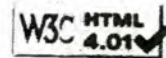
Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	AMENDED ANNUAL REPORT	03-15-2013		FI		
	AMENDED ANNUAL REPORT	03-07-2012		FI		
	ANNUAL REPORT PAYMENT	03-04-2011		SYS		
	ANNUAL REPORT PAYMENT	03-05-2010	03-04-2010	SYS		
	ANNUAL REPORT PAYMENT	03-23-2009		SYS		
	ANNUAL REPORT PAYMENT	03-19-2008		SYS		
	ANNUAL REPORT PAYMENT	03-08-2007		SYS		
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	05-10-2006		FI		
	ANNUAL REPORT PAYMENT	05-04-2006	05-03-2006	SYS		
	NOTICE LATE ANNUAL	04-21-2006		SYS		
	ANNUAL REPORT PAYMENT	03-11-2005		SYS		

EXHIBIT B
PAGE 2

	ANNUAL REPORT PAYMENT	04-28-2004		SYS		
	NOTICE LATE ANNUAL	04-23-2004		SYS		
	ANNUAL REPORT PAYMENT	04-17-2003		SYS		
	ANNUAL REPORT PAYMENT	04-12-2002		SYS		
	ANNUAL REPORT PAYMENT	04-19-2001		SYS		
	STRAIGHT RENEWAL	04-14-2000		FI		
	AMENDED RENEWAL	04-14-1999		FI		
	NEW FILING	04-16-1998		FI		

[About Us](#) | [Announcements](#) | [Laws & Rules](#) | [Feedback](#)
[Policy](#) | [SOS Home](#) | [Oregon Blue Book](#) | [Oregon.gov](#)

For comments or suggestions regarding the operation of this site,
please contact : corporation.division@state.or.us



© 2014 Oregon Secretary of State. All Rights Reserved.

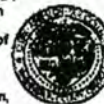
25
2005/11/08
42

Washington County, Oregon 2005-140371
11/08/2005 10:44:56 AM
D-DB# Cnt=1 Stn=7 K GRUNEWALD
\$28.00 \$6.00 \$11.00 - Total = \$42.00



00864899200501403710050051

I, Jerry Hanson, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.
Jerry Hanson
Jerry R. Hanson, Director of Assessment and Taxation, Ex-Officio County Clerk



RECORD AND RETURN TO:

Garry and Kathy LaPoint
LaPoint Business Group, LLC
10618 Crosby Rd. NE
Woodburn, OR 97071

UNTIL A CHANGE IS REQUESTED ALL TAX STATEMENTS SHALL BE SENT TO:

No Change

BARGAIN AND SALE DEED

Exxon of Wilsonville, LLC, an Oregon limited liability company, Grantor, conveys to LaPoint Business Group, LLC, an Oregon limited liability company, Grantee, the following real property situated in Washington County, Oregon and described on the attached Exhibit "A."

The true consideration for this conveyance is \$0.00. However, the actual consideration consists of other value given which is the whole consideration.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Dated this 4 day of November, 2005.

EXXON OF WILSONVILLE, LLC

BY: Garry L. LaPoint, Member

BY: Katherine M. LaPoint, Member

PDX 1349506v1 0-0
Portland

FATCO. NO. NCS-156813



STATE OF OREGON)

County of Multnomah) ss.

This instrument was acknowledged before me on this 4 day of November, 2005, by Garry L. LaPoint, as a member of Exxon of Wilsonville, LLC..

M Kimball
Notary Public for Oregon
My Commission Expires: 3/9/09



STATE OF OREGON)

County of Multnomah) ss.

This instrument was acknowledged before me on this 4 day of November, 2005, by Katherine M. LaPoint, as a member of Exxon of Wilsonville, LLC.

M Kimball
Notary Public for Oregon
My Commission Expires: 3/9/09

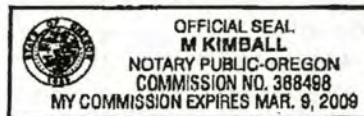




EXHIBIT A

PARCEL I:

A parcel of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the South line of said lot, a distance of 391.33 feet to the East line of Parcel I in Deed from John Q. Hammons, to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East, along said "ODOT" Deed, a distance of 359.27 feet; thence continuing along said "ODOT" Deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of $062^{\circ}51'50''$, a chord bearing of North $31^{\circ}35'19''$ East, a chord length of 133.67 feet to the intersection with the South line of SW Commerce Circle as dedicated in the plat of EDWARDS BUSINESS INDUSTRIAL PARK; thence non-tangent North $70^{\circ}34'24''$ East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius 25.00 feet, arc length of 32.72 feet, central angle of $074^{\circ}59'06''$, a chord bearing of South $71^{\circ}56'03''$ East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of $000^{\circ}41'10''$, a chord bearing of South $24^{\circ}13'24''$ East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 595.65 feet, arc length of 85.44 feet, central angle of $008^{\circ}13'06''$, a chord bearing of South $25^{\circ}08'24''$ East, and a chord length of 85.36 feet to Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South $15^{\circ}09'35''$ West, a distance of 83.41 feet, South $38^{\circ}02'13''$ East, a distance of 200.44 feet, North $46^{\circ}33'47''$ East, a distance of 48.10 feet, South $40^{\circ}56'40''$ East, a distance of 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of $00^{\circ}21'11''$, a chord bearing of South $38^{\circ}36'45''$ East, and a chord length of 17.49 feet to a point 100.00 feet North of, when measured at right angle to, the South line of said Lot 7; thence continuing along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of $00^{\circ}58'46''$, a chord bearing of South $37^{\circ}56'47''$ East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of $030^{\circ}31'07''$, a chord bearing of South $00^{\circ}03'01''$ West, and a chord length of 61.56 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the



South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 347.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Prairie Corp., an Oregon corporation, by instrument recorded July 19, 2000 as Fee No. 2000-48398, more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line



of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

FURTHER EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet; thence South 20°29'49" West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North 00°09'24" East parallel to said East line, 6.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

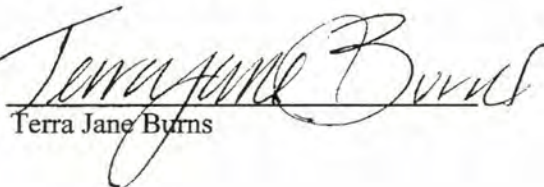
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 2, 2014, I served the foregoing *Defendants' ORCP 21*
3 *Motions, Declaration of Garry L. LaPoint in Support of Defendants' ORCP 21 Motions, and*
4 *Defendants' Counsel's Certificate of Compliance (UTCR 5.010)* on the following Parties by
5 mailing a true copy thereof, via first class mail, postage prepaid, to them at the following
6 address:

7
8 Garrett S. Garfield
9 Holland & Knight LLP
10 111 SW 5th Avenue, Ste. 2300
Portland, OR 97204
Counsel for Plaintiff

11 Wallace W. Lien
12 Wallace W. Lien, P.C.
13 1775 32nd Place NE, Suite A
Salem, OR 97301
Co-Counsel for Defendant

14
15 **LIDLAW & LIDLAW, PC**

16
17 By: 
18 Terra Jane Burns
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

LIDLAW & LIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 503.287.4840

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON
6

7 WILSONVILLE DEVCO, LLC, and NW) Case No. C138125CV
8 COFFEE GROUP, LLC,)
9 Plaintiffs,) **DECLARATION OF GARRY L. LAPOINT**
10 v.) **IN SUPPORT OF DEFENDANTS' ORCP**
11 LAPOINT BUSINESS GROUP, LLC and) **21 MOTIONS**
12 GARRY LAPOINT,)
13 Defendant)

14 I, Garry L. LaPoint, hereby declare and state, as follows:
15

- 16 1. I am at least 18 years of age and am competent to make this declaration. Each of the
17 facts set forth herein are based on my personal knowledge, except those facts set forth on
18 information and belief. As to those facts, I am informed and believe them to be true.
19 2. I make this declaration in support of Defendants' ORCP 21 Motions, filed concurrently
20 herewith.
21 3. At all times material, I have been a member of, and registered agent for, LaPoint
22 Business Group, LLC, an Oregon Limited Liability Company. A copy of LaPoint Business
23 Group, LLC's, Business Entity Data form, taken from the Oregon Secretary of State's website, is
24 marked as Exhibit B and attached to Defendants' ORCP 21 Motions.
25 4. A copy of the last vesting deed to the real property benefitted by the Restrictive Covenant
26 – 25410 SW 95th Avenue Wilsonville, Oregon ("the benefitted parcel") – is marked as Exhibit C

Page 1 – DECLARATION OF GARRY L. LAPOINT IN SUPPORT OF DEFENDANTS' ORCP 21
MOTIONS

LAIDLAW & LAIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840

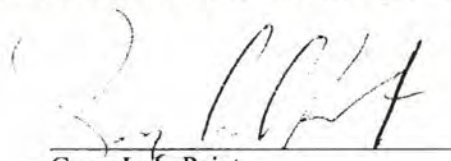
1 and attached to Defendants' ORCP 21 Motions.

2 5. LaPoint Business Group, LLC, is the sole owner of the benefitted parcel. I am a member
3 and of, and registered agent for, LaPoint Business Group, LLC. I hold no interest in and to the
4 benefitted parcel in my personal capacity.

5 6. I am informed and believe that Plaintiffs' complaint seeks a declaratory judgment against
6 me, in my personal capacity. I hold no interest in or to the benefitted parcel in my personal
7 capacity. I respectfully request, that the Court dismiss me from Plaintiffs' Complaint For
8 Declaratory Relief.

9
10 **I hereby declare that the above statement is true to the best of my knowledge and
11 belief, and that I understand it is made for use as evidence in court and is subject to penalty
12 for perjury.**

13 Dated: December 30, 2013

14 
Garry L. LaPoint

15
16
17
18
19
20
21
22
23
24
25
26
Page 2 – DECLARATION OF GARRY L. LAPOINT IN SUPPORT OF DEFENDANTS' ORCP 21
MOTIONS

LAILAW & LAILAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON

6 WILSONVILLE DEVCO, LLC, and NW
7 COFFEE GROUP, LLC,

8 Plaintiffs,

9 v.

10 LAPOINT BUSINESS GROUP, LLC and
11 GARRY LAPOINT,

12 Defendant

) Case No. C138125CV
)
)
)

) **DEFENDANTS' COUNSEL'S**
) **CERTIFICATE OF COMPLIANCE**
) **(UTCR 5.010)**
)
)
)

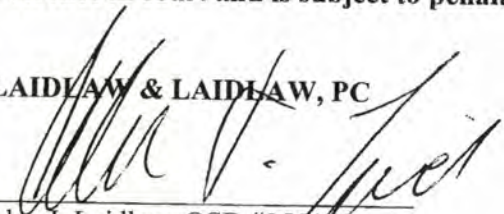
13
14 I, Alec J. Laidlaw, attorney for Defendants in the above captioned matter, hereby certify
15 as follows:

16 1. On December 27, 2013, I telephoned Plaintiffs' counsel to confer on the issues raised in
17 Defendants' ORCP 21 Motions, filed concurrently herewith. Despite the good-faith efforts of
18 counsel, the parties were not able to agree on the issues set forth in the accompanying ORCP 21
19 Motions.

20 **I hereby declare that the above statement is true to the best of my knowledge and**
21 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**
22 **for perjury.**

23 Dated: December 30, 2013

24 **LAIDLAW & LAIDLAW, PC**

25 
Alec J. Laidlaw, OSB #058194

26 Jason Janzen, OSB #063690

Attorneys for Defendants

alec@laidlawandlaidlaw.com

Page 1 - DEFENDANTS' COUNSEL'S CERTIFICATE OF COMPLIANCE (UTCR 5.010)

LAIDLAW & LAIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840
92 of 92

EXHIBIT 1

PLANNING DIVISION MEMORANDUM

February 10, 2014

To: Development Review Board Panel A

From: Daniel Pauly AICP, Associate Planner

Re: The Human Bean Update and Recommend Staff Report Changes for DB13-0046 et. seq.

A number of materials have been submitted during the open record period and in response and rebuttal to those submittals. This memo covers two topics in these materials, the additional a.m. peak traffic study and internal site circulation, including delivery traffic. This memo will be Exhibit A4.

An a.m. peak traffic study has been completed by DKS and included in Exhibit B6, applicants open record submittal. The report concludes "there are no operating concerns at the study intersections or project driveway during the a.m. peak hour."

Internal site circulation and parking for larger vehicles including delivery trucks remains a discussion point. As far as vehicle circulation, the applicant has proposed additional striping and site directional signage to aid circulation. Exhibit E of Exhibit B6 shows delivery truck circulation using LaPoint's property for ingress circulation, but parking on the Wilsonville Devco property to avoid conflicts with fuel delivery. However, there remains disagreement among the property owners whether the current easements and agreement allow such circulation. The easement disagreement will need to be resolved privately by the parties. In Exhibit B8 Wilsonville Devco shows a workable Human Bean delivery truck circulation in the case that it is determined they are unable to use LaPoint's property. The scope of the current review is limited to the Human Bean and Carl's Jr deliveries and site circulation are out of that scope.

Staff recommends the DRB amend the staff report findings related to circulation as follows. Changes are in **bold italic underline text**:

Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas

A31. **Review Criteria**: "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet DD5 "Proposed Truck Turning Movements" of Exhibit B2 of DB12-0074 through 0076 demonstrates sufficient access and maneuvering areas for delivery trucks, both for the Chevron fuel and Carl's Jr. and the coffee kiosk. Staff notes fuel off-loading, and restaurant **and** other commercial delivery parking are in the same area

of the site separating these operations from the general employee and customer parking and pedestrian areas. The access and maneuvering areas for passenger vehicle parking areas appears sufficient providing adequate space for two-way travel. As shown in Exhibits B6 and B7 additional pavement markings and signs are being added to aid in vehicle circulation. The applicant states in their compliance narrative in their notebook, Exhibit B1, that "care has been given to the extent practicable to separate vehicle and pedestrian traffic." Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic. Staff notes disagreement exists between LaPoint and Wilsonville Devco concerning the extent of the easement that would allow deliveries trucks to access the Wilsonville Devco site via LaPoint's property as shown on Exhibit E of Exhibit B6. Exhibit B8 shows an alternative for larger trucks delivering to the Human Bean in the case that private resolution of the easement disagreement does not allow the trucks to maneuver on LaPoint's property. Exhibit B8 shows adequate truck access and circulation to the Human Bean portion of the site. For a development of the proposed size Wilsonville Development Code does not require a separate loading/delivery area, and therefore as is typical of fast food and coffee kiosk type uses in general, the deliveries by necessity happen in the customer/employee parking and circulation areas.

Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation

- A34. **Review Criteria:** "Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses as well as the existing Chevron and Holiday Inn share a common driveway off 95th Avenue and their access and parking areas are interconnected. Joint use of many the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations, and direct vehicle and pedestrian paths between destinations with limited choke points. To the extent practicable parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron a direct pedestrian path is provided to the coffee kiosk. Multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site. As shown in Exhibits B6 and B7 additional signs and pavement markings have been added to further aid in directing circulation thus aiding efficiency.

Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards

- B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the applicant's notebook, Exhibit B1. Staff notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met. *Among the design standards is a requirement that special attention be paid to general circulation and parking areas that are safe and convenient. As shown by the number of added signs and markings, as well as specific drawings for different truck circulation scenarios (see Exhibits B6, B7, and B8), the applicant has demonstrate special attention has been given to site circulation and safe and convenient parking areas.*



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

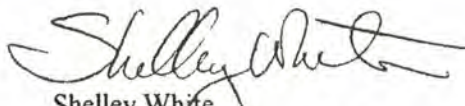
VIA: Certified Mail, Return Receipt Requested

February 13, 2014

Josh Veentjer
Wilsonville Devco LLC
P.O. Box 6437
La Quinta, CA 92248

Re: Case File DB13-0046 et seq

The Development Review Board's Decision and Resolution No. 270 are attached, denying your request for a Stage II Final Plan revision, Site Design Review, and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk. Thank you.



Shelley White
Planning Administrative Assistant

CC: Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects
Tom Berg
Garry LaPoint
Jason LaPoint
Steve Pfeiffer – Perkins Coie

CC via e-mail: Wallace W. Lien
George Gregory



"Serving The Community With Pride"

EXHIBIT 3

February 13, 2014

DEVELOPMENT REVIEW BOARD PANEL A

NOTICE OF DECISION

Project Name: Boones Ferry Pointe – The Human Bean Drive-Up Coffee Kiosk

Case File Nos.: DB13-0046 – Stage II Final Plan revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan revision and Sign Waiver

Applicant/Owner: Josh Veentjer – Wilsonville Devco LLC

**Authorized
Representatives:** Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects

Property Description: Tax Lots 302, Section 2DB; T3S R1W; Washington County;
Wilsonville, Oregon

Location: Corner of 95th Avenue and Boones Ferry Road

On February 10, 2014, at the meeting of the Development Review Board the following action was taken on the above-referenced proposed development applications:

Denied

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022(.02)*.

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this **13th day of February 2014** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022(.09)*

Written decision is attached

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960

Attachments: DRB Resolution No. 270, Copy of proposed DRB Resolution No. 268 which was rejected.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 270**

A RESOLUTION REJECTING PROPOSED RESOLUTION NO. 268 AND DENYING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits, exhibits, and staff report were duly considered by the Development Review Board Panel A at a scheduled meetings conducted on January 13 and February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

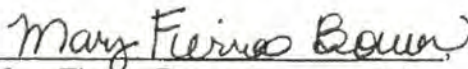
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject, and

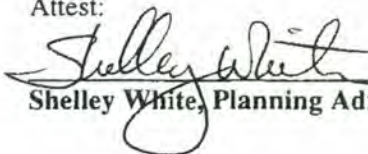
WHEREAS citing concerns about on site traffic circulation, congestion and safety in general and referring specifically to Wilsonville City Code Section 4.400.02 and 4.421 C, the Development Review Board moved, seconded and passed a motion, by a vote of 4 to 1, rejecting proposed Resolution No. 268, and by reference the staff report dated January 6, 2014, finding that the Application did not satisfy Wilsonville Code requirements pertaining to safety and circulation.

NOW, THEREFORE, BE IT RESOLVED THAT THE City of Wilsonville Development Review Board does hereby reject proposed Resolution No. 268, thereby denying the above described Application for reasons stated herein and with more particularity in the record of decision.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10th day of February, 2014 and filed with the Planning Administrative Assistant on February 13, 2014. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022(.09) unless appealed per WC Sec 4.022(.02) or called up for review by the council in accordance with WC Sec 4.022(.03).


Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:


Shelley White, Planning Administrative Assistant

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13th day of January, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.00)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

4.

BEFORE THE CITY COUNCIL

FOR THE

CITY OF WILSONVILLE

In the Matter of the Application for)
a Stage II Final Plan Revision,)
Site Design Review and Master Sign)
Plan Revision and Sign Waiver of:)
WILSONVILLE DEVCO, LLC)
On property addressed as)
25250 SW 95th Avenue and identified as)
TL 302, Section 2DB, Township 3 South,)
Range 1 West, Willamette Meridian,)
City of Wilsonville, Washington County,)
Oregon)

Case Nos.
DB13-0046 (Stage II Final Plan Revision)
DB13-0047 (Site Plan Review)
DB13-0048 (Master Sign Plan Revision and
Sign Waiver)

OBJECTION TO APPEAL

COMES NOW, LaPoint Business Group, LLC, by and through its attorney, Wallace W. Lien, of Wallace W. Lien, P.C., and does hereby object to the Appeal filed by the Applicant in this case.

This objection is based on the fact that the Applicant has provided no legal basis for its appeal. The sum total of the appeal is that the Applicant disagrees with the action of the DRB. The Applicant provides no legal or factual argument for why the DRB decision is wrong. Applicant states that the "DRB misapplied and misinterpreted WDC 4.400.02 and 4.421C" but does not say how or in what manner the DRB decision "misapplied" and "misinterpreted" the approval criteria.

Further, under "Reasons for Appeal" the Applicant again simply disagrees with the DRB decision without providing any legal or factual justification for its appeal. Applicant asserts it has demonstrated adequate internal vehicle circulation, but provides no support for that position other than a staff report done before the DRB decision was made. In fact, what the DRB had in front of it when it made its decision was several video's of the on-site traffic circulation showing accidents

and chaotic vehicular movements in addition to extensive testimony about the vast problems associated with the current circulation. Adding additional traffic for a coffee kiosk would only exacerbate an already unworkable situation. The DRB, after reviewing all the evidence and the approval criteria, made a nearly unanimous decision that modification of this site plan to remove the office building and replace it with a coffee kiosk was not appropriate or in compliance with the approval criteria.

It is insufficient for an appeal to singularly rely on a staff report that was essentially rejected by the DRB based on other evidence, without providing some additional factual or legal justification for why the DRB decision was legally wrong. The fact that the Applicant disagrees with the DRB is not enough to warrant an appeal, and the appeal should be rejected as incomplete and insufficient to warrant consideration by the City Council.

Applicant has played hide and seek with the facts in this case throughout. The proposed site plan has been modified, delivery locations are moved like chess pieces, and pedestrian and bicycle access have been located and relocated as the case has progressed through the City. If the Applicant is allowed to file a generic, non-specific appeal, it will simply be another tactic to hide the ball, and spring on both the City Council, staff and my client, what the Applicant's real justification for the appeal is, if in fact there even is one. This tactic will simply lead to continuation of the hearing in order to allow all parties to properly prepare and rebut whatever the hidden rationale for this appeal is. The land use process is intended to be open and fair, and the Applicant's tactics to hide the ball should not be allowed.

The appeal should be denied as legally insufficient in not stating with any particularity why the DRB decision is incorrect. In the event the appeal is accepted a hearing scheduled, the Applicant

should be required to state in writing at least 14 days before any scheduled hearing, the reasons for the appeal with sufficient specificity so that staff and my client understand the reasons for the appeal and can be prepared to defend the actions of the DRB.

DATED this 28th day of February, 2014.

Wallace W. Lien, OSB 79-3011
Attorney for LaPoint Business Group, LLC

5.

City of

WILSONVILLE
in OREGON



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: March 3, 2014	Subject: Order Establishing Scope of Review of Appeal of DRB Panel A Decision Regarding the Human Bean Coffee Kiosk Staff Member: Daniel Pauly AICP, Associate Planner Department: Planning Division	
Action Required <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Development Review Board Recommendation <input type="checkbox"/> Approval <input checked="" type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comment: Following their review at the January 13 th and February 10 th meetings Development Review Board Panel A rejected proposed Resolution No. 268 to approve with conditions the Human Bean Coffee Kiosk and denied the application. On January 21 st , the applicant filed an appeal of the DRB's decision.	
Staff Recommendation: The City Council's scope of review be limited to the issues related to the reasons DRB members stated for denial. These issues are: <ul style="list-style-type: none"> • On-site traffic congestion, • Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles. 		
Recommended Language for Motion: Having considered the factors in WC 4.022(.07) A, I move the City Council order that the appeal hearing of the denial Human Bean application by Development Review Board Panel A at its February 10, 2014 hearing, be limited to additional testimony and evidence on the following issues and related development code provisions: <ul style="list-style-type: none"> • On-site traffic congestion, • Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles. • Section 4.154, Subsections 4.155 (.03) A., 4.400 (.02) A., and 4.421 (.01) C. 		
PROJECT / ISSUE RELATES TO: Development Code		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL: At their February 10, 2014 meeting on this matter, Development Review Board Panel A voted 4-1 to deny the applications for the Human Bean Coffee Kiosk. On January 21, 2014, the applicant filed an appeal of the DRB's decision. The City's Development

Code (Subsection 4.022 (.05) B.) provides the City Council as the reviewing body shall order the scope of review on appeal to be one of the following:

- Restricted to the record, meaning only evidence and testimony entered into the DRB record shall be considered, but the right of argument as to how the evidence in the record meets or does not meet the applicable standards is granted.
- Limit the scope to issues the Council determines necessary for a proper resolution of the matter. This allows any party to testify and submit new evidence related to the stated issues, but considers all other matters related to the applications on the record. For example, a new concern about architecture can't be raised on appeal if architecture wasn't an issue identified by the Council. Both parties had new evidence on the seminal issue they wanted to present to the DRB, but the record had been closed. This option takes away any claim they parties were not fully heard. This option also gives staff the ability to more thoroughly present the facts surrounding the reasons DRB denied the applications and gives the applicant and the opponent the opportunity to present further approaches to consider that might resolve the problems identified by the DRB.
- A de novo hearing, meaning new evidence and testimony on any topic related to the applications can be submitted during the City Council review. This could lengthen the hearing and not make efficient use of the Council's hearing time.

EXECUTIVE SUMMARY: On January 21, 2014 the applicant filed an appeal of the recent DRB decision to deny the applications allowing for building a coffee kiosk on the same property as the Carl's Jr. Restaurant in North Wilsonville. The appeal will first be heard during the Council's March 17, 2014 meeting. A final decision must be rendered by the City no later than the Council's April 7, 2014 meeting in order to not violate the state's 120-day rule for land use reviews. After discussion between planning and legal staff, staff recommends the council keep the record open on a limited basis to allow additional evidence, staff discussion, and analysis of the issues surrounding the reasons the DRB denied the applications. All other issues and topics will be on the record. This approach allows for more thorough discussion of the issues surrounding the denial and allows the applicant to address concerns raised by the DRB, and opponents of the application to comment on any new ideas proposed to address concerns.

EXPECTED RESULTS: Identification of the level of new evidence and testimony the Council will consider for the Human Bean coffee kiosk applications on appeal

TIMELINE: Making the decision on the type of hearing to hold will allow all parties, including staff, the applicant, and opponents of the application to understand and prepare for the anticipated City Council hearing later in the month.

CURRENT YEAR BUDGET IMPACTS: None anticipated

FINANCIAL REVIEW / COMMENTS:

Reviewed by: JEO, Date: 2/21/14

No financial impact.

LEGAL REVIEW / COMMENT:

Reviewed by: MEK, Date: 2/14/ 2014

The Council has the discretion to set the scope of review on appeal. The factors that the Council shall consider in allowing additional evidence are set forth in WC 4.022 (.07) A. Allowing both parties to address this issue eliminates any claim of prejudice (factor 1); will allow both the parties to know they can bring available evidence as this was not the case with the DRB record being closed (factor 2); this will eliminate any claim of surprise (factor 4), albeit this was not a claim in front of the DRB; and to the extent the proposed testimony and evidence of each party was offered to the DRB (but not admitted) the proposed testimony and evidence appears to have some competency and materiality to the determining issue (factor 4). There may such other factors as the Council may determine apply (factor 5).

COMMUNITY INVOLVEMENT PROCESS: The standards public notice procedures for the DRB have been followed. The DRB has allowed interested parties to testify during their hearing process.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY Making a motion to determine the extent of new evidence and testimony that will be allowed for the Human Bean applications on appeal allows for clear expectations for all the parties involved. The recommendation of keeping the record open only on the issues identified by the DRB in the denial allows for thorough consideration of the issues in relation to the best interest of the community.

ALTERNATIVES: As alternatives to Planning and Legal staff's recommendation to allow new evidence and testimony only on those issues identified for the DRB as reasons for denial the Council could:

- Not allow any new evidence or testimony and review only the DRB record

- Hold a de novo hearing which will allow evidence and testimony on any topic related to the Human Bean.

CITY MANAGER COMMENT:**ATTACHMENTS:**

DRB Notice of Decision, Resolution 270 Denying the Application, and Proposed Resolution Non. 268 rejected by the DRB.



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

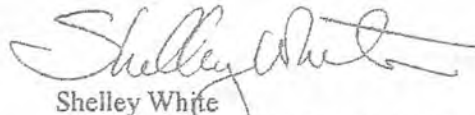
VIA: Certified Mail, Return Receipt Requested

February 13, 2014

Josh Veentjer
Wilsonville Devco LLC
P.O. Box 6437
La Quinta, CA 92248

Re: Case File DB13-0046 et seq

The Development Review Board's Decision and Resolution No. 270 are attached, denying your request for a Stage II Final Plan revision, Site Design Review, and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk. Thank you.



Shelley White
Planning Administrative Assistant

CC: Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects
Tom Berg
Garry LaPoint
Jason LaPoint
Steve Pfeiffer – Perkins Coie

CC via e-mail: Wallace W. Lien
George Gregory

February 13, 2014

DEVELOPMENT REVIEW BOARD PANEL A

NOTICE OF DECISION

Project Name: Boones Ferry Pointe – The Human Bean Drive-Up Coffee Kiosk

Case File Nos.: DB13-0046 – Stage II Final Plan revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan revision and Sign Waiver

Applicant/Owner: Josh Veenster – Wilsonville Devco LLC

**Authorized
Representatives:** Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects

Property Description: Tax Lots 302, Section 2DB; T3S R1W; Washington County;
Wilsonville, Oregon

Location: Corner of 95th Avenue and Boones Ferry Road

On February 10, 2014, at the meeting of the Development Review Board the following action was taken on the above-referenced proposed development applications:

Denied

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022(.02)*.

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this **13th day of February 2014** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022(.09)*

Written decision is attached

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960

Attachments: DRB Resolution No. 270, Copy of proposed DRB Resolution No. 268 which was rejected.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 270**

A RESOLUTION REJECTING PROPOSED RESOLUTION NO. 268 AND DENYING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits, exhibits, and staff report were duly considered by the Development Review Board Panel A at a scheduled meetings conducted on January 13 and February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

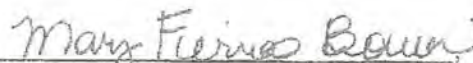
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject, and

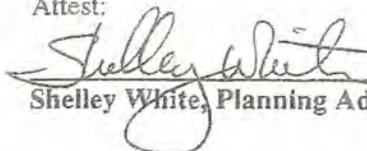
WHEREAS citing concerns about on site traffic circulation, congestion and safety in general and referring specifically to Wilsonville City Code Section 4.400.02 and 4.421 C, the Development Review Board moved, seconded and passed a motion, by a vote of 4 to 1, rejecting proposed Resolution No. 268, and by reference the staff report dated January 6, 2014, finding that the Application did not satisfy Wilsonville Code requirements pertaining to safety and circulation.

NOW, THEREFORE, BE IT RESOLVED THAT THE City of Wilsonville Development Review Board does hereby reject proposed Resolution No. 268, thereby denying the above described Application for reasons stated herein and with more particularity in the record of decision.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10th day of February, 2014 and filed with the Planning Administrative Assistant on February 13, 2014. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022(.09) unless appealed per WC Sec 4.022(.02) or called up for review by the council in accordance with WC Sec 4.022(.03).


Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:


Shelley White, Planning Administrative Assistant

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.068 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13th day of January, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.02)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

6.



Steven L. Pfeiffer
PHONE: (503) 727-2261
FAX: (503) 346-2261
EMAIL: SPfeiffer@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

March 3, 2014

VIA EMAIL

Mr. Tim Knapp, Mayor
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070

**Re: Appeal of DRB Decision Regarding the Human Bean, Wilsonville Devco LLC
DB13-0046, DB13-0047, DB13-0048**

Dear Mayor Knapp and City Councilors:

This office represents the applicant and appellant, Wilsonville Devco, LLC ("Applicant"), in the appeal of the Development Review Board's ("DRB's") decision to deny the above-referenced applications for Stage II Final Plan Revision, Site Design Review and Master Sign Plan Revision and Sign Waiver (together, "Applications") for a coffee kiosk at the corner of Boones Ferry Road and 95th Avenue (the "Site"). The City mailed its notice of the DRB's decision on February 13, 2014, making the deadline for appeal February 27, 2014. Applicant's Notice of Intent to Appeal, dated February 21, 2014, is therefore timely.

On February 28, 2014, LaPoint Business Group, LLC and its attorney, Wallace Lien (together, the "Opponent"), filed an objection to the appeal, asserting that the Applicant failed to provide a legal basis for the appeal. However, as discussed more fully below, Opponent is mistaken and its objection should be rejected. First and foremost, there is no requirement that a Notice of Intent to Appeal contain a legal basis for the appeal, and Opponent has failed to cite to any law or code regulation requiring such legal basis. Wilsonville Development Code ("WDC") Section 4.022 provides the requirements for appeals as follows:

"(.02) Board Action. A decision of the Development Review Board may be appealed to the Council by any affected party who participated in the hearing before the Board by filing an appeal within fourteen (14) calendar days of the posting of the notice of decision, or by the call-up procedures listed below. The notice of appeal shall indicate the decision that is being appealed."

LEGAL120011420.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

Perkins Coie LLP

Mr. Tim Knapp, Mayor
City of Wilsonville
March 3, 2014
Page 2

As previously noted, Applicant's Notice of Intent to Appeal, dated February 21, 2014, was timely filed. Moreover, it clearly indicated the DRB decision being appealed by referencing the applications' City File Numbers, and by attaching a copy of the DRB decision being appealed. Therefore, Applicant's Notice of Intent to Appeal met the requirements of WDC 4.022(.02).

Secondly, Applicant's Notice of Intent to Appeal stated the legal basis for its appeal. Specifically, the notice stated as follows:

"In denying the application, the DRB misapplied and misinterpreted WDC 4.400.02 and 4.421C. Moreover, its determination that these provisions were not satisfied is not supported by, and is contrary to, the substantial evidence in the record." Applicant's Notice of Intent to Appeal, p.1.

This statement is sufficient to put the City, and Opponent, on notice regarding the reasons for the appeal. It is worth noting that once City Council determines the type of review for this appeal, Applicant fully intends to provide City Council with a written statement setting forth its argument, testimony, and evidence in support of this appeal prior to the appeal hearing. The WDC contains no requirement that such written statement be submitted at least fourteen (14) days prior to the appeal hearing, and Opponent fails to cite to any authority containing such requirement.

For the reasons discussed above, Applicant has perfected its appeal and is entitled to an appeal hearing. Opponent's objection should be rejected in its entirety, and City Council should move forward with scheduling a hearing on this appeal. Please add this letter to the official record of this appeal proceeding.

Very truly yours,



Steven L. Pfeiffer

SLP:crl

cc: Client (via email)
George J. Gregores, Esq. (via email)
Wallace Lien (via email)

7.

From: Jacobson, Barbara
Sent: Tuesday, March 04, 2014 9:44 AM
To: Wallace Lien (WLien@lienlaw.com); Pfeiffer, Steven L. (Perkins Coie) (SPfeiffer@perkinscoie.com); ccelko@perkinscoie.com
Cc: Kohlhoff, Mike
Subject: Appeal Hearing

Gentlemen:

Both Mr. Lien's objection and Mr. Pfeiffer's letter in response to it were entered into the record last night. The City Council voted unanimously to hear the appeal limiting evidence to what is already on the record but allowing new evidence only as it directly pertains to internal traffic circulation and safety. Each side will be limited to a maximum presentation time of 20 minutes, with the Appellant/Applicant being allowed to reserve 5 minutes of its allotted time for final rebuttal. If you are interested, the hearing was recorded and you can watch it on online. Go to the City of Wilsonville website and then go to wgctv. I believe its channel 30 City Council meeting.

Barbara A. Jacobson
Assistant City Attorney
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville OR 97070
503-570-1509
503-682-1015 fax
jacobson@ci.wilsonville.or.us

Disclosure: Messages to and from this email address may be subject to the Oregon Public Records Law.

The information contained in this email transmission is confidential and is intended only for the use of the individual or entity intended to receive it. This message may contain information protected by the attorney-client privilege. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this email transmission in error, please immediately notify the sender by return email and delete the original email.

Circular 230 Disclaimer: If any portion of this communication is interpreted as providing federal tax advice, Treasury Regulations require that we inform you that we neither intended nor wrote this communication for you to use in avoiding federal tax penalties that the IRS may attempt to impose and that you may not use it for such purpose.

8.



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

March 5, 2014

Wallace W. Lien
Wallace W. Lien P.C.
1775 32nd Pl NE Ste A
Salem OR 97301

Steven L. Pfeiffer
Perkins Coie LLP
1120 NW Couch St 10th Fl
Portland OR 97209

Re: Appeal of DRB Decision Regarding the Human Bean

Dear Messrs. Lien and Pfeiffer:

As you know from my earlier email to both of you, the City Council has granted Applicant Wilsonville Devco's appeal of the Development Review Board denial of the proposed Human Bean land use application. The appeal will be held on March 17, 2014 on or about 7:00 p.m. The City Council Agenda is available on line at www.ci.wilsonville.or.us. As I also briefly mentioned in my earlier email, the City Council's scope of review will be limited to the DRB record, with the ability for each side to submit limited additional information only as it pertains to the following:

- On-site traffic congestion;
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation, inclusive of delivery vehicles and other larger format vehicles; and
- Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C.

Testimony by the Applicant will be limited to 20 minutes, out of which time 5 minutes may be preserved for rebuttal. Testimony by any opponent(s) is limited to 20 minutes. This does not preclude City Council questions beyond these timeframes.

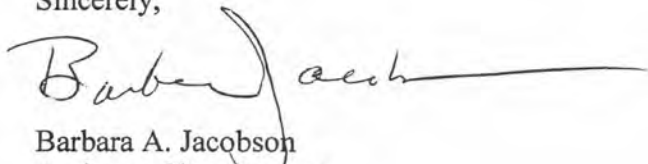
All additional material you would like admitted into the record and considered by City Council, including any briefs, must be received by no later than 5:00 p.m. on March 10, 2014. I would advise you to get the additional information you would like entered into the record here a bit earlier than the last minute of the last day in that City Hall does generally close promptly at 5:00 p.m. Materials sent via email or U.S. Mail are sent at the sender's own risk for timely arrival. Materials not received by this exact deadline will not be considered.



Wallace W. Lien
Steven L. Pfeiffer
March 5, 2014
Page 2

Prior to the hearing, I would encourage both sides to continue to work together to find a reasonable resolution to the issues in dispute. Please recall that this appeal only involves the Stage II Final Plan Revision to allow for a drive through coffee kiosk, in lieu of the development for the site that was previously finally approved. The original approval remains in place and the timeframe for appeal of that approval has long passed.

Sincerely,



Barbara A. Jacobson
Assistant City Attorney

baj:tec

cc: Bryan Cosgrove, City Manager
Michael Kohlhoff, City Attorney
Nancy Kraushaar, Community Development Director
Chris Neamtzu, Planning Director
Dan Pauly, Associate Planner

9.

of Police, any police officer of the City or the City Recorder to summon forthwith from the body of the City persons whose names are on the voter registration books and who have the qualifications of jurors to serve in the Court.

2.538 Jury Verdict.

The six jurors summoned to try the cause must unanimously concur to render a verdict.

2.540 Trial Procedure.

Trials shall be conducted as trials in District Courts and rules of evidence shall be the same as in State Courts, and shall include the applicable status of the State of Oregon regarding the introduction or admission of evidence.

2.550 Municipal Court Privilege, Power and Duties.

The Municipal Court shall possess and exercise within the City all the privileges, powers, duties and jurisdiction, civil and criminal, of a Justice's Court according to ORS, Chapter 51, except that it shall not have a Small Claims Department. It shall be subject to all of the general laws prescribing the duties of a Justice's Court and perform such other duties as may be required by the State, the City Council or this Code.

2.560 Evidentiary Hearing Procedures.

(1) In all evidentiary hearings before the City Council, Planning Commission, Design Review Board or other Board, Commission, Committee or City agency, the following procedures for the conduct of the hearings are prescribed:

(a) All interested persons in attendance shall be heard on the matter for hearing, and this fact shall be communicated to those in attendance.

(b) A summary of the application or other matter for hearing shall be given by the presiding officer or someone appointed by him or her. In the case of land use hearings, a statement of the applicable criteria shall also be given.

(c) The staff report, if any, shall be made.

(d) Questions, if any, by the hearing body of the staff.

(e) Testimony shall be received in the following order:

1) Applicant

- 2) Proponents
- 3) Opponents
- 4) Rebuttal by proponents
- 5) Others

(f) Close public hearing.

(g) Questions, if any, by the hearing body.

(h) Discussion by the hearing body.

(i) A decision shall be made by the hearing body, except, however, that further discussion and/or decision by the hearing body may be postponed to another meeting, the time, date and place of which shall be announced before adjournment.

(j) All persons who speak at such hearing shall identify themselves by name, address and interest in the matter. Attorneys or others shall be allowed to speak on behalf of proponents or opponents.

(k) Written briefs by any interested parties, their attorney or other agent will be accepted if filed with the secretary or clerk of the hearing body at least three (3) days prior to the hearing.

(l) A record made at any prior evidentiary hearing may be accepted, considered and used by the hearing body at any subsequent hearing; and said body by majority vote of a quorum present may deny to accept or hear any repetitious matter.

Section 2.600 Measure 37 Compensation Procedures and Standards.

(1) Purpose: The purpose of this section is to provide procedures and standards for claims for compensation made pursuant to 2004 Measure 37.

(2) Definitions: As used in this section, unless the context requires otherwise:

(a) "Affected property" means the private real property or any interest therein that is alleged to have suffered a reduction in fair market value as a result of the City's regulation restricting the use of that property or interest and for which a property owner seeks compensation for the reduction in value.

(b) "Claimant" means the present owner or owners of the property or any interest therein, who submits a written claim for compensation under Subsection 2.600(3).

(c) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the



Scott
Garry LaPoint <garrylapoint@gmail.com>

Chevron vs Human Bean

gl@eoni.com <gl@eoni.com>
To: Steven.High@core-mark.com


Mon, Feb 10, 2014 at 9:22 AM

Hi Steve,

Would you look at this Journey Plan for the Core-Mark truck and call me back at 503-720-0341.

Thanks,

Garry LaPoint

 **Exhibit B8 Truck Turning Movement 2.3.2014 (1).pdf**
123K

RECEIVED

MAR 10 2014

CITY OF WILSONVILLE

4:16 pm
ack

Pg 1



Garry LaPoint <garrylapoint@gmail.com>

Chevron vs Human Bean

Mon, Feb 10, 2014 at 1:37 PM

High, Steven <Steven.High@core-mark.com>

To: "gl@eoni.com" <gl@eoni.com>

Cc: "Aiello, Anthony" <AAiello@core-mark.com>, "Rhodes, Doug" <DRhodes@core-mark.com>

Gary,

I have forwarded your attachment to, and discussed the matter with my associates. We are still looking at it. However, at this point, we see no significant reason to be alarmed, as our delivery procedure at your location, La Point Chevron, will remain unaltered. As far as the Human Bean is concerned, it is highly doubtful that we would adhere to the side-noted instructions, that include anything regarding 'backing out' or 'backing up into a loop'. Our delivery protocol mandates that we keep backing to a minimum, and especially, backing 'up into a loop'. We don't compromise when it comes to safety. We would look for an alternative delivery position at this location....one that minimizes or eliminates backing. That being said, however, it sounds like you have a lot of good, safety related information and concerns that should definitely help your case.

I wish you good luck with your meeting. Keep safety at the top of your agenda and you should do well; it is always our top priority, here at Core-Mark International, Inc.

Sincerely,

Steve High

Night Transportation Supervisor

Core-Mark Portland

503-786-4227 direct

503-652-0200 x4227

503-652-1079 fax

From: gl@eoni.com [mailto:gl@eoni.com]

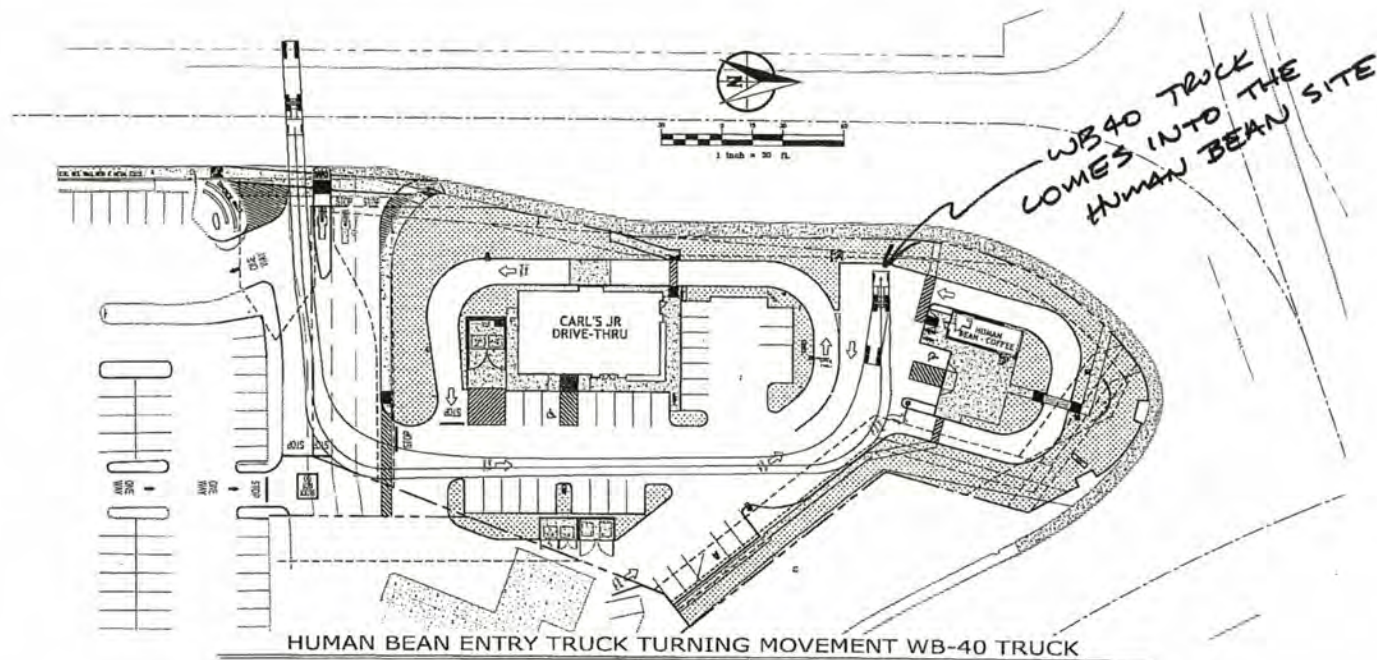
Sent: Monday, February 10, 2014 9:22 AM

To: High, Steven

Subject: Chevron vs Human Bean

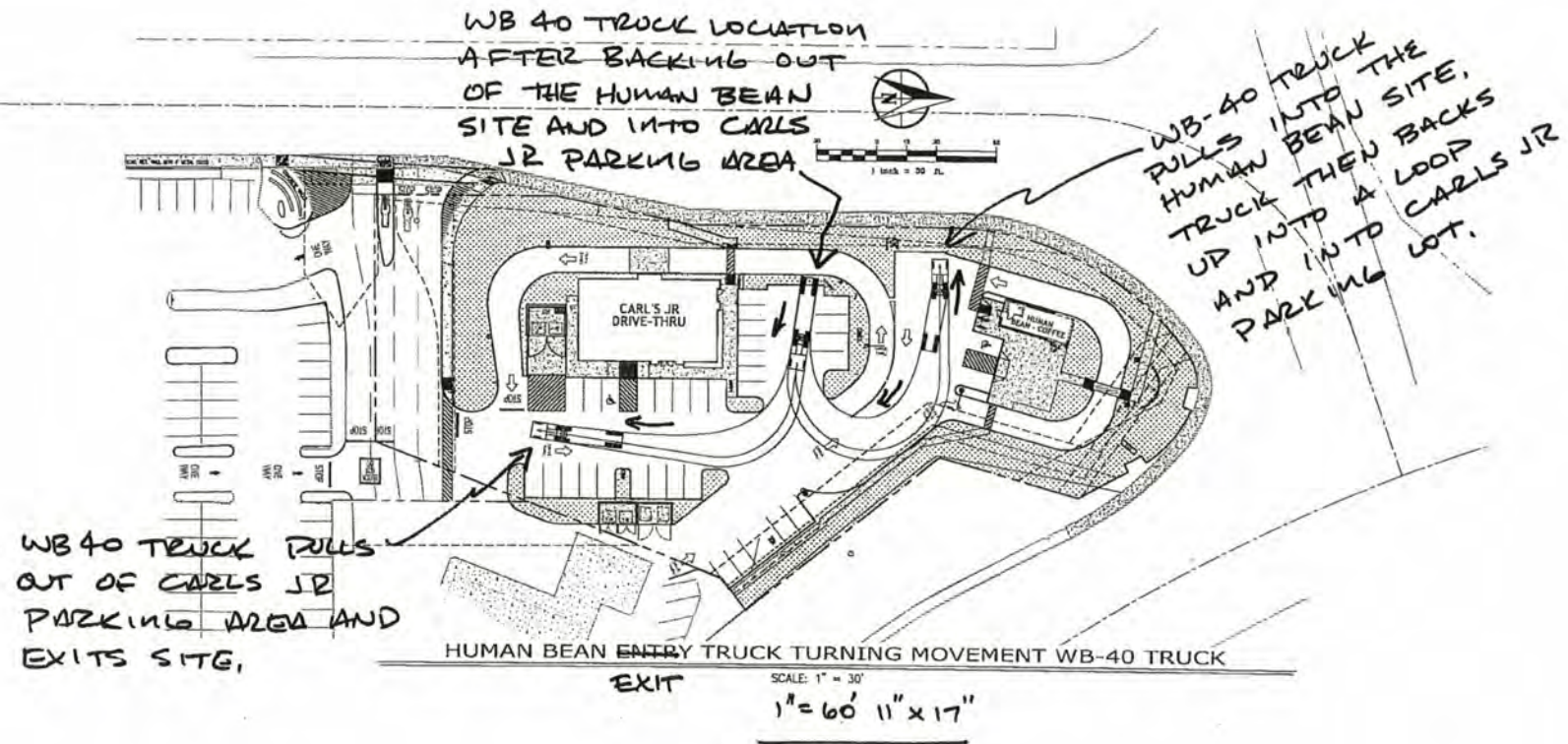
[Quoted text hidden]

Pg. 2

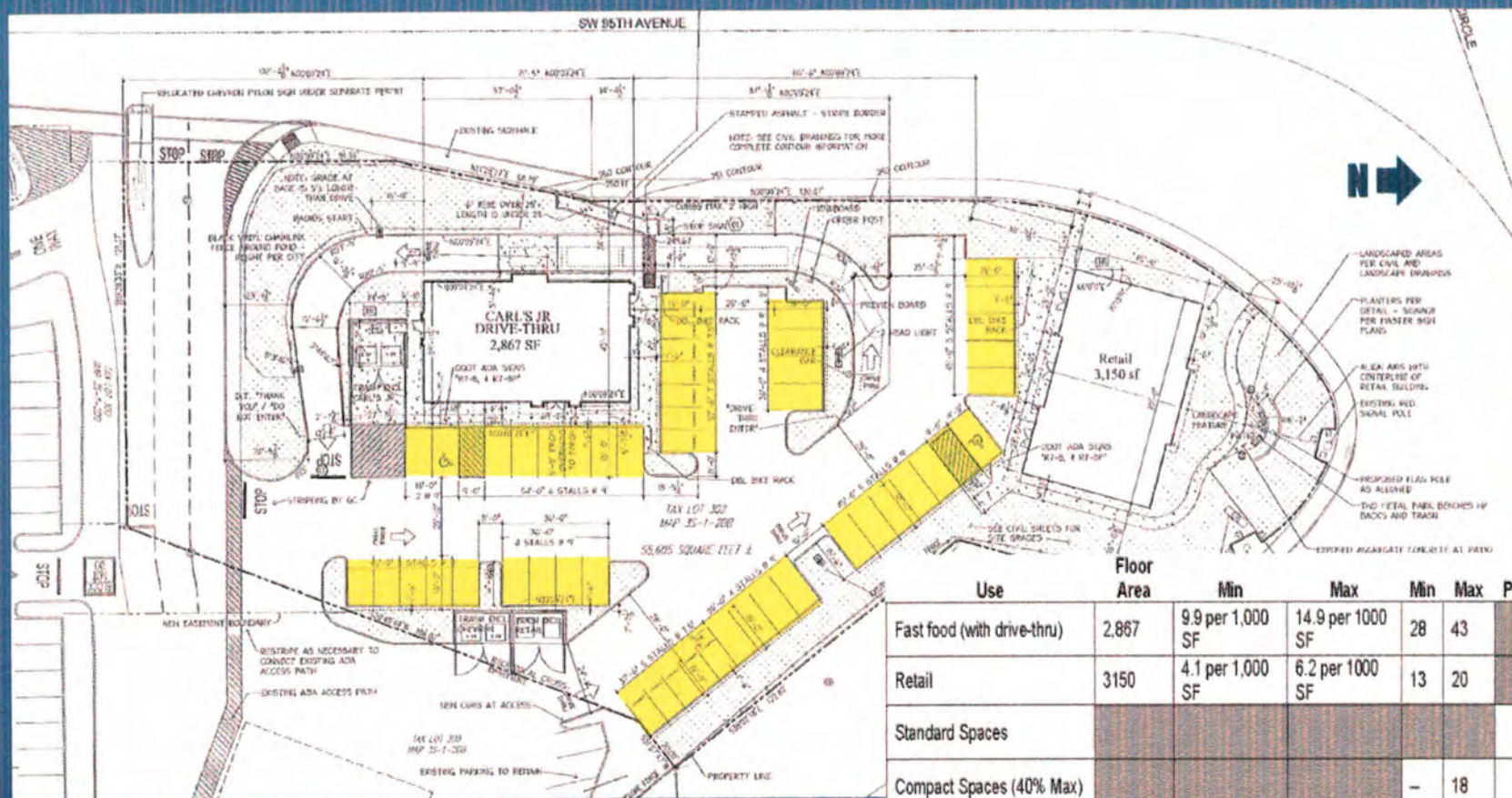


SCALE: 1" = 30'

1" = 60' 11" x 17"



Parking



Use	Floor Area	Min	Max	Min	Max	Provided
Fast food (with drive-thru)	2,867	9.9 per 1,000 SF	14.9 per 1000 SF	28	43	
Retail	3150	4.1 per 1,000 SF	6.2 per 1000 SF	13	20	
Standard Spaces						34
Compact Spaces (40% Max)				--	18	12
Total Non-ADA Spaces				41	60	46
ADA Spaces				1	--	2
Total Parking Spaces						48



1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

PHONE: 503.727.2000

FAX: 503.727.2222

www.perkinscoie.com

Steven L. Pfeiffer

PHONE: (503) 727-2261

FAX: (503) 346-2261

EMAIL: SPfeiffer@perkinscoie.com

March 10, 2014

*Rec'd 3/10/14
4:50 pm
ack*

VIA E-MAIL

Mr. Tim Knapp, Mayor
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070-6499

**Re: Appeal of Denial of The Human Bean Coffee Kiosk;
DB 13-0046, DB 13-0047, DB 13-0048**

Dear Mayor Knapp and City Councilors:

This office represents Wilsonville Devco, LLC ("Applicant"), the applicant in the above-referenced applications (the "Applications"), and the appellant in this appeal of the February 13, 2014 decision by the City of Wilsonville Development Review Board ("DRB"). The DRB denied the request for modification of an earlier Stage II Final Plan approval on the site to replace the approved 3,150 square foot multi-tenant retail building with a 450 square foot The Human Bean coffee kiosk at the corner of Boones Ferry Road and 95th Avenue. The DRB's denial of the Applications was predicated on Wilsonville City Code ("WCC") Sections 4.400.02 and 4.421C and its concerns with site traffic circulation, congestion and safety. As discussed in more detail below, the DRB misapplied and misinterpreted WCC 4.400.02 and 4.421C, thereby improperly denying the Applications. Further, the DRB decision is contrary to, and not supported by, substantial evidence in the record as a whole. For the reasons explained below, the City Council should reverse the DRB's decision and approve the Applications. Please include this letter and its attachments in the official record of this appeal proceeding.

I. Description of the Project.

At the outset, it is important to note that the Applicant had previously obtained Stage II Final Plan approval for a 3,150 square foot multi-tenant retail commercial building on the site. Such approval is still valid, and the retail building remains authorized for construction as approved. Notably, no one, not even the opponent in the present matter ("LaPoint"), appealed the approval of the 3,150 square foot retail building or the approval of the Carl's Jr. on the site. In fact, the

LEGAL120046823.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

Perkins Coie LLP

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 2

Applicant, LaPoint, Holiday Inn, and the City negotiated and entered into a Development Agreement, dated August 2012, which established the rights and responsibilities of each party respecting site access and circulation. The Development Agreement contemplated both a Carl's Jr. and a "other yet to be determined retail" use on the Applicant's property. It also called for the system of easements that are in place today and clearly evidences the parties' mutual understanding of how vehicle circulation would work on the site. This understanding was further developed as part of the previous Stage II Planned Development and Site Plan reviews (DB 12-0074, 0075, and 0076) that were approved early last year, and for which LaPoint was a co-applicant. In short, LaPoint's participation in the Development Agreement and as a co-applicant in the previous application demonstrate that LaPoint believed on-site circulation was safe and adequate to serve the Carl's Jr. and a then-unnamed future retail use.

Moreover, in reviewing the previous Stage II Final Plan for the 3,150 square foot multi-tenant commercial building, the DRB was provided the opportunity to review site circulation and expressly found that there was adequate on-site circulation in compliance with WDC 4.154. Additionally, Tualatin Valley Fire and Rescue ("TVFR") reviewed the prior master plan (case file DB 12-0074, 0075, and 0076) and indicated that "Tualatin Valley Fire and Rescue endorses this proposal."

The current proposal seeks to replace the approved, but unbuilt, retail commercial building with a new 450 square foot drive-through coffee kiosk, resulting in a 2,700 square foot reduction in the size of the building and an attendant reduction in overall traffic on the site. Given the size of the approved retail building and the various retail uses that could occupy the larger building, the traffic, site-circulation, and fire/life/safety impacts of the current proposal are much less than the originally-proposed, and approved, retail building.

II. Substantial Evidence Shows On-Site Circulation is Adequate and Safe.

In its decision, the DRB denied the proposed coffee kiosk and found that the Applications failed to comply with WCC requirements pertaining to safety and on-site circulation. One of the main concerns expressed by the DRB at the hearing was the worst case scenario of an occasional delivery truck in excess of 30 feet serving the coffee kiosk, and the perceived risk that such infrequent delivery truck would not be able to maneuver from the shared driveway onto the site without hitting the curb. In response to such concern, the Applicant has confirmed with The Human Bean and with its vendor, Umpqua Dairy, that deliveries to the coffee kiosk will be made in a box truck not to exceed an overall length of 30 feet. Attached as **Exhibit A** is an email from Scott Sayre at The Human Bean, dated February 14, 2014, and an email from Marty Weaver at Umpqua Dairy, dated February 26, 2014, confirming the size of the delivery truck. The Applicant has also obtained a Truck Turning and Circulation Analysis ("Truck Turning Analysis") performed by transportation engineering firm, Kittelson & Associates, Inc., dated March 2, 2014, and which is attached as **Exhibit B**. The Truck Turning Analysis analyzes a

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 3

30 foot Umpqua box truck with a wheelbase of 18.6 feet, which is the largest vehicle that would perform deliveries to the coffee kiosk. The Truck Turning Analysis concludes that the studied Umpqua delivery truck can successfully access the site in a safe and efficient manner.

Furthermore, the Applicant has provided evidence of safe and convenient circulation on the site in compliance with WCC Sections 4.400.02, 4.421C, 4.154 and 4.155. First of all, the Applicant's site plan demonstrates a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings. Specifically, the site plan shows the following:

- Two separate pedestrian connections to the 95th Avenue sidewalk, each with its own striped drive aisle crossing;
- Circulation and stacking patterns for vehicles visiting the coffee kiosk, with safe stacking for at least seven (7) vehicles;
- Directional arrows separating traffic flow;
- Eight (8) adjacent parking spaces;
- Paved walkways with striped drive aisle crossings connecting the coffee kiosk to parking, the trash enclosures, and the Chevron property to allow, if desired, those who are fueling their cars to walk to the coffee kiosk; and
- A patio area near the coffee kiosk to provide pedestrians with a safe space to drink their coffee other than the parking lot.

For ease of visual reference, attached as **Exhibit C** is a copy of the site plan showing the multiple safe pedestrian pathways highlighted in red.

At the DRB hearing, LaPoint rejected the Applicant's offer to develop pedestrian improvements on his property in order to better connect the adjacent properties. Accordingly, the Applicant has revised the proposed site plan to eliminate all such proposed improvements on LaPoint's property. As shown on the attached **Exhibit D**, all improvements to Applicant's property will be stubbed to, and end at, LaPoint's property. The only remaining additional proposed improvements are two (2) new directional signs directing customers of the coffee kiosk to exit using the drive aisle in front of Carl's Jr. to the shared driveway.


As discussed in detail above, site plans show a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings necessary to connect the proposed coffee kiosk with its associated parking, the sidewalk, and adjacent properties, as well as adequate access for passenger vehicles and delivery trucks. The Applicant has provided substantial evidence that access and circulation serving the coffee kiosk will be safe and adequate as proposed, and City Council can find that the proposed development is consistent with all applicable approval criteria.

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 4

III. Conclusion.

For the reasons discussed above and in the Applicant's submittals in the record below, the Applicant has met all applicable approval criteria. Therefore, the City Council should overturn the DRB's denial of the Applications and approve the requested Applications in their entirety.

Very truly yours,



Steven L. Pfeiffer

SLP:crl

Enclosures

cc: Ben Altman, SFA Design Group (via email) (with encls.)
Craig Anderson, CB Anderson Architects (via email) (with encls.)
Wallace Lien, Esq.(via email) (with encls.)
Client (via email) (with encls.)
George J. Gregores, Esq. (via email) (with encls.)

From: Scott Sayre [<mailto:Scott@thehumanbean.com>]
Sent: Friday, February 14, 2014 5:58 PM
To: josh@pdvco.com
Subject: RE: Wilsonville Truck Sizes

Howdy!

So, Core-Mark will deliver in a Twenty-two foot long box van. Umpqua Dairy will deliver in a twenty-six foot box van.

Have a great weekend!

Scott Sayre
Director of Franchise & Vendor Development
541-608-0564
Fax: 541-608-3757
thehumanbean.com



Visit The Human Bean [Website\[thehumanbean.com\]](http://Website[thehumanbean.com])

'Like' us on [Facebook\[facebook.com\]](http://Facebook[facebook.com]) | Connect with us on [Instagram\[instagram.com\]](http://Instagram[instagram.com]) | Follow us on [Twitter\[twitter.com\]](http://Twitter[twitter.com])



[\[thehumanbean.com\]](http://thehumanbean.com)  [\[facebook.com\]](http://facebook.com)  [\[instagram.com\]](http://instagram.com)  [\[twitter.com\]](http://twitter.com)

From: Marty Weaver [<mailto:Martyw@umpquadairy.com>]
Sent: Wednesday, February 26, 2014 3:39 PM
To: josh@pdvco.com; Scott Sayre
Subject: RE: Human bean info

Gents-

Ok, I think we have this figured out. Box truck overall length bumper to bumper 30', height is 11' and wheelbase is 18.6' w/single axle. We will deliver around 4:00 a.m. before Carls Jr opens. May need to get a key to the HB if no employees there this early. Please let me know your thoughts on this.

Sincerely,
Marty Weaver
Umpqua Dairy Products Co
Director of Sales & Marketing
Phone 541-672-2638
Fax 541-673-0256
martyw@umpquadairy.com

EXHIBIT A



KITTELSON & ASSOCIATES, INC.

TRANSPORTATION ENGINEERING / PLANNING

610 SW Alder Street, Suite 700, Portland, OR 97205 503.228.5230 503.273.8169

March 2, 2014

Project #: 17656.0

Josh Veentjer
Pacific Development Ventures
4188 SW Greenleaf Dr.
Portland, OR 97221

RE: Human Bean Wilsonville Truck Turning and Circulation Analysis - Wilsonville, OR

Dear Josh,

Pursuant to your request, Kittelson & Associates, Inc. has prepared a truck turning and circulation analysis of the proposed Human Bean development project located in Wilsonville, Oregon. This truck turning analysis focuses on the ability of the standard 30-foot Umpqua delivery truck to access the Human Bean site. The remainder of this letter addresses the turning and circulation movements for trucks entering and exiting the site.

TRUCK TURNING MOVEMENT ANALYSIS

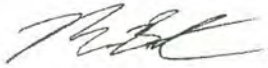
Figure 1 shows the site plan of the Human Bean, located at the corner of SW Boones Ferry Road and SW Commerce Circle. Truck turning movements were performed using AutoTurn Version 8, using a 30' Umpqua box truck as the model vehicle. With a total vehicle length of 30 feet and a wheelbase of 18.6 feet, the Umpqua box truck was determined to be the largest vehicle that would perform deliveries to the proposed Human Bean development. Figure 2 shows the turning and circulation movements for trucks entering the site, and Figure 3 shows the turning and circulation movements for trucks exiting the site. For trucks exiting the site, it is possible for the vehicles to back up in two ways. Figure 3 the truck demonstrates a maneuver to use the internal circulation aisle in the lower parking lot, and it is also possible for a truck to use the internal circulation aisle in the upper parking lot adjacent to Carls Junior. Under all three scenarios, the trucks are capable of successfully entering and exiting from the proposed Human Bean development.

CONCLUSION

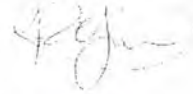
Based on the truck turning and circulation analysis of the proposed Human Bean development contained herein, we have determined that the identified 30-foot Umpqua delivery truck can successfully access the site in a safe and efficient manner. As the Umpqua truck will be the largest delivery vehicle to the site, all other delivery vehicles will also have sufficient access to the Human Bean building.

We trust this truck turning and circulation analysis adequately addresses the delivery feasibility of the proposed Human Bean development. Please let us know if you have any additional questions

Sincerely,
KITTELSON & ASSOCIATES, INC.

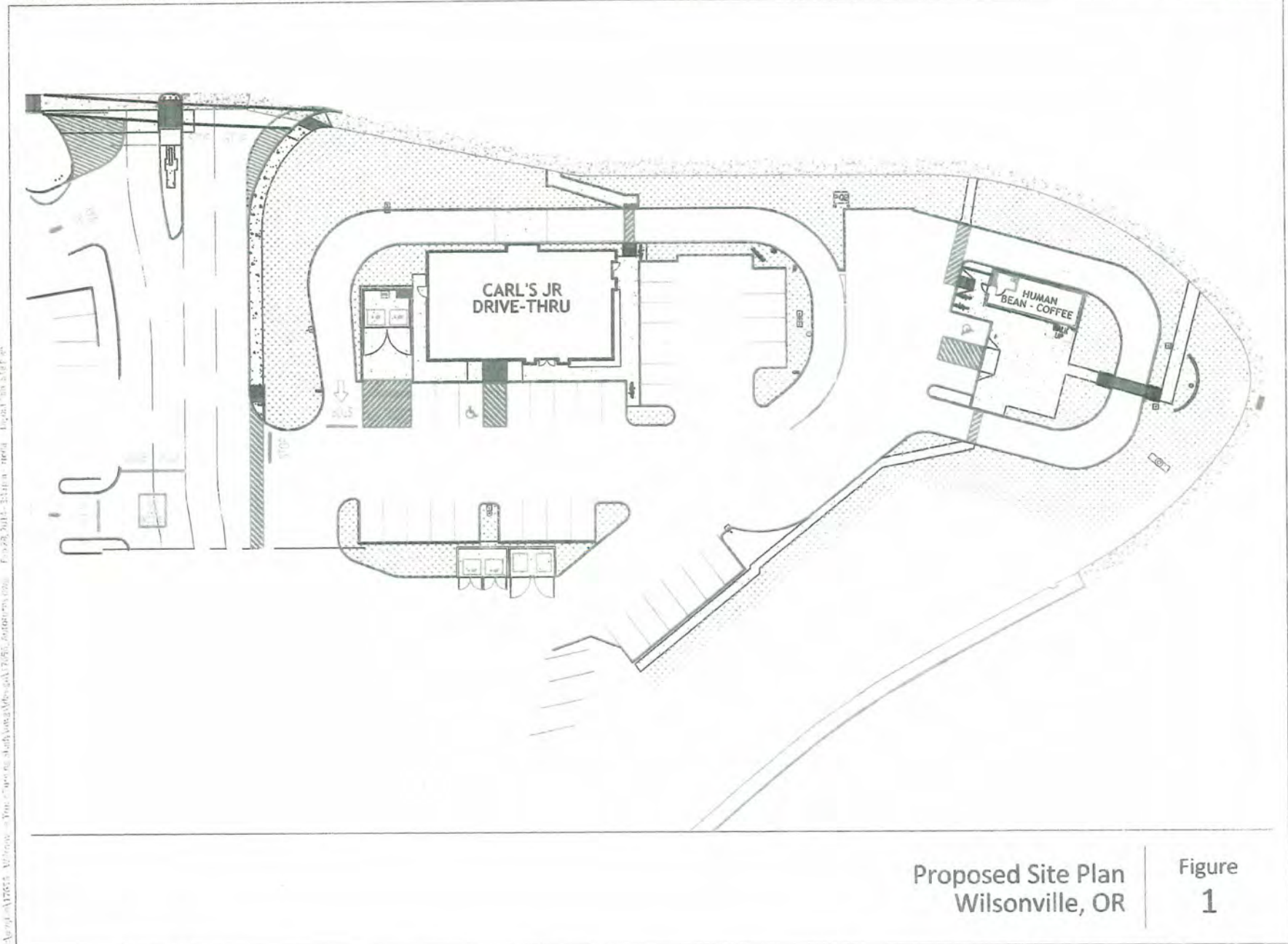


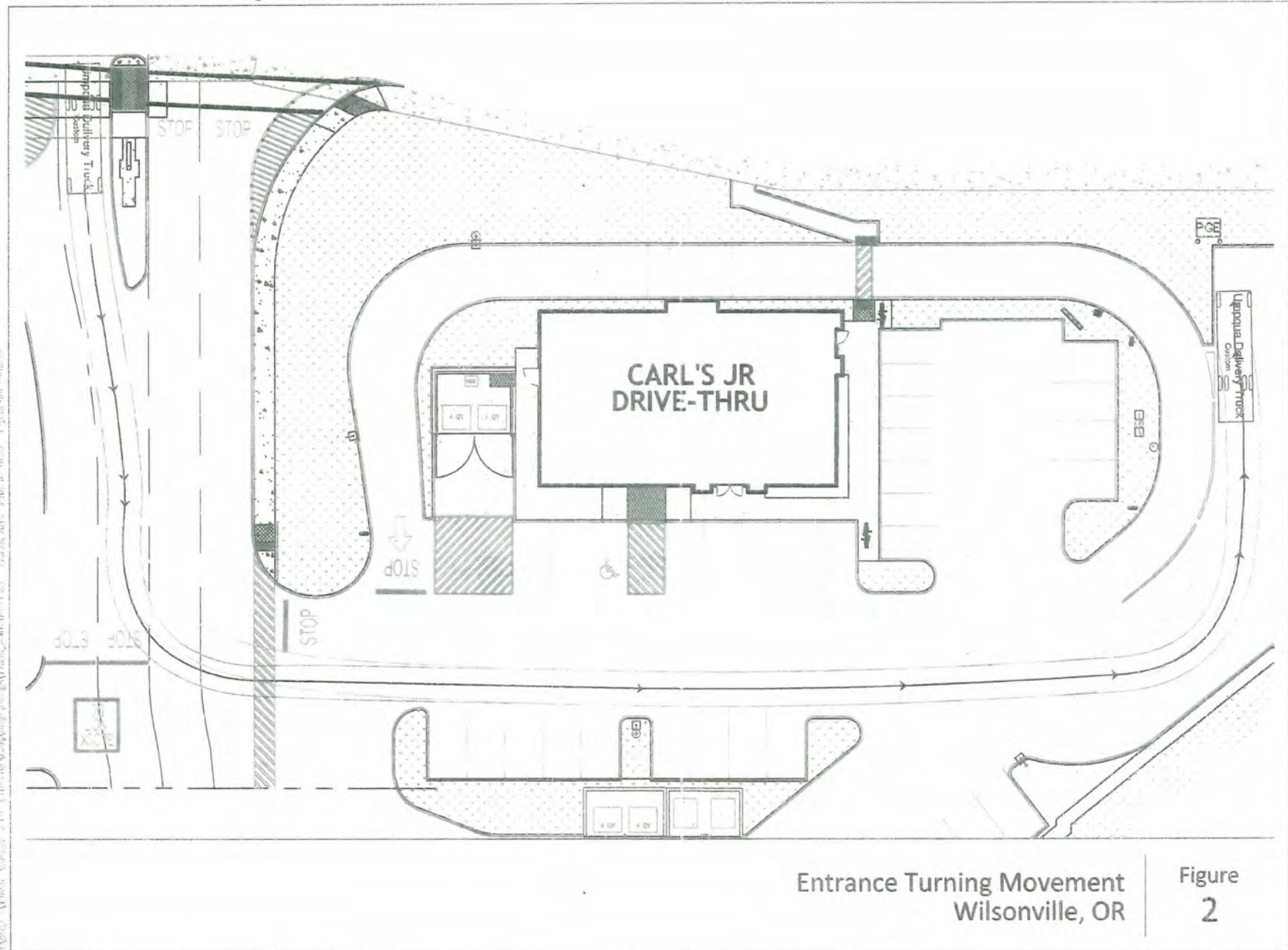
Marc Butorac, P.E., P.T.O.E.
Principal Engineer



Ribeka Toda
Transportation Analyst

Attachments: 1 – Proposed Site Plan
2 – Entrance Turning Movement
3 – Exit Turning Movement

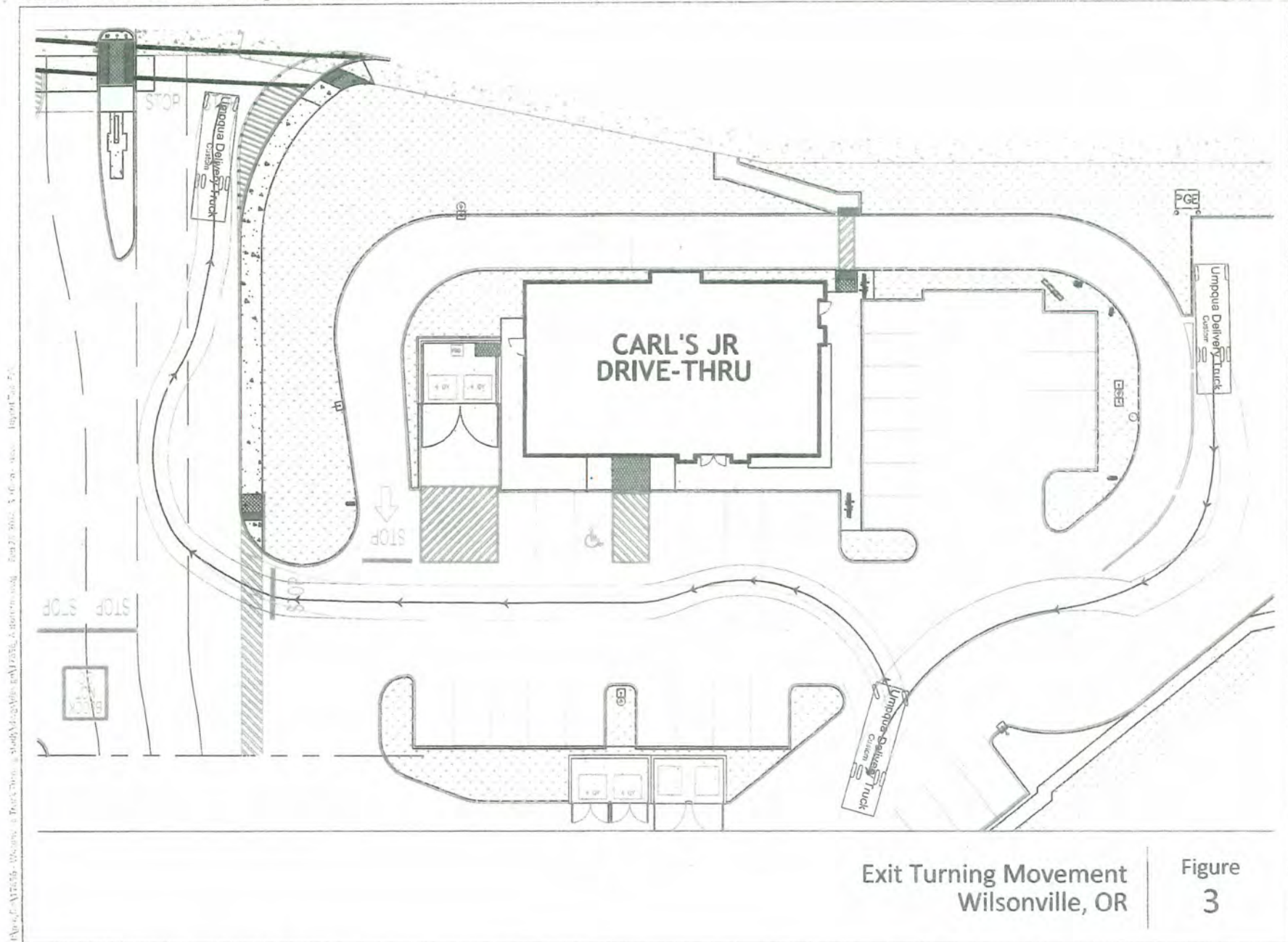




Entrance Turning Movement
Wilsonville, OR

Figure
2

Approved: [Signature] at [Date] for [Project Name] [Address] [City] [State] [Zip] [Phone] [Email] [Website]



Exit Turning Movement
Wilsonville, OR

Figure
3

KITTelson & Associates, Inc. 1000 N. 10th St., Suite 100, Portland, OR 97227-1000

Exit Signs

Directing vehicles exiting site to exit through and in front of Carl's Jr.

Chevron Trash Enclosure on applicant's property

SITE PLAN

100' SCALE

10/1/00

A1.0

CITY COUNCIL MEETING STAFF REPORT

Meeting Date: March 17, 2014	Subject: Resolution No. 2455 2013 Street Lighting Infill Construction Contract Award – CIP #4696 Staff Member: Zachary Weigel, Civil Engineer Department: Engineering
Action Required <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments:
Staff Recommendation: Staff recommends approval of Resolution No. 2455	
Recommended Language for Motion: I move to approve Resolution No. 2455	
PROJECT / ISSUE RELATES TO: <i>[Identify which goal(s), master plans(s) issue relates to.]</i>	
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)
<input checked="" type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL:

A City of Wilsonville resolution approving the public bid process, accepting the lowest, responsible bidder and awarding a construction contract to Signal Construction Group in the amount of \$131,000.00 for the construction of the 2013 Street Light Infill project.

EXECUTIVE SUMMARY:

The 2013 Street Lighting Infill project will improve street lighting at six locations throughout the City. These locations include improved street lighting along portions of Graham's Ferry Road and Tooze Road and at the Wilsonville Road/ Boones Ferry Road intersection. New street lighting will be installed along Burns Way, on Camelot Street near Austria Loop, and at the Town Center Loop West/Citizens Drive intersection.

City Council approved funding of the Capital Improvement Project known as Streetlight Infill in the adopted FY 2013-14 budget. In February 2014, prequalified contractors were invited to submit bids for project construction in accordance with City of Wilsonville and State of Oregon public contracting rules. On February 25, 2014, the City received three bids, of which Signal Construction Group submitted the lowest, responsive bid. Signal Construction Group's bid did not acknowledge receipt of Addendum #2, a minor informality since Addendum #2 did not result in substantive material changes to the Contract Documents (Exhibit B).

EXPECTED RESULTS:

The 2013 Street Lighting Infill project will replace existing lighting or fill in street lighting gaps within the City's lighting infrastructure and will improve existing lighting levels and light distribution.

TIMELINE:

Construction is expected to begin in April 2014 and be completed by June 30, 2014.

CURRENT YEAR BUDGET IMPACTS:

Project #4696 is funded through Streetlight Fund for the amended FY 2013-14 budget, which includes \$389,840 for project design, right-of-way and easement acquisition, construction, and construction management. The non-construction related costs are estimated to be \$110,000, leaving approximately \$280,000 for construction (higher than the subject \$131,000 construction contract)

FINANCIAL REVIEW / COMMENTS:

Reviewed by: CAR Date: 3/4/14

Amended budget for Project #4696 is fully funded with existing resources.

LEGAL REVIEW / COMMENT:

Reviewed by: _MEK_____ Date: 3/5/2014_____

Resolution approved as to form.

COMMUNITY INVOLVEMENT PROCESS:

City staff has met with and received input from citizens interested in improving street lighting at a number of the proposed locations.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

Construction of the 2013 Street Lighting Infill project will increase travel and pedestrian safety on the City's roadways.

ALTERNATIVES:

City staff reviewed multiple alternatives to improve street lighting to current design standards by utilizing existing infrastructure where possible.

CITY MANAGER COMMENT:**ATTACHMENTS**

- A. Exhibit A – Bid Summary
- B. Exhibit B – Signal Construction Group Bid Informality Memo

[illegible]



Engineering Department
29799 SW Town Center Lp. E.
Wilsonville, OR 97070
503-682-4960
503-682-7025 fax

MEMO
Community Development Department
Engineering Division

DATE: February 25, 2014

TO: File

FROM: Zachary J Weigel, P.E.
Civil Engineer

RE: 2013 Street Lighting Infill (CIP #4696)
Signal Construction Group Bid Informality
Engr. File No. 13-03-002

Addenda were issued during the bid period for the 2013 Street Lighting Infill project on February 12, 2014 (Addendum #1) and on February 21, 2014 (Addendum #2). The apparent low bidder, Signal Construction Group (SCG) did not acknowledge receipt of Addendum #2 as part of their bid proposal.

After review of SCG's bid proposal and the language of Addendum #2, the City has determined that the information included in Addendum #2 provided clarification of the contract documents requirements only and did not result in substantial material changes.

Section 00120.30 of the Wilsonville Special Provisions states, "Bids may be rejected if opened and found by the Agency not to be based on Addenda issued before Bids were opened." Section 00120.70 of the Wilsonville Special Provisions states, "A bid will be considered irregular and will be rejected if the irregularity is deemed by the Agency to render the Bid non-responsive."

The City finds SCG's failure to acknowledge receipt of Addendum #2 as part of their bid proposal is a minor informality. As a result, the City finds SCG's bid to be responsive.

RESOLUTION NO. 2455

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH SIGNAL CONSTRUCTION GROUP LLC FOR THE 2013 STREET LIGHTING INFILL PROJECT (CAPITAL IMPROVEMENT PROJECT #4696).

WHEREAS, the City has planned, designed, and budgeted for the completion of Capital Improvement Project #4696, known as the 2013 Street Lighting Infill project (the Project); and

WHEREAS, the City solicited sealed bids for the Project from qualified contractors in compliance with the City of Wilsonville Municipal Code and Oregon Revised Statute (ORS) 279C - Public Contracting for Public Improvements and Related Contracts; and

WHEREAS, on February 25, 2014, the bids received were opened and Signal Construction Group LLC submitted a bid of \$131,000 for the project, which was subsequently evaluated as the lowest responsive and responsible bid.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The procurement process for the Project duly followed City of Wilsonville Municipal Code and Oregon Public Contracting Rules.
2. The contract is awarded to Signal Construction Group LLC who submitted the lowest responsive and responsible bid.
3. The City Council, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, a construction contract with Signal Construction Group LLC for a stated value of \$131,000.
4. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 17th day of March, 2014, and filed with the Wilsonville City Recorder this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	_____
Council President Starr	_____
Councilor Goddard	_____
Councilor Fitzgerald	_____
Councilor Stevens	_____

CITY OF WILSONVILLE CITY COUNCIL MEETING MINUTES

A special meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Thursday, February 20, 2014. Mayor Knapp called the meeting to order at 7:03 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp
Council President Starr - excused
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

Staff present included:

Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Mike Kohlhoff, City Attorney
Sandra King, City Recorder
Jon Gail, Communications Program Manager
Mark Ottenad, Government Affairs Director
Eric Mende, City Engineer

Motion to approve the order of the agenda.

Motion: Councilor Goddard moved to approve the order of the agenda. Councilor Fitzgerald seconded the motion.

Vote: Motion carried 4-0.

MAYOR'S BUSINESS

A. Recognize Karina Jaroch receipt of Girl Scout Gold Award

Mayor Knapp introduced Karina Jaroch, a senior at Valley Catholic High School in Beaverton who has an exceptional background in community service. Ms. Jaroch was awarded the Girl Scout Gold Award; the highest honor awarded to high school aged Girl Scouts. Ms. Jaroch received the Gold Award for completing an independent service project benefiting the Brother Andre Café, a food pantry in Portland by collecting 187 pounds of food that was donated to the food pantry.

Ms. Jaroch explained in addition to conducting the food drives she provided education to the public about the need of food banks during the summer.

B. TVF&R Citizen Life Saving Certificate and Coin Awarded to Tom Smith

Mayor Knapp announced Division Chief Brian Sherrard representing Tualatin Valley Fire & Rescue would be presenting the TVF&R Citizen Life Saving Certificate and Coin to Tom Smith who performed the Heimlich maneuver and saved Arlene Schnitzer's life.

Chief Sherrard recapped the incident leading to the performance of the Heimlich maneuver by Mr. Smith.

CITY OF WILSONVILLE CITY COUNCIL MEETING MINUTES

Mayor Knapp read the following note sent by Mrs. Schnitzer: "I am very sorry that I could not attend tonight, but I am very appreciative that Tom is such an observant person and that he stepped in when he saw a person in need. I want to deeply thank him for saving my life. I am thrilled that Tom is being recognized for his courageous actions."

Chief Sherrard explained the origin of the Life Saving Coin goes back to the military in World War I. The coins are constructed of materials that signify strength and resilience and in the military the coins were given to offer congratulations to people and signify pride, honor and respect within the community. For a citizen they represent selflessness and courage above and beyond what would normally be expected of someone, and saving someone's life falls into that category.

Mr. Smith recounted the event and stated he found out later the woman was Arlene Schnitzer, someone who has given so much to the city of Portland and who is a treasure to the city of Portland. Mr. Smith said receiving the award was an honor and he was humbled to be receiving the award. Mr. Smith thought people should learn how to respond appropriately to people who were in trouble or distress with CPR or the Heimlich maneuver and lend a helping hand.

Councilors thanked Mr. Smith for his willingness to respond.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

There was none.

COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

Councilor Goddard – (Library Board Liaison) – reported he attended the Clackamas County Board of Commissioners open house where there was a good discussion and he appreciated them making themselves available to the residents of Wilsonville. The Councilor also attended the Regional Water Provider's Consortium meeting where they adopted their 2014-15 budget. He announced the date of the next Library Board meeting, the Canyon Creek Road Citizens meeting, and the Daddy Daughter Dance.

Councilor Fitzgerald – (Development Review Panels A & B Liaison) – stated the February Tourism Strategy Task Force meeting has been rescheduled to March and she announced the results of the DRB Panel-A meeting and that the meeting for DRB Panel-B for February had been cancelled.

Councilor Stevens – (Planning Commission; CCI; Wilsonville Seniors Liaison) – announced the Parks and Recreation staff is planning to implement a technology class for seniors who are challenged by the rapidly changes in technology. The Wilsonville Senior Board has expressed the desire to be involved early on with discussions about a future community center. Councilor Stevens reported the Planning Commission discussed the Housing Needs Analysis Residential Land Study and received information about the use of "form based codes" at their last meeting. The Councilor invited the public to participate in the Friends of Trees event.

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

Mayor Knapp reported he and representatives from the City's Planning Commission and Development Review Boards returned recently from a "Smart Growth" conference. The Mayor attended the World of Speed Museum ground breaking, and the Clackamas County Commissioners town hall meeting held in the Wilsonville Community Center.

CONSENT AGENDA

The City Attorney read the titles of the consent agenda items into the record.

A. **Resolution No. 2452**

A Resolution Authorizing City Of Wilsonville Staff To Work With The Korean War Memorial Foundation Of Oregon To Locate And Install Two Commemorative Sculptures At The Oregon Korean War Memorial.

B. Minutes of the February 3, 2014 Council Meeting.

Motion: Councilor Goddard moved to approve the Consent Agenda. Councilor Stevens seconded the motion.

Vote: Motion carried 4-0.

CONTINUING BUSINESS

Mr. Kohlhoff read Ordinance No. 733 by title only for second reading and noted there was no additional public input received on the matter.

A. **Ordinance No. 733** – Second Reading

An Ordinance Of The City Of Wilsonville Amending Wilsonville Code, Public Contracts, Sections 2.312, 2.313, 2.314, 2.315, 2.316, 2.317, And 2.318

Councilor Goddard asked if the language in section 2.312 regarding prequalification will be removed entirely or was it covered in another section of the Code.

Mr. Kohlhoff responded the language will be removed entirely.

Councilor Fitzgerald confirmed the ordinance streamlined operations while maintaining a good level of rigor for making sure the city is adopting good contracting practices.

Mayor Knapp asked if the policy guidelines were available.

Mr. Kohlhoff said the Community Development Director was going to set up within the department policy guidelines for applying the contracting rules with engineers, architects, etc., for contracts under \$100,000. In addition a list would be compiled semi-annually of those contracts. Staff would be reporting to the Council through the City Manager on how the process is working.

Motion: Councilor Goddard moved to approve Ordinance No. 733 on second reading. Councilor Fitzgerald seconded the motion.

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

Vote: Motion carried 4-0.
Councilor Starr – excused
Councilor Goddard - Yes
Councilor Fitzgerald - Yes
Councilor Stevens – Yes
Mayor Knapp - Yes

CITY MANAGER'S BUSINESS

Mr. Cosgrove reminded Councilors of the May 17, 2014 Spring Training date with all of the City's Boards and Commissions. Council will have the opportunity to review the draft agenda when it is available.

LEGAL BUSINESS – There was no report.

ADJOURN

The Mayor adjourned the Council meeting at 7:36 p.m.

Respectfully submitted,

Sandra C. King, MMC, City Recorder

ATTEST:

Tim Knapp, Mayor

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, March 3, 2014. Council President Starr called the meeting to order at 7:00 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp - excused
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

Staff present included:

Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Mike Kohlhoff, City Attorney
Sandra King, City Recorder
Dan Pauly, Associate Planner
Chris Neamtzu, Planning Director
Jon Gail, Community Relations Coordinator
Nancy Kraushaar, Community Development Director
Blaise Edmonds, Manager of Current Planning

Motion to approve the order of the agenda.

Motion: Councilor Fitzgerald moved to approve the order of the agenda. Councilor Stevens seconded the motion.

Vote: Motion carried 4-0.

MAYOR'S BUSINESS

Mayor Knapp was in Washington D.C. meeting with Oregon Legislators and would report on the results of those meetings at the next Council meeting.

COMMUNICATIONS

A. Robotics Team "1425 Error Code Xero Robotics" Update – Kyla Minato

Representatives of Wilsonville High School's *Error Code Xero Team 1425* Robotics Team thanked Council for the donation they received for 2013. They announced the FIRST Robotics District event to be held at Wilsonville High School March 21 - 22, in which 32 robotics teams would be competing and that additional volunteers were needed. The trio spoke about the benefits of participating in the Robotics program noting that team alumni have gone on to earn engineering degrees, and the importance of earning a college degree.

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

B. Mr. Cosgrove introduced Sgt. Brad O'Neal a member of Clackamas County Sheriff's Office for the past 14 years. Sgt. O'Neal works with Nero a German Shepard/Belgian Malinois cross who is trained in narcotics detection.

C. Wilsonville High School Acappella Group Soul-D Out YouTube Video
A YouTube video showing the activities of the Wilsonville High School Acappella Group Soul-D Out was shown. The CNN video described the Acappella group's success.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

Michelle Tonkin, announced the For the Love of Schools Fun Run, City Council Challenge event scheduled for June 1, 2014. The fun run is an annual event to raise money for schools, and 100% of the entry fees go directly to the local schools.

Lonnie Gieber, 10558 SW Sunnyside Drive, presented an average of statistics from the U.S. Census Bureau about the level of poverty in the City of Wilsonville. He spoke about the number of families using food banks, percentage of students eligible for reduced lunch in the schools, and the increases in rent at local apartments. Mr. Gieber wanted to heighten the sensitivity of the public to the needs of citizens who are in the lower economic spectrum. Mr. Gieber announced the Grace Chapel Rummage Sale whose proceeds are distributed to the schools and food pantries in the City of Wilsonville

Michael Davis 6295 SW Wilsonville Road, proposed for the city to prosper, there needed to be a positive attitude towards city employees from the public. He suggested one way for youth to have a positive attitude towards police officers is for the officers to carry a "good ticket book" to reward youth doing a positive act in the community. Staff would pass the idea on to Officer Keen at the high school.

COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

Council President Starr – (*Park & Recreation Advisory Board Liaison*) announced the next meeting dates of the Parks and Recreation Advisory Board meetings, and invited the public to attend the Volunteer Planting and Tree Care event.

Councilor Goddard – (*Library Board Liaison*) had no liaison report to make, but announced the next Library Board meeting and the opening date for registration for a community garden plot.

Councilor Fitzgerald – (*Development Review Panels A & B Liaison*) stated the next meeting date of the Tourism Strategy Task Force, and the upcoming Development Review Board meetings.

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

Councilor Stevens – (*Planning Commission; CCI; Wilsonville Seniors Liaison*) noted the next Planning Commission meeting date where a discussion of Basalt Creek concept planning will take place, and that reservations for park shelters would open March 10.

PUBLIC HEARING

Mr. Kohlhoff read the title of Ordinance No. 736 into the record by title only.

A. **Ordinance No. 736** – 1st Reading

An Ordinance Of The City Of Wilsonville Declaring And Authorizing The Vacation Of Three (3) Portions Of SW 110th Avenue Public Street Right Of Way Between SW Mont Blanc Street And SW Tooze Road/SW Boeckman Road In Villebois Legally Described In Attachment C.

Council President Starr read the public hearing format for land use and opened the hearing at 7:50 p.m.

Mr. Pauly provided the staff report and used a PowerPoint presentation. Mr. Pauly displayed slides showing the changes to the alignment of 110th Avenue over the years. Vacation of portions of SW 110th Avenue in Villebois will enable the previously approved and planned street network, residential, and park development in this portion of Villebois. Both the Transportation Systems Plan and the Villebois Village Master Plan include replacing SW 110th Avenue.

SW 110th Avenue has long served as a north south connection on the west side of Wilsonville. Historically it connected SW Brown Rd./SW Camelot directly north to SW Tooze Road. The Villebois Village Master Plan, originally adopted in 2003, shows a new circulation system replacing SW 110th and the north-south connectivity it provided. During the earlier phases of Villebois development the most southerly portion of the original SW 110th Avenue was vacated and is now a pedestrian connection with plantings extending from SW Camelot Street to the SW Costa Circle/SW Barber Street round-a-bout. The portions of the original SW 110th Avenue between the pedestrian connection and the southernmost portion of proposed vacation have been converted to the SW Costa Circle/SW Barber Street round-a-bout and a segment of SW Costa Circle East.

The proposed vacation allows the conversion of much of the remainder of SW 110th Avenue into private park areas, as shown in the Villebois Village Master Plan. Some segments of the right-of-way will not be vacated, but be incorporated into planned streets including SW Villebois Drive North, SW Berlin Avenue, and SW Stockholm Avenue. The very northern portion of SW 110th Avenue will remain to provide access to a property on the west side of SW 110th just south of SW Tooze Road not yet proposed for development. The north-south connectivity of SW 110th Avenue will be replaced by a new segment of SW Villebois Drive North with bike lanes and sidewalks which will connect from a new round-a-bout at SW Costa Circle to the existing round-a-bout on SW Boeckman Rd./SW Tooze Rd. just west of the Boeckman Bridge.

It is anticipated the construction of SW Villebois Drive North and demolition of the vacated

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

portions of SW 110th Avenue will take place this summer.

There are several requirements that need to be met for a street vacation petition to be approved. Staff has set those forth and how they are met in Attachment A to the Ordinance. The referenced DRB process meets city code requirements for a street vacation as well. The form of the ordinance is approved. The required public hearing notices have been sent and the required notice has been posted along the right-of-way requested to be vacated.

Upon adoption, Ordinance No. 736 will provide the following benefits to the community:

- Continued build-out of the Villebois Village Master Plan
- Support of the implementation of two high priority projects listed in the 2013 Transportation Systems Plan: RE-09 Villebois Drive Extension from Costa Circle to Coffee Lake Drive, and RE-10 Villebois Drive Extension Coffee Lake Drive to Boeckman Road.
- Improved bike and pedestrian connectivity and safety by replacing two-lane SW 110th Avenue without sidewalks or bike lanes with a complete street including bike lanes and sidewalks.
- Road closures and traffic detours during construction, which will be coordinated with the City to minimize duration.
- Development of a number of private parks.

Council may approve the vacation with the Conditions of Approval in the staff report or attach additional conditions the Council deems necessary to satisfy City code and policy.

Councilor Fitzgerald asked how the remaining right-of-way would be used. Mr. Pauly stated that was where the cross streets will go.

Councilor Stevens confirmed the south end of the new road intersecting with Boeckman Road will be a roundabout. Mr. Pauly said it would be a roundabout

Council President Starr invited public testimony; hearing nothing he moved to close the public hearing at 7:58 p.m. The motion was seconded by Councilor Goddard and carried 4-0.

Motion: Councilor Goddard moved to adopt Ordinance No. 736 on first reading. Councilor Fitzgerald seconded the motion.

Vote: Motion carried 4-0.

NEW BUSINESS

A. Set the hearing date appeal of the denial of the Human Bean application by the Development Review Board Panel "A" for March 17, 2014. The appeal is limited to the record and additional testimony and evidence on the following issues and related development code provisions:

- On-site traffic congestion;

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles; and
- Section 4.154, Subsections 4.155(.03)A., 4.400(.02)A., and 4.421(.01)C.

Mr. Kohlhoff stated this matter is to set the hearing date in the appeal of the denial of the Human Bean application by the Development Review Board Panel :A", and it is recommended that it be set for March 17, 2014, and also to establish the scope of review. There are three alternative scopes of review: one would be to hear the matter on the record only; the second would be to hear the matter on the record but have limited additional testimony and evidence on the issues related to the Development Code provisions involved in the denial: the onsite traffic congestion, the adequacy, efficiency and safety of onsite pedestrian and vehicular circulation inclusive of delivery vehicles and other larger format vehicles and involving Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C; and the third scope of review could be a full de novo hearing opening it up essentially to having a second full hearing on the matter.

The staff's recommendation would be to hear the matter on March 17, 2014 and to adopt the scope of appeal that would be limited to the record, but having additional testimony and evidence on the issues and related Development Code provisions that were just outlined.

Mr. Kohlhoff continued, an objection to the appeal was filed by LaPoint Business Group LLC, by and through its attorney and they object basically the fact the applicant has provided no legal basis for its appeal. This objection has been made part of the record.

In addition, a response was filed by Stephen Pfeiffer, attorney for the applicant the Human Bean, Wilsonville Devco LLC, which will also be entered into the record,

Mr Kohlhoff pointed out Section 4.022(.02) addresses procedures for an appeal of the Development Review Board decision to the City Council. Such an appeal is a matter of right as long as the appeal is filed within fourteen days of the decision and indicates the decision that is being appealed. The Code does not require a statement of any specific legal grounds. In this case the applicant filed the appeal within the fourteen day period and cited the decision being appealed. The applicant further stated the DRB misapplied and misinterpreted Wilsonville Development Code Section 4.400(.02) and 4.421C; however the Wilsonville Code does not require a statement of legal grounds as a condition of filing of the appeal. It is staff's recommendation that the Council simply denies the objection on a vote tonight and then makes a motion to set the hearing date and the scope of review. Due to the full agenda on March 17, Mr. Kohlhoff suggested Council may want to consider a motion limiting time for presentation.

Council President Starr said the Council has a recommendation from the City Attorney to vote to reject the appeal, does anybody want to make a motion on that.

Mr. Kohlhoff clarified the first vote would be to deny the objection of the appeal.

Motion: Councilor Goddard moved the Council deny the objection as outlined by the City Attorney Kohlhoff. Councilor Stevens seconded the motion.

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

Vote: Motion carried 4-0

Council President Starr asked about the recommendation based on timing. Mr. Kohlhoff responded the recommendation would be as set forth in the agenda, it would be to set the appeal for a hearing date of March 17, 2014 and limit it to the record and additional testimony and evidence on the following issues and related Development Code provisions:

- On-site traffic congestion;
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles; and
- Section 4.154, Subsections 4.155(.03)A., 4.400(.02)A., and 4.421(.01)C.

Council President Starr asked for a motion.

Motion: Councilor Stevens moved the Council set the hearing date for March 17, 2014 and the Council limits additional evidence addressing only those areas already a part of the DRB record and no new evidence or testimony outside the issue already raised shall be submitted.

Mr. Kohlhoff suggested the motion be amended to add that they can add additional testimony outlined in the three bullet points on the agenda:

- On-site traffic congestion;
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles; and
- Section 4.154, Subsections 4.155(.03)A., 4.400(.02)A., and 4.421(.01)C.

Mr. Cosgrove stated Councilor Stevens can amend her motion to say what the City Attorney just said.

Amended Motion: Councilor Stevens amended her motion to say what the City Attorney just said; the motion is amended to add that they can add additional testimony outlined in the three bullet points on the agenda:

- On-site traffic congestion;
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles; and
- Section 4.154, Subsections 4.155(.03)A., 4.400(.02)A., and 4.421(.01)C.

Council President Starr asked for a second.

Councilor Goddard seconded the motion.

Vote: Motion carried 4-0

Mr. Kohlhoff stated the third item is whether or not the Council wanted to set time limits for the presentation. The appellant, in this case is the applicant, staff is recommending Council set a time limit for the presentation of additional evidence to twenty minutes and give them the right

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

to reserve five of those minutes for rebuttal. And the other party who has filed the objection to the appeal be allowed twenty minutes. Both parties have twenty minutes, but the appellant could reserve up to five minutes for rebuttal.

Council President Starr asked if Council wanted to make such a motion.

Mr. Cosgrove confirmed testimony would be limited to twenty minutes for each side with five minute rebuttal for the appellant.

Councilor Fitzgerald asked if Council had further questions at that time or the desire to get more information can the timelines be extended. Mr. Kohlhoff thought if Council had questions, and it is taking them longer, then Council can grant the additional time that it is taking if they want to carry on. Councilor Fitzgerald asked if the time is always equal to each party. Mr. Kohlhoff responded that was not necessary.

Motion: Councilor Goddard moved to allow both sides in this matter twenty minutes to make their arguments with providing the appellant the right to reserve five minutes for rebuttal. Councilor Fitzgerald seconded the motion.

Vote: Motion carried 4-0.

Council President Starr thought the time allocation would allow both parties sufficient time to plan for the twenty minutes and go from there. That will happen at the next Council meeting.

Mr. Pauly's staff report is included here in its entirety to provide background on the matter.
Begin Staff Report.

Comment: Following their review at the January 13th and February 10th meetings Development Review Board Panel A rejected proposed Resolution No. 268 to approve with conditions the Human Bean Coffee Kiosk and denied the application. On January 21st, the applicant filed an appeal of the DRB's decision.

Staff Recommendation: The City Council's scope of review be limited to the issues related to the reasons DRB members stated for denial. These issues are:

- On-site traffic congestion,
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles.

Recommended Language for Motion: Having considered the factors in WC 4.022(.07) A, I move the City Council order that the appeal hearing of the denial Human Bean application by Development Review Board Panel A at its February 10, 2014 hearing, be limited to additional testimony and evidence on the following issues and related development code provisions:

- On-site traffic congestion,
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles.
- Section 4.154, Subsections 4.155 (.03) A., 4.400 (.02) A., and 4.421 (.01) C.

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

PROJECT / ISSUE RELATES TO: Development Code

☐ Council Goals/Priorities

☐ Adopted Master Plan(s)

☒ Not Applicable

ISSUE BEFORE COUNCIL: At their February 10, 2014 meeting on this matter, Development Review Board Panel A voted 4-1 to deny the applications for the Human Bean Coffee Kiosk. On January 21, 2014, the applicant filed an appeal of the DRB's decision. The City's Development Code (Subsection 4.022 (.05) B.) provides the City Council as the reviewing body shall order the scope of review on appeal to be one of the following:

- Restricted to the record, meaning only evidence and testimony entered into the DRB record shall be considered, but the right of argument as to how the evidence in the record meets or does not meet the applicable standards is granted.
- Limit the scope to issues the Council determines necessary for a proper resolution of the matter. This allows any party to testify and submit new evidence related to the stated issues, but considers all other matters related to the applications on the record. For example, a new concern about architecture can't be raised on appeal if architecture wasn't an issue identified by the Council. Both parties had new evidence on the seminal issue they wanted to present to the DRB, but the record had been closed. This option takes away any claim they parties were not fully heard. This option also gives staff the ability to more thoroughly present the facts surrounding the reasons DRB denied the applications and gives the applicant and the opponent the opportunity to present further approaches to consider that might resolve the problems identified by the DRB.
- A de novo hearing, meaning new evidence and testimony on any topic related to the applications can be submitted during the City Council review. This could lengthen the hearing and not make efficient use of the Council's hearing time.

EXECUTIVE SUMMARY: On January 21, 2014 the applicant filed an appeal of the recent DRB decision to deny the applications allowing for building a coffee kiosk on the same property as the Carl's Jr. Restaurant in North Wilsonville. The appeal will first be heard during the Council's March 17, 2014 meeting. A final decision must be rendered by the City no later than the Council's April 7, 2014 meeting in order to not violate the state's 120-day rule for land use reviews. After discussion between planning and legal staff, staff recommends the council keep the record open on a limited basis to allow additional evidence, staff discussion, and analysis of the issues surrounding the reasons the DRB denied the applications. All other issues and topics will be on the record. This approach allows for more thorough discussion of the issues surrounding the denial and allows the applicant to address concerns raised by the DRB, and opponents of the application to comment on any new ideas proposed to address concerns.

EXPECTED RESULTS: Identification of the level of new evidence and testimony the Council will consider for the Human Bean coffee kiosk applications on appeal

TIMELINE: Making the decision on the type of hearing to hold will allow all parties, including staff, the applicant, and opponents of the application to understand and prepare for the anticipated City Council hearing later in the month.

CURRENT YEAR BUDGET IMPACTS: None anticipated

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

FINANCIAL REVIEW / COMMENTS:

Reviewed by: JEO, Date: 2/21/14

No financial impact.

LEGAL REVIEW / COMMENT:

Reviewed by: MEK, Date: 2/14/ 2014

The Council has the discretion to set the scope of review on appeal. The factors that the Council shall consider in allowing additional evidence are set forth in WC 4.022 (.07) A. Allowing both parties to address this issue eliminates any claim of prejudice (factor 1); will allow both the parties to know they can bring available evidence as this was not the case with the DRB record being closed (factor 2); this will eliminate any claim of surprise (factor 4), albeit this was not a claim in front of the DRB; and to the extent the proposed testimony and evidence of each party was offered to the DRB (but not admitted) the proposed testimony and evidence appears to have some competency and materiality to the determining issue (factor 4). There may such other factors as the Council may determine apply (factor 5).

COMMUNITY INVOLVEMENT PROCESS: The standards public notice procedures for the DRB have been followed. The DRB has allowed interested parties to testify during their hearing process.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY Making a motion to determine the extent of new evidence and testimony that will be allowed for the Human Bean applications on appeal allows for clear expectations for all the parties involved. The recommendation of keeping the record open only on the issues identified by the DRB in the denial allows for thorough consideration of the issues in relation to the best interest of the community.

ALTERNATIVES: As alternatives to Planning and Legal staff's recommendation to allow new evidence and testimony only on those issues identified for the DRB as reasons for denial the Council could:

Not allow any new evidence or testimony and review only the DRB record

Hold a de novo hearing which will allow evidence and testimony on any topic related to the Human Bean.

End of Staff Report.

CITY MANAGER'S BUSINESS - There was no report.

LEGAL BUSINESS – There was no report.

ADJOURN

Council president Starr adjourned the meeting at 8:10 p.m.

Respectfully submitted,

Sandra C. King, MMC, City Recorder

ATTEST:

Council President Scott Starr

CITY COUNCIL MEETING STAFF REPORT

Meeting Date: March 17, 2014	Subject: Ordinance No. 735 Ordinance to prohibit smoking within twenty feet of transit stops and shelters. Staff Member: Stephan Lashbrook Department: Transit	
Action Required <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments:	
Staff Recommendation: Staff recommends approval of Ordinance No. 735 on first reading.		
Recommended Language for Motion: "I move to approve Ordinance No. 735 on first reading."		
PROJECT / ISSUE RELATES TO: <i>[Identify which goal(s), master plans(s) issue relates to.]</i>		
<input checked="" type="checkbox"/> Council Goals/Priorities <i>Safe Healthy & Aesthetically Pleasing Community</i>	<input type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

The issue before Council is whether to prohibit smoking at, in or near transit stops and shelters.

EXECUTIVE SUMMARY:

The City of Wilsonville joined numerous other cities in banning the use of tobacco in public parks in 2012. That City Council decision was in response to strong community support. Since that time, SMART employees have heard from citizens asking that smoking be prohibited in and around transit stops and shelters. When a bus sits at these locations with the doors open, cigarette smoke is often drawn into the bus from smokers outside the bus. Such smoke can also

be irritating to people waiting to board a bus. On occasion, bus drivers have asked smokers to move away from transit shelters, but with mixed results. On some occasions, smokers have flatly refused to comply. Twenty feet is a rational and reasonable distance to provide a margin for the smoke to dissipate when people waiting to board a bus may occupy some of the area within the twenty feet and as a practical matter the distance may be closer to ten feet.

If the Ordinance is adopted, signs will be installed at transit shelters and stops indicating that those locations are smoke free. As proposed, this ordinance will be enforced through fines as outlined in the Wilsonville Code, just as with the tobacco ban in Wilsonville parks.

EXPECTED RESULTS:

Healthier and safer use of City transit facilities. Some increase in ridership is expected. Please see benefits listed below.

TIMELINE:

As proposed, the first reading of the ordinance will take place on March 17, with the second reading on April 7, 2014. The ordinance will take effect 30 days after adoption on second reading.

CURRENT YEAR BUDGET IMPACTS:

Minor costs for creating and posting signs on transit facilities.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: ____CAR____ Date: 03/05/2014

Minor costs can be absorbed in the current year budget.

LEGAL REVIEW / COMMENT:

Reviewed by: _MEK____ Date: 2/28/2014____

Ordinance approved as to form.

COMMUNITY INVOLVEMENT PROCESS:

Staff has relied on the community outreach process used to enact Ordinance No. 712, prohibiting tobacco use in City parks. During that process, community members overwhelmingly supported restricting smoking in public places.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

Adoption of the proposed Ordinance is expected to result in:

- Positive health impacts (e.g. improved public health, reduced health risks for people who use transit, especially those with chronic conditions);
- Reduced environmental impacts (reduced litter from cigarette butts);
- Positive social impacts (transit services are vital to many in the community); and
- Economic benefits (transit helps fuel economic health by getting commuters to and from their jobs).

Effects of Second Hand Smoke (SHS):

- Exposure to SHS is now known to be physically harmful - especially to children;
- No level of SHS is risk free;
- Tobacco smoke contains more than 7,000 chemicals, including hundreds that are toxic and more than 70 that are listed as carcinogens;
- Exposure to SHS negates the positive effects of engaging in healthy outdoor activities, including walking or bicycling to and from transit stops; and
- SHS exposure in outdoor areas can rival amounts in indoor spaces.

ALTERNATIVES:

The City Council has two alternatives to the proposed Ordinance:

1. Expand or decrease the area to be covered by the smoking prohibition; or
2. Elect not to enact the Ordinance.

CITY MANAGER COMMENT:**ATTACHMENTS**

- A. Proposed Ordinance No. 735
- B. "*Secondhand Smoke (SHS) Facts*" from the Centers for Disease Control and Prevention

ORDINANCE NO. 735

AN ORDINANCE AMENDING CITY OF WILSONVILLE MISCELLANEOUS CODE PROVISIONS TO PROHIBIT SMOKING AT OR WITHIN TWENTY FEET OF A BUS STOP OR TRANSIT SHELTER.

WHEREAS, the City Council has received information regarding the benefits of prohibiting smoking on City property, facilities and buildings; and

WHEREAS, City employees have received complaints from transit riders about people smoking at bus stops;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. Wilsonville Code, Miscellaneous Provisions, § 10.000, is amended by adding the following subsection:

“(10.305) Smoking At, In, or Near Public Transit Stops or Shelters.

No person shall smoke tobacco or any other substance at, in, or within 20 feet of a transit stop or shelter. To the extent this smoke free zone extends into any city street or public way, any and all occupants of any fully enclosed vehicle driving through this smoke free zone are exempted from the provisions of this section.”

2. Wilsonville Code, subsection, § 10.430, Penalties subsection is amended by adding the following subsection (4):

“(4) Any person who is convicted of violating the provisions of WC 10.305 shall be punished as a violation pursuant to Section 1.012.”

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the ____ day of _____ 2014, and scheduled for a second reading at a regular meeting of the City Council on the ____ day of _____, 2014, commencing at the hour of 7 p.m. at the Wilsonville City Hall.

Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the _____ day of _____ 2014, by the following votes: Yes:-- No: --

Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this _____ day of _____, 2014.

TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

Secondhand Smoke (SHS) Facts

Secondhand Smoke Fact Sheets

- [Overview](#)
- [Health Effects: Children](#)
- [Health Effects: Adults](#)
- [Estimates of Secondhand Smoke Exposure](#)
- [Disparities in Secondhand Smoke Exposure](#)
- [References](#)
- [For Further Information](#)

Overview

Secondhand smoke is a mixture of gases and fine particles that includes—

- Smoke from a burning cigarette, cigar, or pipe tip,¹
- Smoke that has been exhaled or breathed out by the person or people smoking¹
- More than 7,000 chemicals, including hundreds that are toxic and about 70 that can cause cancer²

Most exposure to secondhand smoke occurs in homes and workplaces. Secondhand smoke exposure also continues to occur in public places such as restaurants, bars, and casinos and in private vehicles.³ Eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure. Separating smokers from nonsmokers, cleaning the air, opening windows, and ventilating buildings does not eliminate secondhand smoke exposure.³

Health Effects: Children

In children, secondhand smoke causes the following:³

- Ear infections
- More frequent and severe asthma attacks
- Respiratory symptoms (e.g., coughing, sneezing, shortness of breath)
- Respiratory infections (i.e., bronchitis, pneumonia)
- A greater risk for sudden infant death syndrome (SIDS)

In children aged 18 months or younger, secondhand smoke exposure is responsible for—⁴

- An estimated 150,000–300,000 new cases of bronchitis and pneumonia annually
- Approximately 7,500–15,000 hospitalizations annually in the United States

Health Effects: Adults

In adults who have never smoked, secondhand smoke can cause heart disease and/or lung cancer.³

Heart Disease

- For nonsmokers, breathing secondhand smoke has immediate harmful effects on the cardiovascular system that can increase the risk for heart attack. People who already have heart disease are at especially high risk.^{3,5}
- Nonsmokers who are exposed to secondhand smoke at home or work increase their heart disease risk by 25–30%.³
- Secondhand smoke exposure causes an estimated 46,000 heart disease deaths annually among adult nonsmokers in the United States.⁶

Lung Cancer

- Nonsmokers who are exposed to secondhand smoke at home or work increase their lung cancer risk by 20–30%.³
- Secondhand smoke exposure causes an estimated 3,400 lung cancer deaths annually among adult nonsmokers in the United States.⁶

There is no risk-free level of contact with secondhand smoke; even brief exposure can be harmful to health.³

Estimates of Secondhand Smoke Exposure

When a nonsmoker breathes in secondhand smoke, the body begins to metabolize or break down the nicotine that was in the smoke. During this process, a nicotine byproduct called cotinine is created. Exposure to nicotine and secondhand smoke can be measured by testing saliva, urine, or blood for the presence of cotinine.³

Secondhand Smoke Exposure Has Decreased in Recent Years

- Measurements of cotinine have shown how exposure to secondhand smoke has steadily decreased in the United States over time.^{3,7}
 - During 1988–1991, approximately 87.9% of nonsmokers had measurable levels of cotinine.
 - During 1999–2000, approximately 52.5% of nonsmokers had measurable levels of cotinine.
 - During 2007–2008, approximately 40.1% of nonsmokers had measurable levels of cotinine.
- The decrease in exposure to secondhand smoke over the last 20 years is due to the growing number of laws that ban smoking in workplaces and public places, the increase in the number of households with smoke-free home rules, and the decreases in adult and youth smoking rates.^{8,9}

Many in the United States continue to be exposed to secondhand smoke⁷

- An estimated 88 million nonsmokers in the United States were exposed to secondhand smoke in 2007–2008.
- Children are at particular risk for exposure to secondhand smoke: 53.6% of young children (aged 3–11 years) were exposed to secondhand smoke in 2007–2008.
- While only 5.4% of adult nonsmokers in the United States lived with someone who smoked inside their home, 18.2% of children (aged 3–11 years) lived with someone who smoked inside their home in 2007–2008.

Disparities in Secondhand Smoke Exposure

Racial and Ethnic Groups

- Although declines in cotinine levels have occurred in all racial and ethnic groups, cotinine levels have consistently been found to be higher in non-Hispanic black Americans than in non-Hispanic white Americans and Mexican Americans.^{7,8,9} In 2007–2008:
 - 55.9% of non-Hispanic blacks were exposed to secondhand smoke.
 - 40.1% of non-Hispanic whites were exposed to secondhand smoke.
 - 28.5% of Mexican Americans were exposed to secondhand smoke.

Low Income


- Secondhand smoke exposure tends to be high for persons with low incomes: 60.5% of persons living below the poverty level in the United States were exposed to secondhand smoke in 2007–2008.⁷

Occupational Disparities

- Occupational disparities in secondhand smoke exposure decreased over the past two decades, but substantial differences in exposure among workers remain. African-American male workers, construction workers, and blue collar workers and service workers are among some of the groups who continue to experience particularly high levels of secondhand smoke exposure relative to other workers.¹⁰

Eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure. Separating smokers from nonsmokers, cleaning the air, opening windows, and ventilating buildings does not eliminate secondhand smoke exposure.³

References

1. National Toxicology Program. **Report on Carcinogens, Twelfth Edition** . [PDF–7.74 MB] Research Triangle Park (NC): U.S. Department of Health and Human Sciences, National Institute of Environmental Health Sciences, National Toxicology Program, 2011 [accessed 2013 June 10].
2. U.S. Department of Health and Human Services. **A Report of the Surgeon General: How Tobacco Smoke Causes Disease: What It Means to You**. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010 [accessed 2013 June 10].
3. U.S. Department of Health and Human Services. **The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General**. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006 [accessed 2013 June 10].

4. United States Environmental Protection Agency. **Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders**. [PDF-3.90 MB]. Washington: U.S. Environmental Protection Agency, Office of Research and Development, Office of Health and Environmental Assessment, 1992 [accessed 2013 June 10].
5. Institute of Medicine. **Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence**. [PDF-707.47 KB]. Washington: National Academy of Sciences, Institute of Medicine, 2009 [accessed 2013 June 10].
6. Centers for Disease Control and Prevention. **Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004**. Morbidity and Mortality Weekly Report 2008;57(45):1226–8 [accessed 2013 June 10].
7. Centers for Disease Control and Prevention. **Vital Signs: Nonsmokers' Exposure to Secondhand Smoke—United States, 1999–2008**. Morbidity and Mortality Weekly Report 2010;59(35):1141–6 [accessed 2013 June 10].
8. Pirkle JL, Bernert JT, Caudill SP, Sosnoff CS, Pechacek TF. **Trends in the Exposure of Nonsmokers in the U.S. Population to Secondhand Smoke: 1988–2002**. Environmental Health Perspectives 2006;114(6):853–8 [accessed 2013 June 10].
9. Centers for Disease Control and Prevention. **Fourth National Report on Human Exposure to Environmental Chemicals**. [PDF-6.36 MB] Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Environmental Health, 2009 [accessed 2013 June 10].
10. Arheart KL, Lee DJ, Dietz NA, Wilkinson JD, Clark III JD, LeBlanc WG, Serdar B, Fleming LE. **Declining Trends in Serum Cotinine Levels in U.S. Worker Groups: The Power of Policy**. Journal of Occupational and Environmental Medicine 2008;50(1):57–63 [cited 2013 June 10].

For Further Information

Centers for Disease Control and Prevention
National Center for Chronic Disease Prevention and Health Promotion
Office on Smoking and Health
E-mail: tobaccoinfo@cdc.gov
Phone: 1-800-CDC-INFO

Media Inquiries: Contact CDC's Office on Smoking and Health press line at 770-488-5493.

CITY COUNCIL MEETING STAFF REPORT

Meeting Date: March 17, 2014	Subject: Ordinance No. 737 Dog Control Staff Member: Barbara Jacobson and Chief Jeff Smith Department: Legal	
Action Required <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: 	
Staff Recommendation: N/A		
Recommended Language for Motion: I move to approve Ordinance No. 737 on first reading.		
PROJECT / ISSUE RELATES TO: <i>[Identify which goal(s), master plans(s) issue relates to.]</i>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

The issue before City Council is as follows: The City has received several citizen complaints concerning dogs running at large, particularly on public sidewalks, causing a concern of danger to children and other pets in particular. As currently written, **Section 10** only addresses vicious animals at large (**Section 10.220**). The proposed amendment would add a **Section 10.240** to require that all dogs within the City limits must be kept on a leash at all times while on public property (excluding in posted off leash dog park areas and excluding working animals). The Section also prohibits dogs from being allowed to run loose on private property without owner permission and incorporates the Clackamas County Dog Control Ordinance by reference.

Finally Section **10.430(1)** is amended to allow for a lower graduated fine and penalty for violations of proposed **Section 10.240(1)**. Standard penalty provisions continue to apply for the remainder of **Section 10**.

EXECUTIVE SUMMARY:

In 2006, the City adopted the Clackamas County Dog Control Ordinance pursuant to Resolution 1977 but, unfortunately, due to funding constraints, there is insufficient County staff available to enforce the County Ordinance in Wilsonville. Therefore, **Section 10.240** now gives Wilsonville law enforcement officers the authority to cite dog-at-large violations of the proposed **Section 10.240** directly into Wilsonville Municipal Court. The proposed **Section 10.240** also sets forth other key provisions of the Clackamas County Dog Control Ordinance and generally incorporates the entire Ordinance by reference, thereby making all of those provisions part of the Wilsonville City Code and allowing their enforcement by our own municipal court, rather than having to refer violations to Clackamas County. To give citizens time to become aware of the City's intent to enforce the law as it pertains to off-lease dogs, a reduced penalty is being proposed and the Police Chief has stated that the deputies will be instructed to start with warnings and education of the public before issuing any fines.

EXPECTED RESULTS:

The proposed Ordinance is expected to reduce the number of dogs at large within the City of Wilsonville and thereby better protect the health and safety of the community, including both people and animals.

TIMELINE:

Immediate.

CURRENT YEAR BUDGET IMPACTS:

None.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: CAR Date: 3/4/14

LEGAL REVIEW / COMMENT:

Reviewed by: MEK Date: 3/3/14

The legal department provided the ordinance in concert with the Assistant City Manager and Chief of Police.

COMMUNITY INVOLVEMENT PROCESS:

None. Proposed Ordinance changes are, however, based on public complaints to City Hall.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups): The goal is that this Ordinance will help to make the community a safer place for people and pets.

ALTERNATIVES:

The Council has the following options for consideration of this Ordinance:

- 1) To approve Ordinance No. 737, as written;
- 2) To not approve Ordinance No. 737, and request specific changes to the ordinance for future agenda;
- 3) To not approve Ordinance No. 737, leaving current code as written.

Option 1 is the recommended option based on citizen complaints and lack of enforcement of the County Dog Control Ordinance by Clackamas County due to funding cutbacks. It will give Wilsonville officers the ability to educate the public and to enforce the Ordinance in Wilsonville Municipal Court if education fails.

CITY MANAGER COMMENT:

ATTACHMENTS

- A. Ordinance No. 737

ORDINANCE NO. 737

AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING CHAPTER 10 OF THE WILSONVILLE CODE BY ADDING SECTION 10.240 CONTROL OF DOGS AND AMENDING SECTION 10.430 PENALTIES.

WHEREAS, it is in the interest of public safety and animal welfare that a new **Section 10.240 Dog Control** be added to the Wilsonville City Code and amending **Section 10.430 Penalties**.

WHEREAS, Pursuant to Resolution No. 1977, the City granted approval to Clackamas County to administer the County's Dog Control and Licensing Ordinance within the City; and

WHEREAS, the foregoing consent remains in place but, due to funding constraints, Clackamas County does not have personnel to administer said Ordinance; and

WHEREAS, numerous citizen complaints have been made regarding safety for both people and pets due to dogs being allowed to roam off leash, at large, or unsupervised within public areas of the City; and

WHEREAS, to assist Wilsonville law enforcement officers, the City believes it in the best interest of the public to enact its own specific Ordinance regarding the prohibition of off leash and at large dogs within all public areas of the City, except as set forth herein;

NOW THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. **Chapter 10 ANIMALS** is hereby amended by adding the following:

"Section 10.240 Control of Dogs.

(1) Except as expressly provided herein, it is unlawful to permit or allow a dog to be off leash or at large on or in any public streets, parks or other public properties within the City of Wilsonville or on private property within the City of Wilsonville if the owner, occupant or person in charge of the private property has not given permission for the off leash or at large dog to be on the private property. Dogs may be allowed off lease in the following circumstances only:

- (a) Within a posted off leash area, as long as under the direction and control of their owner or another person in control of the dog, so long as the dog is not known to be a dangerous or vicious dog.

(b) Working dogs, including but not limited to guide dogs and service dogs recognized as such by State law, so long as the dog is wearing a locating device and is within the near vicinity of the person in control of the dog.

(2) It is unlawful to permit a dog to be unrestrained in an open portion of a vehicle, such as the back of a pick-up truck, or to be tethered in a vehicle in a way that is dangerous to the dog or to traffic.

(3) It is unlawful to leave a dog unattended in a motor vehicle at any location under such condition as may endanger the health or well-being of the dog, including but not limited to dangerous temperature, lack of food, water or attention.

(4) Additional provisions concerning Control of Dogs, as set forth in Clackamas County Code Chapter 5.01, will continue to apply, are enforceable within the City, and are incorporated by reference herein.”

Section 10.430 (1) is amended to add reference to **Section 10.240 (1)**, to now read as follows:

“(1) Any person who violates the provisions of *WC 10.240 (1)*, WC 10.410 or 10.425 shall be punished as follows:”

(Penalties for any violations of **Sections 10.240 (2) through (5)** remain governed by **Section 10.530 Penalties.**)

2. The City Recorder is directed to amend Wilsonville Code **Section 10**, as approved above, and to make such format, style, and conforming changes to match the format and style of the Animal section of the Wilsonville Code.
3. Except as set forth above, **Section 10** of the Wilsonville City Code remains in full force and effect, as written.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the ____ day of _____, 2014, and scheduled for second reading on _____, commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the ____ day of _____, 2014, by the
following votes: Yes: ____ No: ____

Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this ____ day of _____, 2014.

TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

**CITY OF WILSONVILLE
CITY COUNCIL
NOTICE OF PUBLIC HEARING**

PUBLIC NOTICE IS HEREBY GIVEN that the Wilsonville City Council will conduct a public hearing on March 17, **2014**, 7 p.m. at City Hall, 29799 SW Town Center Loop, Wilsonville, Oregon.

The purpose of this public hearing is to consider public testimony on a proposed ordinance entitled:

Ordinance No. 737 – 1st reading

An Ordinance Of The City Of Wilsonville Amending Chapter 10 Of The Wilsonville Code.

Copies may be obtained at a cost of 25 cents per page, at City Hall or by calling the City Recorder at 503-570-1506 and requesting a copy to be mailed to you.

Specific suggestions or questions concerning the proposed ordinance may be directed to the City Attorney, at 503-570-1508. Public testimony, both oral and written will be accepted at the public hearing. Written statements are encouraged and may be submitted to Sandra C. King, MMC, City Recorder, 29799 SW Town Center Loop E, Wilsonville, OR 97070.

Assistive listening devices are available for persons with impaired hearing and can be scheduled for this meeting. The City will endeavor to provide qualified sign language interpreters without cost if requested at least 48 hours prior to the meeting. To obtain such services call the office of the City Recorder at 682-1011.

Published in the Wilsonville Spokesman March 11, 2014.

ORDINANCE NO. 736

AN ORDINANCE OF THE CITY OF WILSONVILLE DECLARING AND AUTHORIZING THE VACATION OF THREE (3) PORTIONS OF SW 110th AVENUE PUBLIC STREET RIGHT-OF-WAY BETWEEN SW MONT BLANC STREET AND SW TOOZE ROAD/SW BOECKMAN ROAD IN VILLEBOIS LEGALLY DESCRIBED IN ATTACHMENT C

WHEREAS, Polygon Northwest Company has filed Street Vacation Petitions with the City of Wilsonville requesting vacation proceedings be initiated for three portions of 110th Street, as authorized by ORS 271.080-271.170; Polygon Northwest Company or entities, including limited liability companies and homeowners associations in which it has interest or which it has control, being the owners of or having an option to purchase the immediately adjacent property to the north, west, and east of the street right-of-way petitioned for vacation; and

WHEREAS, staff has reviewed the submitted Street Vacation Petitions against the applicable city code and state statutory review requirements and has found the petitions to be in compliance with all the requirements as set forth in **Attachment A**, Street Vacation Staff Report Findings, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, in accordance with the Villebois Village Master Plan and the City's Transportation System Plan, the right-of-way requested to be vacated is planned to no longer function as a public street; and

WHEREAS, the Development Review Board and City Council have approved developments of adjacent residential subdivisions with private parks over the tracts to be vacated, conditioned, in part, on vacation of the street right-of-way; and

WHEREAS, in compliance with the aforementioned development conditions, Polygon Northwest Company has provided the City with the required Street Vacation Petitions with the consent from the affected adjacent property owners of two-thirds of the area, legal descriptions and associated maps. Exhibit C to the petitions references the respective development application, which conditions of approval are a part thereof, and are summarized in **Attachment A**. The applications with conditions of approval are on file with the City, and as recited above provide the purpose for which the ground is proposed to be used and the reason for the vacation and being on file were not required to be attached to the petitions to avoid unnecessary

duplication. The Street Vacation Petitions are marked as **Attachment B**, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, the three portions of 110th Street to be vacated are legally described as three tracts: Tract 1, containing approximately 6,024 square feet; Tract 2, containing approximately 12,647 square feet; and Tract 3, containing approximately 12,139 square feet, which descriptions are more fully described in **Attachment C**, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, **Attachment A** provides as conditions for vacation: 1) requiring temporary public access easements over the vacated tracts to allow continued public use of SW 110th Avenue prior to its demolition and reconfiguration of the street network; 2) requiring appropriate easements be provided for any and all public and private utilities located within and below the vacated tracts; and 3) requiring the future demolition of SW 110th Avenue and construction of the reconfigured street network to be coordinated with the City to minimize impacts on the travelling public; and

WHEREAS, the public notice has been duly published and posted on the property as required in ORS 271.110 (Notice of Public Hearing) and the requisite affidavits are on file with the office of the City Recorder; and

WHEREAS, staff has also presented its City Council Meeting Staff Report, which has been made part of the record of this hearing and sets forth that the Development Review Board conducted a public hearing on February 10, 2014, affording the public an opportunity to comment on the proposed tracts for street vacation, and then passed Resolution No. 269 recommending approval of the street vacation of the three tracts to the City Council, which Resolution has been attached to the City Council Meeting Staff Report as Exhibit B, together with the accompanying staff report to the DRB as Exhibit C to the City Council Meeting Staff Report; and

WHEREAS, on March 3, 2014, the City Council duly conducted a public hearing on the above referenced petitions for street vacation, and based on the record, the attachments and exhibits, and testimony provided, and being fully advised, the Council finds that the proposed vacation is consistent with all applicable land use regulations, the City Code requirements for street vacations, as well as the statutory requirements as set forth in **Attachments A, B, and C**; and

WHEREAS, as required by ORS 271.120, the Council further finds that the public interest is not prejudiced by vacation of the public right-of-way due to the fact new transportation facilities are being provided consistent with the City's Transportation System Plan and Villebois Village Master Plan.

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. Findings, Determinations and Conclusions. The City Council adopts, as its findings, determinations, and conclusions, the above Recitals and incorporates them by reference as if fully set forth herein.

Section 2. Order. The portions of the public right-of-way known as 110th Avenue, as more fully described in **Attachment C**, situated in the northeast quarter of Section 15, Township 3 South, Range 1 West of the Willamette Meridian, City of Wilsonville, Clackamas County, Oregon, are hereby declared vacated, subject to conditions of approval and title passing as set forth in the Street Vacation Staff Report Findings, **Attachment A**.

Section 3. Certification. The City Recorder is directed to certify this Ordinance and make the applicable filings in accordance with ORS 271.150.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 3rd day of March, 2014, at the hour of 7:00 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon, and scheduled for second reading on the 17th day of March, 2014, commencing at the hour of 7:00 p.m. at the Wilsonville City Hall.

Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the ____ day of _____, 2014, by the following votes: Yes: ____ No: ____

Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this ____ day of _____, 2014.

TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Goddard

Councilor Fitzgerald

Councilor Stevens

Attachments:

Attachment A - Street Vacation Staff Report Findings

Attachment B - Street Vacation Petitions

Attachment C - Legal Description of Tracts Being Vacated

Ordinance No. 736 Attachment A
STAFF REPORT
WILSONVILLE PLANNING DIVISION

SW 110th Avenue Street Vacation, PDP 3 and 4 East
"Tonquin Meadows"

CITY COUNCIL
QUASI-JUDICIAL PUBLIC HEARING FOR STREET VACATION

HEARING DATE: March 3, 2014

APPLICATION NO.: DB14-0001 Vacation of a Portion of SW 110th Avenue Right-of-Way

REQUEST/SUMMARY: The City Council is being asked to review the vacation of portions of SW 110th Avenue to allow development of private park areas consistent with the previously approved Villebois Phases 3 and 4 East. The connectivity provided by SW 110th will be provided by a planned new segment of SW Villebois Drive North.

LOCATION: Portions of SW 110th Avenue right-of-way between SW Mont Blanc Street and SW Tooze Road/SW Boeckman Road, Section 15, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

**ADJACENT
PROPERTY OWNERS:** Donald E. Bischoff and Sharon L. Lund (Tax Lot 180)
Polygon at Villebois III LLC (Tax Lots 2916 and 2919)
Polygon at Villebois V LLC (Tax Lot 301)

**APPLICANT/
PETITIONER:** Fred Gast, Polygon NW Company

APPLICANT'S REP.: Stacy Connery, AICP, Pacific Community Design, Inc.

COMPREHENSIVE PLAN MAP DESIGNATION: Residential-Village

ZONE MAP CLASSIFICATIONS: V (Village)

STAFF REVIEWERS: Daniel Pauly AICP, Associate Planner
Steve Adams PE, Development Engineering Manager

DRB RECOMMENDATION: **Approve** the request and vacate the requested portions of SW 110th Avenue as shown on the map below.



APPLICABLE REVIEW CRITERIA

<u>DEVELOPMENT CODE</u>	
Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Subsection 4.031 (.01) L.	Authority of the Development Review Board: Street Vacations
Subsection 4.032 (.01) D.	Authority of the Planning Commission: Street Vacations
Subsection 4.033 (.01) H.	Authority of the City Council: Street Vacations
Subsection 4.034 (.07)	Street Vacation Review Standards and Procedures
<u>OTHER PLANNING DOCUMENTS</u>	
Villebois Village Master Plan	
Transportation Systems Plan	
SAP East Approval Documents	
PDP 3 East Approval Documents	
PDP 4 East Approval Documents	
<u>OREGON REVISED STATUTES</u>	
ORS 271.080	Vacation in incorporated cities; petition; consent of property owners.
ORS 271.120	Vacation hearing; determination.
ORS 271.140	Title to vacated areas.
ORS 271.150	Vacation records to be filed; costs.
ORS 271.190	Vacation consent of owners of adjoining properties; other required approval.
ORS 271.200	Vacation Petition; notice

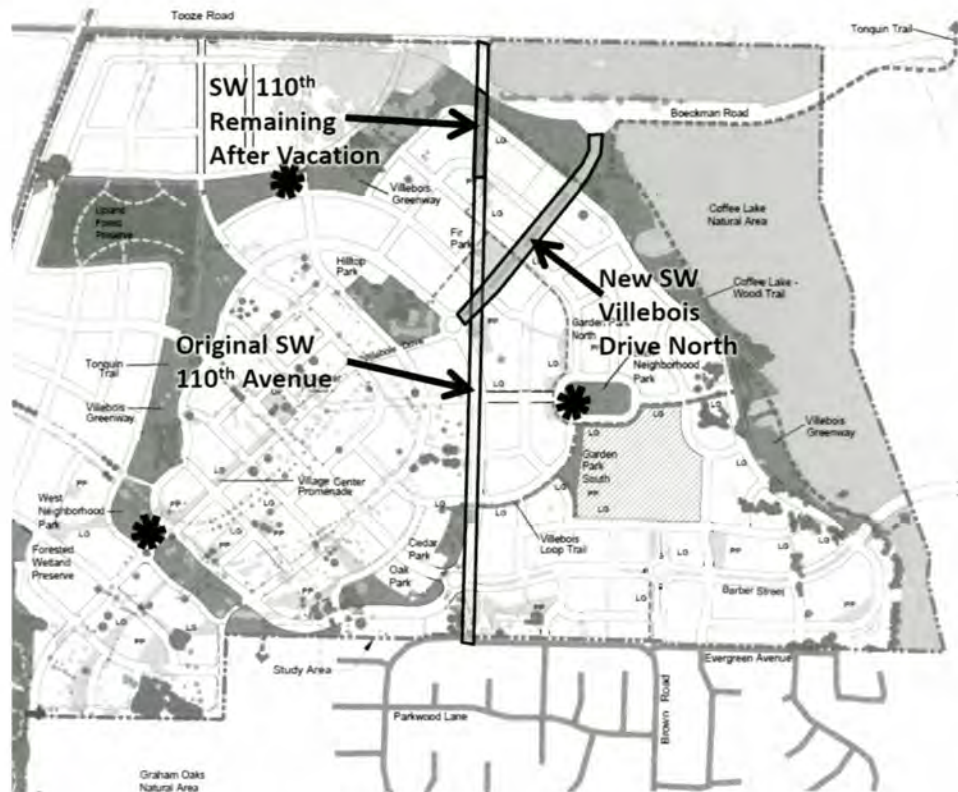
BACKGROUND/SUMMARY:

SW 110th Avenue has long served as a north south connection on the west side of Wilsonville. Historically it connected SW Brown Rd./SW Camelot directly north to SW Tooze Road. The Villebois Village Master Plan, originally adopted in 2003, shows a new circulation system replacing SW 110th and the north-south connectivity it provided. During the earlier phases of Villebois development the most southerly portion of the original SW 110th Avenue was vacated and is now a pedestrian connection with plantings extending from SW Camelot Street to the SW Costa Circle/SW Barber Street round-a-bout. The portions of the original SW 110th Avenue between the pedestrian connection and the southernmost portion of proposed vacation have been converted to the SW Costa Circle/SW Barber Street round-a-bout and a segment of SW Costa Circle East. The proposed vacation allows the conversion of much of the remainder of SW 110th Avenue into private park areas, as shown in the Villebois Village Master Plan. Some segments of the right-of-way will not be vacated, but be incorporated into planned streets including SW Villebois Drive North, SW Berlin Avenue, and SW Stockholm Avenue. The very northern portion of SW 110th Avenue will remain to provide access to a property on the west side of SW 110th just south of SW Tooze Road not yet proposed for development. The north-south

City Council, Staff Report March 3, 2014
Vacation of Portions of SW 110th Avenue

Ordinance No. 736 Attachment A

connectivity of SW 110th Avenue will be replaced by a new segment of SW Villebois Drive North which will connect from a new round-a-bout at SW Costa Circle to the existing round-a-bout on SW Boeckman Rd./SW Tooze Rd. just west of the Boeckman bridge. The demolition of SW 110th and construction of the new SW Villebois Drive North segment is currently planned later this year together with Polygon Homes construction of a new subdivision previously approved.



CONCLUSION AND CONDITIONS OF APPROVAL:

Staff and the DRB have reviewed the applicant's analysis of compliance with the applicable criteria. This Staff report adopts the applicant's responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, the Development Review Board recommends approval of the proposed application (DB14-0001) with the following conditions:

Conditions:

- | |
|--|
| <p>PF 1. Concurrently with the 110th Avenue Right-of-Way vacation, the Applicant shall file Temporary Public Access Easements over the same described parcels being vacated to allow legal continued use of 110th Avenue prior to its demolition and reconfiguration of the street network.</p> |
| <p>PF 2. For any public or private utilities currently located within the proposed vacated Right-of-Way, and anticipated to remain in this location, Applicant shall provide public or private utility easements on City approved forms. For public easements these shall be minimum 15-foot wide easements centered on the utility. For private easements they shall be of</p> |

sufficient width as needed by the private utility and as approved by the City.

PF 3. The future demolition of 110th Avenue and construction of the street network in Tonquin Meadows will need to be coordinated with the City to minimize impacts to the traveling public.

FINDINGS OF FACT:

1. Prior land use actions include:

Legislative:

02PC06 - Villebois Village Concept Plan
02PC07A - Villebois Comprehensive Plan Text
02PC07C - Villebois Comprehensive Plan Map
02PC07B - Villebois Village Master Plan
02PC08 - Village Zone Text
04PC02 - Adopted Villebois Village Master Plan
LP-2005-02-00006 - Revised Villebois Village Master Plan
LP-2005-12-00012 - Revised Villebois Village Master Plan (Parks and Recreation)
LP13-0005 - Revised Villebois Village Master Plan

Quasi Judicial:

04 DB 22 et seq - SAP-East
DB12-0042 et seq - PDP-3E Tonquin Meadows
DB12-0050 et seq - PDP-4E Tonquin Meadows No. 2
DB13-0013 et seq - PDP-4C Polygon Northwest at Villebois No. 2
AR13-0046 PDP 3 and 4 East Phasing Amendment

2. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

CONCLUSIONARY FINDINGS:

Planning and Land Development Ordinance

Subsections 4.031 (.01) L., 4.032 (.01) D., Subsection 4.033 (.01) H. Authority to Review Street Vacations

1. **Review Criteria:** These subsections define the roles of the Development Review Board, the Planning Commission, and City Council for street vacations. The Development Review Board is authorized to make recommendations to City Council for street vacations where a specific development application has been filed for the subject property. The Planning Commission is authorized to make recommendations to City Council for street vacations where no specific development application has been filed for the subject property. City Council takes final action on street vacation applications.

Finding: These criteria are satisfied.

Details of Finding: Specific development applications have been filed and approved by the City for the land being vacated subject to approval of the street vacation. The land is

approved to be development as private park space. See case files DB12-0042 (Preliminary Development Plan, Villebois Phase 3 East), DB12-0048 (Final Development Plan for Parks and Open Space, Villebois Phase 3 East), DB12-0050 (Preliminary Development Plan, Villebois Phase 4 East), and DB12-0054 (Final Development Plan for Parks and Open Space, Villebois Phase 4 East). Due to the previous submission of specific development application for the subject land, the Development Review Board is reviewing the street vacation to make a recommendation to City Council. The City Council will then take the final action on the request.

Subsection 4.034 (.07) Standards for Street Vacation

2. **Review Criteria:** "Applications for street vacations shall be reviewed in accordance with the standards and procedures set forth in ORS 271.
Finding: These criteria are satisfied.
Details of Finding: As shown in Findings 9 -16 below, the request is being reviewed in accordance with ORS 271.

Previous Land Use Approvals

DB12-0042 SAP-East PDP 3E, Preliminary Development Plan, Condition of Approval PFA 34.

3. **Review Criteria:** "The City understands that the Applicant will also construct Villebois Drive west of the development through its intersection with Costa Circle, and construct Costa Circle from this intersection to its present location at Mt. Blanc. Existing transition between Costa Circle and 110th Avenue shall be demolished with construction of the new roadway.

With completion of this roadway construction, 110th Avenue will be closed. Applicant shall submit the required exhibits and work with the City to abandon or transfer the existing right-of-way and create easements for the underground private and/or public utilities that remain. See also PDA 2."

Finding: These criteria are satisfied.

Details of Finding: PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile DB12-0053) received planning approval on November 12, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II of PDP 3E and PDP 4E to occur concurrently. Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. The existing transition between Costa Circle and 110th Avenue will be demolished with roadway construction. Portions of 110th Avenue within the subject site will be close with completion of roadway construction.

This application provides the required exhibits for vacation of the necessary portions of 110th Avenue. The Final Plat for the 1st phase of Tonquin Meadows will address further transfer of the vacated areas and any easements that are necessary. Separate documents addressing any easements outside of areas to be platted will be provided in conjunction with the Final Plat.

Approval of this application for ROW vacation of portions of SW 110th Avenue will allow the Applicant to comply with Condition PFA 34.

Transportation Systems Plan

Table 5-4. Higher Priority Projects (Southwest Quadrant) Roadway Extensions

4. **Review Criteria:**

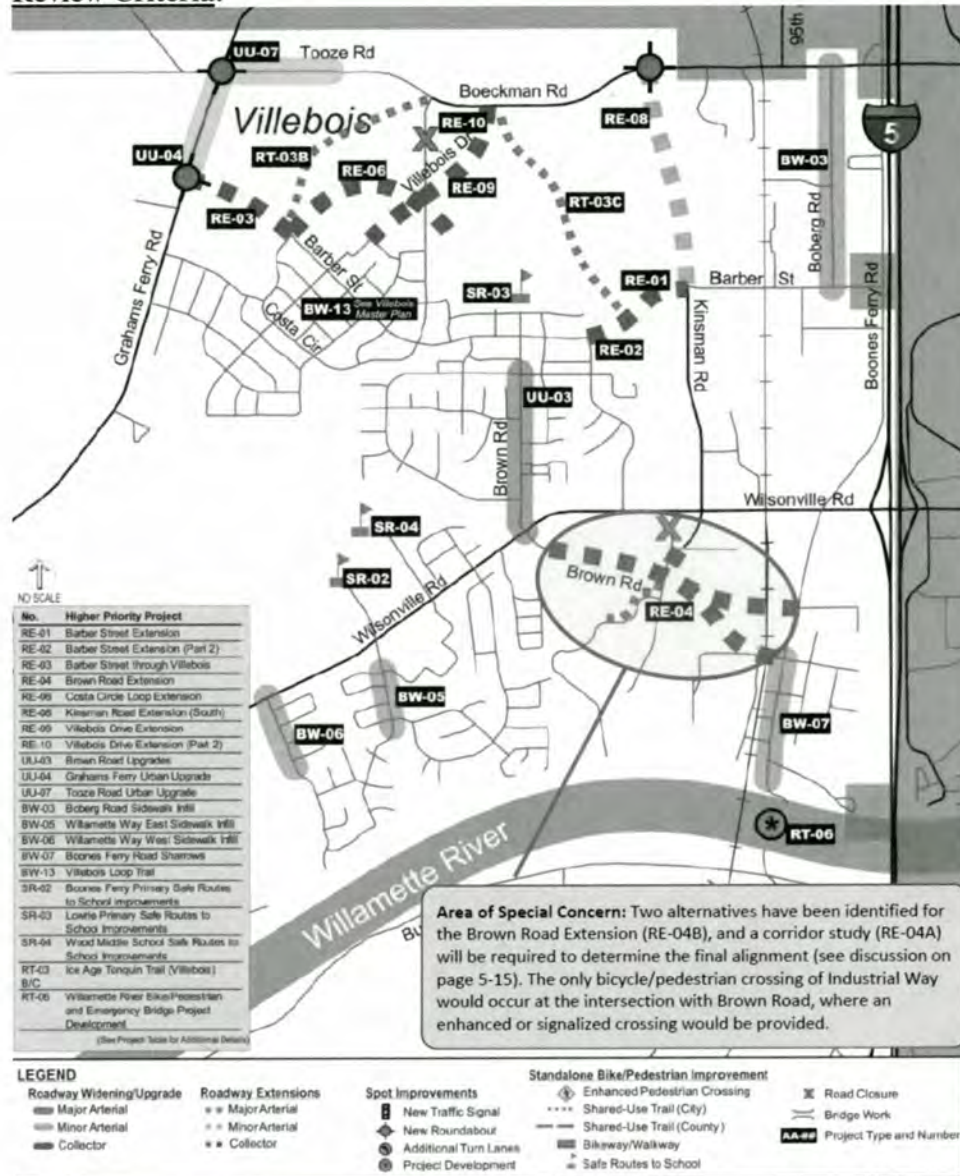
RE-09	Villebois Drive Extension	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Costa Circle to Coffee Lake Drive	\$390,000
RE-10	Villebois Drive Extension (Part 2)	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Coffee Lake Drive to Boeckman Road	\$250,000

Finding: These criteria are satisfied.

Details of Finding: The listed extensions of Villebois Drive in the Transportation System Plan are planned to be constructed as part of Construction Phase 1 of PDP 3 and 4 East as shown in the phasing plan approved in Case File AR13-0046, and will replace the north-south connectivity between Villebois and SW Boeckman Road/SW Tooze Road.

Figure 5-5. Higher Priority Projects (Southwest Quadrant)

5. **Review Criteria:**



Finding: This criterion is satisfied.

Details of Finding: The closure of SW 110th is shown by the red "X" in Figure 5-5 in association with projects RE-09 and RE-10, extension of SW Villebois Drive.

Villebois Village Master Plan

Figure 5B Parks and Open Space Categories

6. Review Criteria:



Finding: This criterion is satisfied.

Details of Finding: This and other figures show the intention for the portions of SW 110th being vacated to become private parks.

Figure 7 Street Plan

7. **Review Criteria:**



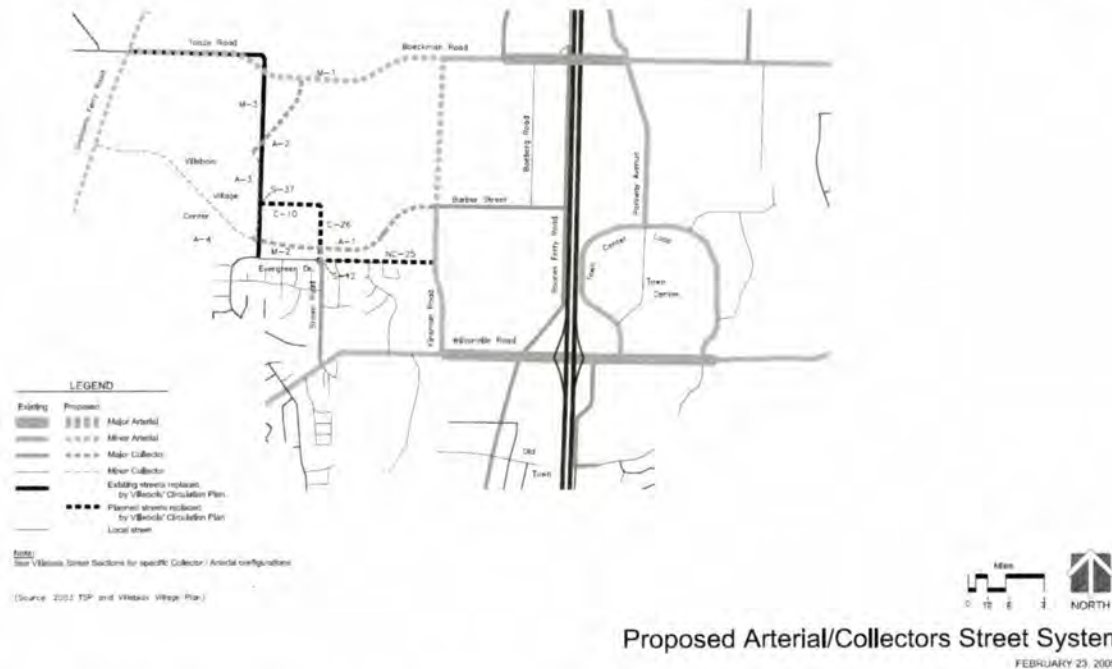
Finding: This criterion is satisfied.

Details of Finding: This and other figures show how SW 110th is not planned as part of the circulation and street system in the Villebois Village Master Plan.

Figure 8. Proposed Arterial and Collector System

8. **Review Criteria:**

Figure 8



Finding: This criterion is satisfied.

Details of Finding: Figure 8 of the Villebois Village Master Plan shows SW 110th Avenue as an “Existing street replaced by the Villebois Circulation Plan.”

Oregon Revised Statutes

ORS 271.080 (1) Petition for Street Vacation in Incorporated Cities

9. **Review Criterion:** “Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.”

Finding: This criterion is satisfied.

Details of Finding: Polygon Homes has filed the described petition. Previous land use actions by the City approve Polygon, contingent on the vacation, to construct private parks on the vacated right-of-way. The reason for the vacation is clear in previous land use approvals and the record of this request, including the connectivity provided by SW 110th being provided by planned new roads.

ORS 271.080 (2) Consent of Adjoining Property Owners

10. **Review Criterion:** “There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds

in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing."

Finding: This criterion is satisfied.

Details of Finding: The petition has been signed by all owners of abutting property, who are also the owners of more than two-thirds (2/3) of real property affected thereby. The total size of real property affected thereby is 699,961 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 518,679 SF, or 74% of the total real property affected thereby. Given that the petition has been signed by all owners of abutting property, consent of property owners for 74% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

ORS 271.090 Submission of Street Vacation Petition to City

11. **Review Criteria:** "The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition."

Finding: These criteria are satisfied.

Details of Finding: The petition has been submitted to the City, and Polygon has been informed of the hearing dates before the Development Review Board and City Council.

ORS 271.100 City Action of Street Vacation Petition

12. **Review Criteria:** "The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition."

Finding: These criteria are satisfied.

Details of Finding: The vacation of these portions of SW 110th have long been showed in City adopted master plans and a development application was approved by the City to develop the vacated right-of-way contingent on approval of the vacation. The City is setting and holding public hearings to consider the petition.

ORS 271.110 Notice of Hearing

13. **Review Criteria:** This section prescribes the notices required for street vacation hearings including newspaper publication and posting of notices along the right-of-way to be vacated.

Finding: These criteria are satisfied.

Details of Finding: The noticing requirements required by ORS 271.110 have or will be met prior to the hearing.

ORS 271.120 Hearing; determination

14. **Review Criteria:** "At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest."

Finding: These criteria are satisfied.

Details of Finding: The consent of the owners of the requisite area have been obtained as shown with the attached petitions, notice has been given as prescribed. Public policy, as shown in the Villebois Village Master Plan and Transportation Systems Plan, has long been to vacate the proposed area upon replacement with streets planned as part of the Villebois development. After receiving a recommendation from the Development Review Board the City Council would vacate the street by ordinance.

ORS 271.140 Title to Vacated Areas

15. **Review Criteria:** "The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city."

Finding: These criteria are satisfied.

Details of Finding: It is understood the title to portions of the street to be vacated will be attached to the lands bordering the subject area in equal portions.

ORS 271.150 Vacation Records to be Filed

16. **Review Criteria:** "The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city."

Finding: These criteria are satisfied.

Details of Finding: It is understood the ordinance will be recorded as required by this section, the cost of which will be borne by the petitioner.

Street Vacation Petition

This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **Exhibit A**. All signatures must be in ink. A listing of the names and addresses of all abutting and affected area property owners, as shown on the attached Street Vacation Map, was obtained from the Clackamas County real property tax roll records and is attached hereto as **Exhibit B**.

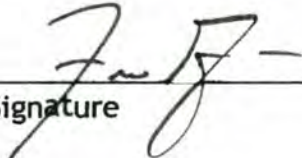
REQUIRED SIGNATURES:

We, the owner in fee simple of the following described real properties consent to the vacation of all that portion of SW 110th Avenue, in the City of Wilsonville, Clackamas County, Oregon, as shown on the attached Street Vacation Map, and as described in the application narrative, attached hereto as **Exhibit C**.

1) Polygon at Villebois III, LLC
Property Owner's Name

No site address; Reference Parcel 31W15 02916
Property Street Address and Legal Description

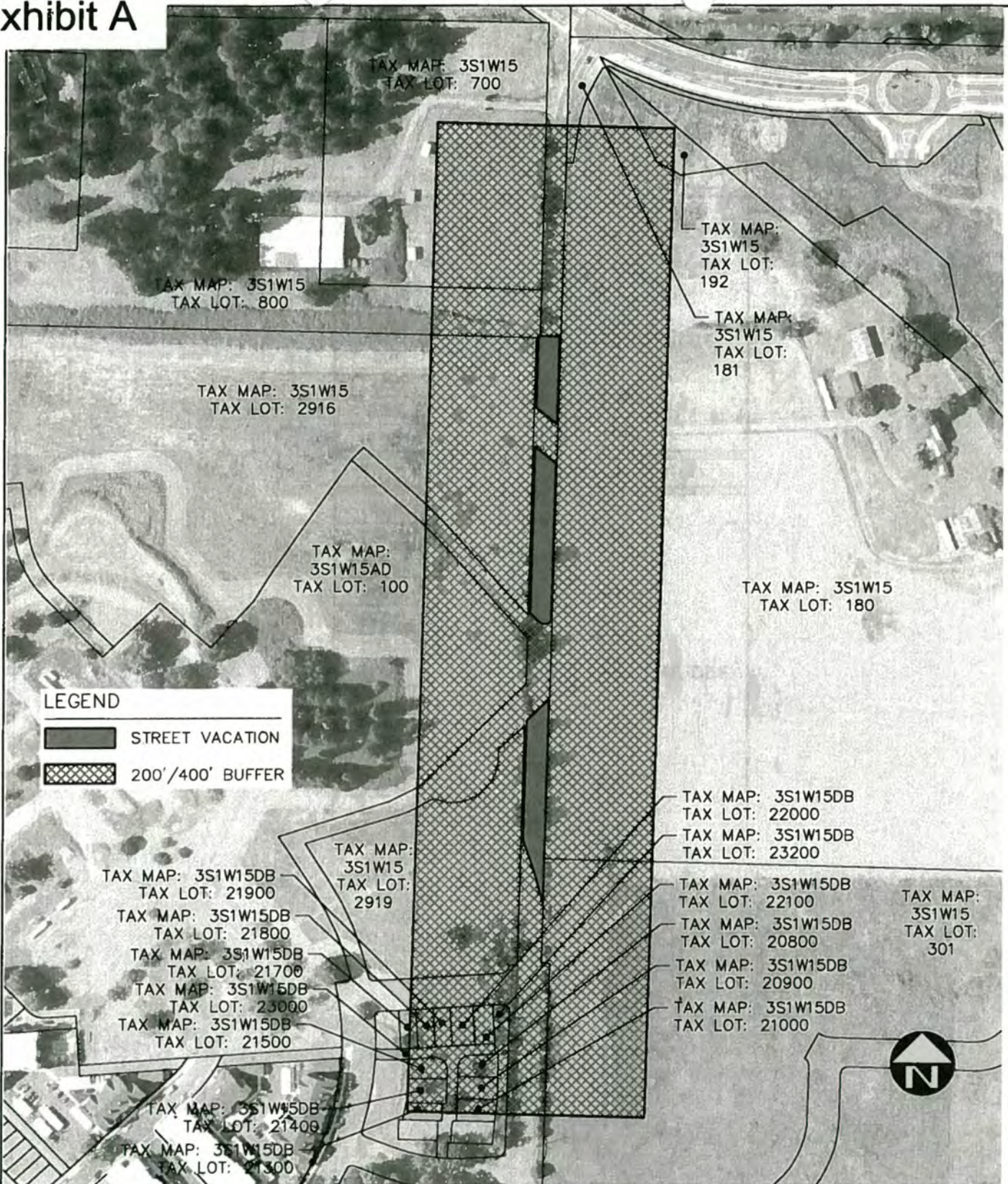
No site address; Reference Parcel 31W15 02919
Property Street Address and Legal Description


Signature

01/09/14
Date

Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legal\395025 Street Vacation Lots.2013-12-12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM cl



DRAWN BY: CLL DATE: 12/12/13
 REVIEWED BY: TCJ DATE: 12/12/13
 PROJECT NO.: 395-025
 SCALE: 1"=250'
 PAGE 1 OF 2



12564 SW Main St
 Tigard, OR 97223
 [T] 503-941-9484
 [F] 503-941-9485

TAX MAP	TAX LOT #
3 SOUTH 1 WEST SECTION 15	180
	181
	192
	301
	700
	800
	2916
	2919
3 SOUTH 1 WEST SECTION 15 AD	100
3 SOUTH 1 WEST SECTION 15 DB	20800
	20900
	21000
	21300
	21400
	21500
	21700
	21800
	21900
	22000
	22100
	23000
	23200

DRAWN BY: CLL DATE: 12/12/13
 REVIEWED BY: TCJ DATE: 12/12/13
 PROJECT NO.: 395-025
 SCALE: NTS
 PAGE 2 OF 2



12564 SW Main St
 Tigard, OR 97223
 [T] 503-941-9484
 [F] 503-941-9485

Exhibit B

REFPARCEL	OWNER	OWNERFIRST	OWNERLAST	MAILADDRES	MAILCITY	MAILSTATE	MAILZIP
31W15 00700	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00800	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00180	Donald Bischoff	Donald	Bischoff	16300 SW 192nd Ave	Sherwood	OR	97140
31W15 00301	Polygon At Villebois LLC	Polygon At Villebois LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 00181	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15 00192	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15AD00100	Rcs-Villebois Dev LLC	Rcs-Villebois Dev LLC		371 Centennial Pkwy #200	Louisville	CO	80027
31W15 02916	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 02919	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15DB20800	Lorenzo & Laura Young	Lorenzo & Laura	Young	28949 SW Costa Cir E	Wilsonville	OR	97070
31W15DB20900	Jeffrey Barram	Jeffrey	Barram	28955 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21000	Julie Helmke	Julie	Helmke	28969 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21300	Sheryl Dischner	Sheryl	Dischner	28962 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21400	James Woodin	James	Woodin	28954 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21500	Austin Joyner	Austin	Joyner	28926 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21700	Juan & Michele Vasquez	Juan & Michele	Vasquez	11124 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21800	Daniel Solivan	Daniel	Solivan	11118 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21900	Millan Stewart	Millan	Stewart	11106 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22000	Judi Campbell	Judi	Campbell	11090 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22100	Matthew & Karlee Wyckoff	Matthew & Karlee	Wyckoff	11082 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB23000	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209
31W15DB23200	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209

Street Vacation Petition

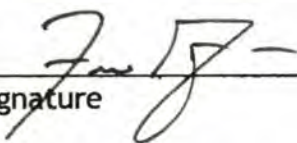
This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **Exhibit A**. All signatures must be in ink. A listing of the names and addresses of all abutting and affected area property owners, as shown on the attached Street Vacation Map, was obtained from the Clackamas County real property tax roll records and is attached hereto as **Exhibit B**.

REQUIRED SIGNATURES:

We, the owner in fee simple of the following described real properties consent to the vacation of all that portion of SW 110th Avenue, in the City of Wilsonville, Clackamas County, Oregon, as shown on the attached Street Vacation Map, and as described in the application narrative, attached hereto as **Exhibit C**.

2) Polygon at Villebois V, LLC
Property Owner's Name

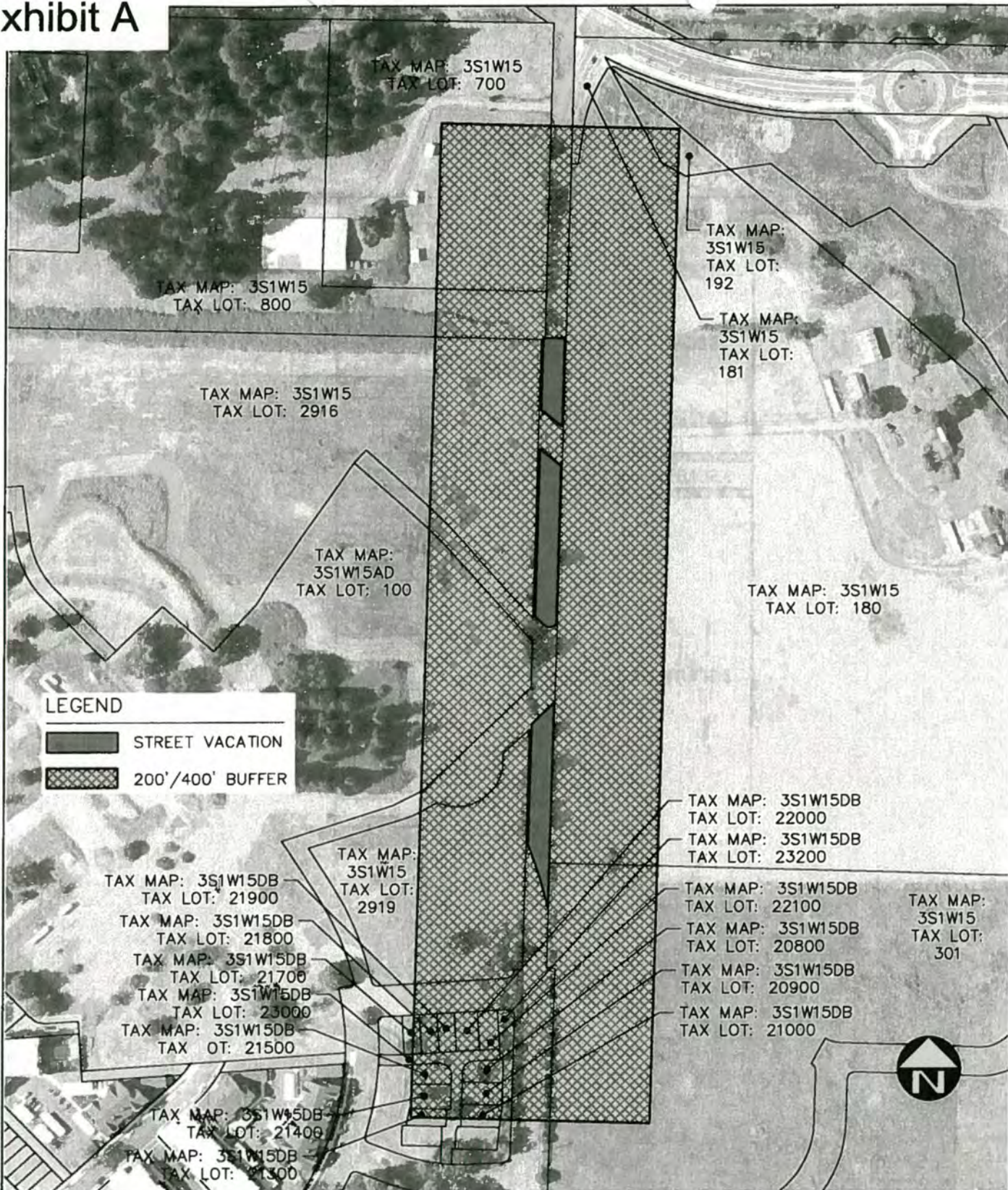
29092 SW 110th Ave, Wilsonville, Oregon 97070; Reference Parcel 31W15 00301
Property Street Address and Legal Description


Signature

01/09/14
Date

Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legals\395025.Street Vacation Lots.2013-12-12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM cl



DRAWN BY: CLL DATE: 12/12/13
 REVIEWED BY: TCJ DATE: 12/12/13
 PROJECT NO.: 395-025
 SCALE: 1"=250'
 PAGE 1 OF 2



12564 SW Main St
 Tigard, OR 97223
 [T] 503-941-9484
 [F] 503-941-9485

TAX MAP	TAX LOT #
3 SOUTH 1 WEST SECTION 15	180
	181
	192
	301
	700
	800
	2916
	2919
3 SOUTH 1 WEST SECTION 15 AD	100
3 SOUTH 1 WEST SECTION 15 DB	20800
	20900
	21000
	21300
	21400
	21500
	21700
	21800
	21900
	22000
	22100
	23000
	23200

DRAWN BY: CLL DATE: 12/12/13
 REVIEWED BY: TCJ DATE: 12/12/13
 PROJECT NO.: 395-025
 SCALE: NTS
PAGE 2 OF 2



12564 SW Main St
 Tigard, OR 97223
 [T] 503-941-9484
 [F] 503-941-9485

Exhibit B

REFPARCEL	OWNER	OWNERFIRST	OWNERLAST	MAILADDRES	MAILCITY	MAILSTATE	MAILZIP
31W15 00700	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00800	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00180	Donald Bischoff	Donald	Bischoff	16300 SW 192nd Ave	Sherwood	OR	97140
31W15 00301	Polygon At Villebois LLC	Polygon At Villebois LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 00181	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15 00192	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15AD00100	Rcs-Villebois Dev LLC	Rcs-Villebois Dev LLC		371 Centennial Pkwy #200	Louisville	CO	80027
31W15 02916	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 02919	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15DB20800	Lorenzo & Laura Young	Lorenzo & Laura	Young	28949 SW Costa Cir E	Wilsonville	OR	97070
31W15DB20900	Jeffrey Barram	Jeffrey	Barram	28955 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21000	Julie Helmke	Julie	Helmke	28969 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21300	Sheryl Dischner	Sheryl	Dischner	28962 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21400	James Woodin	James	Woodin	28954 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21500	Austin Joyner	Austin	Joyner	28926 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21700	Juan & Michele Vasquez	Juan & Michele	Vasquez	11124 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21800	Daniel Solivan	Daniel	Solivan	11118 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21900	Milian Stewart	Milian	Stewart	11106 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22000	Judi Campbell	Judi	Campbell	11090 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22100	Matthew & Karlee Wyckoff	Matthew & Karlee	Wyckoff	11082 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB23000	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209
31W15DB23200	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209

Street Vacation Petition

This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **Exhibit A**. All signatures must be in ink. A listing of the names and addresses of all abutting and affected area property owners, as shown on the attached Street Vacation Map, was obtained from the Clackamas County real property tax roll records and is attached hereto as **Exhibit B**.

REQUIRED SIGNATURES:

We, the owner in fee simple of the following described real properties consent to the vacation of all that portion of SW 110th Avenue, in the City of Wilsonville, Clackamas County, Oregon, as shown on the attached Street Vacation Map, and as described in the application narrative, attached hereto as **Exhibit C**.

3) Donald Bischoff
Property Owner's Name

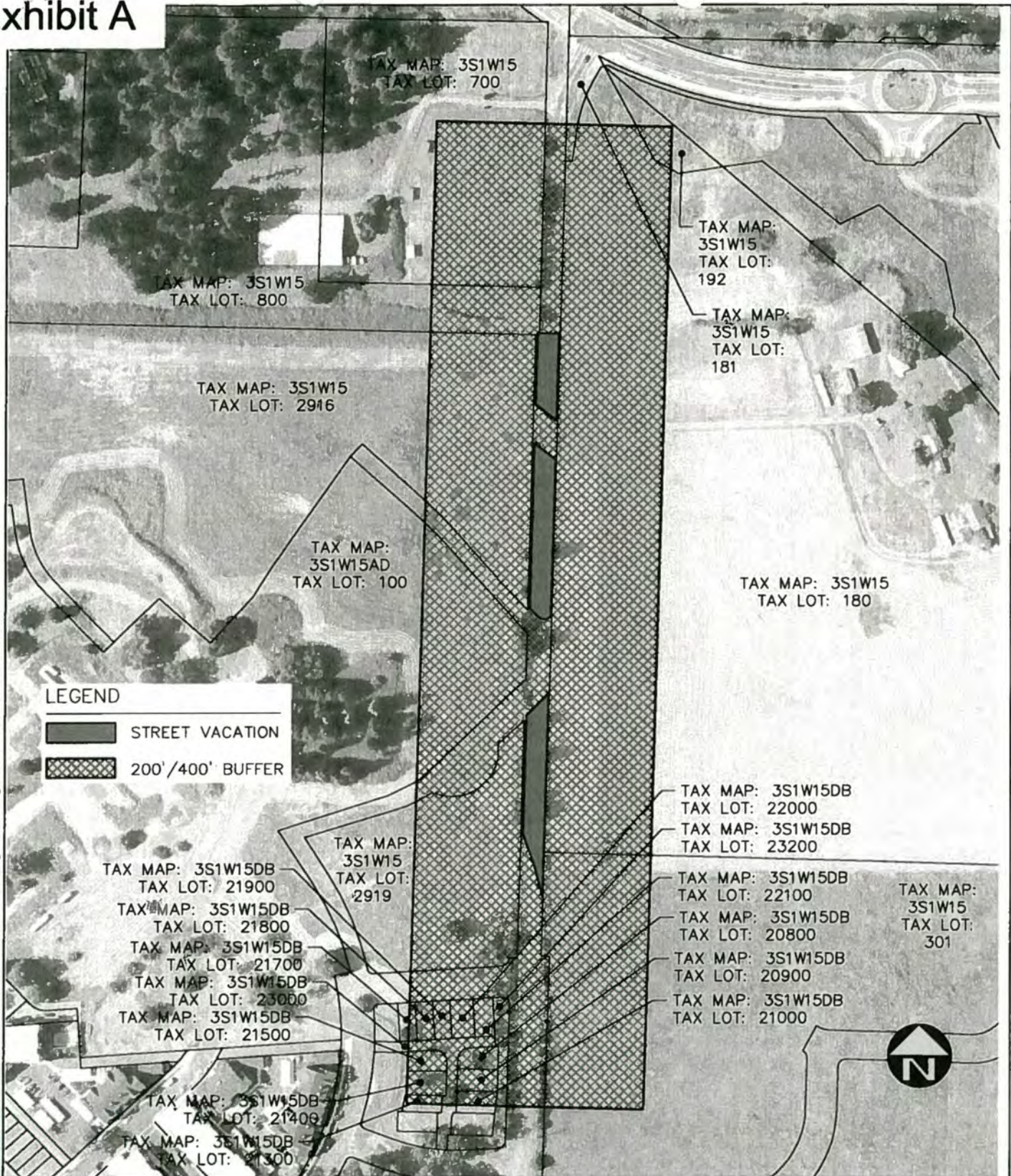
No Site Address; Reference Parcel 31W15 00180
Property Street Address and Legal Description

Donald Bischoff
Signature

12-19-13
Date

Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legal\395025 Street Vacation Lots.2013-12-12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM .cl



DRAWN BY: CLL DATE: 12/12/13
 REVIEWED BY: TCJ DATE: 12/12/13
 PROJECT NO.: 395-025
 SCALE: 1"=250'
 PAGE 1 OF 2



12564 SW Main St
 Tigard, OR 97223
 [T] 503-941-9484
 [F] 503-941-9485

TAX MAP	TAX LOT #
3 SOUTH 1 WEST SECTION 15	180
	181
	192
	301
	700
	800
	2916
	2919
3 SOUTH 1 WEST SECTION 15 AD	100
3 SOUTH 1 WEST SECTION 15 DB	20800
	20900
	21000
	21300
	21400
	21500
	21700
	21800
	21900
	22000
	22100
	23000
	23200

DRAWN BY: CLL DATE: 12/12/13
 REVIEWED BY: TCJ DATE: 12/12/13
 PROJECT NO.: 395-025
 SCALE: NTS
PAGE 2 OF 2



12564 SW Main St
 Tigard, OR 97223
 [T] 503-941-9484
 [F] 503-941-9485

Exhibit B

REFPARCEL	OWNER	OWNERFIRST	OWNERLAST	MAILADDRES	MAILCITY	MAILSTATE	MAILZIP
31W15 00700	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00800	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00180	Donald Bischoff	Donald	Bischoff	16300 SW 192nd Ave	Sherwood	OR	97140
31W15 00301	Polygon At Villebois LLC	Polygon At Villebois LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 00181	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15 00192	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15AD00100	Rcs-Villebois Dev LLC	Rcs-Villebois Dev LLC		371 Centennial Pkwy #200	Louisville	CO	80027
31W15 02916	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 02919	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15DB20800	Lorenzo & Laura Young	Lorenzo & Laura	Young	28949 SW Costa Cir E	Wilsonville	OR	97070
31W15DB20900	Jeffrey Barram	Jeffrey	Barram	28955 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21000	Julie Helmke	Julie	Helmke	28969 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21300	Sheryl Dischner	Sheryl	Dischner	28962 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21400	James Woodin	James	Woodin	28954 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21500	Austin Joyner	Austin	Joyner	28926 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21700	Juan & Michele Vasquez	Juan & Michele	Vasquez	11124 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21800	Daniel Solivan	Daniel	Solivan	11118 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21900	Milian Stewart	Milian	Stewart	11106 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22000	Judi Campbell	Judi	Campbell	11090 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22100	Matthew & Karlee Wyckoff	Matthew & Karlee	Wyckoff	11082 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB23000	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209
31W15DB23200	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209



EXHIBIT A

December 24, 2013

LEGAL DESCRIPTION Right-of-Way Vacation

Job No. 395-025

Three tracts of land being portions of SW 110th Avenue (County Road No. 355) Right-of-Way located in the Northeast Quarter of Section 15, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, State of Oregon, more particularly described as follows:

Tract 1

BEGINNING at the Northeast corner of Tract "OO", plat of "Tonquin Woods at Villebois No. 4";

thence South 88°24'59" East, a distance of 40.00 feet to a point on the easterly Right-of-Way line of SW 110th Avenue;

thence along said easterly Right-of-Way line, South 01°35'01" West, a distance of 166.59 feet;

thence leaving said easterly Right-of-Way line, North 50°46'32" West, a distance of 2.28 feet;

thence along a 770.50 foot radius tangential curve to the right, arc length of 24.11 feet, central angle of 01°47'33", chord distance of 24.10 feet, and chord bearing of North 49°52'45" West;

thence North 48°58'59" West, a distance of 25.04 feet to a point on the westerly Right-of-Way line of said SW 110th Avenue;

thence along said westerly Right-of-Way line, North 01°35'01" East, a distance of 134.28 feet to the POINT OF BEGINNING.

Containing 6,024 square feet, more or less.

Tract 2

BEGINNING at the most southerly corner of Tract "NN", plat of "Tonquin Woods at Villebois No. 4";

thence along the westerly Right-of-Way line of SW 110th Avenue, North 01°35'01" East, a distance of 317.69 feet;

thence leaving said westerly Right-of-Way line, along a 829.50 foot radius non-tangential curve, concave northeasterly, with a radius point bearing North 39°24'48" East, arc length of

2.73 feet, central angle of 00°11'19", chord distance of 2.73 feet, and chord bearing of South 50°40'52" East;

thence South 50°46'32" East, a distance of 47.79 feet to a point on the easterly Right-of-Way line of said SW 110th Avenue;

thence along said easterly Right-of-Way line, South 01°35'01" West, a distance of 301.53 feet;

thence leaving said easterly Right-of-Way line, along a 15.00 foot radius non-tangential curve, concave northerly, with a radius point bearing North 50°40'50" West, arc length of 24.85 feet, central angle of 94°54'18", chord distance of 22.10 feet, and chord bearing of South 86°46'19" West;

thence North 45°46'32" West, a distance of 24.44 feet to the POINT OF BEGINNING.

Containing 12,657 square feet, more or less.

Tract 3

COMMENCING at the most northerly corner of Parcel 2, Partition Plat No. 2010-046;

thence along the westerly Right-of-Way line of SW 110th Avenue, South 01°35'01" West, a distance of 68.95 feet to the POINT OF BEGINNING;

thence leaving said westerly Right-of-Way line, North 46°43'10" East, a distance of 19.16 feet;

thence along a 646.00 foot radius tangential curve to the left, arc length of 38.44 feet, central angle of 03°24'32", chord distance of 38.43 feet, and chord bearing of North 45°00'54" East to a point on the easterly Right-of-Way line of SW 110th Avenue;

thence along said easterly Right-of-Way line, South 01°35'01" West, a distance of 388.84 feet;

thence leaving said easterly Right-of-Way line, along a 788.00 foot radius non-tangential curve, concave westerly, with a radius point bearing South 77°24'40" West, arc length of 124.82 feet, central angle of 09°04'33", chord distance of 124.69 feet, and chord bearing of North 17°07'37" West to a point on the westerly Right-of-Way line of SW 110th Avenue;

thence along said westerly Right-of-Way line, North 01°35'01" East, a distance of 229.31 feet to the POINT OF BEGINNING.

Containing 12,139 square feet, more or less.

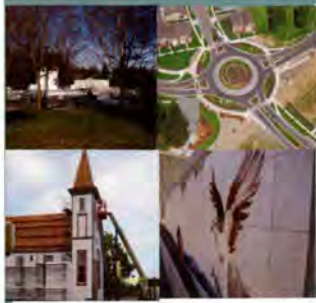
Basis of bearings being plat of "Tonquin Woods at Villebois No. 4", Clackamas County Survey Records.

REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
JULY 9, 2002
TRAVIS C. JANSEN
57751

RENEWES: 6/30/2015



City of Wilsonville

January-February
2014

Community Development

FROM THE DIRECTOR'S OFFICE

Greetings! 2014 greeted us with lots of activity in Community Development—much of which is familiar to you:

- Basalt Creek Concept Plan is underway.
- Frog Pond / Advance Road Concept Plan work scope and contract are ready for Council approval.
- Canyon Creek Extension project design is underway.
- Barber Street Extension right-of-way acquisition project design is progressing.
- Active Adult construction has begun at The Grove (Brenchley).
- New construction at Villebois remains strong for our Planning, Engineering, and Building Divisions.
- Memorial Park Parking Lot is looking great and just waiting for consecutive dry days for paving.
- The Long Range Urban Renewal Strategic Plan is nearing completion.

We are also progressing on several other notable projects:

- Chris Neamtzu has kicked off work on the Industrial Form Based Code and Pattern Book that we hope to use for future Coffee Creek Industrial Area development.
- Eric Mende is pleased to report that the acceptance testing was successfully completed for the \$36 million Wastewater Treatment Plant upgrade project. He and Delora Kerber invite you all to the ribbon cutting celebration for our new plant on April 24 at 2:00 p.m.
- Delora, Eric, Mike Kohlhoff, and I are participating in technical and governance work group meetings for expanding the Willamette River Water Supply to Hillsboro, Tualatin Valley Water District, and possibly other cities in the southwest Portland metro area.

Upcoming major projects for which Metro will be seeking public input and for which I hope to be your resource for information and questions are the:

- Regional Transportation Plan Update—Public comment period is March 21-May 5; adoption by the Metro Council is scheduled for July 2014.
- Climate Smart Communities Preferred Scenarios Project—Policymakers and the public will be asked to weigh in on the following questions:
 1. Through May 2014—"What mix of investments and actions best support your community's vision for healthy and equitable communities and a strong economy while reducing greenhouse gas emissions?"
 2. Through December 2014—"What funding sources should be considered and/or prioritized to realize our shared vision for walkable communities, job creation and affordable housing and transportation choices?"

Days are getting longer, temps are warming—spring is on its way! Our sincere sympathy goes out to our fellow Midwest and East Coast communities who faced record snows and low temps this winter.

Respectfully yours,
Nancy Kraushaar, P.E.



Inside this issue:

Building	2
Engineering,	2-3
Engineering, Private Develop- ment	3
Planning, Current	4
Planning, Long Range	4-5
Economic Development	6

Building Division

Number of Permits Issued			
Permit Type	Calendar YTD	Fiscal YTD	Project
New Single Family	7	69	
Single Family Additions	2	14	
New Commercial	1	2	Café Yumm
Commercial-Industrial Tenant Improvements	11	129	



Café Yumm

Engineering Division, Capital Projects

Waste Water Treatment Plant (2082): The \$36M upgrade to the WWTP successfully completed Acceptance Testing on January 20th, 2014. A ribbon cutting is scheduled for April. The upgrade provides a 60% increase in treatment capacity, state of the art odor control, improved discharge water quality, and produces only non-toxic biosolids suitable for agricultural use.



Barber Street Extension (4116): Advance (90%) plans are in review and property acquisitions are in progress, with a scheduled June 19th bid date.

Streetlight Infill (4696): Bids were opened February 25. This project will provide new streetlight coverage along Burns Way, and improve lighting along Tooze Road and Grahams Ferry Road.

Segment 3B Water Transmission (1055): The 48" diameter water transmission pipeline was brought online in December, and the new Pressure Reducing Vault at Boeckman Road became operational in February. Project Closeout and cost reconciliation with Sherwood will occur in the next two months.

Engineering, Capital Projects, cont'd



Canyon Creek Road Extension (4184): Final design is underway for Summer 2014 construction. Staff is working with Mentor Graphics to build the full street layout. The project will provide a long-planned north-south connection of Canyon Creek Road to Town Center Loop, reducing traffic on Parkway Avenue.

Engineering, Private Development

Villebois: Construction work continues by Lennar on Retherford Meadows in East Villebois. Construction of public infrastructure has been completed by Polygon on Villebois Tonquin Woods 4 & 5 in Central/North Villebois.

Plan reviews for Tonquin Meadows in East Villebois are underway. Construction of this phase will add 132 lots (90 single family and 42 townhomes) and connect Villebois Drive to the Boeckman Road roundabout. Construction is anticipated to occur starting spring/summer 2014.

Renaissance: Construction work continues in the 33-lot Renaissance Boat Club Development west of Memorial Park.

Brenchley North: In the Terrene Apartments, construction has been complete ; construction has started on the Active Adult at the Grove development.

76 Station North: A PW Permit has been issued and construction has started on the expansion of the 76 Station in north Wilsonville.

Planning Division, Current

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk 95th Avenue & Boones Ferry Road Wilsonville, Oregon



On February 10th DRB Panel 'A' voted to deny the application for the proposed Human Bean drive-through coffee kiosk next to Carl's Junior restaurant on SW 95th Avenue. Josh Veentjer, Wilsonville Devco LLC, Owner. Application Numbers: DB013-0046 – 48. The applicant is appealing the DRB decision to the City Council. Staff: Dan Pauly, AICP.

DRB Panel 'A' approved to vacate portions of SW 110th Avenue, SW Mont Blanc Avenue and SW Tooze/Boeckman Road at Villebois. Fred Gast, Polygon Northwest Company – Applicant. Application Number DB14-0001. This is a DRB recommendation to the City Council. Staff: Dan Pauly, AICP.

Planning Division, Long Range

BASALT CREEK CONCEPT PLANNING: On January 28th, Tualatin City Council authorized approval of the contract with Fregonese Associates (FA) to be the lead planning and design consultant on the project. FA's work is underway, beginning with development of Public Involvement Plan and detailed project timeline. Staff is planning to share the Involvement Plan and a revised Partnering Agreement with Council in early May.

RESIDENTIAL LANDS STUDY (aka HOUSING NEEDS ASSESSMENT): Both Council and the Planning Commission directed staff to prepare the draft Residential Lands Study and supporting technical documents for public hearings. The first public hearing before the Commission is scheduled for April 9th, when the Commission will consider recommending adopting the Study into the Comprehensive Plan.

Continued on next page

Planning Division, Long Range, cont'd

INDUSTRIAL FORM BASED CODE AND PATTERN BOOK: Staff and consultants have kicked off work on the Coffee Creek Industrial Area Form Based Code and Pattern Book. The Technical Advisory Committee, whose membership is comprised of industrial developer, broker, design team and Chamber of Commerce interests met on February 19th to review the first technical memorandums. That evening, the Planning Commission also conducted a work session.

FROG POND-ADVANCE ROAD PLANNING: Staff has selected Angelo Planning Group, a local consulting firm, to support Community Development on this project over the next two years. During the solicitation process, the project is ramping up as staff begins to collect data about the existing conditions of the land. During March, tree and natural resources inventories will be completed. Staff is also drafting the Public Involvement Plan for the project, and forming the Technical Advisory Committee of staff from other agencies (e.g., ODOT, Metro, and Tualatin Valley Fire) that will participate in the planning effort.



Frog Pond Grange

Economic Development Division

- ◆ A draft Urban Renewal Strategic Plan has been developed and is currently under review by the Urban Renewal Task Force. Staff expects to present the draft Strategic Plan to City Council in April.
- ◆ TIF Zone Creation: The TIF Zone Application is in the process of being finalized.
- ◆ Work is underway in partnership with Clackamas County Economic Development to create economic development market analysis for two properties in Wilsonville (the Elligsen Property and Xerox Building 83) as part of the Clackamas County Employment Lands Study.
- ◆ A new, stand-alone economic development website has been designed and content development is nearing completion for a Spring 2014 go-live date.
- ◆ A business outreach strategy and schedule is in development with the intent of initiating focused outreach in April.
- ◆ Numerous property acquisitions are underway in support of engineering projects.
- ◆ Capital Project budget development is complete.



Patrick Duke
Library Director

**LIBRARY
BOARD**
Hilly Alexander
Chair

**Megan
Chuinard**

Caroline Berry

Reggie Gaines

Alan Steiger

**Wilsonville Public Library
Monthly Report to Council
March 2014**

Headlines:

- **Free Tax Help continues on Saturdays 1 to 4pm Saturdays through April 12th.** Be sure to bring necessary documentation and 2012 tax records.
- **Kim Stafford** talks about his father in a presentation called, **"You Must Revise Your Life: William Stafford on Poetry and Peace."** **McMenamins Old Church, March 19th 6pm**
- **Wilsonville History Night at McMenamins Old Church - The Extraordinary Life of Homer Davenport, Political Cartoonist: March 25th, 6pm** (doors open at 5pm)
- **Library Board meeting. March 26th, 6:30pm** at the Library.

February Statistics

- **Physical item circulation: 36,770** items checked out or renewed, down 7%. We were closed for 3 days for snow. Add those days back and we're positive.
- **E-book and downloadable audiobook circulation 1,530**, up 76% from last year.
- **Volunteer hours donated to the library: 898 (5.1 FTE)**

Administration

The Library Board will be approving a new strategic plan at the March 26 meeting. Below is an explanation of the first goal.

- **Ignite a passion for reading and learning in all children from birth**
 - The Library will reach EVERY family of preschool children to inform them about the value of reading from birth.
 - The library will work to identify children at risk of reaching kindergarten not ready to learn.
 - The library will provide experiences and resources that encourage and excite children and parents about reading.

The first 2,000 days are critical for a child. It is a time when the brain is learning fast about the world and cementing critical linkages within the brain that will affect the child for the rest of its life. Success in school and in life is significantly dependent on these formative years.

With this goal, the Library commits to reaching out to all families in the community with information and resources to help parents learn about the importance of early literacy to positively influence their children's lives. The Library will continue produce our very popular preschool programs, to promote programs like Dolly Parton's Imagination Library, and will work to extend its reach by working with the budding Clackamas County Early Learning Hub and other initiatives.

Adult Services

- January adult programming attendance: 277.

Upcoming Programming (not mentioned above):

- **Book Notes Concert: I-5 Connection, April 12th, 2pm**
- **April Book Club: Ask Me: 100 Essential Poems of William Stafford**
Discuss this on April 10th, 6pm
- **The Great Books Discussion Group** meets on April 16th at 4pm. This month:
The moral sense of man and the lower animals by Charles Darwin

Youth Services

- January Youth Services programming attendance was 2,352
- **Battle of the Books**
The Library hosted the regional Battle of the Books competition on February 22nd. 12 high school team competed in game show type sessions where questions were asked about each of the dozen books the kids have read over the fall and winter. Wilsonville High School won this regional competition and goes on to Salem to compete for the State title.

Upcoming Programming

- **Storytime and other preschool programming:**

This year's schedule:

Toddler Time
Tuesdays 10 am

Babytime
Tuesdays 11 am

Family Storytime
Tuesday 6:30 pm
Wednesday 10:30 am,
and 1:00 pm
Thursday 10:30 am

Haz un Titere y cuenta un Cuento en Espanol e Ingles
(Bilingual Storytime)
Monday 6 pm

School age programming
each month.

- **K-2 Book Adventures, April 17th, 4pm**

See more events at www.wilsonvillelibrary.org

Local Businesses Give to the Community Center

Xerox Employees Volunteer at the Center

When Xerox donated \$5,000 to the Center, they promised to send employees to volunteer for the senior lunch program, and get a sense of how the convection oven was being used. On Feb. 18th, three employees from Xerox did just that, working with the Center's nutrition coordinators to help set tables and serve lunch, and pack home delivered meals. It was a nice opportunity for senior participants to thank Xerox for supporting the program, and the employees got a chance to meet the seniors who enjoy the hot meals each week. In 2013, 6700 meals were served at the Center, and 7081 hot home delivered meals were delivered.

Clocktower Chiropractic Supports Senior Scholarship Fund

Dr. Sarah Colby and her staff celebrated their patients during February by offering free treatments for new and existing clients. Participants were told that if they'd like to make a donation in lieu of a payment, it would support senior participants at the Community Center. Many individuals took advantage of the patient appreciation celebration, which also offered discounted massages and \$285 was raised to benefit the senior scholarship fund at the Center. Many thanks go out to Dr. Colby, her staff and patients for their generosity.



Daddy Daughter Dance

Parks and Recreation hosted the annual Daddy Daughter Dance on Friday, February 28th. The event was attended by 136 dads and daughters. Throughout the night, there was a variety of music, prizes, and unlimited trips through the photobooth to capture the memories of the evening.



Animeal Donation for pets of Home Delivered Meal Recipients

The Home Delivered Meal program has been very fortunate since last June to receive generous donations from FIDO (Animeals), out of Clackamas County. This is available to seniors on home delivered meals who need assistance feeding their pets. Animeals (kibbles and bits) and sometimes soft pet food are delivered to the Center and then our drivers deliver the pet meals when they are delivering the meal to the clients.

Parks and Recreation

Parks Update

Winter storm event/response-February 6-9, 2014

The park system suffered only the loss of 1 small Pine tree along the Boeckman Creek Crossing pathway during the recent snow/ice event. A large Douglas Fir tree from a neighboring property broke and fell into Memorial Park without incident and was removed by the property owner. Park Maintenance staff also provided assistance to Public Works helping with after hours sanding and emergency response.

Community Garden

Upcoming improvements to the Community Garden will include the addition of a gate in the west garden to provide better accessibility for garden users and additional irrigation in the east garden to allow additional garden plots to be added.



Memorial Park Sports Field Maintenance

After winter field vandalism, staff has increased efforts to get the fields ready for the upcoming season. Ballfields 2 and 3 and soccer field 3 have been deep tine aerated and slice seeded with a winter blend of seed; additional fertilizer will also be applied to help the turf recover. Regular maintenance activities are under way on all fields including weed control, edging and leveling in preparation for the practice sessions soon to be underway. Calcined Clay material is being added to the skinned infield areas to increase playability and lessen the possibility of rainouts, and mowing has already started.

Field Sign Up Night

On February 20th, representatives from area sports organizations including Wilsonville Youth Sports, Willamette United Soccer and Wilsonville Adult Softball scheduled field usage for the upcoming year. Teams booked fields from early March to mid November. A total of 2,927 hours were booked.

New Classes Get Rolling!

Two new classes taught by instructor Jules Moody began in February. For the Active Adults 55+, 9 participants are taking part in a stability ball class designed to improve core strength, balance and posture. Another 9 participants are enrolled in Body Sculpt, a class offered through our Adult class offerings designed to strengthen and tone all major muscle groups. Both classes will be offered again during the Spring session.



Upcoming Event

Wilsonville Egg Hunt - Saturday, April 19th, 10:00am, Memorial Park Ball Fields. The event is free and open to children up to 11 years old.

Director's Report

“Seamless mobility” used to be an advertising slogan for cell phone service companies. Today it is the goal of transit providers who want to make sure their passengers can move from place to place as effortlessly as possible.

It seems that Germany has much to teach us about how we might make mobility more seamless. Large urban areas in Germany have regional governments responsible for assuring that different transit providers have coordinated schedules and tickets and passes that are shared by all transit providers. That would mean that someone traveling across the region would only need a single ticket and would know that he or she would not have long wait times from one bus or train to the next – regardless of how many transfers might be needed or how many different transit agencies were involved. German transit systems also have the reputation of being very efficient.

That does not seem like it should be impossible to replicate in America. If we were able to do the same here, we would be providing an opportunity for seamless mobility beyond anything we currently offer. Transit systems in America would probably enjoy the kind of ridership numbers that are common in the metropolitan areas of Germany.

Stephan Lashbrook

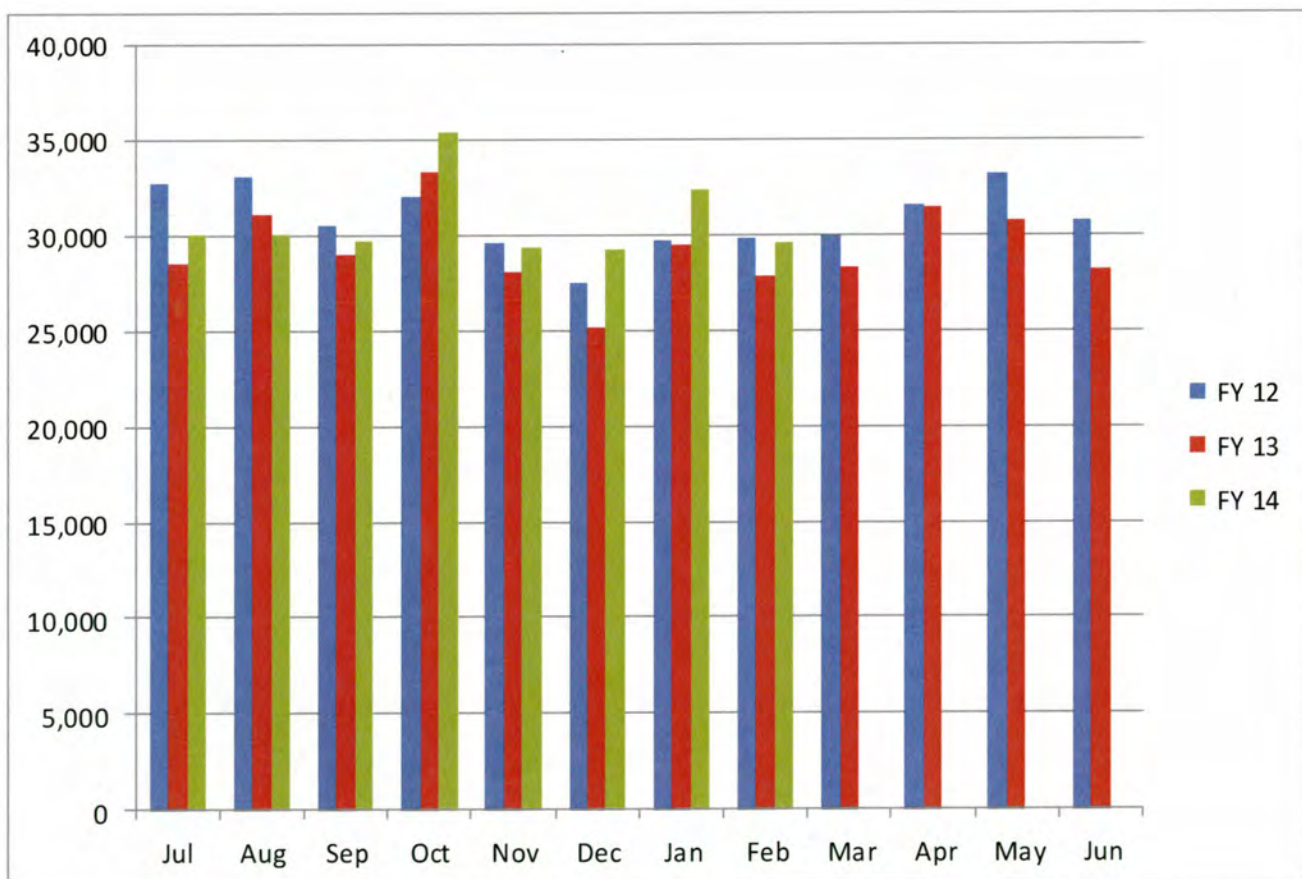


Save the Date! April 30, 2014 — National Walk @ Lunch Day.

SMART OPERATIONS

February Report

The snow event of February 6-9 affected most people. Although SMART continued to provide service through this difficult time, ridership was definitely affected. Many people stayed home (and wisely so). As expected, both our long range commuter routes, the 1X to Salem and the 2X to Barbur Blvd. had the most difficulties and had significant drop off in ridership. For instance, the 1X normally carries around 245 daily passengers, but on Friday, February 7, we carried 44. Yet another route had near normal ridership, our Crosstown Route 4 carried 502 that day, near the daily average of 582. We experienced no accidents or incidents, and we left no passengers stranded, including down in Salem. Even with this event, our ridership exceeded last year's numbers by 6.3%.



Fleet Update

February has been a busy month in the Fleet department. In addition to weather-related work during the recent snow event, assisting Public Works crews with their sanding equipment, and keeping SMART's buses chained as needed, staff participated in two clean fuels transportation events during the past month.

First, the City's Fleet Department was recipient of an award from The Columbia-Willamette Clean Cities Coalition for efforts to reduce petroleum use in our City's Transit fleet through the use of Compressed Natural Gas (CNG). Staff attended the annual meeting which was held in conjunction with the Portland Auto Show and accepted the award during SMART's CNG presentation session.



Secondly, as a part of a green transportation conference hosted by Trans-Energy, the City was asked to present a workshop describing how, as a smaller entity, SMART was able convert to CNG on a small scale. The workshop consisted of a field trip to Wilsonville's Boberg facility to view the fueling station and tour the new maintenance facility. This session was led by the Fleet Manager and well received by representatives in attendance from the City of Tacoma, City of Vancouver, B.C., and TriMet among others from around the Pacific Northwest.

Transit Integration Project Update

Beginning later this month, SMART will conduct a system wide stop-level boarding/alighting analysis. This type of analysis is time consuming, yet crucial to understanding transit ridership trends and demands. As part of the Transit Integration Project, SMART will begin this analysis on routes 2X and 6 to help refine the alternative service scenario draft for this project.

As SMART continues to update its fleet with newer and more advanced technology and software, this type of ridership data will become more readily available for staff to use when planning for service that best meets the needs of the community.



Active Transportation Summit



On April 21-22, 2014 8:00 AM - 6:30 PM, join leaders across Oregon for two days of discovery, networking, sharing best practices, and shaping the future of transportation.

Transportation, planning, tourism, and health professionals; policy makers; advocates; researchers; and visionaries will come together to share the latest and greatest on what investing in biking, walking, and transit means for our communities.

www.oat-summit.com

Contact Us

Stephan Lashbrook
Transit Director
503-570-1576
Lashbrook@ridesmart.com

Steve Allen
Operations Manager
503-570-1577
Allen@ridesmart.com

Scott Simonton
Fleet Manager
503-570-1541
Simonton@ridesmart.com

Jen Massa Smith
Program Manager
503-682-4523
Massa@ridesmart.com

City of Wilsonville
Work Session and City Council Meeting Calendar

ITEMS ARE TENTATIVELY SCHEDULED AND MAY BE MOVED TO ANOTHER MEETING.

Meeting Date	Agenda Items
<p style="text-align: center;">MARCH 17</p> <p style="text-align: center;">PACKET MATERIALS DUE</p> <p style="text-align: center;">MARCH 4</p>	<p>Executive Session –</p> <p>Work Session</p> <ul style="list-style-type: none"> • Contract approval Frog Pond/Advance Rd PSA (Kraushaar) • New Web Sites Unveiling (Wolf/Miller) <p>Mayor’s Business</p> <ul style="list-style-type: none"> • Proclamation declaring April Parkinson’s Awareness Month <p>Communications</p> <ul style="list-style-type: none"> • Chief Duyck, TVF&R annual State of the District • Introduce new Police Chief Jeff Smith – James Rhodes (Troha) <p>Consent Agenda</p> <ul style="list-style-type: none"> • Contract approval – Frog Pond CP PSA • Res 2455 Street Light Infill <p>Public Hearing</p> <ul style="list-style-type: none"> • Appeal by Human Bean of DRB decision (Pauly) • Ord. 735 Smoking Ban at Transit Stops and Bus Stops– first reading (Lashbrook) • Ordinance adopting amendments to Chapter 10, Animals 1st reading (Kohlhoff) <p>Continuing Business</p> <ul style="list-style-type: none"> • Ordinance –2nd reading -- 110th Avenue Street Vacation (Dan Pauley) <p>New Business</p> <p>URBAN RENEWAL AGENCY MEETING</p> <ul style="list-style-type: none"> • Resolution for acquiring right-of-way from Mentor Graphics for CIP #4184 (Adams) • Villebois Drive North ROW Dedication (Retherford)
<p style="text-align: center;">MARCH 20</p>	<p>Tourism Task Force Meeting #4 6 p.m.</p>

<p>APRIL 7</p> <p>PACKET MATERIALS DUE MARCH 24</p> <p>OAMR MID-YEAR BEND SCK OOT APRIL 2-4</p> <p>SCK OOT APRIL 10-11</p>	<p>Executive Session –</p> <p>Work Session</p> <ul style="list-style-type: none"> • TDM and staff presentation (Fitzgerald/Ottenad) • URA strategic Plan and Urban Renewal Debt Service (Retherford/Ossanna) <i>Possible delay</i> <p>Mayor's Business</p> <ul style="list-style-type: none"> • April Volunteer Appreciation Month?? • Arbor Day/Week Proclamation – Tree City USA (Pauly) <p>Communications</p> <ul style="list-style-type: none"> • Metro Councilor Craig Dirksen – Metro activities update <p>Consent Agenda</p> <p>Public Hearing</p> <ul style="list-style-type: none"> • Renaissance at Canyon Creek II Comp Plan Amendment/ Zone Map Amendment (Wheeler) 1st Reading • Supplemental Budget (Rodocker) • SMART Bus Stop Smoking Ban –2nd reading (Lashbrook) • Amending Chapter 10 Animals – 2nd reading (Kohlhoff) <p>Continuing Business</p> <p>New Business</p> <ul style="list-style-type: none"> • Fiber Franchise Agreement with Clackamas County (Kohlhoff) [moved from 3/3/14] • Development agreement – Mentor Graphics <p>City Manager's Business</p> <ul style="list-style-type: none"> • Quarterly Council Goal Update (Cosgrove) <p>URBAN RENEWAL AGENCY MEETING</p> <ul style="list-style-type: none"> • Adoption of Urban Renewal Strategic Plan (Retherford) <i>Possible delay</i>
--	---

<p>APRIL 21</p> <p>PACKET MATERIALS DUE APRIL 8</p>	<p>Executive Session –</p> <p>Work Session</p> <ul style="list-style-type: none"> • Metro Establishing a Community Enhancement Fee – Ray Phelps <p>Communications</p> <ul style="list-style-type: none"> • Earth Day Proclamation <p>Consent Agenda</p> <ul style="list-style-type: none"> • Resolutions for tax exemption apartments (Rodocker) <p>Public Hearing</p> <ul style="list-style-type: none"> • <p>Continuing Business</p> <ul style="list-style-type: none"> • Renaissance at Canyon Creek II Comp Plan Amendment/ Zone Map Amendment (Wheeler) 2nd Reading <p>New Business</p> <ul style="list-style-type: none"> •
<p>APRIL 24</p>	<p>Wastewater Treatment Plant Ribbon Cutting 2 p.m.</p>
<p>APRIL 24</p>	<p>Tourism Task Force Meeting #5</p>
<p>MAY 1</p>	<p>Budget Committee Meeting 6 p.m.</p>

<p>MAY 5</p> <p>STAFF REPORT DUE APRIL 22</p>	<p>Executive Session –</p> <p>Work Session</p> <ul style="list-style-type: none"> • Tourism Task Force recommendation to Council (Fitzgerald/Ottenad) <p>Communications</p> <p>Consent Agenda</p> <p>Public Hearing</p> <ul style="list-style-type: none"> • Housing Needs Analysis (Mangle) <p>Continuing Business</p> <p>New Business</p> <ul style="list-style-type: none"> • TDM and staff presentation (Fitzgerald/Ottenad) •
<p>MAY 8</p>	<p>Budget Committee Meeting 6 p.m.</p>
<p>MAY 13</p>	<p>Budget Committee Meeting 6 p.m. tentative</p>
<p>MAY 17 - SATURDAY</p>	<p>“Spring Training” Meeting of all Boards & Commissions</p>
<p>MAY 19</p> <p>STAFF REPORT DUE MAY 4</p>	<p>Executive Session –</p> <p>Work Session</p> <p>Communications</p> <p>Consent Agenda</p> <ul style="list-style-type: none"> • <p>Public Hearing</p> <ul style="list-style-type: none"> • <p>Continuing Business</p> <p>New Business</p>
<p>FALL OF 2015</p>	<p>Citizen’s Academy</p>

Council Goals Quarterly Updates:

January –March, update to be given the first council meeting of **April**
April-June, update to be given first council meeting of **July**
July-September, update to be given first council meeting of **October**
October-December, update to be given first Council meeting of **January**.

UNSCHEDULED ITEMS

- Xerces Society/Crest Center (Jacobson & Rappold)
- ODOT Passenger Rail Update (Kraushaar)
- Legislative Changes
- Draft Tourism Development Strategy (Councilor Fitzgerald, Consultant Bill Baker, Ottenad)
- Final Tourism Development Strategy presented (Councilor Fitzgerald, Consultant Bill Baker, Ottenad)
- Community Wide Survey – May (Cosgrove)

**City of Wilsonville
City Council Meeting
March 17, 2014, 2014 Sign In Sheet**

[illegible]

City of Wilsonville
March 17, 2014 City Council Meeting

*Declared
to speak*

SPEAKER CARD

NAME: WALLACE W. Liew, Atty for LaPointe
ADDRESS: 3265 Liberty Rd S. Salem, OR 97302
TELEPHONE: 503-585-0105 E-MAIL WALLACE.Liew@liewlaw.com
AGENDA ITEM YOU WANT TO ADDRESS: Coffee Kiosk
Appeal -

Please limit your comments to 3 minutes. Thank you.

City of Wilsonville
March 17, 2014 City Council Meeting

Manager of Holiday Inn

Favors.

SPEAKER CARD

NAME: JEFF BROWN

ADDRESS: 25425 SW 95th Ave, Wilsonville

TELEPHONE: 503-682-5597 E-MAIL jbrown@portlandlandscap.com

AGENDA ITEM YOU WANT TO ADDRESS: The Human Bean

Please limit your comments to 3 minutes. Thank you.

Interested in City building a
community center

City of Wilsonville
March 17, 2014 City Council Meeting

SPEAKER CARD

NAME: MICHAEL DAVID

ADDRESS: 6295 SW WILSONVILLE RD #178
DAVID MICHAEL 726-41400.011

TELEPHONE: 503-500-0261 E-MAIL BLISS REASON MOORMAN
LOCAL CHAIRMAN

AGENDA ITEM YOU WANT TO ADDRESS: LOCAL CHAIRMAN
WIP CANCER DOERNBECKERS
COMMUNITY CENTER

Please limit your comments to 3 minutes. Thank you.

City of Wilsonville
March 17, 2014 City Council Meeting

SPEAKER CARD

Has been change - flashing
lights not there anymore.
Now posted for set
times - Needs publication.

NAME: Ginger Fitch

ADDRESS: 29395 SW Camelot St Wilsonville

TELEPHONE: 503-954-9829 E-MAIL gingfitch@yahoo.com

AGENDA ITEM YOU WANT TO ADDRESS: CITIZEN INPUT
ON BARBER ST SCHOOL SAFETY ZONE

Please limit your comments to 3 minutes. Thank you.

City of Wilsonville
March 17, 2014 City Council Meeting

SPEAKER CARD

Concerned @ Vacation before
new connection is open.
Concerned @ slower emergency
response, reduced connectivity
Nc

NAME: Ginger Fitch

ADDRESS: 29395 SW Camelot St Wilsonville

TELEPHONE: 503-954-9829 E-MAIL gingfitch@yahoo.com

AGENDA ITEM YOU WANT TO ADDRESS: 110th Road Vacation
Ordinance No 736

Please limit your comments to 3 minutes. Thank you.

City of Wilsonville
March 17, 2014 City Council Meeting

Carls TR Franchise Owner.
Favours Applicant

SPEAKER CARD

NAME: DAN GJURGEVICH

ADDRESS: 7263 SW LYNNWOOD CT. WILSONVILLE
OR 97070

TELEPHONE: (503) 701-4020 E-MAIL DAN@KGIKWOODS.COM

AGENDA ITEM YOU WANT TO ADDRESS: SUPPORT OR
KICKER KIOSK AND SITE PLANS

Please limit your comments to 3 minutes. Thank you.

Opposition

City of Wilsonville
March 17, 2014 City Council Meeting

SPEAKER CARD

& JASON CAPORAL

NAME: GARY L. CAPORAL

ADDRESS: 25410 SW 95th AVE

TELEPHONE: 503-720-0341 E-MAIL g1@roni.com

AGENDA ITEM YOU WANT TO ADDRESS: HUMAN BEAN

Please limit your comments to 3 minutes. Thank you.

King, Sandy

From: LFaxon@CommNewspapers.com
Sent: Wednesday, March 05, 2014 2:23 PM
To: King, Sandy
Subject: RE: Public Hearing Notice

Good Afternoon Sandy,
Notice received. I will get this notice in the March 12th edition of the Wilsonville Spokesman. Once published, I will send affidavits of publication to your attention.

Thank you,

Louise Faxon
Legal Advertising
Community Newspapers/Portland Tribune
6605 SE Lake Rd, Portland 97222-2161
PO Box 22109, Portland OR 97269-2109
(503) 546-0752; fax (503) 620-3433
Legals Notices are online at: <http://publicnotices.portlandtribune.com>

From: King, Sandy [<mailto:king@ci.wilsonville.or.us>]
Sent: Wednesday, March 05, 2014 1:40 PM
To: Louise Faxon
Subject: Public Hearing Notice

Louise;

Can you publish the attached public hearing notice one time in the March 11th edition of the Wilsonville Spokesman and send proof of publication. Many thanks.

Sandra C. King, MMC
City Recorder
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070
503-570-1506

PUBLIC RECORDS LAW DISCLOSURE: Messages to and from this e-mail address is a public record of the City of Wilsonville and may be subject to public disclosure. This e-mail is subject to the State Retention Schedule.

**CITY OF WILSONVILLE
CITY COUNCIL
NOTICE OF PUBLIC HEARING**

PUBLIC NOTICE IS HEREBY GIVEN that the Wilsonville City Council will conduct a public hearing on March 17, **2014**, 7 p.m. at City Hall, 29799 SW Town Center Loop, Wilsonville, Oregon.

The purpose of this public hearing is to consider public testimony on a proposed ordinance entitled:

Ordinance No. 737 – 1st reading

An Ordinance Of The City Of Wilsonville Amending Chapter 10 Of The Wilsonville Code.

Copies may be obtained at a cost of 25 cents per page, at City Hall or by calling the City Recorder at 503-570-1506 and requesting a copy to be mailed to you.

Specific suggestions or questions concerning the proposed ordinance may be directed to the City Attorney, at 503-570-1508. Public testimony, both oral and written will be accepted at the public hearing. Written statements are encouraged and may be submitted to Sandra C. King, MMC, City Recorder, 29799 SW Town Center Loop E, Wilsonville, OR 97070.

Assistive listening devices are available for persons with impaired hearing and can be scheduled for this meeting. The City will endeavor to provide qualified sign language interpreters without cost if requested at least 48 hours prior to the meeting. To obtain such services call the office of the City Recorder at 682-1011.

Published in the Wilsonville Spokesman March 11, 2014.

King, Sandy

From: LFaxon@CommNewspapers.com
Sent: Wednesday, February 05, 2014 11:49 AM
To: King, Sandy
Subject: RE: Public Hearing Notice

Good Morning Sandy,
Notice received. I will get this notice in the March 12th editions of the Wilsonville Spokesman. Once published, I will send affidavits of publication to your attention.

Thank you,

Louise Faxon
Legal Advertising
Community Newspapers/Portland Tribune
6605 SE Lake Rd, Portland 97222-2161
PO Box 22109, Portland OR 97269-2109
(503) 546-0752; fax (503) 620-3433
Legals Notices are online at: <http://publicnotices.portlandtribune.com>

From: King, Sandy [<mailto:king@ci.wilsonville.or.us>]
Sent: Wednesday, February 05, 2014 11:09 AM
To: Louise Faxon
Subject: Public Hearing Notice

Louise;

Here is a notice for the March 11, 2014 Wilsonville Spokesman.

Sandra C. King, MMC
City Recorder
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070
503-570-1506

PUBLIC RECORDS LAW DISCLOSURE: Messages to and from this e-mail address is a public record of the City of Wilsonville and may be subject to public disclosure. This e-mail is subject to the State Retention Schedule.

**CITY OF WILSONVILLE
CITY COUNCIL
NOTICE OF PUBLIC HEARING**

PUBLIC NOTICE IS HEREBY GIVEN that the Wilsonville City Council will conduct a public hearing on **March 17, 2014**, 7 p.m. at City Hall, 29799 SW Town Center Loop, Wilsonville, Oregon.

The purpose of this public hearing is to consider public testimony on a proposed ordinance entitled:

“An Ordinance Amending City Of Wilsonville Miscellaneous Code Provisions To Prohibit Smoking At Or Within Twenty Feet Of A Bus Stop Or Transit Shelter”.

Copies may be obtained at a cost of 25 cents per page, at City Hall or by calling the City Recorder at 503-570-1506 and requesting a copy to be mailed to you.

Specific suggestions or questions concerning the proposed ordinance may be directed to Stephan Lashbrook, SMART Director, at 503-570-1576. Public testimony, both oral and written will be accepted at the public hearing. Written statements are encouraged and may be submitted to Sandra C. King, MMC, City Recorder, 29799 SW Town Center Loop E, Wilsonville, OR 97070.

Assistive listening devices are available for persons with impaired hearing and can be scheduled for this meeting. The City will endeavor to provide qualified sign language interpreters without cost if requested at least 48 hours prior to the meeting. To obtain such services call the office of the City Recorder at 682-1011.

Published in the Wilsonville Spokesman March 11, 2014.

King, Sandy

From: Kohlhoff, Mike
Sent: Wednesday, February 05, 2014 9:44 AM
To: Lashbrook, Stephan; King, Sandy
Subject: RE: Title

Yup!

Michael E. Kohlhoff
City Attorney
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville OR 97070
503-570-1508
503-682-1015 fax
kohlhoff@ci.wilsonville.or.us

3/17/14
P.H.
NOTICE SENT
2/5/14
Published on 3/11/14

Disclosure: Messages to and from this email address may be subject to the Oregon Public Records Law.

The information contained in this email transmission is confidential and is intended only for the use of the individual or entity intended to receive it. This message may contain information protected by the attorney-client privilege. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this email transmission in error, please immediately notify the sender by return email and delete the original email.

Circular 230 Disclaimer: If any portion of this communication is interpreted as providing federal tax advice, Treasury Regulations require that we inform you that we neither intended nor wrote this communication for you to use in avoiding federal tax penalties that the IRS may attempt to impose and that you may not use it for such purpose.

From: Lashbrook, Stephan
Sent: Wednesday, February 05, 2014 9:42 AM
To: King, Sandy
Cc: Kohlhoff, Mike
Subject: Title

Sandy:

Mike K has indicated that he is ok with this:

**"AN ORDINANCE AMENDING CITY OF WILSONVILLE MISCELLANEOUS CODE PROVISIONS TO PROHIBIT S
MOKING AT OR WITHIN TWENTY FEET OF A BUS STOP OR TRANSIT SHELTER."**

Thanks.

Stephan
Stephan A. Lashbrook
Transit Director
City of Wilsonville
(503) 570-1576
lashbrook@ridesmart.com

Disclosure Notice: Messages to and from this e-mail address may be subject to the Oregon Public Records Law.

**CITY OF WILSONVILLE
CITY COUNCIL
NOTICE OF PUBLIC HEARING**

PUBLIC NOTICE IS HEREBY GIVEN that the Wilsonville City Council will conduct a public hearing on **March 17, 2014**, 7 p.m. at City Hall, 29799 SW Town Center Loop, Wilsonville, Oregon.

The purpose of this public hearing is to consider public testimony on a proposed ordinance entitled:

“An Ordinance Amending City Of Wilsonville Miscellaneous Code Provisions To Prohibit Smoking At Or Within Twenty Feet Of A Bus Stop Or Transit Shelter”.

Copies may be obtained at a cost of 25 cents per page, at City Hall or by calling the City Recorder at 503-570-1506 and requesting a copy to be mailed to you.

Specific suggestions or questions concerning the proposed ordinance may be directed to Stephan Lashbrook, SMART Director, at 503-570-1576. Public testimony, both oral and written will be accepted at the public hearing. Written statements are encouraged and may be submitted to Sandra C. King, MMC, City Recorder, 29799 SW Town Center Loop E, Wilsonville, OR 97070.

Assistive listening devices are available for persons with impaired hearing and can be scheduled for this meeting. The City will endeavor to provide qualified sign language interpreters without cost if requested at least 48 hours prior to the meeting. To obtain such services call the office of the City Recorder at 682-1011.

Published in the Wilsonville Spokesman March 11, 2014.

City of Wilsonville

March 17, 2014 City Council Meeting Action Minutes

COUNCILORS	STAFF	STAFF	STAFF
Mayor Knapp	Bryan Cosgrove	Beth Wolf	Barbara Johnson
Councilor Goddard- Excused	Mike Kohlhoff	Dan Pauly	Cathy Rodocker
Councilor Starr - Excused	Jeanna Troha	Angela Handran	Stan Sherer
Councilor Fitzgerald	Sandra King	Katie Mangle	Steve Adams
Councilor Stevens	Stephan Lashbrook	Chris Neamtzu	
	Nancy Kraushaar	Mark Ottenad	
	Holly Miller	Jon Gail	

AGENDA	ACTIONS
WORK SESSION	
Council Concerns	
<ul style="list-style-type: none"> Fitzgerald – publicize National Drug Take Back and inform residents where they can drop off unused/unwanted prescription drugs. Knapp – requested staff investigate options for the recycling of fluorescent light tubes. 	Staff will talk with Republic Services to learn what recycling options are possible for residents and businesses and bring that information back to Council.
<ul style="list-style-type: none"> Frog Pond PSA 	Staff provided a brief report on Resolution 2454 which Council will take action on via the Consent Agenda.
<ul style="list-style-type: none"> New City Websites Unveiled 	The five newly re-designed websites were presented to Council.
<ul style="list-style-type: none"> Medical Marijuana 	The City Attorney explained the legislature’s recent decision to create a one year moratorium on medical marijuana dispensaries. The LOC has drafted a model ordinance, and staff will bring this to Council in April.
<ul style="list-style-type: none"> Street Light Infill Project 	Staff identified the locations where changes would be made to street light poles and the areas where infill lighting will be installed.
<ul style="list-style-type: none"> 	
<ul style="list-style-type: none"> 	
REGULAR MEETING	
<u>Mayor’s Business</u>	
<ul style="list-style-type: none"> Proclamation declaring April Parkinson’s Awareness Month 	The proclamation was read for the record and presented to a representative of the Parkinson’s Action Network.
<u>Communications</u>	
<ul style="list-style-type: none"> Chief Mike Duyck, TVF&R State of the District 	Chief Duyck presented an update of TVF&Rs activities and talked about the local option levy that will be on the May ballot.

<ul style="list-style-type: none"> • Introduction of Wilsonville Police Chief Jeff Smith 	Former Police Chief James Rhodes introduced newly appointed Wilsonville Police Chief Jeff Smith.
<u>Consent Agenda</u> <ul style="list-style-type: none"> • Resolution No. 2454 – authorizing the City Manager to sign a PSA with Angelo Planning Group for Frog Pond planning • Resolution No. 2455 – authorizing the City Manager to sign a construction contract for street lighting infill • Minutes of February 20 and March 3, 2014 Council Meetings 	Consent Agenda approved 3-0
<u>Public Hearing</u> <ul style="list-style-type: none"> • Appeal of DRB Decision regarding Wilsonville Devco application for coffee kiosk • Ordinance No. 735 – amending Code provisions to prohibit smoking within 20 feet of a bus stop • Ordinance No. 737 – amending Chapter 10 of the Code dealing with leashing dogs in the city 	<p>Council reversed the DRB's decision to deny the application, while imposing additional conditions of approval.</p> <p>Due to the lateness of the hour, both ordinances were carried over to the April 7, 2014 Council meeting for public hearing and first reading.</p>
<u>Continuing Business</u> <ul style="list-style-type: none"> • Ordinance No. 736 – vacating portions of 110th Avenue 	Adopted on second reading 3-0.
<u>City Manager's Business</u>	No report.
<u>Legal Business</u>	No report
URBAN RENEWAL	
<ul style="list-style-type: none"> • URA Resolution No. 240 – authorizing right of way dedication for Villebois Drive North 	Adopted 3-0.

RECORDED BY: SCK

**Land Use Application
City of Wilsonville**

**Boones Ferry Pointe
The Human Bean
Drive-up Coffee Kiosk**

**Design Review Modifications
Replace Retail Building with
Site Design Review**

**November 6, 2013
Revised December 9, 2013 for Completeness**

APPLICANT/OWNER:
Wilsonville Devco, LLC
PO Box 916
Portland, OR 97207
Contact: Josh Veentjer
josh@iipcorp.com



APPLICANT'S REPRESENTATIVES:

CB Anderson, Project Architects
7209 Greenwood Ave. N.
Seattle, WA 98103
Contact: Craig Anderson
206-782-2911
craig@cba-arch.com

SFA Design Group, Project Planning
9020 SW Washington Square Dr., Ste 505
Portland, OR 97223
Contact: Ben Altman
503-641-8311
baltman@sfadg.com



City of Wilsonville
EXHIBIT B1 DB13-0046 et seq

NOTICE

December 9, 2013

Josh Veentjer
Wilsonville Devco LLC
PO Box 6437
La Quinta, CA 92248



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

Application Number: DB13-0046, DB13-0047, DB13-0048
Legal: 25250 SW 95th Ave., the property described as Tax Lot 0302, Section 2DB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon.

Status: Notice that Your Application IS COMPLETE.

Dear Mr. Veentjer:

You are listed as the authorized representative on a City of Wilsonville Site Development Application form submitted regarding the property described above. Your application materials were received by the City on November 12, 2013 in application for a Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-up coffee kiosk and associated improvements.. Additional materials were submitted on December 4, 2013. On the basis of the material submitted, I have determined that your application is now materially complete. The date of that determination is today, December 9, 2013.

Staff will process the current application based upon the material currently on file. For the purpose of applying the 120-day time limit, the application was deemed to be complete today, December 9, 2013.

If you have any questions, please contact me at 503-682-4960.

Sincerely,

Daniel Pauly, AICP
Associate Planner
City of Wilsonville

cc:

Craig Anderson
CB Anderson Architects
7209 Greenwood Ave. N.
Seattle, WA 98103

Ben Altman
SFA Design Group
9020 SW Washington Sq. Dr., Ste. 505
Portland, OR 97223



"Serving The Community With Pride"



SFA Design Group, LLC

STRUCTURAL | CIVIL | LAND-USE PLANNING | SURVEYING

December 4, 2013

Daniel Pauley, Associate Planner
City of Wilsonville
29799 SW Town Center Loop E.
Wilsonville, OR 97070

**RE: Response to Letter of Incomplete Application, Boones Ferry Pointe DRB
Revision Coffee Kiosk, DB13-0046, DB13-0047, DB13-0048.**

Dear Daniel:

The following narrative and attached revised documents represent our response to your letter of Incomplete Application for the Boones Ferry Pointe, DRB Revision for Coffee Kiosk, DB13-0046, DB13-0047, and DB13-0048.

General

1. Pursuant to Subsection 4.140 (.09) C. Please provide updated grading and drainage information. The neighboring property owner has stated to City Staff that the grading of the property was changed from the previously approved plans. Please clarify, either provide information showing the grading is the same as previously approved or updated grading and drainage plans.

RESPONSE

First, the Grading Plan, relative to the issue raised by the Chevron property owner, was part of the original development application for Boones Ferry Pointe. The Grading Plan was approved as part of the overall site development approval. The Boones Ferry Pointe Construction Grading Plan (C105) was approved, and the site grading completed consistent with the original Design Review approval.

The revised Kiosk Site (Sheet DD102) reflects the same grading at the property line transition to the Chevron Site. Comparison of these two grading plans confirms that grading in the area in question has not changed with the new site plan.

There were, however, minor grading revisions north of the new Kiosk building, which are shown on the attached Sheet DD102. It is noted that these minor revisions were actually included in the As-Built Drawings provided to the Building Department for the overall site grading. The revisions, however, have not been reviewed by the Engineering Department.

The grading plan in the drainage problem area in question for the Chevron property has not been revised for the revisions related to the Coffee Kiosk. The Project engineer believes the drainage issue on the Chevron site was created during construction of the Chevron facility, not by the construction for Boones Ferry Pointe.

When the Chevron property was developed (graded & paved) to the northwest of the fuel storage tanks they created a low point for surface water on their site which they chose to direct towards the Boones Ferry Pointe property rather than picking up the water on their own site and directing it into their own storm system.

Therefore at the location in question, Chevron did not collect, treat or detain the impervious runoff from and within their property. The low point in question diverted storm water off the Chevron site onto the undeveloped Boones Ferry Pointe Property. Consequently the applicant believes the drainage ponding issue on the Chevron property was created by improper runoff collection on their own property.

This issue has only now come to light with the development of the Boones Ferry Pointe site, where the approved grading plan provided for a grade and storm flow break at the property line, at approximately the 250.01 foot elevation. This grade break exposed the low point on the Chevron site, which now has no outfall.

While the applicant does not believe he created the problem, he is working with the owners of the Chevron facility to correct the ponding.

Circulation and Parking (Including Bicycle and Pedestrian)

2. Pursuant to Section 4.154 (adopted June 2013) Please provide written response to these criteria for on-site pedestrian access and circulation and demonstrate compliance with the standards in this Section in the site planning.

Section 4.154. On-site Pedestrian Access and Circulation.

(.01) On-site Pedestrian Access and Circulation

A. The purpose of this section is to implement the pedestrian access and connectivity policies of the Transportation System Plan. It is intended to provide for safe, reasonably direct, and convenient pedestrian access and circulation.

B. Standards. Development shall conform to all of the following standards:

- 1. Continuous Pathway System. A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable.*
- 2. Safe, Direct, and Convenient. Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:*

a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.

b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.

c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.

d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)(B.)(3.)(d.).

3. Vehicle/Pathway Separation. Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards.

4. Crosswalks. Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light color concrete inlay between asphalt, or similar contrast).

5. Pathway Width and Surface. Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five (5) feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA.

6. All pathways shall be clearly marked with appropriate standard signs.

RESPONSE

With the proposed tenant/building revision, the site plan has been revised to provide enhanced on-site pedestrian circulation. These improvements include the following:

- An additional pedestrian connection has been provided from the 95th Avenue sidewalk to the south side of the coffee kiosk;
- The walk north of the building has been realigned to connect to the relocated outdoor patio on the east side of the building; and
- A sidewalk has been extended from the outdoor patio out to the east side to provide a pedestrian link from the parking area to the building.

These walkways provide safe and convenient pedestrian access and circulation with reasonably direct routes from the street and parking area to the building. Where the pathways cross a parking area or driveway, they are clearly marked with contrasting paint or paving materials.

3. Pursuant to Subsections 4.155 (.02)-(.03) Please provide an accurate and updated parking count, and ensure references to number of parking stalls is consistent between drawings and narrative. Currently inconsistencies exist between the drawings, the narrative, and what is actually on the ground. Please also clarify and update the percent of the parking that does not meet the definition of a standard parking space "a permanently surfaced or marked area not less than nine (9) feet wide and eighteen (18) feet long.

RESPONSE

With the proposed tenant/building revision, the site plan has been revised relative to parking, particularly north of the drive-up lane for Carl's Jr. The original plan provided 19 standard spaces and 1 ADA space for the 3,150 square foot retail building.

The original revised site plan showed the wrong square footage for the Kiosk. **The Kiosk Building is only 450 square feet, not 470. Therefore the Revised Site Plan corrects this error.**

The revised Coffee Kiosk Site Plan provides 7 standard spaces, 2 compact spaces and 1 ADA space for the 450 square foot building. In addition, the 6 parking spaces along the north side of the Carl's Jr. have been stripped as Compact Spaces. The two new spaces added south of the Coffee Kiosk will be standard spaces.

The two uses combined require a minimum of 33 spaces and a maximum of 49. The revised Plan provides 36 spaces, including 28 standard spaces, 6 compact spaces and two ADA spaces.

4. Pursuant to Subsection 4.155 (.04) (adopted June 2013) Please provide written response to the new bicycle parking standards and demonstrate compliance with the standards in Subsection B. and the long-term bicycle requirements in Subsection C. With eight (8) required bicycle parking spaces, fifty percent (50%) of them must be long term, secure spaces.

RESPONSE

Section 4.155 states as follows:

Section 4.155. General Regulations - Parking, Loading and Bicycle Parking.

(.04) Bicycle Parking:

A. Required Bicycle Parking - General Provisions.

- 1. The required minimum number of bicycle parking spaces for each use category is shown in Table 5, Parking Standards.***
- 2. Bicycle parking spaces are not required for accessory buildings. If a primary use is listed in Table 5, bicycle parking is not required for the accessory use.***

3. When there are two or more primary uses on a site, the required bicycle parking for the site is the sum of the required bicycle parking for the individual primary uses.

4. Bicycle parking space requirements may be waived by the Development Review Board per Section 4.118(.03)(A)(9.) and (10.).

B. Standards for Required Bicycle Parking

1. Each space must be at least 2 feet by 6 feet in area and be accessible without moving another bicycle.

2. An aisle at least 5 feet wide shall be maintained behind all required bicycle parking to allow room for bicycle maneuvering. Where the bicycle parking is adjacent to a sidewalk, the maneuvering area may extend into the right-of-way.

3. When bicycle parking is provided in racks, there must be enough space between the rack and any obstructions to use the space properly.

4. Bicycle lockers or racks, when provided, shall be securely anchored.

5. Bicycle parking shall be located within 30 feet of the main entrance to the building or inside a building, in a location that is easily accessible for bicycles. For multi-tenant developments, with multiple business entrances, bicycle parking may be distributed on-site among more than one main entrance.

C. Long-term Bicycle Parking

1. Long-term bicycle parking provides employees, students, residents, commuters, and others who generally stay at a site for several hours a weather-protected place to park bicycles.

2. For a proposed multi-family residential, retail, office, or institutional development, or for a park and ride or transit center, where six (6) or more bicycle parking spaces are required pursuant to Table 5, 50% of the bicycle parking shall be developed as long-term, secure spaces. Required long-term bicycle parking shall meet the following standards:

a. All required spaces shall meet the standards in subsection (B.) above, and must be covered in one of the following ways: inside buildings, under roof overhangs or permanent awnings, in bicycle lockers, or within or under other structures.

b. All spaces must be located in areas that are secure or monitored (e.g., visible to employees, monitored by security guards, or in public view).

c. Spaces are not subject to the locational criterion of (B.)(5.).

RESPONSE

Table 5, under Section 4.155, requires bike parking for fast food service at 1 space/4,000 square feet, with a minimum of 4 spaces. Bike racks have already been provided for Carl's Jr., which is now open and operating.

The Human Bean is also classified as fast food service. Therefore a minimum of 4 spaces is required for this use even though it is only **450 square feet**. A double bike rack has been added, at the southeast corner of the Kiosk, to provide convenient secured short-term storage for 4 bikes adjacent to the building.

As only 4 bike spaces are required for the coffee kiosk no long term storage is required.

Signs

5. Pursuant to Section 4.156.02, 4.156.05, and 4.156.08 Please provide full signage information, including drive-up signage, menu board, directional signage, and any other exterior site signage including design and location on site.

6. Pursuant to Subsections 4.156.02 (.07) A. 1., B. 2., and 4.156.03 (.01), Please update the Master Sign Plan request and waiver request to reflect flexibility for different sign design over time rather than only the currently planned signs. Each building façade should identify the sign band and maximum sign area. This will allow flexibility for future rebranding or tenant changes. Also, please ensure individual element signs are measured using the summed area of up to three squares, rectangles, circles, or triangles drawn around all sign elements.

RESPONSE

A full set of revised signage details has been provided with this response.

The revised Master Sign Plan identifies the locations on the various building elevations, together with the allowable sign area for each elevation (regardless of tenant). The revised Master Sign Plan addresses the requirement "*for consistent and compatible sign design throughout the development*" and defines the location and allowed sign area per elevation, thus *anticipating future needs*, such as a change of tenants.

The proposed signage for the Coffee Kiosk building includes one 15.86 square foot sign (Human Bean Sign, with Logo) on three of the four elevations. The approved Master Sign Plan is being revised to allow for this same sign area (15.86 square feet) on three elevations of the Kiosk building. The applicant believes this signage proportionally fits this small narrow building, while providing good readable sign.

The basis for the Waiver for the narrow north elevation sign area and compliance with the Waiver Criteria was addressed in the original Application Narrative for this proposed revision.

For the Human Bean, the allowed sign area is calculated utilizing the sum of a triangle for the cup logo and rectangles for the lettering, per attached drawings. With the revised building dimensions the new Code allows:

1. Up to 36 square feet of signage on each elevation for the Carl's Jr. building.
2. The Kiosk building is allowed:
 - a. 12 square feet per north and south elevations (narrow width); and
 - b. 36 square feet per east and west elevations.

TABLE 1
Revised Master Sign Plan
Allowed and Proposed Building Signage

Building	Façade	Sign Location	Maximum Sign Area	Proposed Sign Area
Carl's Jr	North	Over door on Tower	36	36
	West	Over Drive-up Window on Tower	36	36
	South	Over door on Tower	36	26
	East	Over door on Tower	36	36
Building	Façade	Sign Location	Maximum Sign Area	Proposed Sign Area
Coffee Kiosk	North	Over Windows	12*	15.86
	West	Over Drive-up Window	36	15.86
	South	Over Doors	12	0
	East	Over Window	36	15.86
		TOTAL	96	47.58

* Waiver request to allow 15.86 square feet on north elevation.

Even with the Waiver request for the very narrow north elevation the proposed signage is only about 50% of the maximum allowed for the new building configuration.

Landscaping

7. *Pursuant to Subsection 4.176 Please update the landscape plans to show the installed landscaping, including the landscaping around the freestanding sign.*

RESPONSE

With the proposed tenant/building revision, the landscaping plan has been revised adding additional plantings around the northern free standing sign, along with refinements to the prior plaza behind the monument sign. The revised Landscaping Plan reflects the following changes:

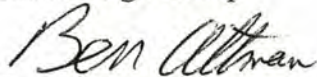
- The plaza area or outdoor patio has been moved adjacent to the building, and landscaping has been added around the monument sign.
- The swale south of the monument plaza has also been removed, regarded with landscaping.

- The drive-up menu board has been re-positioned so that it is not directly visible from the street. Therefore no additional visual screening will be required.
- The perimeter landscaping adjacent to the east side parking has been adjusted to accommodate the sidewalk, and revised parking/drive-up lane.

Once you confirm that these responses satisfy "Completeness" We will provide the ten complete copies of the revised compliance findings and all drawings, included those revised or added, in both reduced and full-sized drawings. We will also provide ten compact digital disks (CD-ROMs) of the submitted findings and all project drawings.

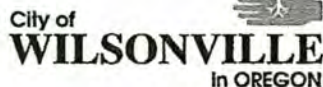
We look forward to working with you on this project. Thank you for your cooperation and assistance. If you have any questions or need additional information, please contact me immediately, so we can respond quickly.

Sincerely,
SFA Design Group



Ben Altman
Senior Planner/Project Manager

NOTICE



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

November 20, 2013

Josh Veentjer
Wilsonville Devco LLC
PO Box 6437
La Quinta, CA 92248

Application Numbers: DB13-0046, DB13-0047, DB13-0048 Boones Ferry Pointe Drive- up Coffee Kiosk
Legal: 25250 SW 95th Ave., the property described as Tax Lot 0302, Section 2DB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon.

Status: Notice that Your Application IS NOT COMPLETE.

Dear Mr. Veentjer:

You are listed as the authorized representative on a City of Wilsonville Site Development Application form submitted regarding the property described above. Your application materials were received by the City on November 7, 2013 (application materials) and November 12, 2013 (check for payment of application fees) in application for a Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-up coffee kiosk and associated improvements..

The materials submitted with the application form discussed above were found to be incomplete, when reviewed regarding the applicable provisions of ORS 227.178(2) and Subsection 4.035(.05) WC, due to missing items identified in the following requests numbered 1. through 7.

General

1. Pursuant to Subsection 4.140 (.09) C. Please provide updated grading and drainage information. The neighboring property owner has stated to City Staff that the grading of the property was changed from the previously approved plans. Please clarify, either provide information showing the grading is the same as previously approved or updated grading and drainage plans.

Circulation and Parking (Including Bicycle and Pedestrian)

2. Pursuant to Section 4.154 (adopted June 2013) Please provide written response to these criteria for on-site pedestrian access and circulation and demonstrate compliance with the standards in this Section in the site planning.
3. Pursuant to Subsections 4.155 (.02)-(.03) Please provide an accurate and updated parking count, and ensure references to number of parking stalls is consistent between drawings and narrative. Currently inconsistencies exist between the drawings, the narrative, and what is actually on the ground. Please also clarify and update the percent of the parking that does not meet the definition of a standard parking space "a permanently surfaced or marked area not less than nine (9) feet wide and eighteen (18) feet long.
4. Pursuant to Subsection 4.155 (.04) (adopted June 2013) Please provide written response to the new bicycle parking standards and demonstrate compliance with the standards in Subsection B.



"Serving The Community With Pride"

and the long-term bicycle requirements in Subsection C. With eight (8) required bicycle parking spaces, fifty percent (50%) of them must be long term, secure spaces.

Signs

5. Pursuant to Section 4.156.02, 4.156.05, and 4.156.08 Please provide full signage information, including drive-up signage, menu board, directional signage, and any other exterior site signage including design and location on site.
6. Pursuant to Subsections 4.156.02 (.07) A. 1., B. 2., and 4.156.03 (.01), Please update the Master Sign Plan request and waiver request to reflect flexibility for different sign design over time rather than only the currently planned signs. Each building façade should identify the sign band and maximum sign area. This will allow flexibility for future rebranding or tenant changes. Also, please ensure individual element signs are measured using the summed area of up to three squares, rectangles, circles, or triangles drawn around all sign elements.

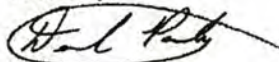
Landscaping

7. Pursuant to Subsection 4.176 Please update the landscape plans to show the installed landscaping, including the landscaping around the freestanding sign.

The above items 1 through 7 must be addressed in order to complete the applications. Please initially submit two (2) copies of the revised materials to ensure completeness. Once the application has been deemed complete please provide ten (10) copies of the revised project narrative, findings, and reduced 11" by 17" plans, full sheet plans drawn to scale and folded and ten (10) cd's of the project narrative, findings, and plans. When you have resubmitted the application materials, staff will have up to 30 days in which to determine whether the application is complete. ORS 227.178.

If you have any questions, please contact me at 503-682-4960, or at pauly@ci.wilsonville.or.us

Sincerely,



Daniel Pauly, AICP
Associate Planner
City of Wilsonville

cc:

Craig Anderson
CB Anderson Architects
7209 Greenwood Ave. N.
Seattle, WA 98103

Ben Altman
SFA Design Group
9020 SW Washington Sq. Dr., Ste. 505
Portland, OR 97223

November 20, 2013

Dear Mr. Veentjer:



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

As indicated in the attached correspondence, your applications:

Case File DB13-0046, DB13-0047, DB13-0048: Carl's Jr. and Commercial Building
has been deemed to be incomplete.

You must acknowledge, in writing, your intent to provide the material required to complete the application, as identified in the attached correspondence, dated November 20, 2013. To do this, please sign below and return this acknowledgment by December 4, 2013, to:

City of Wilsonville Planning Division
Attn: Daniel Pauly
29799 SW Town Center Loop Drive E
Wilsonville, OR 97070

If you indicate your intent to complete the application, you will have 180 days from the date of the submittal (November 12, 2013) to provide the required material. If you fail to submit the required material within 180 days (May 11, 2014), your application will be deemed void. The case files regarding the applications will then be closed.

If you do not return this acknowledgment, such action will be considered to be a refusal under the meaning accorded in ORS 227.178(2). Your applications will then be processed based upon the information you have previously submitted. Note that failure to submit sufficient evidence or material to demonstrate compliance with the applicable criteria is grounds for denial of the application.

ACKNOWLEDGEMENT

I (☐ intend / ☐ refuse) to provide the additional material identified in correspondence from the Division of Planning and Development, dated November 20, 2013.

Signed and Acknowledged (Applicant)

Date



"Serving The Community With Pride"

Section 4.155. General Regulations - Parking, Loading and Bicycle Parking.

- F. On-street parking spaces, directly adjoining the frontage of and on the same side of the street as the subject property, may be counted towards meeting the minimum off-street parking standards.
- G. Tables 5 shall be used to determine the minimum and maximum parking standards for various land uses. The minimum number of required parking spaces shown on Tables 5 shall be determined by rounding to the nearest whole parking space. For example, a use containing 500 square feet, in an area where the standard is one space for each 400 square feet of floor area, is required to provide one off-street parking space. If the same use contained more than 600 square feet, a second parking space would be required. Structured parking and on-street parking are exempted from the parking maximums in Table 5. [Amended by Ordinance No. 538, 2/21/02.]
- H. Electrical Vehicle Charging Stations:
 - 1. Parking spaces designed to accommodate and provide one or more electric vehicle charging stations on site may be counted towards meeting the minimum off-street parking standards.
 - 2. Modification of existing parking spaces to accommodate electric vehicle charging stations on site is allowed outright.
- I. Motorcycle parking:
 - 1. Motorcycle parking may substitute for up to 5 spaces or 5 percent of required automobile parking, whichever is less. For every 4 motorcycle parking spaces provided, the automobile parking requirement is reduced by one space.
 - 2. Each motorcycle space must be at least 4 feet wide and 8 feet deep. Existing parking may be converted to take advantage of this provision.[Amended by Ord. #719, 6/17/13]

(.04) Bicycle Parking:

- A. Required Bicycle Parking - General Provisions.
 - 1. The required minimum number of bicycle parking spaces for each use category is shown in Table 5, Parking Standards.
 - 2. Bicycle parking spaces are not required for accessory buildings. If a primary use is listed in Table 5, bicycle parking is not required for the accessory use.
 - 3. When there are two or more primary uses on a site, the required bicycle parking for the site is the sum of the required bicycle parking for the individual primary uses.
 - 4. Bicycle parking space requirements may be waived by the Development Review Board per Section 4.118(.03)(A.)(9.) and (10.).
- B. Standards for Required Bicycle Parking
 - 1. Each space must be at least 2 feet by 6 feet in area and be accessible without moving another bicycle.
 - 2. An aisle at least 5 feet wide shall be maintained behind all required bicycle parking to allow room for bicycle maneuvering. Where the bicycle parking is

Section 4.155. General Regulations - Parking, Loading and Bicycle Parking.

adjacent to a sidewalk, the maneuvering area may extend into the right-of-way.

3. When bicycle parking is provided in racks, there must be enough space between the rack and any obstructions to use the space properly.
4. Bicycle lockers or racks, when provided, shall be securely anchored.
5. Bicycle parking shall be located within 30 feet of the main entrance to the building or inside a building, in a location that is easily accessible for bicycles. For multi-tenant developments, with multiple business entrances, bicycle parking may be distributed on-site among more than one main entrance.

C. Long-term Bicycle Parking

1. Long-term bicycle parking provides employees, students, residents, commuters, and others who generally stay at a site for several hours a weather-protected place to park bicycles.
2. For a proposed multi-family residential, retail, office, or institutional development, or for a park and ride or transit center, where six (6) or more bicycle parking spaces are required pursuant to Table 5, 50% of the bicycle parking shall be developed as long-term, secure spaces. Required long-term bicycle parking shall meet the following standards:
 - a. All required spaces shall meet the standards in subsection (B.) above, and must be covered in one of the following ways: inside buildings, under roof overhangs or permanent awnings, in bicycle lockers, or within or under other structures.
 - b. All spaces must be located in areas that are secure or monitored (e.g., visible to employees, monitored by security guards, or in public view).
 - c. Spaces are not subject to the locational criterion of (B.)(5.).

[Section 4.155(.04) Added by Ord. #719, 6/17/13]

GENERAL DEVELOPMENT REGULATIONS

Section 4.154. On-site Pedestrian Access and Circulation.

(.01) On-site Pedestrian Access and Circulation

- A. The purpose of this section is to implement the pedestrian access and connectivity policies of the Transportation System Plan. It is intended to provide for safe, reasonably direct, and convenient pedestrian access and circulation.
- B. Standards. Development shall conform to all of the following standards:
 1. Continuous Pathway System. A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable.
 2. Safe, Direct, and Convenient. Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:
 - a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.
 - b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.
 - c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.
 - d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)(B.)(3.)(d.).
 3. Vehicle/Pathway Separation. Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards.
 4. Crosswalks. Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light-color concrete inlay between asphalt, or similar contrast).
 5. Pathway Width and Surface. Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five (5) feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA.
 6. All pathways shall be clearly marked with appropriate standard signs.

[Added by Ord. #719, 6/17/13]

CITY OF WILSONVILLE

29799 SW Town Center Loop East
Wilsonville, OR 97070
Phone: 503.682.4960
Fax: 503.682.7025
Web: www.ci.wilsonville.or.us

Planning Division Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

Pre-Application meeting date: _____

TO BE COMPLETED BY APPLICANT:

Please PRINT legibly

Legal Property Owner's Name:

Josh Veentjer, Wilsonville Devco, LLC

Authorized Representative:

Ben Altman, SFA Design Group

Address: 50550 Mandarina
La Quinta, CA 92253

Address: 9020 SW Washington Square Drive, Suite 505
Portland, OR 97223

Phone: 503-201-1309

Phone: 503-841-8311

Fax:

Fax:

E-mail: josh@pdvco.com

E-mail: baltman@sfdg.com

Property Owner or

Authorized Signature:

Josh Veentjer

Printed Name Josh Veentjer

Title: Managing Member

Date 10-30-13

Site Location and Description:

Project Address if Available: 25250 SW 95th Avenue

Suite/Unit _____

Project Location: Northern portion of Boones Ferry Pointe, adjacent to Carl's Jr. and Chevron Station

Tax Map #(s): 2DB

Tax Lot #(s): 302

County: Washington

Request:

DRB Site and Architectural Plan Modifications to replace Retail Building with Coffee Kiosk, including amended Master Sign Plan, with Waiver for sign area.

Project Type:

Class I

Class II

Class III

☐ Residential

☒ Commercial

☐ Industrial

☐ Other (describe below)

Application Type:

☐ Annexation

☐ Appeal

☐ Comp Plan Map Amendment

☐ Conditional Use

☐ Final Plat

☐ Major Partition

☐ Minor Partition

☐ Parks Plan Review

☐ Plan Amendment

☒ Planned Development

☐ Preliminary Plat

☐ Request to Modify Condition

☐ Request for Special Meeting

☐ Request for Time Extension

☒ Signs

☒ Site Design Review

☐ SROZ/SRIR Review

☐ Staff Interpretation

☐ Stage I Master Plan

☒ Stage II Final Plan

☐ Type C Tree Removal Plan

☐ Tree Removal Permit (B or C)

☐ Temporary Use

☐ Variance

☐ Villebois SAP

☐ Villebois PDP

☐ Villebois FDP

☒ Waiver

☐ Zone Map Amendment

☐ Other

FOR STAFF USE ONLY:

Application Rec'd: _____ Fee: _____ Check #: _____ Application Complete: _____ By: _____

File No (s) _____

**Land Use Application
City of Wilsonville**

**Boones Ferry Pointe
The Human Bean
Drive-up Coffee Kiosk**

**Design Review Modifications
Replace Retail Building with**

Site Design Review

November 6, 2013

Revised December 9, 2013 for Completeness

APPLICANT/OWNER:

**Wilsonville Devco, LLC
PO Box 916
Portland, OR 97207
Contact: Josh Veentjer
josh@iipcorp.com**

APPLICANT'S REPRESENTATIVES:

**CB Anderson, Project Architects
7209 Greenwood Ave. N.
Seattle, WA 98103
Contact: Craig Anderson
206-782-2911
craig@cba-arch.com**

**SFA Design Group, Project Planning
9020 SW Washington Square Dr., Ste 505
Portland, OR 97223
Contact: Ben Altman
503-641-8311
baltman@sfadg.com**

FACT SHEET:

Project Name: Boones Ferry Pointe

Type of Application: Site Design Review for Carl's Jr. – Replace Retail Building with Drive-up Coffee Kiosk Modification and LED Banding on Building, with Sign Code Waiver

Site Location: SW 95th Avenue

Tax Lots: T3S R1W, Map 2DB, Lot 302

Land Area: Northern portion of 55,605 square feet; or 1.30 Acres

Comp. Plan/Zoning: Commercial/PDC, Planned Development Commercial

Applicants/Owners: Wilsonville Devco, LLC

Design Team:

Project Planning

Ben Altman, SFA Design Group

Project Architect

CB Anderson

Craig Anderson - Primary Contact

Cameron Fultz

Advance Electric Signs

Steve Slack

Engineering MEP

Priest Engineering

Arwin Priest

Brett Wixson

I. Introduction

This application is submitted on behalf of Josh Veentjer, Wilsonville Devco, LLC representing the owner and applicant for Tax Lot 302, Map T3S R1W 2DB.

On March 11, 2013 The DRB approved development Plans for Boones Ferry Pointe, including a Carls Jr & Retail Center, Case Files DB12-0074-DB12-0076.

The Carl's Jr. building is nearly complete, with expected occupancy in November 2013.

Subsequently the applicant has experienced difficulty leasing space in the planning Retail Building. Therefore this building is proposed to be replaced with a Drive-up Coffee Kiosk. This application includes:

1. PDC Stage II Development Plan
2. Site Design Review;
3. Class II Major Adjustment to Master Sign Plan; and
4. Sign Code Waiver

The proposed coffee kiosk (450 sf) is much smaller than the approved retail building (3,150 sf), but includes a drive-up service lane, which raps around the Kiosk. The site plan modifications include:

- 450 sf Kiosk, replacing 3150 sf retail building;
- Addition of drive-up lane;
- Revision to parking, reduction from 48 to 36
- Minor revisions to adjacent landscaping, including revised plaza and pedestrian pathway. Approved benches replaced with tables with umbrellas
- Sign revisions for building mounted signs

Therefore this application is for DRB approval.

Development Agreement

Prior to submittal of this application, the applicant has worked with the City and the owner of the adjacent Chevron Station, and the Holiday Inn to refine access, egress, and site circulation. The conclusions reached by the parties have been recorded in a Development Agreement, a copy of which is included in the application documents, see Index Tab.

The Development Agreement provides for the driveway configuration, which will provide two inbound lanes, after the sign island and two outbound lanes, with a 50 foot north bound curb radius to accommodate trucks. It also provides for reconfiguration of the access and egress points for the Holiday Inn. In addition the Agreement provides for relocation of the existing freestanding Chevron Sign and provision for adding a panel for Carl's Jr.

Surrounding Development

This property is located in the area originally master planned as the Commerce Circle Industrial Park. However, it is now separated from the Commerce Circle area by 95th Avenue. The AGC Building is located west across 95th from the site.

The site abuts in intersection of 95th Avenue and Boones Ferry Road, and is located immediately north of the Holiday Inn and west of the Chevron Station. To the east of the site is Boones Ferry Road.

From Incomplete application Letter, dated November 20, 2013:

General

- 1. Pursuant to Subsection 4.140 (.09) C. Please provide updated grading and drainage information. The neighboring property owner has stated to City Staff that the grading of the property was changed from the previously approved plans. Please clarify, either provide information showing the grading is the same as previously approved or updated grading and drainage plans.*

RESPONSE

First, the Grading Plan, relative to the issue raised by the Chevron property owner, was part of the original development application for Boones Ferry Pointe. The Grading Plan was approved as part of the overall site development approval. The Boones Ferry Pointe Construction Grading Plan (C105) was approved, and the site grading completed consistent with the original Design Review approval.

The revised Kiosk Site (Sheet DD102) reflects the same grading at the property line transition to the Chevron Site. Comparison of these two grading plans confirms that grading in the area in question has not changed with the new site plan.

There were, however, minor grading revisions north of the new Kiosk building, which are shown on the attached Sheet DD102. It is noted that these minor revisions were actually included in the As-Built Drawings provided to the Building Department for the overall site grading. The revisions, however, have not been reviewed by the Engineering Department.

The grading plan in the drainage problem area in question for the Chevron property has not been revised for the revisions related to the Coffee Kiosk. The Project engineer believes the drainage issue on the Chevron site was created during construction of the Chevron facility, not by the construction for Boones Ferry Pointe.

When the Chevron property was developed (graded & paved) to the northwest of the fuel storage tanks they created a low point for surface water on their site which they chose to direct towards the Boones Ferry Pointe property rather than picking up the water on their own site and directing it into their own storm system.

Therefore at the location in question, Chevron did not collect, treat or detain the impervious runoff from and within their property. The low point in question diverted storm water off the Chevron site onto the undeveloped Boones Ferry Pointe Property. Consequently the applicant believes the drainage ponding issue on the Chevron property was created by improper runoff collection on their own property.

This issue has only now come to light with the development of the Boones Ferry Pointe site, where the approved grading plan provided for a grade and storm flow break at the property line, at approximately the 250.01 foot elevation. This grade break exposed the low point on the Chevron site, which now has no outfall.

While the applicant does not believe he created the problem, he is working with the owners of the Chevron facility to correct the ponding.

Other responses to Incomplete Application items, listed in Response Letter, dated December 4-2013, have been incorporated into this Compliance narrative.

Compliance Report Format

In the following sections, compliance with applicable Plan policies and Code provisions are addressed. Specific Comprehensive Plan policies and Code provisions determined to be applicable to this application are presented in *10 pt Bold Italic*, with our compliance response presented in 12 pt regular type.

II. Development Code Compliance

TYPE III DRB REVIEW

CARL'S JR. BUILDING – RED LED BANDING

Consistent with the industrial designation in the Comprehensive Plan, the subject property is zoned PDC, Planned Development Commercial. For the most part the PDC and other applicable zoning and development standards were addressed for compliance under the original approvals, Case Files DB12-0074-DB12-0076. Therefore the following compliance responses for this application are limited to the specific site and architectural revisions.

(.04) Professional Design.

A. The applicant for all proposed Planned Developments shall certify that the professional services of the appropriate professionals have been utilized in the planning process for development.

B. Appropriate professionals shall include, but not be limited to the following to provide the elements of the planning process set out in Section 4.139:

- 1. An architect licensed by the State of Oregon;*
- 2. A landscape architect registered by the State of Oregon;*
- 3. An urban planner holding full membership in the American Institute of Certified Planners, or a professional planner with prior experience representing clients before the Development Review Board, Planning Commission, or City Council; or*
- 4. A registered engineer or a land surveyor licensed by the State of Oregon.*

C. One of the professional consultants chosen by the applicant from either 1, 2, or 3, above, shall be designated to be responsible for conferring with the planning staff with respect to the concept and details of the plan.

D. The selection of the professional coordinator of the design team will not limit the owner or the developer in consulting with the planning staff.

RESPONSE

The Planned Development Regulations require a Design Team. The Professional Design Team for this project is listed on Pages 2.

Based on marketing interest, the applicant is proposing to replace the retail building with a coffee kiosk. The Site Plan revision result in the modified area calculations shown in Table 1 below.

Table 1
Stage II, Final Development Plans
Carl's Jr. and Retail Building
Land Area Allocation - Square Feet

Use	Approved Stage II		Revised Stage II	
	Lot Coverage Square Feet	Percent of Site	Lot Coverage Square Feet	Percent of Site
Building	6,017	11	3,317	6
Landscaping	16,139	29	15,580	28
Paving & Parking	33,449	60	36,688	66
Total	55,605	100	55,605	100

While the new building area is reduced, with the drive-up lane, the paving area is increased. Even so, the net landscaping at 28% still exceeds the 15% minimum standard.

PDC Stage II, Final Development Plan

(.09) Final Approval (Stage II).

- A. Unless an extension has been granted by the Development Review Board, within two (2) years after the approval or modified approval of a preliminary development plan (Stage I), the applicant shall file with the City Planning Department a final plan for the entire development or when submissions in stages has been authorized pursuant to Section 4.035 for the first unit of the development, a public hearing shall be held on each such application as provided in Section 4.013.*
- B. After such hearing, the Development Review Board shall determine whether the proposal conforms to the permit criteria set forth in this Code, and shall approve, conditionally approved, or disapprove the application.*
- C. The final plan shall conform in all major respects with the approved preliminary development plan, and shall include all information included in the preliminary plan plus the following:*
 - i. The location of water, sewerage and drainage facilities;*
 - ii. Preliminary building and landscaping plans and elevations, sufficient to indicate the general character of the development;*
 - iii. The general type and location of signs;*
 - iv. Topographic information as set forth in Section 4.035;*

- v. *A map indicating the types and locations of all proposed uses; and*
- vi. *A grading plan.*
- D. *The final plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development or phase of development. However, Site Design Review is separate and more detailed review of proposed design features, subject to the standards of Section 4.400.*
- E. *Copies of legal documents required by the Development Review Board for dedication or reservation of public facilities, or for creation of non-profit homeowner's association, shall be submitted.*

RESPONSE

This application includes a request for Stage II Final Development Plan approval. As previously acknowledged with the prior approval, the Stage I Master Plan for the Chevron site simply listed this area as Phase 2, so to that extent the Stage II plans substantially conform in all major respects with the Stage I Master Plan. This application involves a modified Stage II Final Development Plan, which replaces the retail building with a drive-up coffee kiosk. The proposed revised site plan remains consistent with the originally approved site plan, except for the revisions at the north end, which include the following:

- 450 sf Kiosk, replacing 3150 sf retail building;
- Revised building elevations;
- Addition of drive-up lane;
- Revision to parking, reduction from 48 to 36
- Minor revisions to adjacent landscaping, including revised plaza and pedestrian pathway. Approved benches replaced with tables with umbrellas
- Sign revision for building mounted signs

None of the locations of water, sewer, and storm drainage; general type and location of signs; topographic information; access & egress; or grading plan are not significantly altered.

Both the approved retail building and the proposed coffee shop are allowed commercial uses is permitted under Section 4.131. PDC - Planned Development Commercial Zone.

Sufficient details have been provided so as to indicate fully the ultimate operation and appearance of the proposed Carl's Jr. and the proposed coffee kiosk.

There are no proposed or required dedications of additional rights-of-way or reservations of public facilities. All right-of-way and street improvements have already been provided, and improvements completed. The approved revised driveway access/egress are now being constructed, including the modified access for the Holiday Inn, and they will not be altered by this proposed revision.

The emphasis on providing a high quality visual environment, including coordinated signage is retained. The new coffee shop building is designed with similar materials as

the prior approved retail building and Carl's Jr. so as to retain a coordinated appearance, and also maintain compatible with and complimentary design with the adjacent Chevron and Holiday Inn.

The total square footage of the new buildings is 3,317 square feet. The landscaping cover is slightly reduced to 15,580 square feet or 28% of the site, which still exceeds the minimum standard of 15%.

This is commercial property not residential, all under single ownership, so there is no homeowner's association proposed. There is however the executed Development Agreement linked to the other two adjacent properties.

Therefore, we believe the proposed development and application satisfies all the Stage II requirements consistent with Code standards.

SITE DESIGN REVIEW

1.400. Purposed.

(.01) Excessive uniformity, inappropriate or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services thereof.

(.02) The City Council declares that the purposes and objectives of site and development requirements and the site design review procedures are to:

- A. Assure that Site Development Plans are designed in a manner that insures proper functioning of the site and maintains a high quality visual environment;*
- B. Encourages originality, flexibility and innovation in site planning and development, including the architecture, landscaping and graphic design of said development;*
- C. Discourages monotonous, drab, unsightly, dreary and inharmonious developments;*
- D. Conserve the City's natural beauty and visual character and charm by assuring that structures, signs and other improvements are properly related to their sites, and to surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to exterior appearances of structures, signs and other improvements;*
- E. Protect and enhance the City's appeal and thus support and stimulate business and industry and promote the desirability of investment and occupancy in business, commercial and industrial purposes;*
- F. Stabilize and improve property values and prevent blighted areas and, thus increase tax revenues;*
- G. Insure that adequate public facilities are available to serve development as it occurs and that proper attention is given to site planning and development so as to not adversely impact the orderly, efficient and economic provisions of public facilities and services;*
- H. Achieve the beneficial influence of pleasant environments for living and working on behavioral patterns and, thus decrease the cost of government services and reduce opportunities for crime through careful consideration of physical design and site layout*

under defensible space guidelines that clearly define all areas as either public, semi-public, or private, provide clear identity of structures and opportunities for easy surveillance of the site that maximize resident control of behavior – particularly crime;

- I. Foster civic pride and community spirit so as to improve the quality and quantity of citizen participation in local government and in community growth, change and improvements;*
- J. Sustain the comfort, health, tranquility and contentment of residents and attract new residents by reason of the City's favorable environment and, thus, to promote and protect the peace, health and welfare of the City.*

RESPONSE

The approved building design and architectural detail provided attractive appearance with accent colors. The proposed coffee kiosk is much smaller, but maintains similar design details for consistency.

Marketing efforts for the approved retail building did not produce any interest, except for coffee shops. While Carl's Jr. will operate 24 hours per day, the Coffee Shop will only be open between 5 AM to 9 PM. This site is in an industrial area, not surrounded by any residential uses.

If the planning staff or Board members are interested in viewing a similar facility, there is one on Newberg at 206, Villa Road.

Circulation and Parking (Including Bicycle and Pedestrian) Incomplete Application Item.

2. Pursuant to Section 4.154 (adopted June 2013) Please provide written response to these criteria for on-site pedestrian access and circulation and demonstrate compliance with the standards in this Section in the site planning.

Section 4.154. On-site Pedestrian Access and Circulation.

(.01) On-site Pedestrian Access and Circulation

A. The purpose of this section is to implement the pedestrian access and connectivity policies of the Transportation System Plan. It is intended to provide for safe, reasonably direct, and convenient pedestrian access and circulation.

B. Standards. Development shall conform to all of the following standards:

- 1. Continuous Pathway System. A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable.*
- 2. Safe, Direct, and Convenient. Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:*

- a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.*
- b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.*

c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.

d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)(B.)(3.)(d.).

3. Vehicle/Pathway Separation. Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards.

4. Crosswalks. Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light color concrete inlay between asphalt, or similar contrast).

5. Pathway Width and Surface. Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five (5) feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA.

6. All pathways shall be clearly marked with appropriate standard signs.

RESPONSE

With the proposed tenant/building revision, the site plan has been revised to provide enhanced on-site pedestrian circulation. These improvements include the following:

- An additional pedestrian connection has been provided from the 95th Avenue sidewalk to the south side of the coffee kiosk;
- The walk north of the building has been realigned to connect to the relocated outdoor patio on the east side of the building; and
- A sidewalk has been extended from the outdoor patio out to the east side to provide a pedestrian link from the parking area to the building.

These walkways provide safe and convenient pedestrian access and circulation with reasonably direct routes from the street and parking area to the building. Where the pathways cross a parking area or driveway, they are clearly marked with contrasting paint or paving materials.

Section 4.155. General Regulations - Parking, Loading and Bicycle Parking.

(.01) Purpose:

A. The design of parking areas is intended to enhance the use of the parking area as it relates to the site development as a whole, while providing efficient parking, vehicle circulation and attractive, safe pedestrian access.

B. As much as possible, site design of impervious surface parking and loading areas shall address the environmental impacts of air and water pollution, as well as climate change from heat islands.

C. The view from the public right of way and adjoining properties is critical to meet the aesthetic concerns of the community and to ensure that private property rights are met. Where developments are located in key locations such as near or adjacent to the I-5 interchanges, or involve large expanses of asphalt, they deserve community concern and attention.

(.02) General Provisions:

A. The provision and maintenance of off-street parking spaces is a continuing obligation of the property owner. The standards set forth herein shall be considered by the Development Review Board as minimum criteria.

RESPONSE

The parking and delivery areas have been designed and approved with access and maneuvering areas adequate to serve the functional needs of the site, and also for consistency with the executed Development Agreement. Consistent with the approved parking and circulation plans, the revised plan maintains the care given to separate vehicle and pedestrian traffic, to the extent the site restrictions allow.

For these sizes of buildings the code does not require separate loading docks. As is typical for these types of uses, delivery trucks utilized available parking spaces. Delivery times are typically scheduled so as to not conflict with peak customer traffic periods.

With the much smaller building and the addition of the drive-up lane for the coffee shop, parking has been reduced from 48 to 36 spaces. The revised use and building area calculate to a minimum of 33 spaces and a maximum of 49 spaces. The circulation and parking revisions have been made based on the review by DKS, see attached memorandum.

As originally approved, circulation patterns will be clearly marked including provisions for safe and convenient access that meet ADA and ODOT standards. Because the parking for this facility is less than 50 spaces only one ADA space has been provided for each building.

The parking areas will be appropriately landscaped to minimize their off-site visual impacts, consistent with the ten percent (10%) code standard. The landscaping plan provides for one shade tree planting area eight (8) feet in width and length for every eight (8) parking spaces or an equivalent aggregated amount. With the proposed revision a total of 8 bike racks will be provided consistent with Code standards as set forth in Table 5 of the Code, shown below.

The applicable off-street parking standards, excerpted from Table 5, Section 4.155, are as shown below.

***Section 4.155
CODE Table 5***

<i>Use</i>	<i>Parking Minimum</i>	<i>Parking Maximum</i>	<i>Bicycle Minimum</i>	<i>Truck Loading</i>
<i>Fast Food</i>	<i>9.9 per 1,000 sq ft</i>	<i>14.9 per 1,000 sq ft</i>	<i>minimum 4</i>	<i><5,000 sq ft = 0</i>

Parking has been designed using the fast food standards. Applying the Code standards to this development the calculated parking requirements compared to the proposed parking are reflected in Table 5.

Table 3
Proposed Parking
Compared to Code

Building	Floor Area/1,000 sq. ft.	Minimum Required Spaces/1,000 sq. ft.	Parking Spaces <i>Required</i> <i>Provided</i>	Proposed ADA Spaces	Required Bicycle Spaces/1,000 sq. ft.	Proposed Bicycle Spaces
Carl's Jr.	2,867	9.9		1	Min. 4	4
Coffee Kiosk	470	9.9		1	Min. 4	4
Total	3,297		33 37	2	6	8

The code requires a minimum of 33 spaces. The maximum number of spaces allowed calculates to 49. The development plan provides 37, plus 2 ADA parking spaces, which complies within the allowed range of minimum and maximum code standards.

In addition, provisions for 8 bicycle spaces will also be provided. Therefore the proposed parking meets code standards, and no waiver is necessary or requested.

Incomplete Application Item.

3. Pursuant to Subsections 4.155 (.02)-(.03) Please provide an accurate and updated parking count, and ensure references to number of parking stalls is consistent between drawings and narrative. Currently inconsistencies exist between the drawings, the narrative, and what is actually on the ground. Please also clarify and update the percent of the parking that does not meet the definition of a standard parking space "a permanently surfaced or marked area not less than nine (9) feet wide and eighteen (18) feet long.

RESPONSE

With the proposed tenant/building revision, the site plan has been revised relative to parking, particularly north of the drive-up lane for Carl's Jr. The original plan provided 19 standard spaces and 1 ADA space for the 3,150 square foot retail building.

The original revised site plan showed the wrong square footage for the Kiosk. **The Kiosk Building is only 450 square feet, not 470. Therefore the Revised Site Plan corrects this error.**

The revised Coffee Kiosk Site Plan provides 7 standard spaces, 2 compact spaces and 1 ADA space for the 450 square foot building. In addition, the 6 parking spaces along the north side of the Carl's Jr. have been stripped as Compact Spaces. The two new spaces added south of the Coffee Kiosk will be standard spaces.

The two uses combined require a minimum of 33 spaces and a maximum of 49. The revised Plan provides 36 spaces, including 28 standard spaces, 6 compact spaces and two ADA spaces.

Section 4.156.08. Sign Regulations in the PDC, PDI, and PF Zones.

(.02) Signs on Buildings.

A. Sign Eligible Facades: Building signs are allowed on a facade of a tenant space or single tenant building when one or more of the following criteria are met:

1. The facade has one or more entrances open to the general public;
2. The facade faces a lot line with frontage on a street or private drive with a cross section similar to a public street, and no other buildings on the same lot obstruct the view of the building facade from the street or private drive; or
3. The facade is adjacent to the primary parking area for the building or tenant.

B. Sign Area Allowed:

1. The sign area allowed for all building signs on a sign eligible facade is shown in the table below:

Linear Length of Façade (feet)	Sign Area Allowed*
Less than 16	Area equal to linear length
16 to 24	24 sq. ft.
Greater than 24 to 32	32 sq. ft.
Greater than 32 to 36	Area equal to linear length
Greater than 36 to 72	36 sq. ft.
Greater than 72	36 sq. ft. plus 12 sq. ft. for each 24 linear feet or portion thereof greater than 72 up to a maximum of 200 sq. ft.

RESPONSE

There will be a sign panel installed in the approved free standing sign for the Coffee Kiosk. This panel will be 16 square feet in area, and is designed to fit within the approved sign area.

The Coffee Kiosk will have three building mounted signs as follows:

1. One 15.86 square foot sign on the West façade facing 95th Avenue over drive-thru window;
2. One 15.86 square foot sign on the North façade facing Boones Ferry; and
3. One 15.86 square foot sign on the East façade over the walk-up window.

Total Building Signage 47.58 Square feet

The building dimensions are 12' 10" wide (north/south facades) and 35' 4" long (east/west facades. The drive-up window is on the northwest corner of the building, and there is a walk-up window on the northeast corner.

The maximum area allowed on the east/west facades is 36 square feet, which is more than an adequate allowance for the proposed building signage. However, the maximum area allowed on the north/south facades, which is very narrow, is only 12 square feet. Based on the building dimensions a total of 84 square feet of signage could be provided.

This smaller scale coffee kiosk building is new to Wilsonville and probably wasn't anticipated when the sign code was revised. The code seeks signage proportional to building elevations, but the City has no history with such a narrow building. This clearly is a fairly unique building shape.

In order to accommodate a reasonably sized sign, with good street visibility on the narrow side of the building the applicant is requesting a waiver from the Sign Code to allow the same 15.86 square foot sign as on the other elevations. This waiver will allow equal signage for all three elevations, but the total will still be only 57% of the maximum area allowed.

We believe this waiver is reasonable, and does not allow more total signage than would otherwise be allowed. We submit that this adjustment meets the following criteria for a sign waiver:

- The waiver will result in improved more visible sign design, in regards to both aesthetics and functionality. The larger north elevation sign will be more readable from the street, which is a high traffic intersection;
- The waiver will result in a sign or signs more compatible with and complementary to the overall design and architecture of a site. It will also be compatible with signage on adjoining properties, surrounding areas, and the zoning district than signs allowed without a waiver; and
- The waiver will result in sign or signs that improve, or at least do not negatively impact, public safety, especially traffic safety. We argue that the larger sign will enhance traffic safety by allowing the sign to be more easily read from the street.

Signs Incomplete Application Item.

4. Pursuant to Section 4.156.02, 4.156.05, and 4.156.08 Please provide full signage information, including drive-up signage, menu board, directional signage, and any other exterior site signage including design and location on site.

5. Pursuant to Subsections 4.156.02 (.07) A. 1., B. 2., and 4.156.03 (.01), Please update the Master Sign Plan request and waiver request to reflect flexibility for different sign design over time rather than only the currently planned signs. Each building façade should identify the sign band and maximum sign area. This will allow flexibility for future rebranding or tenant changes. Also, please ensure individual element signs are measured using the summed area of up to three squares, rectangles, circles, or triangles drawn around all sign elements.

RESPONSE

A full set of revised signage details has been provided with this response.

The revised Master Sign Plan identifies the locations on the various building elevations, together with the allowable sign area for each elevation (regardless of tenant). The revised Master Sign Plan addresses the requirement “*for consistent and compatible sign design throughout the development*” and defines the location and allowed sign area per elevation, thus *anticipating future needs*, such as a change of tenants.

The proposed signage for the Coffee Kiosk building includes one 15.86 square foot sign (Human Bean Sign, with Logo) on three of the four elevations. The approved Master Sign Plan is being revised to allow for this same sign area (15.86 square feet) on three elevations of the Kiosk building. The applicant believes this signage proportionally fits this small narrow building, while providing good readable sign.

The basis for the Waiver for the narrow north elevation sign area and compliance with the Waiver Criteria was addressed in the original Application Narrative for this proposed revision.

For the Human Bean, the allowed sign area is calculated utilizing the sum of a triangle for the cup logo and rectangles for the lettering, per attached drawings. With the revised building dimensions the new Code allows:

1. Up to 36 square feet of signage on each elevation for the Carl's Jr. building.
2. The Kiosk building is allowed:
 - a. 12 square feet per north and south elevations (narrow width); and
 - b. 36 square feet per east and west elevations.

TABLE 1
Revised Master Sign Plan
Allowed and Proposed Building Signage

Building	Façade	Sign Location	Maximum Sign Area	Proposed Sign Area
Carl's Jr	North	Over door on Tower	36	36
	West	Over Drive-up Window on Tower	36	36
	South	Over door on Tower	36	26
	East	Over door on Tower	36	36
Building	Façade	Sign Location	Maximum Sign Area	Proposed Sign Area
Coffee Kiosk	North	Over Windows	12*	15.86
	West	Over Drive-up Window	36	15.86
	South	Over Doors	12	0
	East	Over Window	36	15.86
		TOTAL	96	47.58

* Waiver request to allow 15.86 square feet on north elevation.

Even with the Waiver request for the very narrow north elevation the proposed signage is only about 50% of the maximum allowed for the new building configuration.

4.199 OUTDOOR LIGHTING

4.199.20. Applicability:

(.01) This Ordinance is applicable to:

- A. Installation of new exterior lighting systems in public facility, commercial industrial and multi-family housing projects with common areas.**
- B. Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial industrial and multi-family housing projects with common areas.**

(.02) Exemption. The following luminaires and lighting systems are EXEMPT from these requirements:

- A. Interior lighting**
- B. Internally illuminated signs**
- F. Building Code required exit path lighting**
- G. Lighting specifically for stairs and ramps**
- K. Code required Signs**
- M. Landscape lighting**

4.199.30 Lighting Overlay Zones.

(.01) The designated Lighting Zone as indicated on the Lighting Overlay Zone Map for a commercial, industrial, multi-family, or public facility parcel or project shall determine the limitations for lighting systems and fixtures as specified in this Ordinance.

(.02) The Lighting Zones shall be:

- A. LZ 0. Critical dark environments.**
- B. LZ 1. Developed areas in City and State parks, recreation areas, SROZ wetland and wildlife habitat areas; developed areas in natural settings; sensitive night environments; and rural areas.**
- C. LZ 2. Low-density suburban neighborhoods and suburban commercial districts, industrial parks and districts. This zone is intended to be the default condition for the majority of the City.**
- D. LZ 3. Medium to high-density suburban neighborhoods and districts, major shopping and commercial districts as depicted on the Lighting Overlay Zone Map.**
- E. LZ 4. Reserved for limited applications with special lighting requirements.**

4.199.40. Lighting Systems Standards for Approval.

(.01) Non-Residential Uses and Common Residential Areas.

- A. All outdoor lighting shall comply with either the Prescriptive Option or the Performance Option below.**

(.03) In addition to the above submittal requirements, Applicants using the Performance

Method shall submit the following information as part of the permit set plan review:

- A. Site plan showing horizontal isocandle lines, or the output of a point-by-point computer calculation of the horizontal illumination of the site, showing property lines and light levels immediately off of the subject property.**
- B. For each side of the property, the output of a point-by-point vertical footcandle calculation showing illumination in the vertical plane at the property line from**

grade to at least 10 feet higher than the height of the tallest pole.
C. Lighting plans shall be prepared by a qualified licensed engineer.

4.199.60. Major Additions or Modifications to Pre-Existing Sites.

(01.) Major Additions. If a major addition occurs on a property, all of the luminaires on the site shall comply with the requirements of this Section. For purposes of this subsection, the following are considered to be major additions:

A. Additions of 50 percent or more in terms of additional dwelling units, gross floor area, seating capacity, or parking spaces, either with a single addition or with cumulative additions after July 2, 2008.

B. Modification or replacement of 50 percent or more of the outdoor lighting luminaires' within a 5-year timeframe existing as of July 2, 2008.

Table 9: Performance Method

Lighting Zone	Maximum percentage of direct uplight lumens	Maximum Light Level at Property Line	
		Horizontal plane at grade (foot candles - fc)	Vertical plane facing the site in question, from grade to mounting height of highest mounted luminaire (foot candles - fc)
LZ 2	5%	0.2 fc	0.4 fc

From Table 10: Curfew: Lighting Zone Curfew Time

LZ 2 10:00 PM (2200 hours)

RESPONSE

The City has adopted new outdoor lighting standards, Section 4.199. These relatively new regulations set standards for the intensity of outdoor lighting, and there are also curfew provisions, aimed at lower artificial light levels at night (dark sky).

Section 4.199.30(.02) establishes lighting zones. The subject site is within LZ 2, as identified on the Lighting Zone Map. This zone applies to low-density suburban neighborhoods and suburban commercial districts, industrial parks and districts, and is the default condition for the majority of the City. This zone has a 10:00 PM curfew, which calls for lower lighting levels after 10:00 PM.

The development site is within a developed commercial and industrial district and within the PDC, Planned Development Commercial Zone. This development is subject to the provisions of these new regulations, as defined above. The original lighting plan was approved utilizing the "Performance Option".

With the new building and revised site plan, some of the exterior lighting is also being revised, as follows:

1. One parking lot light pole is proposed to be moved. This pole is located between the Chevron property and the Coffee Kiosk and it will be moved about 17 feet to

- the southeast of its original location, to accommodate the revised parking and drive-up lane configuration;
2. The front of building with windows will have sconces facing in the direction of the flag pole. The six wall sconces that are fully shielded (so halo effect) - bulb is 13W quad fluorescent in opaque scone;
 3. "Lady in the Cup" fixture added onto the Human Bean building;
 4. 2 floodlights (wall wash) added to light up the curved monument;
 5. 1 floodlight added between the two monument lights to light up the 30' flag pole; and
 6. Pathway light bollards have been shifted to match the new alignment.

The cut sheets for the new wall and ground lighting has been provided. These changes did not appreciably alter compliance with the approved photometrics, as is reflected in the revised Photometric Plan, Sheet SE1.0. On the Photometric Plan we've clouded the area of changes and noted that everything outside the clouded areas is either existing or previously approved and permitted.

We have not shown the vertical information since the contributing light at the property line is 0.0 or 0.1. That means the vertical information would render similar information.

However, it is noted that this section also provides an exception for businesses that operate continuously (Exception 3). While Carl's Jr. will operate 24 hours per day, the Coffee Shop will only be open between 5 AM to 9 PM. Even with this exception, the approved Development Plans provided for lighting that is energy efficient and consistent with the standard in this section of the code.

The lights are controlled by timers and photocells so they are only activated at times of low natural light. See Lighting Plans for details.

General Building Design

In the design for the original approval care was taken to maintain brand identity for the anchor tenant, Carl's Jr., while also integrating the development into the business park environment. The prototype Carl's Jr. building is quite contemporary, so a full exterior redesign was necessary for this Wilsonville location.

The proposed coffee kiosk is a much smaller structure than the approved retail building. But to the extent practicable similar architectural features have been employed with the new design. Similar materials and colors have been selected to provide continuity between the two buildings.

In considering the design direction for the exterior of the proposed Human Bean building, a similar approach was taken to that of the previous retail companion building to the Carl's Jr. We wanted the finishes and material to be compatible where some finishes would match and others would be unique to our prescribed Western theme. So the brick, cornice, and canopies uses at Carl's Jr find their matching application at the Human Bean building. The similar wood exterior approach of lap siding and board and batt is also

carried through to the Human Bean building, but with differences in color to identify the unique character of the coffee concept. We feel that these differences and similarities between the two buildings contribute comfortable and appealing design cohesion to the area.

The proposed building and site improvements are designed to compliment and enhance the existing business park environment, and therefore will maintain consistency with the Design Review Criteria and Objectives listed above. The approved improvements are designed to ensure the site functions safely, properly and efficiently.

4.421. Criteria and Application of Design Standards.

(.01) The following standards shall be utilized by the Board in reviewing the plans, drawings, sketches and other documents required for Site Design Review. These standards are intended to provide a frame of reference for the applicant in the development of site and building plans as well as a method of review for the Board. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention and innovation. The specifications of one or more particular architectural style is not included in these standards. (Even in the Boones Ferry Overlay Zone, a range of architectural styles will be encouraged.)

- A. Preservation of Landscape. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas.*
- B. Relation of Proposed Buildings to Environment. Proposed structures shall be located and designed to assure harmony with the natural environment, including protection of steep slopes, vegetation and other naturally sensitive areas for wildlife habitat and shall provide buffering from less intensive uses in accordance with Sections 4.139 and 4.139.5. The achievement of such relationship may include enclosure of space in conjunction with other existing buildings or other proposed buildings and the creation of focal points with respect to avenues of approach, street access or relationships to natural features such as vegetation or topography.*
- C. Drives, Parking, and Circulation. With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location and number of access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the design of proposed buildings and structures and the neighboring properties.*
- D. Surface Water Drainage. Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or (et sic) the public storm drainage system.*
- E. Utility Service. Any utility installations above ground shall be located so as to have a harmonious relation to neighboring properties and site. The proposed method of sanitary and storm sewage disposal from all buildings shall be indicated.*
- F. Advertising Features. In addition to the requirements of the City's sign regulations, the following criteria should be included: the size, location, design, color, texture, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.*
- G. Special Features. Exposed storage area, exposed mechanical installations, surface areas, truck loading areas, utility buildings and structures and similar*

accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall be required to prevent their being incongruous with the existing or contemplated environment and its surrounding properties. Standards for screening and buffering are contained in Section 4.176.

(.02) The standards of review outlined in Sections (a) through (g) shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures.

(.03) The Board shall also be guided by the purposes of Section 4.400 and such objectives shall serve as additional criteria and standards.

RESPONSE

The design of the coffee kiosk provides continuity in architectural features, while allowing for appropriate distinctions between the two buildings. Because there is now an outdoor plaza adjacent to the Kiosk, the prior approved patio at the north end has been modified to the planter/wall sign, with flag pole. With this redesign, the pedestrian connection from 95th Avenue is now much more direct to the outdoor plaza.

The modified driveway and parking area provides for safe and convenient site access and circulation. Modification to the storm drainage and utilities plans are minor.

The signage for the new building is generally consistent with the layout previously approved. The scale of the building signs has been adjusted, as previously addressed, to best fit the building, while maintaining consistency with the Carl's Jr. building signage.

The applicant believes the proposed modifications maintain conformance with the original approval, as well as compliance with the design criteria specified in this Section.

The property is located at a prominent arterial intersection adjacent to the Elligsen Road Freeway Interchange and therefore the site is highly visible from the adjacent roadways. As noted, the Carl's Jr. will be a 24 hour operation. However, the coffee kiosk will only operate between 5 AM to 9 PM.

This site is surrounded by a combination of commercial and industrial uses and shares access with the adjacent Chevron Station and Holiday Inn. There are no nearby residential uses. And, both the Chevron and Holiday Inn have been approved with various architectural forms. Therefore this proposal is compatible with the surrounding development.

Landscaping Incomplete Application item

6. *Pursuant to Subsection 4.176 Please update the landscape plans to show the installed landscaping, including the landscaping around the freestanding sign.*

RESPONSE

With the proposed tenant/building revision, the landscaping plan has been revised adding additional plantings around the northern free standing sign, along with refinements to the prior plaza behind the monument sign. The revised Landscaping Plan reflects the following changes:

- The plaza area or outdoor patio has been moved adjacent to the building, and landscaping has been added around the monument sign.
- The swale south of the monument plaza has also been removed, regarded with landscaping.
- The drive-up menu board has been re-positioned so that it is not directly visible from the street. Therefore no additional visual screening will be required.
- The perimeter landscaping adjacent to the east side parking has been adjusted to accommodate the sidewalk, and revised parking/drive-up lane.

FINAL CONCLUSION – Replace Retail Building with Drive-up Coffee Kiosk

The proposed coffee kiosk building will replace the approved retail building. It will be significantly smaller, and thereby less intrusive at the highly visible intersection site.

Based on the revised site and building plans and the findings provided herein, the applicant has been demonstrated compliance with all applicable code standards.

The applicant has further justified the requested sign area waiver, as being consistent with the waiver criteria. While the waiver allows an increase in sign area on the north building elevation, it does not allow for more total sign area that would be allowed for the three elevations combined.

Therefore the applicant respectfully requests approval as requested.

DKS

117 Commercial Street NE
Suite 310
Salem, OR 97301
503.391.8773
www.dksassociates.com

MEMORANDUM

DATE: September 5, 2013

TO: Steve Adams, P.E., City of Wilsonville

FROM: Scott Mansur P.E., P.T.O.E. *Sm*
Derek Moore, E.I.T. *DM*

SUBJECT: Wilsonville Carl's Jr. Coffee Kiosk Trip Generation



P13003-017

This memorandum documents an updated trip generation estimate and a site plan review for the proposed Carl's Jr. site on the southeast corner of the Boones Ferry Road/95th Avenue intersection in Wilsonville, Oregon. A previous transportation impact analysis¹ was performed for the project site assuming it would include a Carl's Jr. and a 3,150 square foot specialty retail center. It is now proposed that the project site would replace the specialty retail building with a drive-through coffee kiosk. The sections of this memorandum identify the original trip generation, new trip generation based on the revised land uses, and a site plan review.

Original Trip Generation

The trip generation estimates used for the prior impact study are shown in Table 1. Trip rates provided by the Institute of Transportation Engineers (ITE)² were used to estimate the p.m. peak hour project trips levels. The original analysis estimated the project site would generate 112 (56 in, 56 out) p.m. peak hour driveway trips and 60 (30 in, 30 out) p.m. peak hour primary trips.

Table 1: Carl's Jr. and Retail Center Trip Generation from Original Analysis

Land Use (ITE Code)	Size	P.M. Peak Hour Trip Generation Rate	P.M. Peak Hour Trips		
			In	Out	Total
Fast-Food Restaurant w/Drive-Through Window (934)	2.79 KSF ^a	33.84 trips/KSF ^a	49	45	94
Specialty Retail Center (814)	3.38 KSF ^a	8.88 trips/KSF ^a	13	17	30
Total Trips			62	62	124
Internal Trips			-6	-6	-12
Driveway Trips			56	56	112
Pass-by Trips			-26	-26	-52
New Primary Trips			30	30	60

^a KSF = 1,000 square feet

¹ Carl's Jr. Traffic Impact Study, DKS Associates, May 2012

² Trip Generation, 8th Edition, Institute of Transportation Engineers, 2008



Revised Trip Generation

Currently, the project site is proposed to include a 2,876 square foot Carl's Jr. restaurant and a 430 square foot drive-through coffee kiosk. Trip generation for the revised site was performed using p.m. peak hour trip rates provided by the Institute of Transportation Engineers (ITE).³ Consistent with the previous study, a 10% internal trip rate was assumed for those that are visiting multiple land uses on the site (including the existing Chevron and Holiday Inn). In addition, both of the proposed land uses attract pass-by trips, which were assumed to be drawn from 95th Avenue.

As shown in Table 2, the proposed Carl's Jr. and coffee kiosk would generate approximately 117 (60 in, 57 out) p.m. peak hour driveway trips and 47 (25 in, 22 out) p.m. peak hour primary trips. This is five more driveway trips and 13 fewer primary trips than what was previously estimated for this site and used to determine traffic impacts in the original *Carl's Jr. Traffic Impact Study*. The proposed coffee kiosk would generate slightly more trips than the previously proposed retail center; however it has a much higher pass-by trip rate (90% pass-by as compared to 50%) and therefore generates fewer primary trips. The small increase in driveway trips is not expected to negatively impact intersection operations identified in the previous traffic study.

Table 2: Proposed Carl's Jr. and Coffee Kiosk Trip Generation

Land Use (ITE Code)	Size	P.M. Peak Hour Trip Generation Rate	P.M. Peak Hour Trips		
			In	Out	Total
Fast-Food Restaurant w/Drive-Through Window (934)	2.867 KSF ^a	33.84 trips/KSF ^a	50	47	97
Coffee/Donut Shop with Drive-Through Window and No Indoor Seating (938)	0.43 KSF ^a	75.0 trips/KSF ^a	16	16	32
Total Trips			66	63	129
<i>Internal Trips</i>			-6	-6	-12
Driveway Trips			60	57	117
<i>Pass-by Trips</i>			-35	-35	-70
New Primary Trips			25	22	47

^a KSF = 1,000 square feet

Site Plan Review

With the change in land use type, the development's site plan also changed. The updated site plan (dated August 6, 2013) was reviewed to evaluate pedestrian and bicycle needs, vehicular access and circulation, safety, and parking. A copy of the site plan is provided in the appendix.

Pedestrian and Bicycle Needs

The provided site plan shows sidewalks along the proposed driveway and pedestrian connections from the sidewalks along 95th Avenue to both the Carl's Jr. building and the coffee kiosk. A median at the driveway access separates ingress and egress movements and provides refuge for pedestrians crossing the wide driveway. No concerns were identified relating to pedestrian and bicycle needs.

³ *Trip Generation, 8th Edition*, Institute of Transportation Engineers, 2008



Vehicle Access and Circulation

In order to maintain access spacing requirements, the project site will utilize an existing access that is shared by the nearby Chevron and Holiday Inn. Upon reconstruction of the driveway, it should be verified that the site driveway meets American Association of State Highway and Transportation Officials (AASHTO) intersection sight distance requirements.⁴

Vehicles leaving the Carl's Jr. drive-through lane and navigating toward the exit would be required to make a sharp 180-degree right turn. Turn templates should be provided by the applicant to verify that this turn can be executed without forcing vehicles into oncoming traffic.

Parking

The proposed Carl's Jr. Restaurant and coffee kiosk are required to comply with the City of Wilsonville Planning and Land Development code for the number of vehicular parking stalls that are provided on the site.⁵ The requirements are based on the size and type of land use. As shown in Table 3, both proposed land uses fall into the same category of fast food with a drive through and will require 33 to 49 parking stalls. The proposed site plan shows a total of 37 parking stalls, which meets the code requirements.

Table 3: Parking Analysis

Unit Type	Required Parking Rate	Required Number of Stalls	Provided Number of Stalls
Fast Food Restaurant with Drive-Through (3,297 sq. ft.)	9.9/KSF to 14.9/KSF	33 to 49	37

Summary

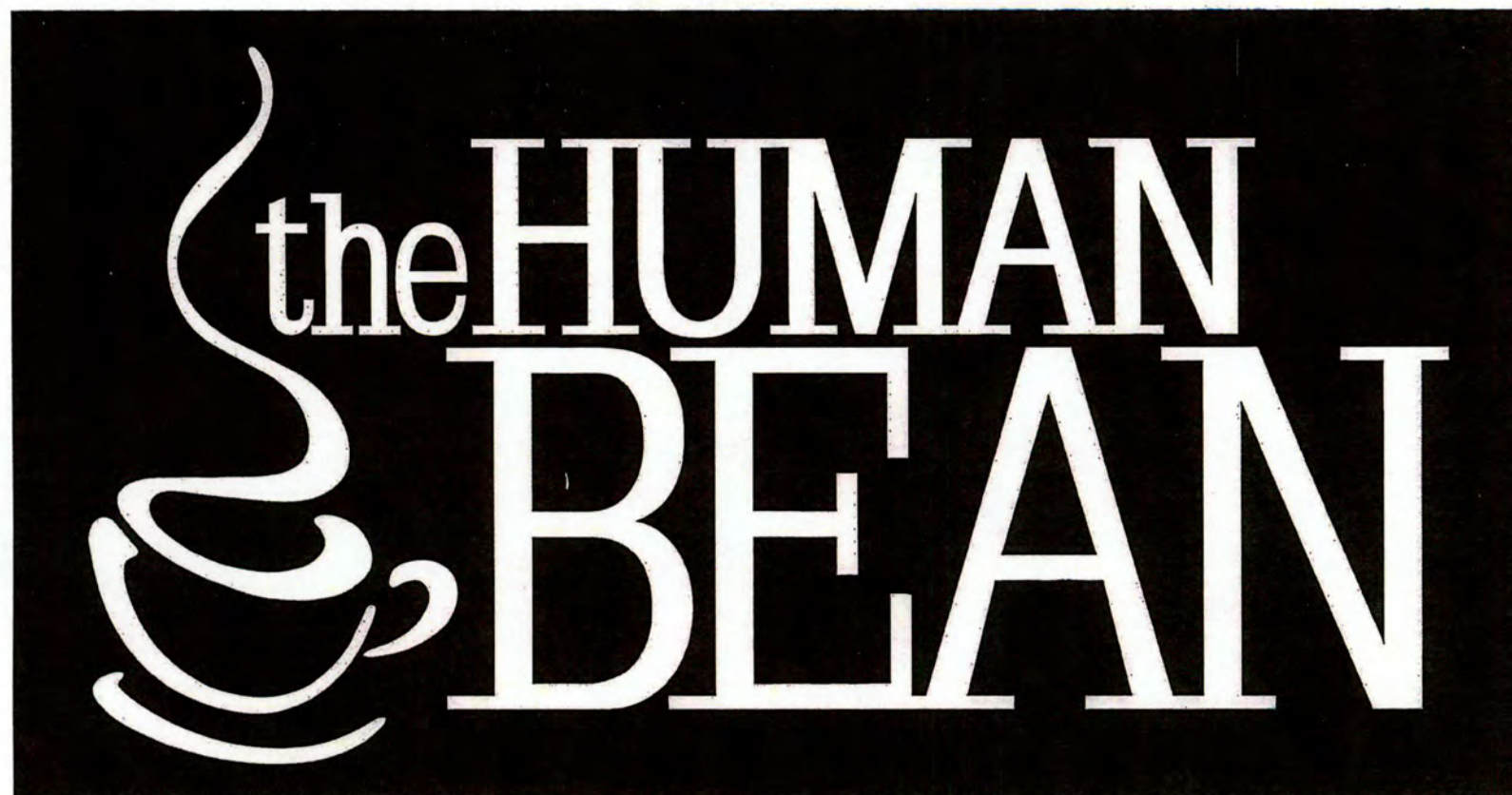
Key trip generation and site plan review findings for the proposed active adult apartment complex are as follows:

- The proposed Carl's Jr. and coffee kiosk would generate approximately 117 (60 in, 57 out) p.m. peak hour driveway trips and 47 (25 in, 22 out) p.m. peak hour primary trips. This is five more driveway trips and 13 fewer primary trips than what was previously estimated for this site. The small increase in driveway trips is not expected to negatively impact intersection operations identified in the previous traffic study.
- Sight distance at the reconstructed project access should be verified prior to occupancy. Turn templates should be reviewed to ensure vehicles exiting the Carl's Jr. drive-through have adequate room for turning movements.
- Sufficient vehicle parking is provided to meet the City's parking requirements.

Please let us know if you have any questions.

⁴ *Geometric Design of Highways and Streets*, AASHTO, 2004; Case B1, p. 661.

⁵ City of Wilsonville, Planning and Land Development Ordinance, Sections 4.154-4.198, Table 5, Updated Jan. 2010.



SIGNS & MENUS

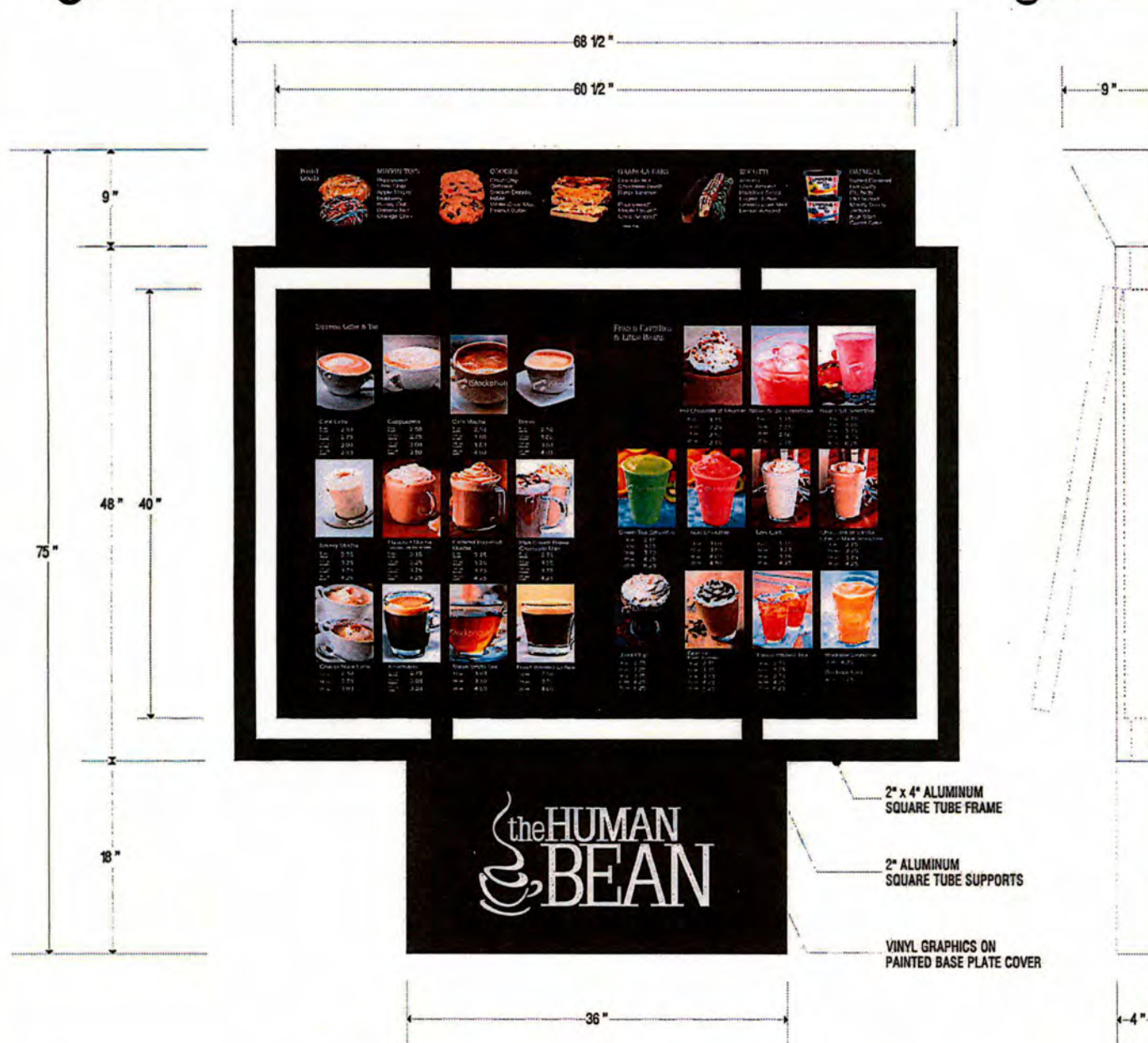
Presented by:



DRIVE THRU MENU

1 FRONT VIEW

2 SIDE VIEW



ADVANCED ELECTRIC

Signs
INC.
Your Full Service Company

360-225-6826 1550 DOWNRIVER DR.
WOODLAND WA 98674

SIGN TYPE:

INTERNALLY ILLUMINATED CUSTOM MENU SYSTEM

SIGN MATERIAL:

ALUMINUM / ACRYLIC / FULL COLOR GRAPHICS

COLORS TO BE USED:

BLACK CABINET
FULL COLOR PRINTED MENU INSERTS
DARK BROWN BASE

SPECIFICATIONS

- ALUMINUM CONSTRUCTION
- ACRYLIC FACES
- EPOXY PRIMER / POLYURETHANE PAINT
- INTERNAL CABINET ILLUMINATION
- FULL COLOR MENU INSERTS
- U.L. APPROVED

FOR EXACT DUPLICATION OF LOGO, CUSTOMER TO PROVIDE CAMERA READY ARTWORK.

PROJECT TITLE: HUMAN BEAN

PROJECT LOCATION:

DRAWING: DRIVE THRU MENU DRAWN BY: WOODY

DATE: 11/05/2013 PREPARED BY: STEVE SLACK

SIGNATURE FOR APPROVAL:

COPYRIGHT 2013 ADVANCED ELECTRIC SIGNS INC.

BY SHOWING THIS SKETCH YOU (THE ABOVE SIGNED) ARE HEREBY AUTHORIZING ADVANCED ELECTRIC SIGNS INC. TO REPRODUCE THESE SIGNS AS SHOWN AND DEPICTED IN THIS SKETCH AND DOES NOT HOLD RESPONSIBILITY ON ANY ALTERATIONS.

WALK UP MENU

1 FRONT VIEW



2 SIDE VIEW



2" x 4" ALUMINUM SQUARE TUBE FRAME

2" ALUMINUM SQUARE TUBE SUPPORTS

ADVANCED ELECTRIC

Signs
INC.

Your Full Service Company

360-225-6826 1550 DOWNRIVER DR. WOODLAND WA 98674

SIGN TYPE:

INTERNALLY ILLUMINATED CUSTOM MENU SYSTEM

SIGN MATERIAL:

ALUMINUM / ACRYLIC / FULL COLOR GRAPHICS

COLORS TO BE USED:

BLACK CABINET
FULL COLOR PRINTED MENU INSERTS

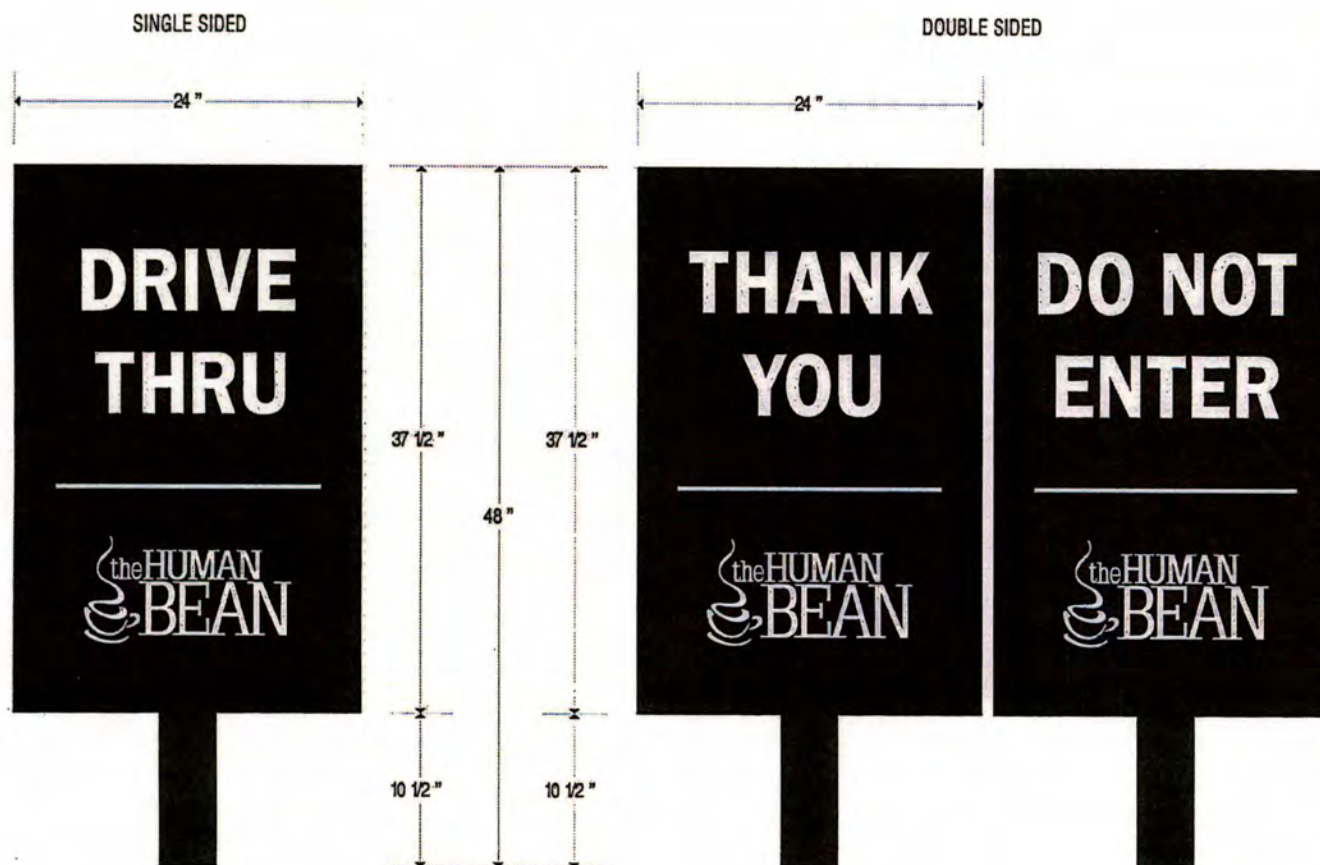
SPECIFICATIONS

- ALUMINUM CONSTRUCTION
 - ACRYLIC FACES
 - EPOXY PRIMER / POLYURETHANE PAINT
 - INTERNAL CABINET ILLUMINATION
 - FULL COLOR MENU INSERTS
 - U.L. APPROVED
- FOR EXACT DUPLICATION OF LOGO, CUSTOMER TO PROVIDE CAMERA READY artwork.

PROJECT TITLE: HUMAN BEAN	
PROJECT LOCATION:	
DRAWING# WALK UP MENU	DRAWN BY: WOODY
DATE: 11/05/2013	PRESENTED BY: STEVE SLACK
SIGNATURE FOR APPROVAL	

COPYRIGHT 2013 ADVANCED ELECTRIC SIGNS INC.

BY SHOWING THIS SKETCH YOU (THE ABOVE SIGNED) ARE HEREBY AUTHORIZING ADVANCED SIGNS TO PRODUCE THESE SIGNS AS SHOWN AND INSPECTED IN THIS SKETCH AND DOES NOT INCLUDE CHANGES OR ANY ALTERATIONS.



ADVANCED ELECTRIC
Signs INC.
 Your Full Service Company
 360-225-6826 1550 DOWNRIVER DR. WOODLAND WA 98674

SIGN TYPE:
 INTERNALLY ILLUMINATED CABINETS w/ ACRYLIC
 FACES OVERLAYED IN VINYL GRAPHICS

SIGN MATERIAL:
 ALUMINUM / ACRYLIC / VINYL

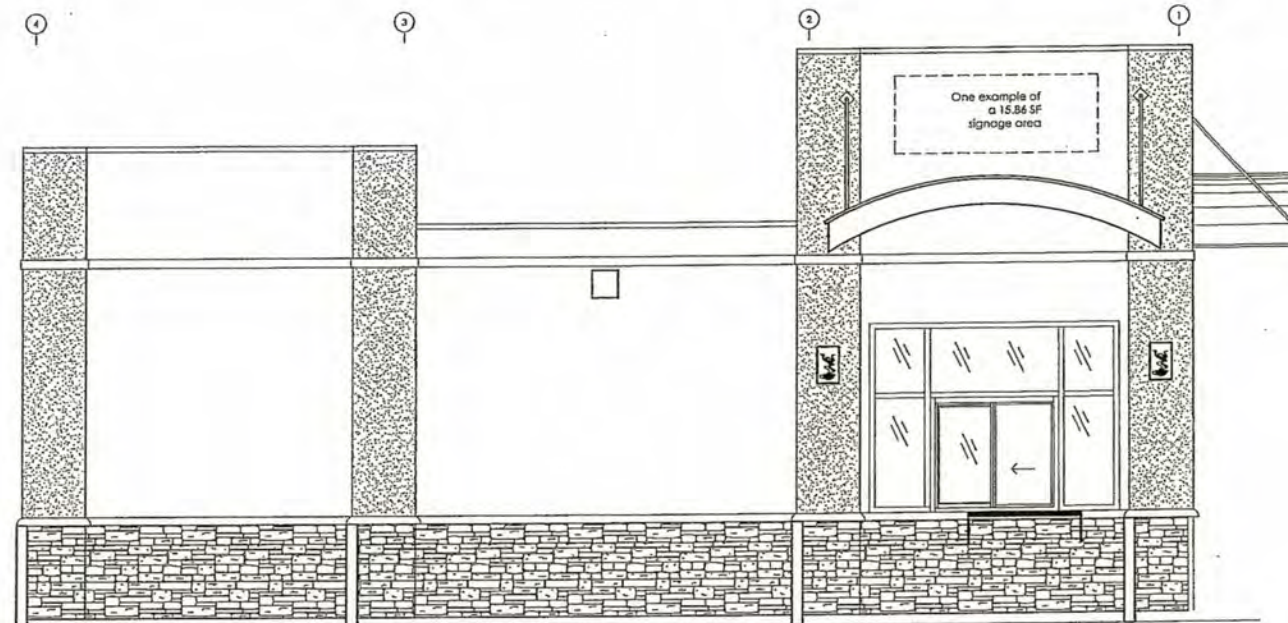
COLORS TO BE USED:

	BLACK CABINET & POST
	WHITE ACRYLIC
	DARK BROWN - 3M TRANS. VINYL

SPECIFICATIONS	
•	ALUMINUM CONSTRUCTION
•	ACRYLIC FACES
•	EPOXY PRIMER / POLYURETHANE PAINT
•	INTERNAL CABINET ILLUMINATION
•	VINYL GRAPHICS
•	U.L. APPROVED
FOR EXACT DUPLICATION OF LOGO, CUSTOMER TO PROVIDE CAMERA READY ARTWORK	

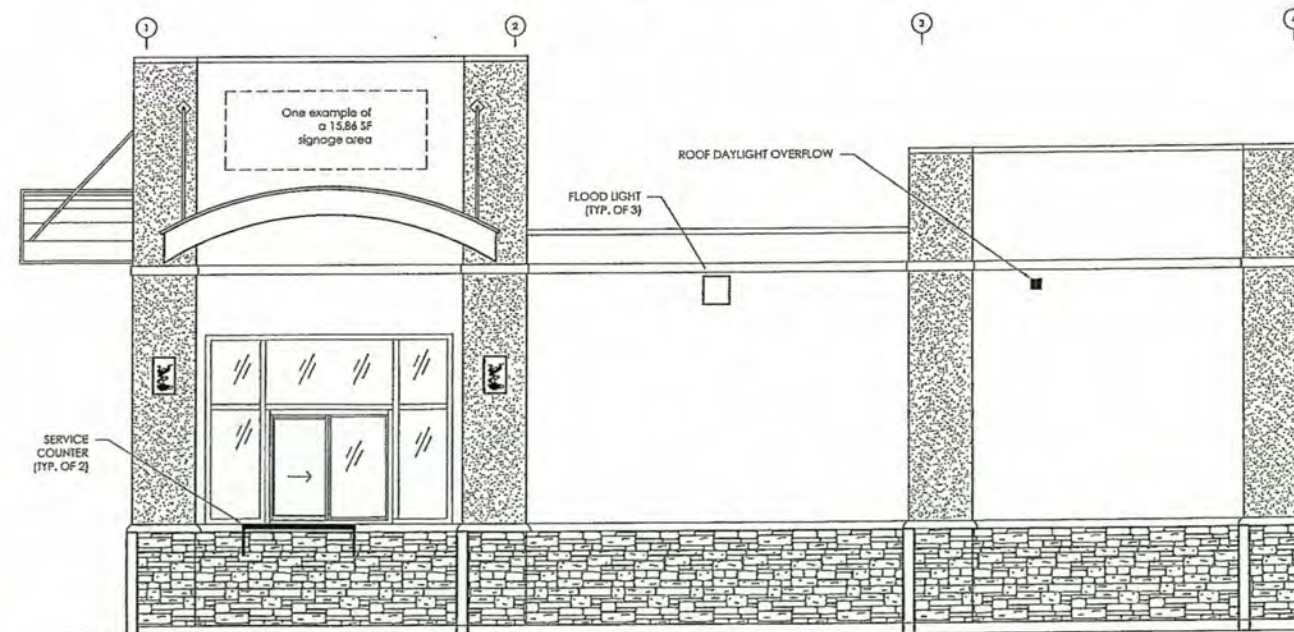
PROJECT TITLE: HUMAN BEAN	
PROJECT LOCATION:	
DRAWING# DIRECTIONALS	DRAWN BY: WOODY
DATE: 11/05/2013	PRESENTED BY: STEVE SLACK
SIGNATURE FOR APPROVAL	
COPYRIGHT 2013 ADVANCED ELECTRIC SIGNS INC.	
BY SIGNING THIS SKETCH YOU (THE ABOVE SIGNER) ARE HEREBY AUTHORIZING ADVANCED ELECTRIC SIGNAGE TO PRODUCE THESE SIGNS AS SHOWN AND DEPICTED IN THIS SKETCH AND DOES NOT INCLUDE CHANGES OR ANY ALTERATIONS.	

EXTERIOR FINISH SCHEDULE				
	DESCRIPTION	FINISH	BRAND / COLOR / STYLE	NOTES
WALLS				
MAIN BODY	STUCORLEX APPLIED FINISH OVER FRC	PAINT	PITTSBURGH PITT-TECH - MATCH DRYVIT#112 SANDLEWOOD BEIGE	1 COAT STUCCO, 2 COATS FINISH
FLASTERS	STUCORLEX APPLIED FINISH OVER FRC	PAINT	PITTSBURGH PITT-TECH - MATCH DRYVIT#33PA CARIBOU	1 COAT STUCCO, 2 COATS FINISH
WAINSCOT & WATER TABLE	CULTURED STONE	OWENS CORNING	WARM SPRINGS LEDGE PANEL	NATURAL-SEAL w/ CHEM TRETE P8 VOC
ROOF				
AWNING ROOFING	24 ga. STANDING SEAM METAL	PREFINISHED	TAYLOR MATCH CUSTOM BILT METALS MUSKET SR-30.2	SINGLE LAYER, 305 FELT
FLASHING & CAPS	24 ga. METAL	PREFINISHED	TAYLOR MATCH CUSTOM BILT METALS MUSKET SR-30.2	
SOFFITS	24 ga. METAL	PREFINISHED	TAYLOR MATCH CUSTOM BILT METALS SAND BEIGE SR-S4.3	
DOORS				
ALL DOORS AND FRAMES	GALVANIZED HOLLOW METAL		PITTSBURGH PITT-TECH - MATCH DRYVIT#112 SANDLEWOOD BEIGE	1 COAT PRIMER, 2 COATS FINISH



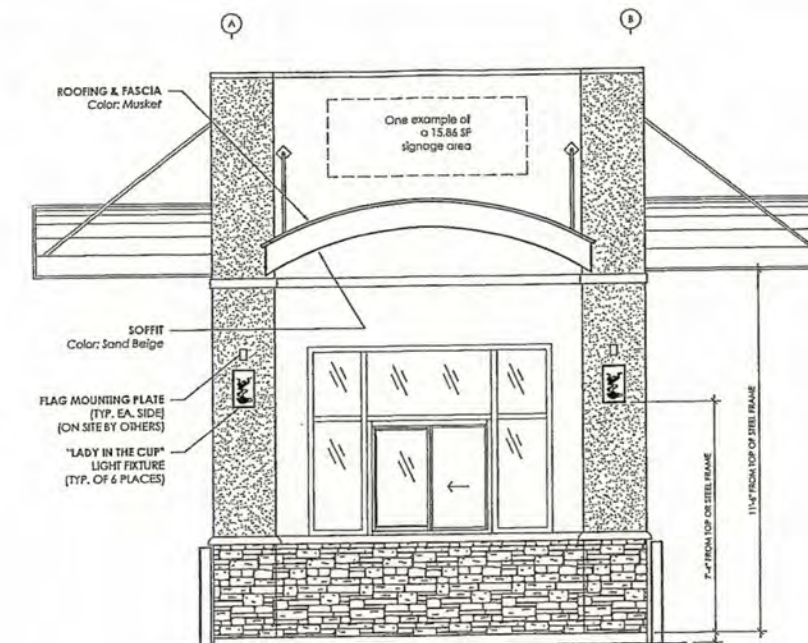
WALL "A" ELEVATION

SCALE: 3/8" = 1'-0"



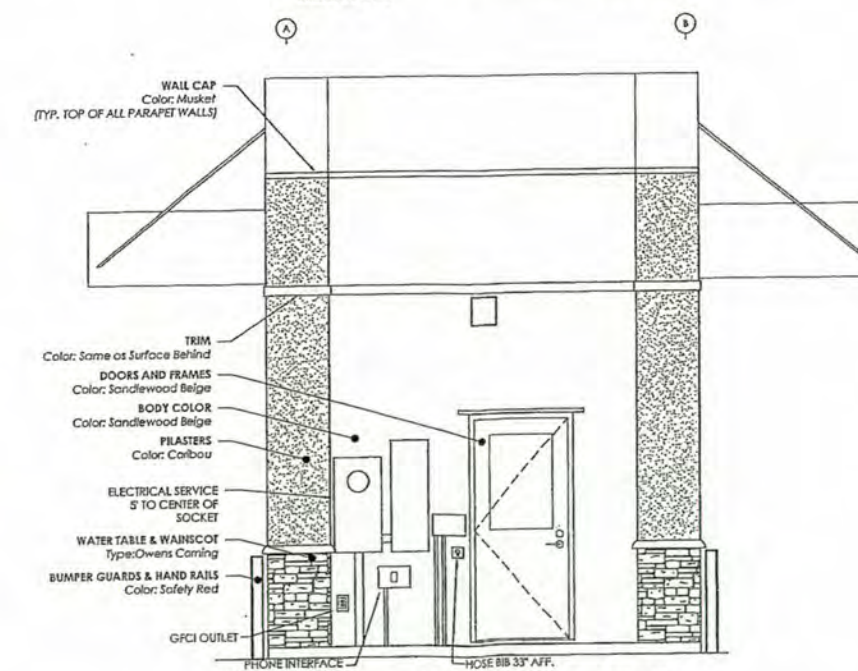
WALL "B" ELEVATION

SCALE: 3/8" = 1'-0"



WALL '1' ELEVATION

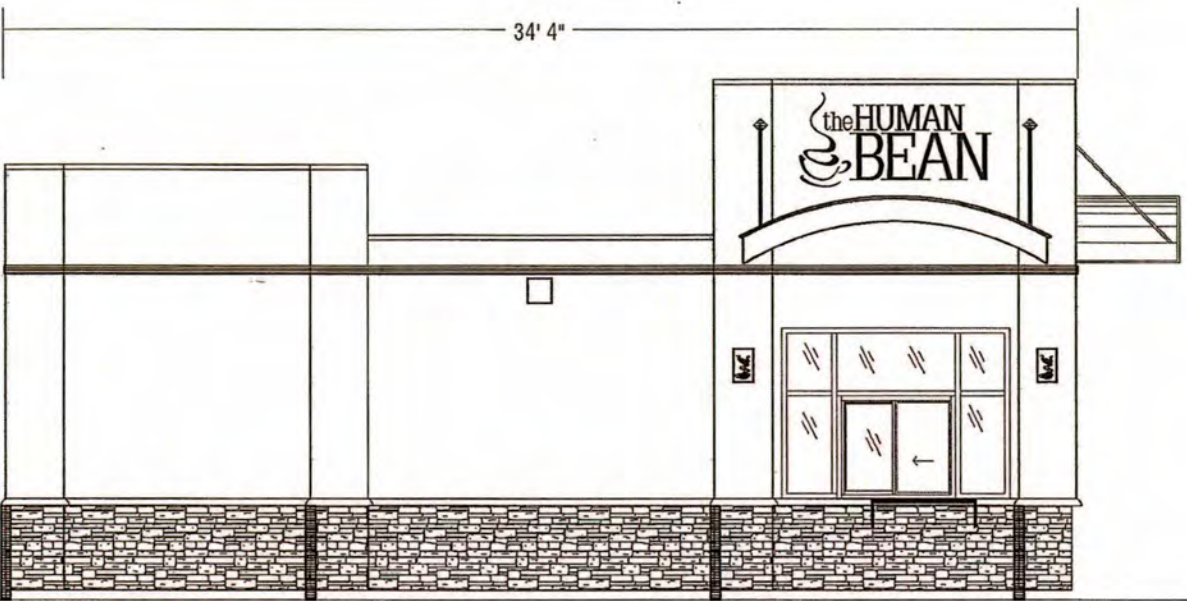
SCALE: 3/8" = 1'-0"



WALL '2' ELEVATION

SCALE: 3/8" = 1'-0"

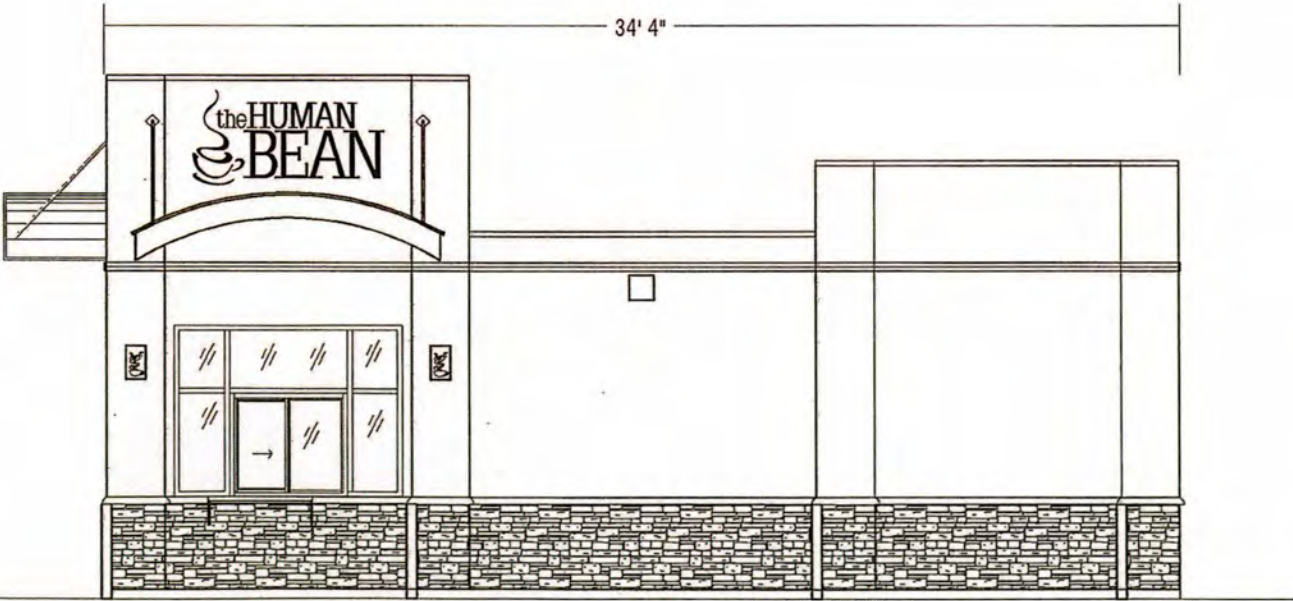
ELEVATION DETAIL



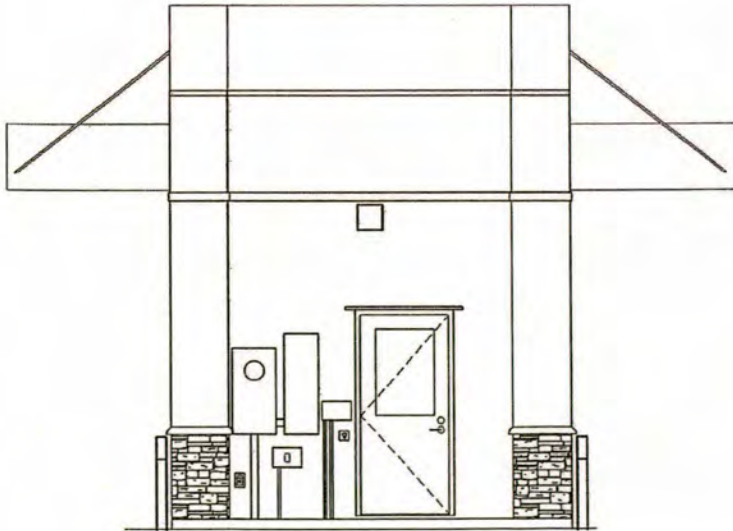
1 EAST WALL PROPOSED SIGN AREA
TOTAL SQ FT = 15.86 SCALE: 5/32" = 1'



3 NORTH WALL PROPOSED SIGN AREA
TOTAL SQ FT = 15.86 SCALE: 5/32" = 1'



2 WEST WALL PROPOSED SIGN AREA
TOTAL SQ FT = 15.86 SCALE: 5/32" = 1'



ADVANCED ELECTRIC
Signs
INC.
Your Full Service Company
360-225-6826 1550 DOWNRIVER DR.
WOODLAND WA 98674

SIGN TYPE:
FLUSH MOUNT INTERNALLY ILLUMINATED CHANNEL
LETTERS w/ ACRYLIC FACES

SIGN MATERIAL:
ALUMINUM / ACRYLIC

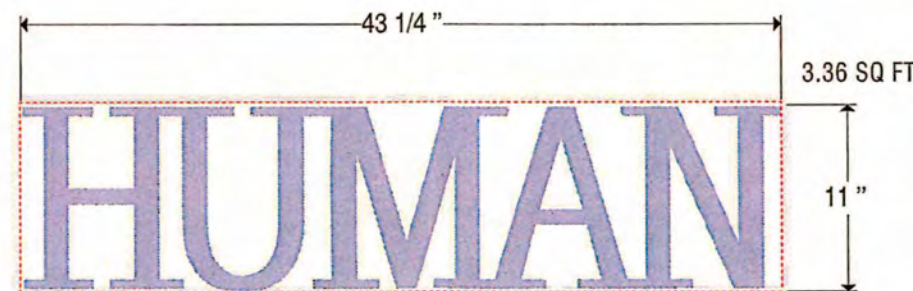
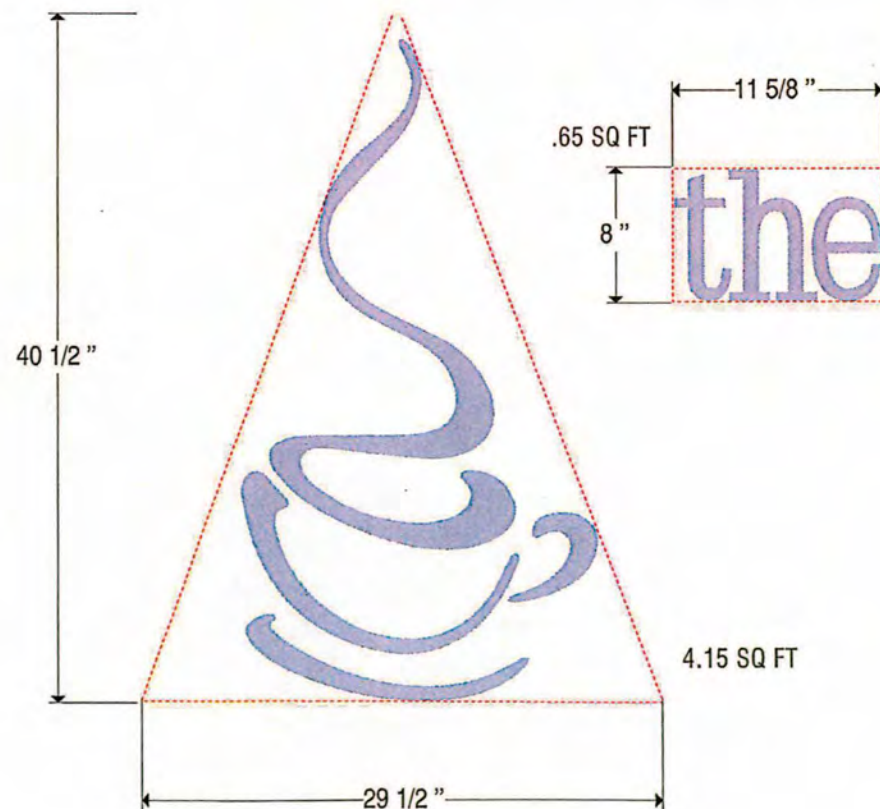
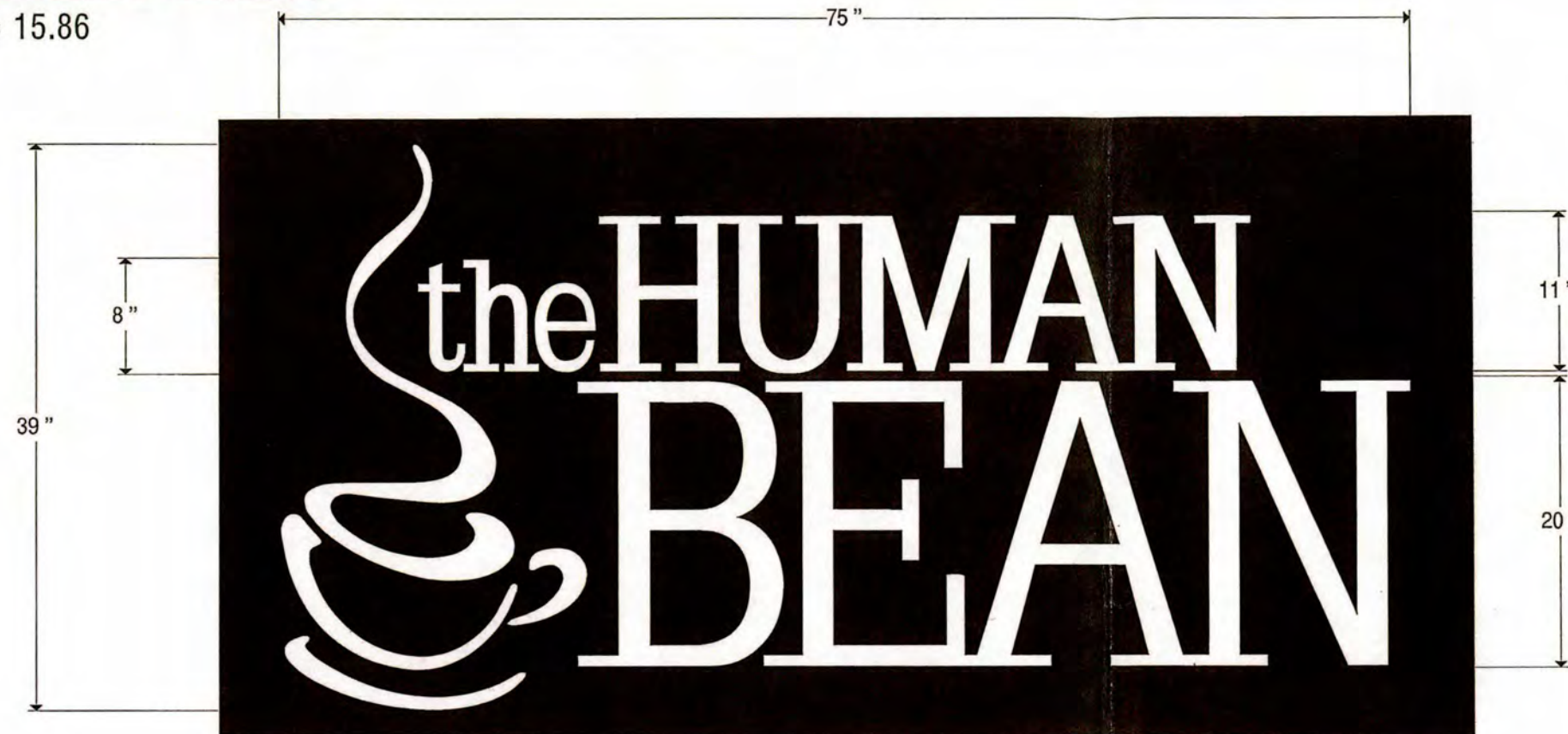
COLORS TO BE USED:
BLACK RETURNS & TRIMCAP
WHITE ACRYLIC

SPECIFICATIONS	
• ALUMINUM CONSTRUCTION	
• ACRYLIC FACES	
• INTERNAL LETTER ILLUMINATION	
• U.L. APPROVED	
•	
•	
FOR EXACT DUPLICATION OF LOGO, CUSTOMER TO PROVIDE CAMERA READY ARTWORK.	

PROJECT TITLE:	HUMAN BEAN		
PROJECT LOCATION:	WILSONVILLE, OR		
DRAWING#	103113-B	DRAWN BY:	WOODY
DATE:	10/31/2013	PRESENTED BY:	STEVE SLACK
SIGNATURE FOR APPROVAL			
COPYRIGHT 2013 ADVANCED ELECTRIC SIGNS INC.			
BY SIGNING THIS SKETCH YOU (THE ABOVE SIGNED) ARE HEREBY AUTHORIZING ADVANCED SIGNS TO PRODUCE THESE SIGNS AS SHOWN AND DEPICTED IN THIS SKETCH AND DOES NOT INCLUDE CHANGES OR ANY ALTERATIONS.			

SQUARE FOOTAGE CALCULATION

TOTAL SQ FT = 15.86



ADVANCED ELECTRIC

Signs
INC.
Your Full Service Company

360-225-6826 1550 DOWNRIVER DR.
WOODLAND WA 98674

SIGN TYPE:

FLUSH MOUNT INTERNALLY ILLUMINATED CHANNEL
LETTERS w/ ACRYLIC FACES

SIGN MATERIAL:

ALUMINUM / ACRYLIC

COLORS TO BE USED:

BLACK RETURNS & TRIMCAP
WHITE ACRYLIC

SPECIFICATIONS

- ALUMINUM CONSTRUCTION
- ACRYLIC FACES
- INTERNAL LETTER ILLUMINATION
- U.L. APPROVED

FOR EXACT DUPLICATION OF LOGO, CUSTOMER TO PROVIDE CAMERA READY ARTWORK.

PROJECT TITLE: HUMAN BEAN
PROJECT LOCATION: WILSONVILLE, OR
DRAWING# 103113-C DRAWN BY: WOODY
DATE: 10/31/2013 PRESENTED BY: STEVE SLACK

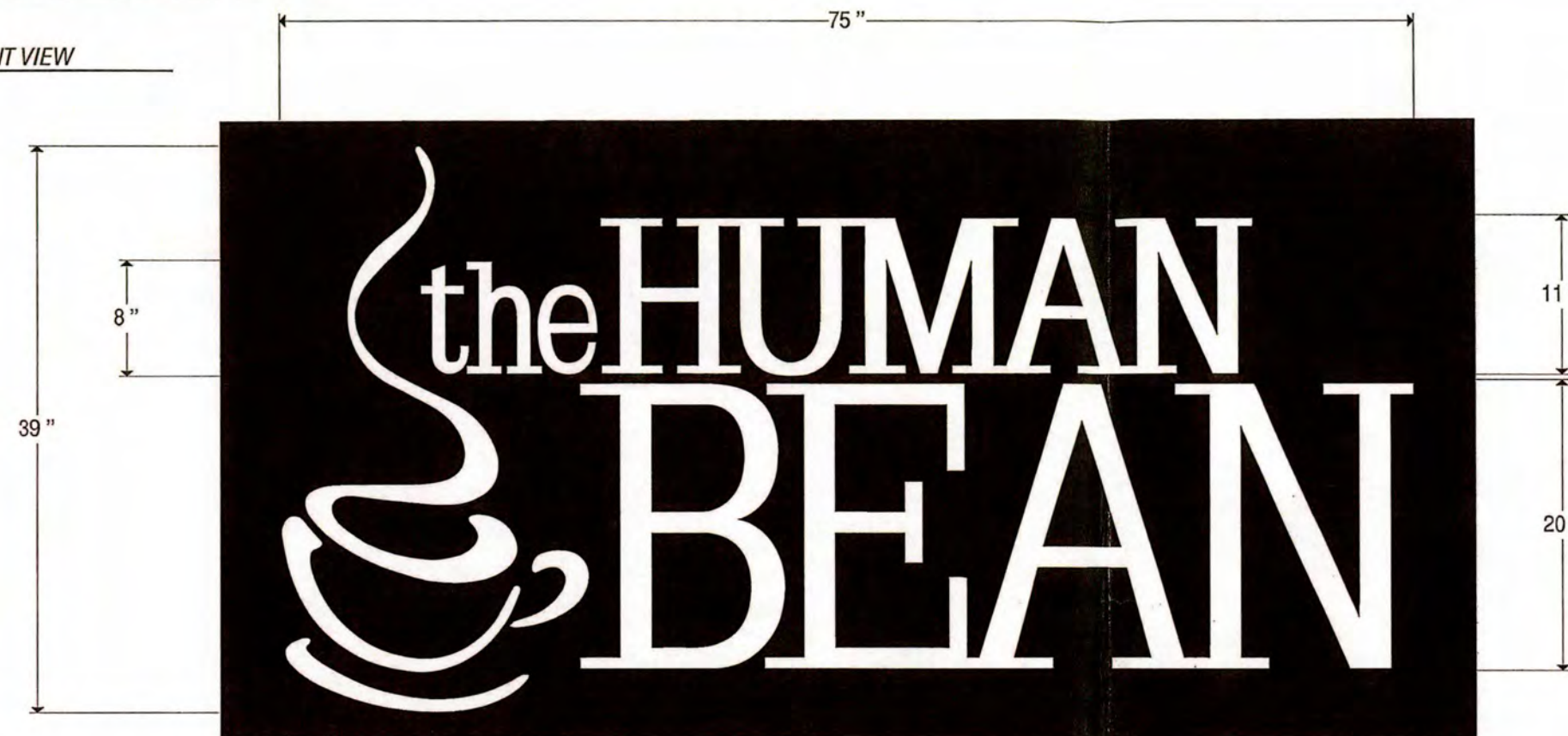
SIGNATURE FOR APPROVAL

COPYRIGHT 2013 ADVANCED ELECTRIC SIGNS INC.

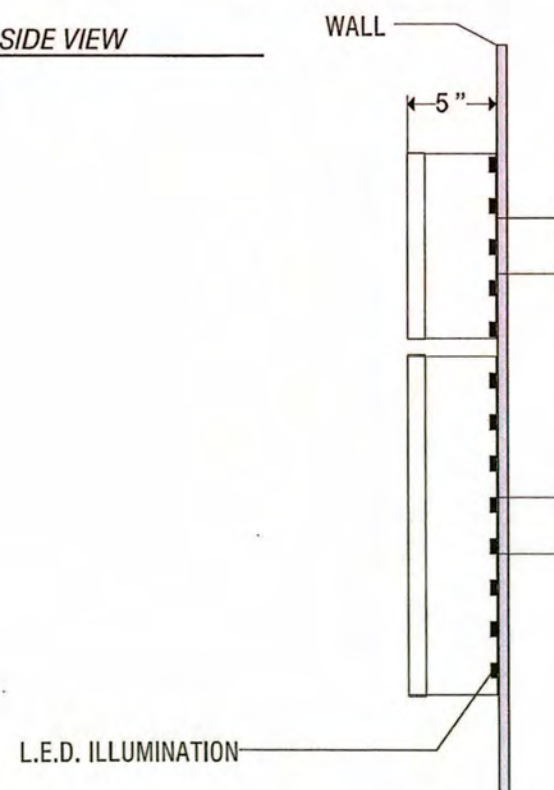
BY SIGNING THIS SKETCH YOU (THE ABOVE SIGNED) ARE HEREBY AUTHORIZING ADVANCED SIGNS TO PRODUCE
THESE SIGNS AS SHOWN AND DEPICTED IN THIS SKETCH AND DOES NOT INCLUDE CHANGES OR ANY ALTERATIONS.

CONSTRUCTION DETAIL

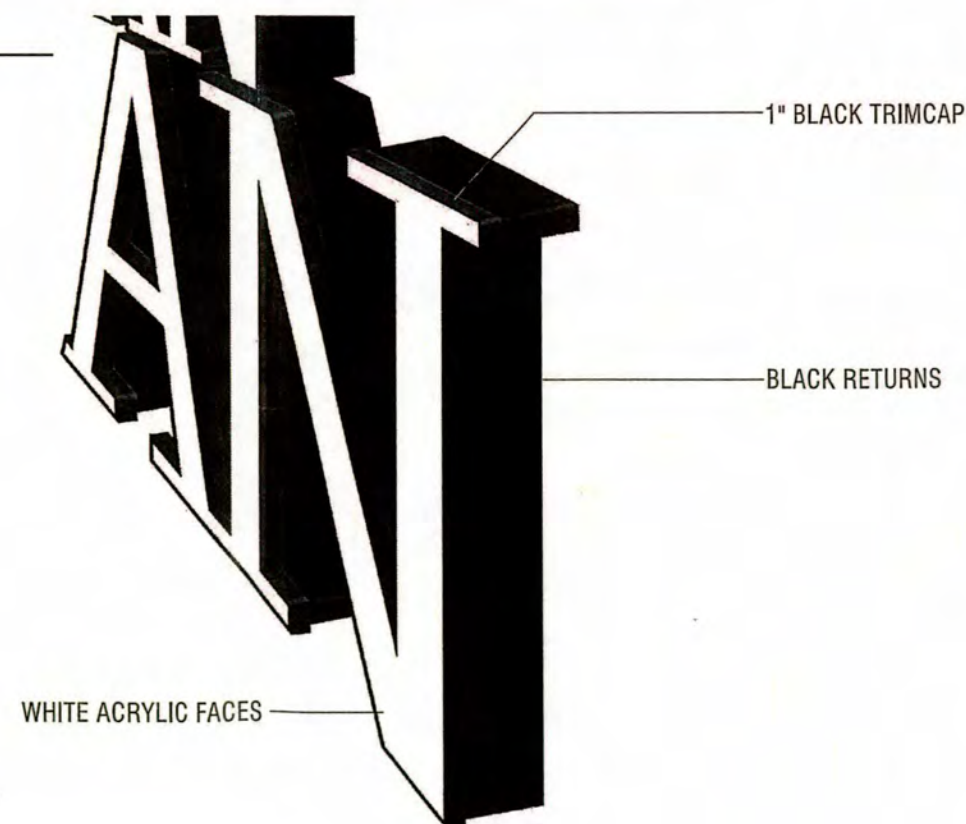
1 FRONT VIEW



2 SIDE VIEW



3 ISO VIEW



ADVANCED ELECTRIC

Signs
INC.
Your Full Service Company

360-225-6826 1550 DOWNRIVER DR.
WOODLAND WA 98674

SIGN TYPE:

FLUSH MOUNT INTERNALLY ILLUMINATED CHANNEL
LETTERS w/ ACRYLIC FACES

SIGN MATERIAL:

ALUMINUM / ACRYLIC

COLORS TO BE USED:

BLACK RETURNS & TRIMCAP
WHITE ACRYLIC

SPECIFICATIONS

- ALUMINUM CONSTRUCTION
- ACRYLIC FACES
- INTERNAL LETTER ILLUMINATION
- U.L. APPROVED

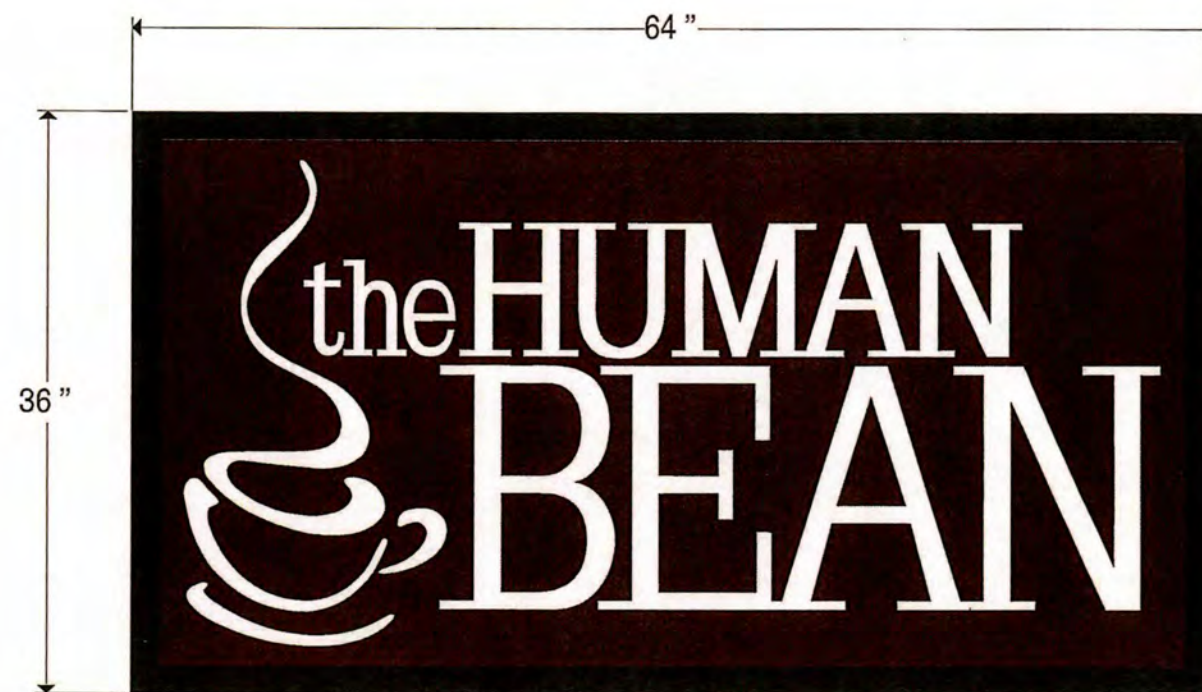
FOR EXACT DUPLICATION OF LOGO, CUSTOMER TO PROVIDE CAMERA READY ARTWORK.

PROJECT TITLE: HUMAN BEAN
PROJECT LOCATION: WILSONVILLE, OR
DRAWING#: 103113-A DRAWN BY: WOODY
DATE: 10/31/2013 PRESENTED BY: STEVE SLACK

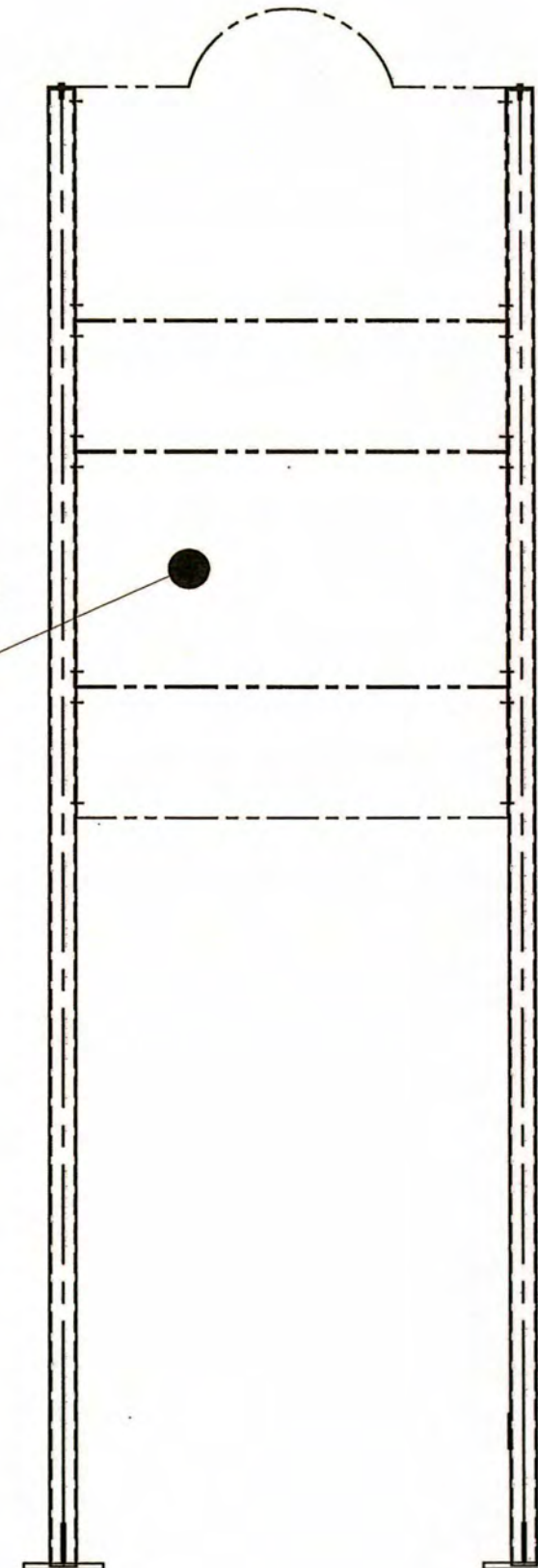
SIGNATURE FOR APPROVAL

COPYRIGHT 2013 ADVANCED ELECTRIC SIGNS INC.

BY SIGNING THIS SKETCH YOU (THE ABOVE SIGNED) ARE HEREBY AUTHORIZING ADVANCED SIGNS TO PRODUCE THESE SIGNS AS SHOWN AND DEPICTED IN THIS SKETCH AND DOES NOT INCLUDE CHANGES OR ANY ALTERATIONS.



3M 230-59 DARK BROWN



ADVANCED ELECTRIC

Signs
INC.
Your Full Service Company

360-225-6826 1550 DOWNRIVER DR.
WOODLAND WA 98674

SIGN TYPE:

VINYL GRAPHICS APPLIED FIRST SURFACE
TO EXISTING TENANT PANELS

SIGN MATERIAL:

VINYL GRAPHICS

VINYL COLORS TO BE USED:

3M 230-59 DARK BROWN

SPECIFICATIONS

• VINYL GRAPHICS

FOR EXACT DUPLICATION OF LOGO, CUSTOMER TO PROVIDE CAMERA READY ARTWORK.

PROJECT TITLE:	HUMAN BEAN		
PROJECT LOCATION:	WILSONVILLE, OR		
DRAWING#	103013	DRAWN BY:	WOODY
DATE:	10/30/13	PRESENTED BY:	STEVE SLACK

SIGNATURE FOR APPROVAL

COPYRIGHT 2013 ADVANCED ELECTRIC SIGNS INC.

BY SIGNING THIS SKETCH YOU (THE ABOVE SIGNED) ARE HEREBY AUTHORIZING ADVANCED SIGNS TO PRODUCE THESE SIGNS AS SHOWN AND DEPICTED IN THIS SKETCH AND DOES NOT INCLUDE CHANGES OR ANY ALTERATIONS.

HERCULUX™

PEACE OF MIND
Guarantee™



PROJECT INFORMATION

Job Name

Fixture Type

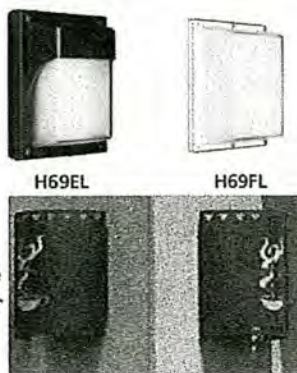
Catalog Number

Approved by

H69 SERIES – LOW PROFILE HOUSING

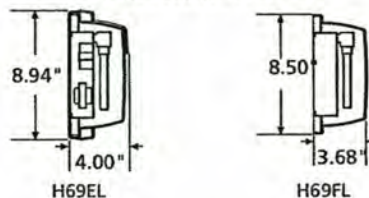
PRODUCT FEATURES:

- » Surface wall mount – nominal 6"W×9"L×4"D
- » 16-gauge aluminum housing (H69EL)
- » UV-stabilized, injection molded polycarbonate lens
- » Stainless steel Torx® fasteners



Opaque
Cover

CROSS SECTION / DETAILS



SPECIFICATIONS

BASEPLATE: H69FL: White TGIC polyester powder coat. Salt spray test: 1,000 hours; – 5-stage pre-treatment. Reflectance: 92%. See Options for marine grade aluminum baseplate (AL).
H69EL: 16-gauge aluminum. Housing flange interlocks around refractor producing maximum moisture deflection and resistance to prying. Provided with four-point mounting holes and one wireway hole – see Cross Section/Details. Standard housing in dark bronze TGIC polyester powder coat. – 5-stage pre-treatment.

LENS: One-piece wraparound lens/housing (UV-stabilized, high impact, virgin injection molded polycarbonate). Internal-prismatic refractor. Nominal thickness .125".

EYELID: H69EL: High-impact resistant, UV-stabilized injection molded opaque dark bronze polycarbonate. Optional finishes to match housing. Nominal thickness .125".

GASKET: Die-cut closed cell neoprene gasket seals lens/housing to mounting surface. H69EL: Refractor inset into housing and sealed with one "O" ring closed cell silicone gasket.

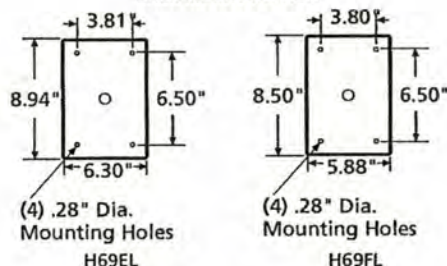
HARDWARE: Four stainless steel Torx® with center pin fasteners secure lens to baseplate. H69EL: Shoulder fastener design and washer prevent refractor/eyelid stress due to over torquing.

ELECTRICAL: Electronic ballasts high power factor. Magnetic ballasts normal power factor standard. See Options for power factor corrected ballasts.

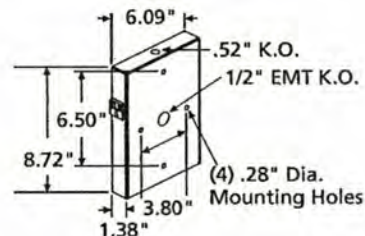
INSTALLATION: Wall mount standard four-point mounting required for Peace of Mind Guarantee®. H69EL: Fixture must be installed lamp base up. NOTE: For surface conduit applications, see H69EM Series.

LISTINGS: UL and CUL listed for Wet Location. ADA compliant.

BACK MOUNTING VIEW



CONVENIENCE OUTLET ADAPTER (CO) (H69FL ONLY)



ORDERING INFORMATION

Model	Lens Type	Finish	Lamp Type	Lamp Quantity	Voltage	Options	Accessories
-------	-----------	--------	-----------	---------------	---------	---------	-------------

Model

H69EL Eyelid
H69FL Full Face

Lamp Type (Qty/Ballast/Volt/Starting Temp)

7 7 Watt Twin (1,2/MB/120,277/0°F)
13Q 13 Watt Quad (1/RS/120,277,347/0°F)
75I 75 Watt Incandescent (1/A19/120)

Options

AL Marine Grade Aluminum Baseplate (H69FL only)
PFC Power Factor Corrected Ballast – 120V only (277V standard)
PH Phillips Head Fasteners
SB Specified Ballast (Consult Factory)

Lens Type

PP Pearlescent Polycarbonate
C Clear Prismatic Polycarbonate

Lamp Quantity (See Lamp Type)

1 One Lamp
2 Two Lamps

Accessories

CO Convenience Outlet Adapter – Non-GFI Receptacle (Damp Location only) (non-ADA) (H69FL only)
9500 Torx® Screwdriver

Finish (H69EL only)

DB Dark Bronze
MB Matte Black
MW Matte White
LG Light Gray
SL Silver
FG Forest Green
CC Custom Color (Consult factory)

Voltage

120 120 Volts
277 277 Volts
347 347 Volts
DV 120-277 Volts



www.kenall.com

P: 800-4-Kenall

F: 847-360-1781

1020 Lakeside Drive Gurnee, Illinois 60031

When you see this image, you will know the Kenall product shown or described is manufactured in the USA with components purchased from US suppliers, and meets the Buy American requirements under the ARRA. Kenall has not determined the origin of its domestically purchased components or the subcomponents thereof. Content of specification sheets is subject to change; please consult www.kenall.com for current product details. © 2012 Kenall Mfg. Co. All rights reserved.

H69_EL_FL-112712

FXF42XQT

Medium base HPS, MH or CFL specification grade flood with Integra Hood glare shield and fixed wall mounting bracket. Bracket provides 2 different Full Cutoff Mounting angels. Can be mounted as upright. Lamp supplied.

Color: Bronze

Weight: 10.7 lbs

Lamp Info

Type: 42W Triple
Watts: 42W
Shape/Size: N/A
Base: N/A
ANSI: N/A
Hours: 12,000
Lamp Lumens: 3,200
Efficacy: 70 LPW

Ballast Info

Type: Elec HPF QT
120V: 0.38A
208V: 0.3A
240V: 0.2A
277V: 0.17A
Input Watts: 46W
Efficiency: 91%

Technical Specifications

UL Listing:

Suitable for wet locations. Suitable for mounting within 1.2m (4ft) of the ground.

Housing:

Precision die cast aluminum. 1/2" NPS locking Swivel Arm, Wall Bracket Trunnion or Slip Fitter.

Reflector:

Anodized aluminum. Field adjustable beam spread. Rotates 90° for horizontal or vertical lamp position.

Lens Frame & Glare Shield:

Precision die cast aluminum. Hinged for easy access. Phillips head screws for added security.

Socket:

HID Porcelain 4kv Pulse Rated socket with nickel plated screw shell CFL Plug in type, GX24q-4 base.

Finish:

Our environmentally friendly polyester powder coatings are formulated for high-durability and long-lasting color, and contains no VOC or toxic heavy metals.

Lens:

Thermal tempered shock resistant glass, 3/16" thick.

Lens Gasket:

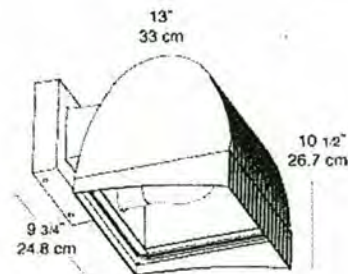
High temperature one piece molded silicone set in die cast retaining groove. Remains in place during relamping.

Ground Mounting:

Use the new MPM19 Mighty Post with aluminum cap for sturdy installation.

Lead Tap:

Fixture works with 120, 208, 240 and 277 Volts .



EPA:

Maximum EPA 1.1

Patents:

Pat. D545,471.

Ballast Minimum Starting Temperature:

0°F.

Country of Origin:

Designed by RAB in New Jersey and assembled in the USA by RAB's IBEW Local 3 workers.

Buy American Act Compliant:

This product is a COTS item manufactured in the United States, and is compliant with the Buy American Act.

Recovery Act (ARRA) Compliant:

This product complies with the 52.225-21 "Required Use of American Iron, Steel, and Manufactured Goods-- Buy American Act-- Construction Materials (October 2010).

Trade Agreements Act Compliant:

This product is a COTS item manufactured in the United States, and is compliant with the Trade Agreements Act.

GSA Schedule:

Suitable in accordance with FAR Subpart 25.4.

RAB
LIGHTING

Tech Help Line: 888 RAB-1000

Email: sales@rabweb.com

On the web at: www.rabweb.com

DESCRIPTION

The cylindrical form of the Vision Flood blends effortlessly to architectural and landscape environments. Now available in performance-driven LED technology, VISION FLOOD LED offers optical, energy and maintenance solutions for the full breadth of floodlighting applications.

SPECIFICATION FEATURES
Construction

HOUSING: One-piece, die-cast aluminum housing maintains a nominal .125" thickness to endure the toughest environments while maintaining precise tolerance control. **DOOR:** Die-cast aluminum door maintains a nominal .125" thickness and features concealed hinging to the housing. Door is secured with four (4) tamper-resistant recessed stainless steel allen head fasteners. Door frame features an integral accessory channel for the mounting of optional light control accessories. Doorframe seals to housing with a continuous extruded silicone gasket. Lens is impact-resistant 0.180" thick tempered clear flat glass, sealed to the door with a one-piece silicone gasket. IP66 rated.

Optics

DISTRIBUTION: Cooper Lighting's proprietary state of the art optical designs offer the choice of high efficiency floodlighting optical distributions including symmetric round, symmetric rectangular, asymmetric rectangular and tight spot beam patterns. Optic module is injection molded thermo plastic with highly reflective, metalized specular finish. **LEDs:** High output LEDs, 50,000+ hours life at >70% lumen maintenance, offered standard in 4000K (+/- 275K) and nominal 70 CRI.

Electrical

DRIVER: LED drivers feature electronic universal voltage (120-277V/50-60Hz), > 0.9 power factor, < 20% harmonic distortion and features ambient temperature rating range of +40°C (104°F) down to minimum starting temperature of -30°C (-22°F). Shipped standard with Cooper Lighting proprietary circuit module designed to withstand 10kV of transient line surge. LEDs and drivers mounted to assembly trays and equipped with quick disconnects for ease of maintenance.

Mounting

KNUCKLE: Heavy-duty die-cast aluminum knuckle utilizes a taper-lock adjustment mechanism for both solid engagement and infinite aiming adjustment. Knuckle adjustment is made via one (1) captive stainless steel allen head fastener consistent with doorframe fasteners. Tested to sustain 3G of vibration without losing aiming position. VFS knuckle features a 3/4" NPT nipple on bottom surface for rigid attachment to available mounting accessories. Optional slipfitter mount available for VFS.

Finish

Housing is finished in 5-stage, super premium TGIC polyester powder coat paint, 2.5 mil nominal thickness for superior protection against fade and wear. Standard colors include black, bronze, grey, white, dark platinum and graphite metallic. RAL and custom color matches available. Consult Outdoor Architectural Colors brochure for a complete selection.

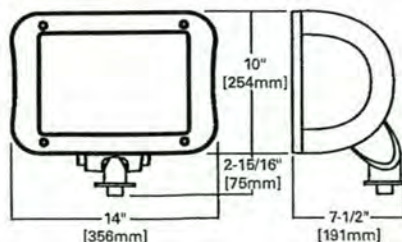
Warranty

VFS LED features a 5-year limited warranty.


**VFS
VISION FLOOD
SMALL LED**

ARCHITECTURAL FLOOD
LUMINAIRE

Sustainable Design

DIMENSIONS

CERTIFICATION DATA

40°C Ambient Temperature Rating
UL and cUL Listed
ISO 9001
IP66 Luminaire
ARRA Compliant
LM79 / LM80 Compliant
3G Vibration Tested

ENERGY DATA

Electronic LED Driver
>0.9 Power Factor
<20% Total Harmonic Distortion
120-277V/50 & 60hz, 347V/60hz
-30°C Minimum Temperature

EPA

Effective Projected Area:
1.19 Sq. Ft.

SHIPPING DATA

Approximate Net Weight:
18 lbs. (8 kgs)

ORDERING INFORMATION

Sample Number: VFS-K-A40-5-LED-E1-MST-WH

Product Family	# of LEDs/Drive Current ¹	Lamp Type	Distribution	Options ⁹	Accessories ¹²
VFS = Vision Flood Small	A20-3 = 20 LEDs @ 350mA A20-5 = 20 LEDs @ 525mA A20-7 = 20 LEDs @ 700mA A40-3 = 40 LEDs @ 350mA A40-5 = 40 LEDs @ 525mA A40-7 = 40 LEDs @ 700mA ^{2,3}	LED = Light-Emitting Diodes Voltage E1 = Electronic (120-277V) D1 = Electronic Dimming (120-277V) 347 = 347V 480 = 480V ⁵	TS = Tight Spot TSB = Tight Spot ^{3,6,7} Baffle WST = Wide Symmetric Rectangular MST = Medium Symmetric Rectangular VAT = Vertical Asymmetric Rectangular NSR = Narrow Symmetric Round MSR = Medium Symmetric Round Finish ⁸ BK = Black AP = Grey BZ = Bronze WH = White DP = Dark Platinum GM = Graphite Metallic	PC = Button Photocell (Specify voltage) 2L = Bi-Level ^{3,6,10} Switching SG = Softening Glass ¹¹	JB-XX = Architectural J-Box with two 3/4" NPT Entries SM-XX = Stanchion Mount ST-XX = Stanchion Mount Tenon WM-XX = Wall Mount WMA-XX = Wall Mount Arm WMT-XX = Wall Mount Arm Tenon Mount TMA-XX = Twin Mount Arm - EPA 0.35 TMT-XX = Twin Mount Arm Tenon Mount - EPA 0.42 SMT-XX = Surface Mount Tenon SF-XX = Slipfitter PM1-XX = Post Mount Extension Single - EPA 0.12 PM2-XX = Post Mount Extension Double - EPA 0.12 VFS-CFR-XX = Color Filter Adapter with Red Gel VFS-CFB-XX = Color Filter Adapter with Bright Blue Gel VFS-CFG-XX = Color Filter Adapter with Deep Green Gel VFS-CFO-XX = Color Filter Adapter with Warm Orange Gel VFS-BD-XX = Barn Doors - EPA 1.01 VFS-TV-XX = Top Visor - EPA 0.6 VA6174 = Tamper-proof driver bit CPR cap screw

Notes:

- Standard 4000K CCT, nominal 70 CRI.
- 40 LEDs @ 700mA [A40-7] limited to 25° C ambient conditions.
- Not available with color filters or external shielding.
- Only available with 20 LEDs at 350 or 525 [A20-3 or A20-5]. Provides 0-10V DC low voltage leads used in dimming control.
- Only available with normal power factor and <30 THD.
- Not available with 347/480V.
- Available with 20 or 40 LEDs at 350mA [A20-3 or A40-3] only.
- Custom and RAL color matching available upon request. Consult customer service representative for further information.
- Add as suffix in order shown.
- Only available with 40 LEDs at 350 or 525 [A40-3 or A40-5].
- Standard on WST Distribution.
- Order separately. Replace XX w/selected color finish.

DELIVERED LUMENS BY DISTRIBUTION, LED QUANTITY AND DRIVE CURRENT

DISTRIBUTION		Drive Current / LED Quantity						IES NEMA Type (HxV)
		350mA		525mA		700mA		
		20 LED	40 LEDs	20 LED	40 LEDs	20 LEDs	40 LEDs	
	TS (Tight Spot)	1,599	2,976	2,207	4,161	2,608	4,853	2X2
	TSB (Tight Spot Baffle)	1,117	2,079	-	-	-	-	1x1
	WST (Wide Symmetric Rectangular)	1,887	3,367	2,607	4,884	3,081	5,500	7x6
	MST (Medium Symmetric Rectangular)	1,801	3,354	2,489	4,689	2,942	5,254	6x5
	VAT (Vertical Asymmetric Rectangular)	1,849	3,443	2,555	4,881	3,020	5,391	6x6
	NSR (Narrow Symmetric Round)	1,622	3,021	2,241	4,223	2,649	4,729	3x3
	MSR (Medium Symmetric Round)	1,673	3,116	2,312	4,356	2,732	4,876	4x4

* Lumen values based upon 4000K CCT and 25° C ambient operating temperatures.

INPUT WATTS BY VOLTAGE, LED QUANTITY AND DRIVE CURRENT

Voltage	Input by Drive Current / LED Quantity					
	350mA		525mA		700mA	
	20 LEDs	40 LEDs	20 LEDs	40 LED	20 LEDs	40 LEDs
Input watts @ 120-277V	24W	46W	35W	67W	49W	94W
Input watts @ 347V	27W	48W	38W	70W	52W	97W
Input watts @ 480V	31W	52W	42W	73W	55W	100W

DESCRIPTION

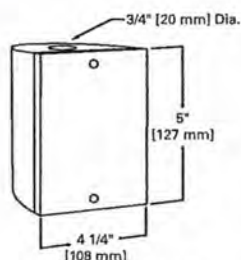
The Vision Flood Small (VFS) knuckle features a 3/4" NPT threaded nipple on its bottom surface for direct mounting to the following accessories: Junction Box (JB), Slipfitter (SF), Stanchion Mount (SM), Twin Arm Mount (TMA), Wall Mount Arm (WMA), Wall Mount (WM), and Post Mount Extensions (PM1, PM2). When coupled with the available slipfitter (SF), the VFS can be mounted to the following accessories: Surface Mount Tenon (SMT), Stanchion Mount Tenon (ST), Twin Mount Arm Tenon (TMT), and Wall Mount Arm Tenon (WMT).

Catalog #	Type
Project	
Comments	
Prepared by	Date

ACCESSORIES SPECIFICATIONS

JUNCTION BOX [JB]

U.L. and CSA listed for wet locations, the Vision J-Box is supplied with a 3/4" clearance hole on the top surface and two (2) 3/4" NPT openings on the bottom surface. An optional drilling consisting of one (1) 1/2" NPT opening on the bottom surface can be specified.



Junction Box [JB]

SLIPFITTER [SF]

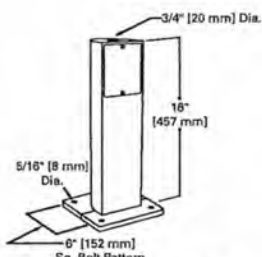
Die-cast aluminum slipfitter features a 3/4" NPT entry point on top surface to mate to standard VFS knuckle. Allows fixture assembly to be mounted to standard 2" pipe size (2 3/8" O.D.) tenons and tenon equipped accessories.



Slipfitter [SF]

STANCHION MOUNT [SM]

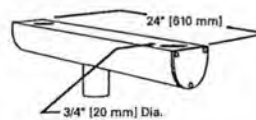
Used to mount fixture above grade to solid surface, or partially buried when secured to concrete pad. Cast aluminum housing and mounting plate is 18" tall and is supplied with a single 3/4" clearance hole entry point.



Stanchion Mount [SM]

TWIN ARM MOUNT [TMA]

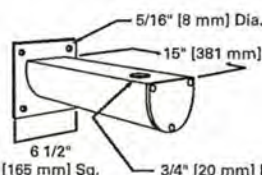
Soft form extruded aluminum arm is 24" in length and features two (2) 3/4" clearance holes for twin fixture mount. Other lengths and drilling patterns available upon request. Twin arm base slip fits over standard 2" pipe size (2 3/8" O.D.) tenon. End caps are removable for wiring access. Useful in ground mount and pole mount applications.



Twin Arm Mount [TMA]

WALL MOUNT ARM [WMA]

Extruded aluminum arm with cast mounting plate is 15" in length and is supplied with a 3/4" clearance hole entry point. Also useful as an arm extension off square area light poles.



Wall Mount Arm [WMA]

WALL MOUNT [WM]

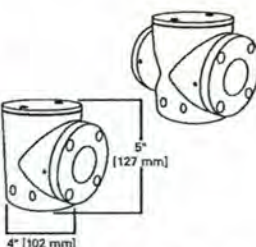
Cast aluminum mounting plate adapts around 4" square or octagonal J-box by others. Additional stud mounting is required beyond J-box attachment. Consists of mounting bracket and cast aluminum splice access cover providing a clean transition to the wall surface. Hanger mount integral to mounting plate allows for ease of installation.



Wall Mount [WM]

POST MOUNT EXTENSION [PM1/PM2]

Cast aluminum assembly slip fits over standard 2" pipe size (2 3/8" O.D.) tenons, and allows for single (PM1), or double (PM2) mount configurations. Assembly allows for 360° of fixture rotation. Top cap provides splice access. Useful for single or twin, pole mounted downward aiming applications.

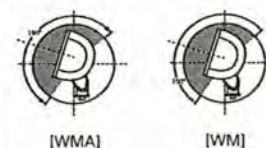
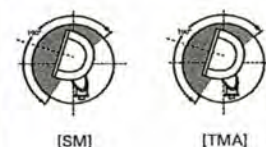
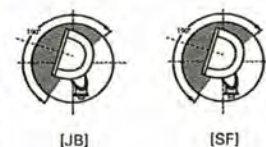


Post Mount Extension [PM1/PM2]



VFS VISION FLOOD SMALL ACCESSORIES

Aiming Range (From Center)



ACCESSORIES SPECIFICATIONS (CON'T.)

SURFACE MOUNT TENON [SMT]

For above-grade surface mount placement, the SMT is supplied with a 4" tall standard 2" pipe size (2 3/8" O.D.) tenon.

STANCHION MOUNT TENON [ST]

Used to mount fixture above grade to solid surface, or partially buried when secured to concrete pad. Cast aluminum housing and mounting plate is 18" tall and is supplied with a standard 2" pipe size (2 3/8" O.D.) tenon.

TWIN ARM MOUNT TENON [TMT]

Soft form extruded aluminum arm is 24" in length and features two (2) standard 2" pipe size (2 3/8" O.D.) tenons for twin fixture mount. Other lengths and drilling patterns available upon request. Twin arm base slip fits over standard 2" pipe size (2 3/8" O.D.) tenon. End caps are removable for wiring access. Useful in ground mount and pole mount applications. For extended downward aiming, utilize PM1 or PM2 in conjunction with TMT.

WALL MOUNT ARM TENON [WMT]

Extruded aluminum arm with cast mounting plate is 15" in length and is supplied with a standard 2" pipe size (2 3/8" O.D.) tenon. Also useful as an arm extension off square area lightpole.

TOP VISOR [VFS-TV]

Controls excess spill and glare on top portion of distribution. Especially useful in uplighting applications to limit light travel above intended wall surface or sign. Mounts to accessory channel in doorframe. Compatible with all distributions.

BARN DOORS [VFS-BD]

Four (4) independently mounted and adjustable doors control cutoff angles in all directions, allowing custom distribution control for any application. Compatible with all distributions.

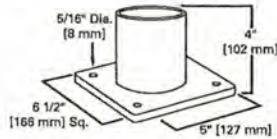
VANDAL SHIELD [VFS-VS]

3/16" thick molded polycarbonate convex lens. Treated with UV inhibitor to discourage the gradual discoloration that results from exposure to sunlight and metal halide lamps.

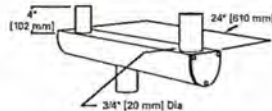
EXTERNAL GRID LOUVERS

[VFS-GL1 / VFS-GL2]

Designed to control lamp glare and spill light while maintaining beam efficiency. Useful when aiming direction or intended target lies in close proximity to pedestrian and/or motor vehicle activity. Mounts to accessory channel in doorframe. Finished in black powder coat paint. GL1 for NS and NF optics only. GL2 for MF, WF, VF and HS optics only.



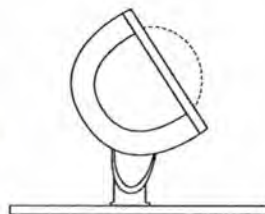
Surface Mount Tenon [SMT]



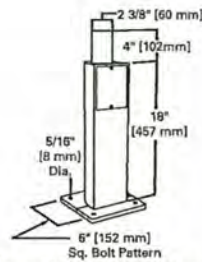
Twin Arm Mount Tenon [TMT]



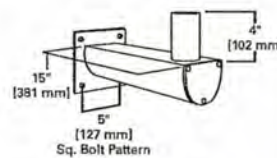
Top Visor [VFS-TV]



Vandal Shield [VFS-VS]



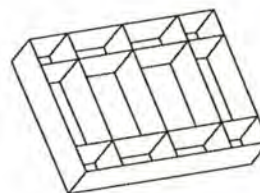
Stanchion Mount Tenon [ST]



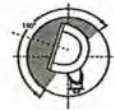
Wall Mount Arm Tenon [WMT]



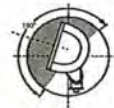
Barn Doors [VFS-BD]



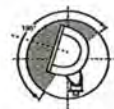
External Grid Louvers [VFS-GL1 / VFS-GL2]

Aiming Range (From Center)

[SMT]



[ST]



[TMT]



[WMT]

NOTE: Specifications and dimensions subject to change without notice

Visit our web site at www.cooperlighting.com

PANEL SCHEDULE	
1	2
3	4
5	6
7	8
9	10
11	12
13	14
15	16
17	18
19	20
21	22
23	24
25	26
27	28
29	30
31	32
33	34
35	36
37	38
39	40
41	42
43	44
45	46
47	48
49	50
51	52
53	54
55	56
57	58
59	60
61	62
63	64
65	66
67	68
69	70
71	72
73	74
75	76
77	78
79	80
81	82
83	84
85	86
87	88
89	90
91	92
93	94
95	96
97	98
99	100

[illegible]

H.V.A.C. (MOTOR, COMPRESSOR, HEATER SIZES)		
OPERATION VOLTAGE	200 MIN.	230 MAX.
COMPRESSOR	11.4A RLA	68.2 LRA
INDOOR BLOWER FAN	2.1 FLA	1/2 H.P.
OUTDOOR BLOWER FAN	1 FLA	1/6 H.P.
HEAT STRIP	GAS	
MINIMUM CIRCUIT AMPS		17.1 AMPS
MAXIMUM OVERCURRENT PROTECTION		25 AMPS
OVERCURRENT PROTECTION: DUAL ELEMENT TIME DELAY FUSE OR HACR CIRCUIT BREAKER		

VOLTAGE: 120/208 PHASE: 3 ϕ

4" INTAKE THRU ROOFTOP CRAWLSPACE VENTILATION

RECEPTACLE WITH BUILT IN USB HUB

CONTROLLED BY TIMECLOCK VIA CIRCUIT #5

120/208 VOLT 3 PHASE SERVICE BLUNE 1271B METER AND SQUARE D QO342M200R8 NEMA 3R ELECTRICAL PANEL

NETWORK INTERFACE LOCATION SEE EXTERIOR ELEVATIONS

CONTROLLED BY TIMECLOCK/PHOTOCELL VIA CIRCUIT #5

ROOFTOP AC UNIT

DUAL CAMERA LOCATION (1) FACING FRONT (1) FACING BACK

WALK-IN COOLER

COOLER CONDENSING UNIT

4" IN LINE CRAWL SPACE EXHAUST FAN CONTROLLED BY SPEED CONTROL INSTALL FLOW SWITCH AND INDICATOR LIGHT FOR FAILURE NOTIFICATION FIELD VERIFY EXACT LOCATIONS ABOVE COOLER

RECEPTACLE WITH BUILT IN USB HUB

SPEAKER, CAMERA, DATA HOME RUN LOCATION SEE SHEET AS.1 FOR ELEVATION AND WIRING DETAILS

SURFACE MOUNT WEATHER PROOF BOX INSIDE PARAPET WALL FOR SITE INSTALLED SIGN CONNECTION TYPICAL OF (3)

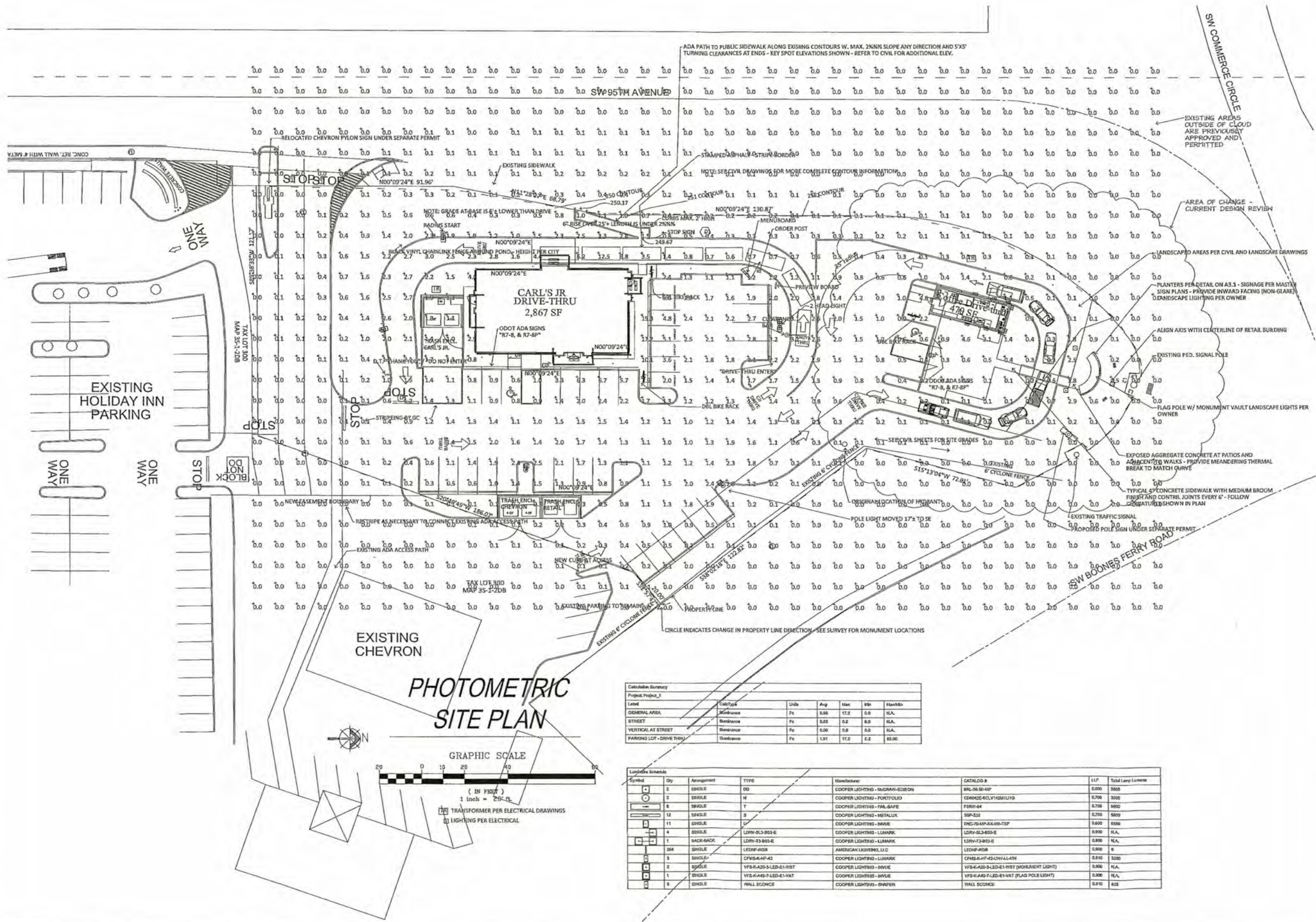
CLEAR FLOOR SPACE REQUIRED IN FRONT OF ELECTRICAL EQUIPMENT

ON SITE BY OTHERS

NOTES:

* = @ 50" AFF TO TOP

FILE NAME:



PHOTOMETRIC SITE PLAN

Calculation Summary						
Label	Calc Type	Units	Avg	Max	Min	Max/Min
GENERAL AREA	Uniformity	Fc	0.36	17.2	0.0	N/A
STREET	Uniformity	Fc	0.02	0.2	0.0	N/A
VERTICAL AT STREET	Uniformity	Fc	0.00	0.0	0.0	N/A
PARKING LOT - DRIVE THRU	Uniformity	Fc	1.01	11.2	0.2	88.00

Symbol	Qty	Arrangement	TYPE	Manufacturer	CATALOG #	LFP	Total Lamp Lumens
[Symbol]	2	SINGLE	DD	COOPER LIGHTING - MCGRAW-HILL	MR-36-50-40P	5,800	11,600
[Symbol]	2	SINGLE	H	COOPER LIGHTING - PORTFOLIO	CS4042-4CLYH2M1L1Y5	5,700	11,400
[Symbol]	8	SINGLE	T	COOPER LIGHTING - FAR-SAFE	FARM-64	5,700	45,600
[Symbol]	12	SINGLE	S	COOPER LIGHTING - METALLUX	SSP-232	5,700	68,400
[Symbol]	11	SINGLE	S	COOPER LIGHTING - INVADE	ENC-75-AMP-XX-48-13P	5,600	61,600
[Symbol]	4	SINGLE	LDRV-6L3-803-E	COOPER LIGHTING - LUMARK	LDRV-6L3-803-E	5,000	N/A
[Symbol]	1	BACK-BACK	LDRV-T3-803-E	COOPER LIGHTING - LUMARK	LDRV-T3-803-E	5,000	N/A
[Symbol]	264	SINGLE	LEDHF-4028	AMERICAN LIGHTING, LLC	LEDHF-4028	5,000	1,320
[Symbol]	3	SINGLE	CFMS-K4P-42	COOPER LIGHTING - LUMARK	CFMS-K4P-42-30VALLAH	5,010	15,030
[Symbol]	2	SINGLE	VFS-KA20-3-LED-61-WST	COOPER LIGHTING - INVADE	VFS-KA20-3-LED-61-WST (MONUMENT LIGHT)	5,000	N/A
[Symbol]	1	SINGLE	VFS-KA40-7-LED-61-WAT	COOPER LIGHTING - INVADE	VFS-KA40-7-LED-61-WAT (PLAS POLE LIGHT)	5,000	N/A
[Symbol]	8	SINGLE	WALL SCORCE	COOPER LIGHTING - SHAPER	WALL SCORCE	5,010	40,080

7209 Greenwood Avenue N
Seattle, Washington 98103
206-782-2911
Fax 782-5624

CLIENT

Wilsonville Devco LLC
C/O Pacific Development Ventures
PO Box 916
Portland, OR 97207
(503) 201.1009

PROJECT

Boones Ferry Pointe
SW 95th Ave & Commerce Circle
WILSONVILLE, OREGON

DRAWING TITLE

PHOTOMETRIC
SITE PLAN

REVISIONS

△	
△	
△	
△	
△	

STAMP

THESE DRAWINGS ARE NOT FOR CONSTRUCTION UNLESS THEY BEAR THE APPROVAL SIGNATURE OF THE CITY OF WILSONVILLE OR OTHER REQUIRED REGULATORY AGENCIES

DATE: OCT-3-2013

BY: [Signature]
SUBMITTAL DATE: [Signature]

R/D DATE: [Signature]

Drawn: Cam Fultz

ARCH. NO.: 1199L-COFFEE

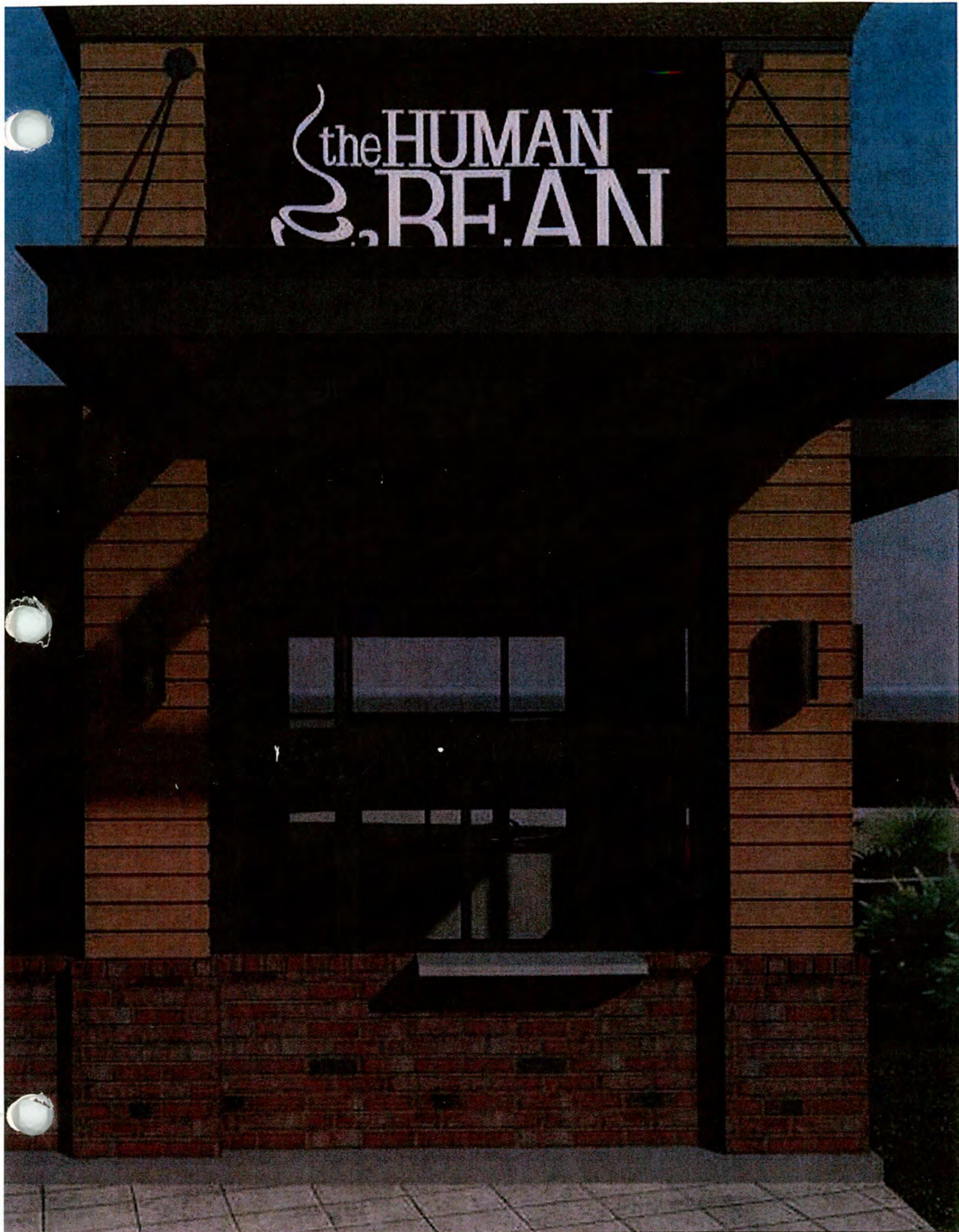
SCALE: AS SHOWN

SHEET

SE1.0

KGK Foods CONVERSION BASED ON CKE PROTOTYPE VERSION 22-14

the HUMAN
RENT





NOTE: ADD 3.47' TO ALL ELEVATIONS TO GET TO NAVD 88 DATUM.

UNLESS OTHERWISE NOTED, ALL SANITARY LINES ARE TO BE PVC (ASTM D3034)

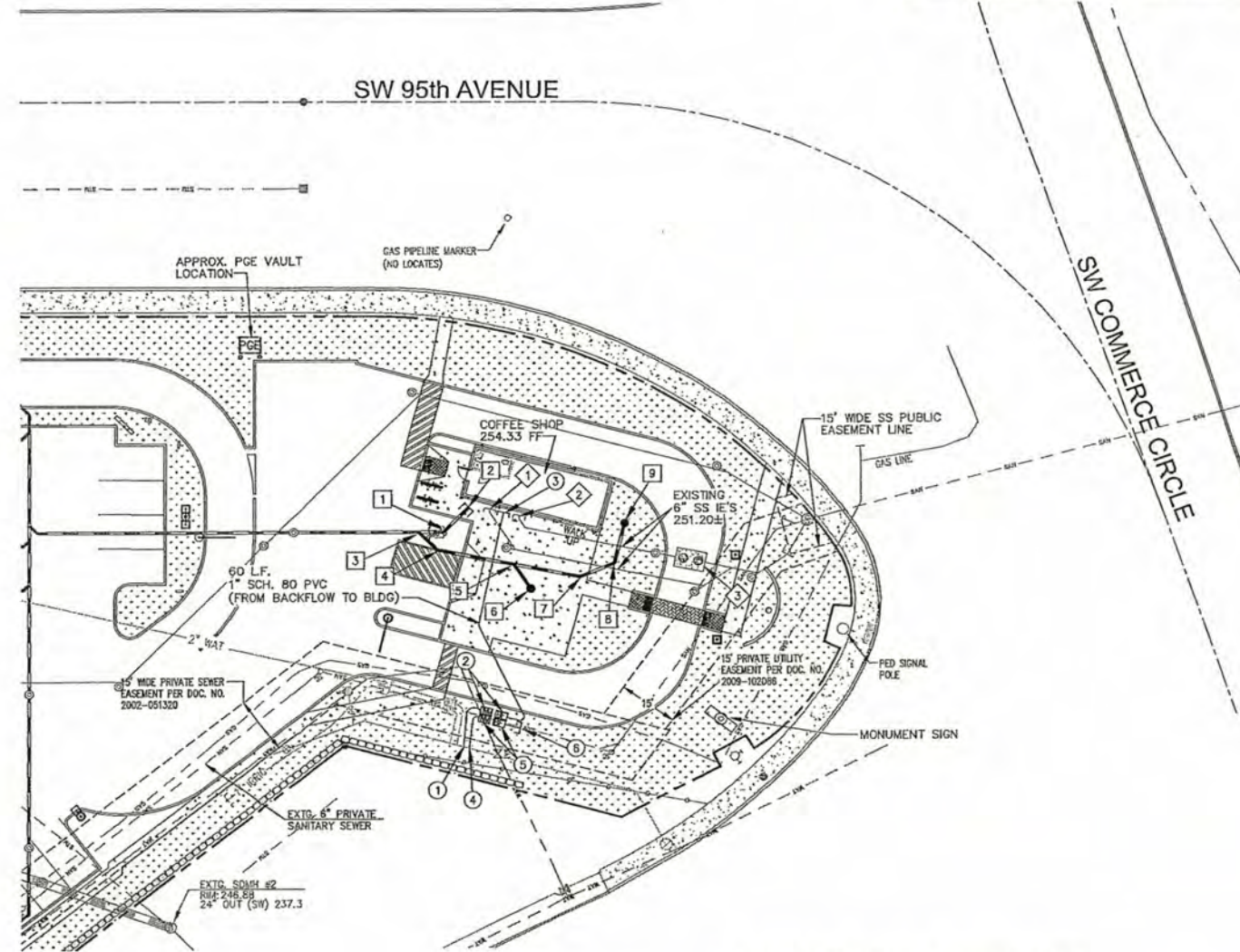
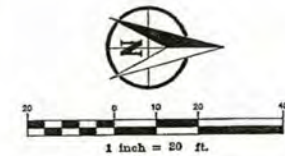
BACKFILL NOTE:
PIPES UNDER PAVED SURFACES REQUIRE GRANULAR BACKFILL. FOR PIPES OUTSIDE PAVEMENT, NATIVE BACKFILL IS PERMITTED, UNLESS OTHERWISE NOTED

NOTE: 2"x 4" SERVICE CONNECTION MARKERS TO BE COLOR CODED GREEN (SANITARY)

NOTE: 2"x 4" SERVICE CONNECTION MARKERS TO BE COLOR CODED WHITE (SANITARY)

THE CONTRACTOR SHALL FIELD VERIFY THE SIZE, LOCATION & DEPTH OF EXISTING UTILITIES PRIOR TO CONSTRUCTION NOTIFY ENGINEER OF ANY DISCREPANCIES PRIOR TO COMMENCING CONSTRUCTION

NOTE: SEE PLUMBING PLANS FOR UTILITY CONNECTIONS WITHIN 5' OF BUILDING PAD



LEGEND	
PROPERTY LINE	---
X-CENTERLINE	---
X-CURB	---
X-FENCE LINE	---
X-POWER LINE	---
X-GAS LINE	---
X-STORM SEWER LINE	---
X-SANITARY SEWER LINE	---
X-WATER LINE	---
EXISTING CLEANOUT	⊙
EXISTING STORM DRAIN MANHOLE	⊙
PROPOSED STORM LINE	---
EXISTING STORM LINE	---
EXISTING FIRE HYDRANT	⊙
PROPOSED 3/4" WATER METER	⊙
PROPOSED 3/4" BACKFLOW	⊙
EXISTING WATER METER	⊙
EXISTING BACKFLOW	⊙
PROPOSED CURB	---
PROPOSED 3/4" WATER LINE	---
PROPOSED SITE LIGHTING	⊙
EXISTING LANDSCAPE AREA	---

PROPOSED WATERLINE DATA

- 3/4" DOMESTIC SERVICE TAP @ 8" DIP WATERLINE.
- INSTALL 3/4" DOMESTIC METER AND 3/4" BACKFLOW ASSY.
- END 3/4" DOMESTIC WATER SERVICE CONNECTION @ BUILDING. SEE PLUMBING PLANS FOR CONTINUATION.
- 1" IRRIGATION SERVICE TAP @ 8" DIP WATERLINE.
- INSTALL 1" IRRIGATION METER AND 3/4" BACKFLOW ASSY.
- END 3/4" DOMESTIC IRRIGATION CONNECTION. SEE IRRIGATION PLANS FOR CONTINUATION.

PROPOSED STORM SEWER DATA

ROOF DRAIN LATERALS	
1	INSTALL 6" 45° BEND @ EXTG. 6" STORM MAIN. IE @ MAIN: = 251.85
2	INSTALL 6" SD LATERAL 9.0 LF @ S = 2.00% IE BLDG = 252.03
CATCH-BASIN AND PIPE INFORMATION	
3	INSTALL 4"x6" 45° BEND @ EXTG. 6" STORM MAIN. IE @ MAIN: = 251.66 INSTALL 6.70 LF, 4" 3034 PIPE @ 1% SLOPE TO 4
4	INSTALL 4" DIAM. 45° BEND IE @ BEND: = 251.73 INSTALL 19.6 LF, 4" 3034 PIPE @ 1% SLOPE TO 5
5	INSTALL 4" WYE IE @ WYE: = 251.92 INSTALL 17.0 LF, 4" 3034 PIPE @ 1% SLOPE TO 7
6	INSTALL 6" ROUND CATCHBASIN (NDS SPEE-D BASIN) HEEL RESISTANT STEEL GRATE - PEDESTRAIN LOADING STD. TOP OF GRATE: = 253.81 4" IE OUT: 252.31 INSTALL 7.6 LF, 4" 3034 PIPE @ 5.1% SLOPE TO 5
7	INSTALL 4" DIAM. 45° BEND IE @ BEND: = 252.09 INSTALL 9.5 LF, 4" 3034 PIPE @ 1% SLOPE TO 8
8	INSTALL 4" DIAM. 45° BEND IE @ BEND: = 252.18 INSTALL 10.7 LF, 4" 3034 PIPE @ 1% SLOPE TO 9
9	INSTALL 6" ROUND CATCHBASIN (NDS SPEE-D BASIN) STEEL GRATE - PEDESTRAIN LOADING STD. TOP OF GRATE: = 253.43 4" IE OUT: 252.30

EXISTING SANITARY SEWER DATA

- 6" SS BUILDING CONNECTION - 6" IE: 251.55
(CONSTRUCTED PREVIOUSLY WITH CARLS JR SITEWORK)
- 6" SS BUILDING CONNECTION - 6" IE: 251.46
(CONSTRUCTED PREVIOUSLY WITH CARLS JR SITEWORK)
- GREASE VAULT CONSTRUCTED PREVIOUSLY WITH CARLS JR SITEWORK.

This document and the information disclosed herein (trade dress, branding, equipment, color profiles) are the exclusive copyrighted property of KITTREDGE ENGINEERS, Inc. They are instruments of service for this project only. No part of this document may be made available, copied, reproduced or distributed to others without written consent of KITTREDGE ENGINEERS, Inc. 2012

KITTREDGE ENGINEERS, Inc.
6665 SW 207TH AVENUE
ALOMA, OR 97007
TEL: (503) 708-3942

Wilsonville Devco LLC
c/o Pacific Development Ventures
PO Box 916
Portland, OR 97207
(503) 685-9600

Boones Ferry Pointe
(Coffee Drive-Thru)
SW 95TH AVE & COMMERCE CIRCLE
WILSONVILLE, OREGON

COMPOSITE UTILITY PLAN

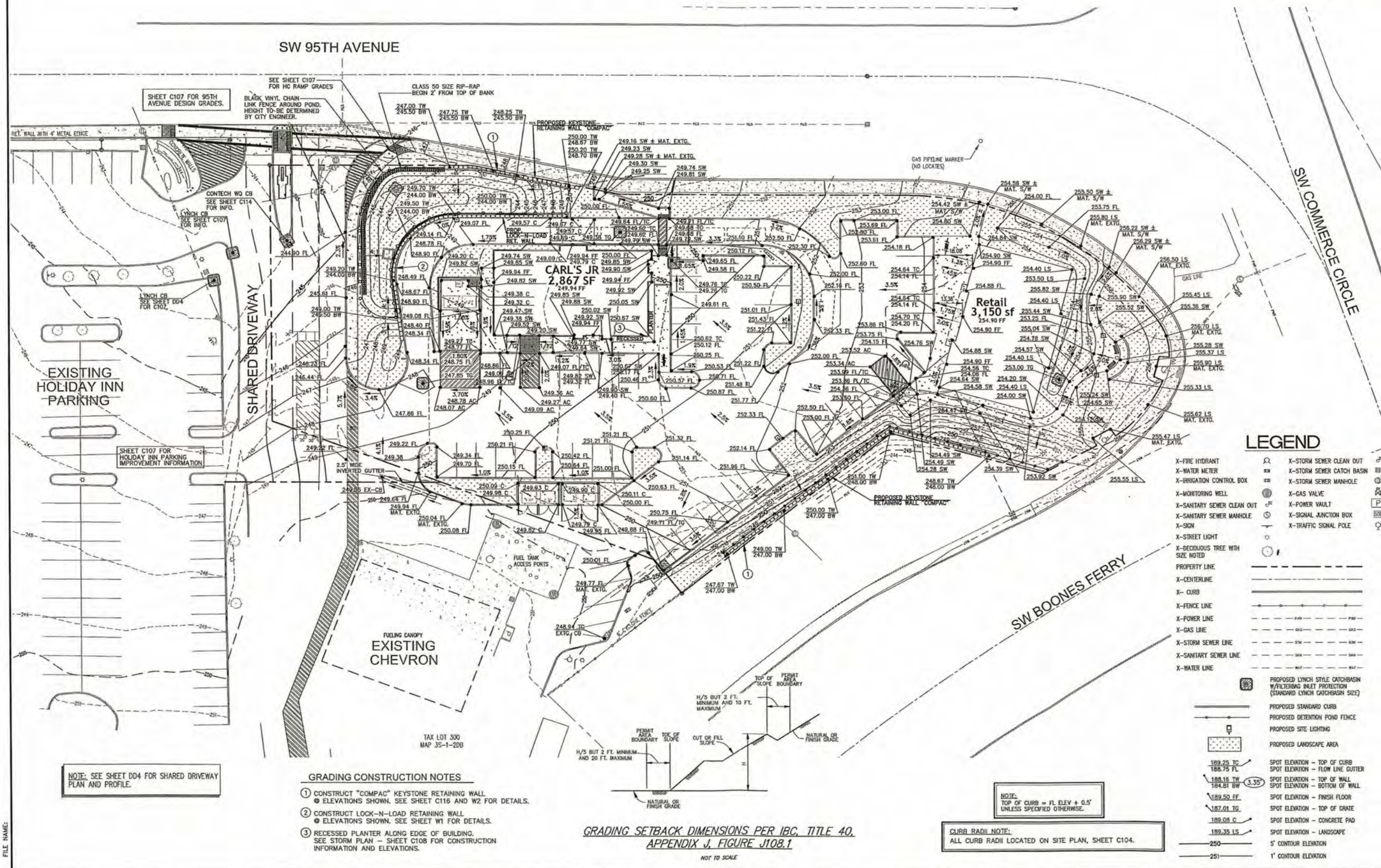
REVISIONS	
△	
△	
△	
△	
△	
STAMP	



DATE: 12-04-2013
BLOG, SUBMITTAL: ①
DATE: ②
DATE: ③
BIG DATE:
CDE NO.:
ARCH. NO.: 1199
SCALE:
SHEET

DD101

NOTE: ADD 3.47' TO ALL ELEVATIONS
TO GET TO NAVD 88 DATUM.



GRADING CONSTRUCTION NOTES

1. CONSTRUCT "COMPAC" KEYSTONE RETAINING WALL.
ELEVATIONS SHOWN. SEE SHEET C116 FOR DETAILS.
2. CONSTRUCT LOCK-N-LOAD RETAINING WALL.
ELEVATIONS SHOWN. SEE SHEET W1 FOR DETAILS.
3. RECESSED PLANTER ALONG EDGE OF BUILDING.
SEE STORM PLAN - SHEET C108 FOR CONSTRUCTION
INFORMATION AND ELEVATIONS.

GRADING SETBACK DIMENSIONS PER IBC, TITLE 40,
APPENDIX J, FIGURE J108.1

NOT TO SCALE

CURB RADI NOTE:
ALL CURB RADI LOCATED ON SITE PLAN, SHEET C104.

LEGEND

- | | |
|-------------------------------------|---------------------------|
| X-FIRE HYDRANT | X-STORM SEWER CLEAN OUT |
| X-WATER METER | X-STORM SEWER CATCH BASIN |
| X-IRRIGATION CONTROL BOX | X-STORM SEWER MANHOLE |
| X-MONITORING WELL | X-GAS VALVE |
| X-SANITARY SEWER CLEAN OUT | X-POWER VAULT |
| X-SANITARY SEWER MANHOLE | X-SIGNAL JUNCTION BOX |
| X-SIGN | X-TRAFFIC SIGNAL POLE |
| X-STREET LIGHT | |
| X-DECIDUOUS TREE WITH
SIZE NOTED | |
| PROPERTY LINE | |
| X-CENTERLINE | |
| X-CURB | |
| X-FENCE LINE | |
| X-POWER LINE | |
| X-GAS LINE | |
| X-STORM SEWER LINE | |
| X-SANITARY SEWER LINE | |
| X-WATER LINE | |
-
- | | |
|---|-----------------------------------|
| PROPOSED LYNCH STYLE CATCHBASIN
W/FILTERBAG INLET PROTECTION
(STANDARD LYNCH CATCHBASIN SIZE) | |
| PROPOSED STANDARD CURB | |
| PROPOSED DETENTION POND FENCE | |
| PROPOSED SITE LIGHTING | |
| PROPOSED LANDSCAPE AREA | |
| 189.25 TC | SPOT ELEVATION - TOP OF CURB |
| 188.75 FL | SPOT ELEVATION - FLOW LINE GUTTER |
| 188.16 TW | SPOT ELEVATION - TOP OF WALL |
| 184.61 BW | SPOT ELEVATION - BOTTOM OF WALL |
| 189.50 FF | SPOT ELEVATION - FINISH FLOOR |
| 187.01 TG | SPOT ELEVATION - TOP OF GRATE |
| 189.08 C | SPOT ELEVATION - CONCRETE PAD |
| 189.35 LS | SPOT ELEVATION - LANDSCAPE |
| 250 | 5' CONTOUR ELEVATION |
| 251 | 1' CONTOUR ELEVATION |

KITTRIDGE ENGINEERS, LLC
6565 SW 207TH AVENUE
ALOMA, OR 97007
TEL: (503) 708-3942

Wilsonville Devco LLC
c/o Integrated Investment Partners
PO Box 916
Portland, OR 97207
(503) 685-9600

Boones Ferry Pointe
SW 95TH AVE & COMMERCE CIRCLE
WILSONVILLE, OR 97150

**GRADING
PLAN**

REVISIONS

- | | |
|--|--|
| | |
| | |
| | |
| | |
| | |
| | |

STAMP



DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

BLDG. SUBMITTAL DATE: ①

CHEK NO.: ②

ARCH. NO.: 1199

SCALE: 1" = 20'

SHEET

DATE: 04-19-20

NOTE: ADD 3.47' TO ALL ELEVATIONS
TO GET TO NAVD 88 DATUM.



SW 95TH AVENUE

SW COMMERCE CIRCLE

CARL'S JR
2,867 SF
249.94 FF

EXISTING
HOLIDAY INN
PARKING

SHARED DRIVEWAY

FUELING CANOPY
EXISTING
CHEVRON

TAX LOT 300
MAP 35-1-20B

NOTE: SEE SHEET DD4 FOR SHARED DRIVEWAY
PLAN AND PROFILE.

GRADING SETBACK DIMENSIONS PER IBC, TITLE 40,
APPENDIX J, FIGURE J108.1

NOT TO SCALE

NOTE:
TOP OF CURB = FL ELEV + 0.5'
UNLESS SPECIFIED OTHERWISE.

CURB RADIUS NOTE:
ALL CURB RADII LOCATED ON SITE PLAN, SHEET C104.

LEGEND

- X-FIRE HYDRANT
- X-WATER METER
- X-IRRIGATION CONTROL BOX
- X-MONITORING WELL
- X-SANITARY SEWER CLEAN OUT
- X-SANITARY SEWER MANHOLE
- X-SIGN
- X-STREET LIGHT
- X-DECIDUOUS TREE WITH
SIZE NOTED
- PROPERTY LINE
- X-CENTERLINE
- X-CURB
- X-FENCE LINE
- X-POWER LINE
- X-GAS LINE
- X-STORM SEWER LINE
- X-SANITARY SEWER LINE
- X-WATER LINE
- X-STORM SEWER CLEAN OUT
- X-STORM SEWER CATCH BASIN
- X-STORM SEWER MANHOLE
- X-GAS VALVE
- X-POWER VAULT
- X-SIGNAL JUNCTION BOX
- X-TRAFFIC SIGNAL POLE
- PROPOSED LYNCH STYLE CATCHBASIN
W/FILTERING INLET PROTECTION
(STANDARD LYNCH CATCHBASIN SIZE)
- PROPOSED STANDARD CURB
- PROPOSED DETENTION POND FENCE
- PROPOSED SITE LIGHTING
- PROPOSED LANDSCAPE AREA
- SPOT ELEVATION - TOP OF CURB
- SPOT ELEVATION - FLOW LINE CUTTER
- SPOT ELEVATION - TOP OF WALL
- SPOT ELEVATION - BOTTOM OF WALL
- SPOT ELEVATION - FINISH FLOOR
- SPOT ELEVATION - TOP OF GRATE
- SPOT ELEVATION - CONCRETE PAD
- SPOT ELEVATION - LANDSCAPE
- FADED ELEVATIONS = EXISTING GRADES
- 5' CONTOUR ELEVATION
- 1' CONTOUR ELEVATION

KITTEDGE ENGINEERS, LLC
6565 SW 207TH AVENUE
ALOHA, OR 97007
TEL: (503) 708-3942

Wilsonville Devco LLC
c/o Pacific Development Ventures
PO Box 916
Portland, OR 97207
(503) 688-9400

Boones Ferry Pointe
(Coffee Drive-Thru)
SW 95TH AVE & COMMERCE CIRCLE
WILSONVILLE, OREGON

GRADING
PLAN

REVISIONS	
1	
2	
3	
4	
5	

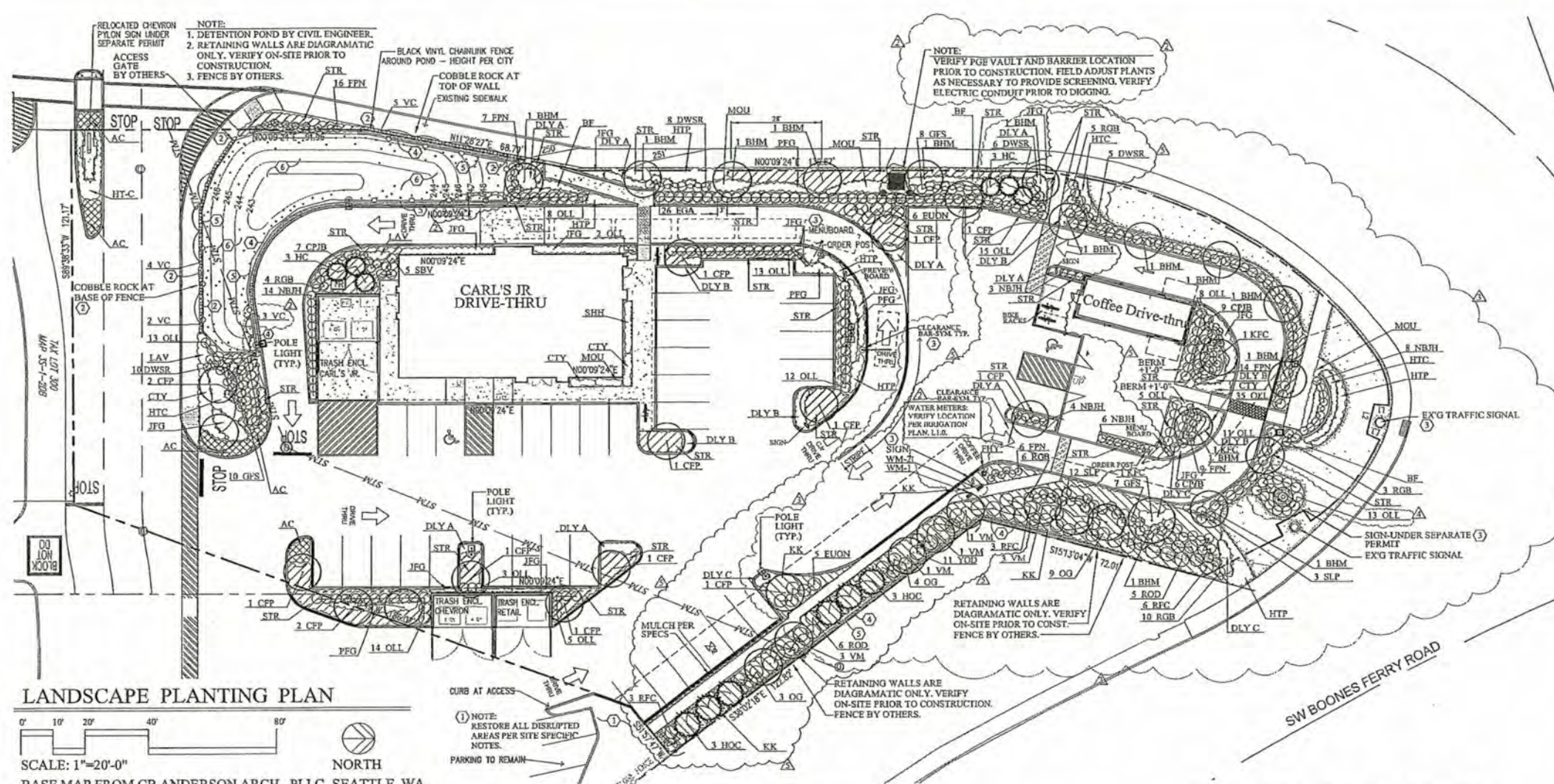


THESE DRAWINGS ARE NOT TO
CONSTRUCTION UNLESS THEY
THE APPROVED STAMP OF THE
OF WILSONVILLE OR OTHER
REQUIRED REGULATORY AGENCIES

DATE: 12-04-20
BLDG. SUBMITTAL DATE: ①
DATE: ②

BIO DATE:
CDE NO.:
ARCH. NO.: 1199
SCALE:
SHEET

DD102



LANDSCAPE PLANTING PLAN

SCALE: 1"=20'-0"
NORTH

BASE MAP FROM CB ANDERSON ARCH., PLLC-SEATTLE, WA

LANDSCAPE CONSTRUCTION NOTES

- All work performed shall conform with City of Wilsonville, landscape and irrigation requirements, codes and specifications.
- Owner shall secure all permits from City of Wilsonville for required work per Landscape Planning and Irrigation Plans.
- Locate, protect and avoid disruption of all above and below grade utilities and site features prior to construction. Contractor is responsible for any resulting damages during construction. Call locate before you dig at 1 800 424-5555.
- Clean subgrade by removing all undesirable vegetation including grasses, weeds, blackberries, scotch broom and poplar seedlings including roots. Leave subgrade in landscape areas minimum 9" below paving in shrub beds and 5" below paving in lawn areas. Remove all debris from site.
- Provide minimum approved 6" depth topsoil mix in all shrub beds. Topsoil to be 60% granular sand and 40% rotted compost mix. Submit topsoil sample with test results to Landscape Architect for approval prior to importing on site. Scarify subgrade by rototilling and add topsoil on surface. Add additional topsoil as needed to contour shrub beds including required berms.
- Provide minimum approved 4" depth topsoil mix in all lawn beds. Topsoil to be 60% granular sand and 40% rotted compost mix. Submit topsoil sample with test results to Landscape Architect for approval prior to importing on site. Scarify subgrade by rototilling and add topsoil on surface. Add additional topsoil as needed to contour and level lawn. Areas that are to be hydroseeded: allow lawn to be established, cut straight edge between lawn and mulched planter, remove over spray lawn from mulch planter, dispose of debris from site.
- Provide minimum 2" depth medium hem-fir mulch to all planting beds. Provide mulch sample to Landscape Architect prior to installation. Fill all planting beds and lawn areas to within 1" of top of all curbs and walks. Slope all planting beds and lawn areas to drain.
- Provide one (1) year warranty for all plant materials and workmanship. Landscape Contractor shall provide maintenance to site until Final Acceptance from Owner. Work to include mowing lawns, weeding beds and disposing all debris off-site.
- Verify all quantities shown on the plant list and plans. If discrepancies exist between the graphic representation and the numeric totals, the graphic representation shall rule.
- Hold all plant material minimum three feet away from building to allow from plant material growth and maintenance.
- All plant materials to be specimen quality with full, symmetrical trunk and foliage, unless otherwise noted. Fertilize all plantings with "Osmocote" plant granules. Install 2 cups per tree larger than 3", 1 cup per tree less than 3", 1/2 cup per 5 gal., 1/4 per 2 and 1 gal. 1/8 cup per 6" and 4" pots. Place at base of plant after mulch has been installed.
- Lawn - Sod with approved source in designated areas. Hydroseed with approved source in all other lawn areas.
- Lawn Hydroseeded Areas: Hydroseeded lawn to become established, then cut straight edge between lawn and mulch planter beds. Weed planter, removing lawn and weeds from planter, dispose of debris off-site.
- Insure proper drainage of all planting holes prior to installing plant materials. If planting holes do not drain or if heavy clay soils are evident contact landscape architect.
- Fill all planting holes and lawn areas to within 1" of top of all curbs and walks. Berms all planting beds and lawn areas: minimum 2% slope to drain.
- Asphalt to be removed 2" from behind extended curb in planting beds after paving is completed and before plant material is installed.
- Landscape Contractor to provide Alternate bid for One Year Maintenance Cost to bid.

PLANT MATERIAL LEGEND

Abbrev.	Common Name	Botanical Name	Size
* BHM	Bowhall Maple	Acer rubrum "Bowhall"	3" cal/B&B-Matched at 6' branch
* CFP	Capital Flowering Pear	Pyrus calleryana "Capital"	1 3/4" cal/B&B-Matched at 6' branch, 10' ht. min.
* EGA	Emerald Green Arborvitae	Thuja occidentalis "Emerald Green"	6' hgt./B&B
* HC	Hinokie Cypress	Chamaecyparis obtusa "Hinokie"	6' hgt./B&B
* HOC	Hogan Cedar	Thuja plicata "Fastigata"	6' hgt./B&B
* KFC	Kwanan Flowering Cherry	Prunus serrulata "Kwanan"	1 3/4" cal/B&B-Matched at 6' branch, 10' ht. min.
* VM	Vine Maple	Acer circinnatum-Kurume Green	8' hgt./B&B - 3 Multi-trunk min.
* CPJB	Crimson Pinyon Jap. Barbary	Berberis thunbergii "Crimson Pinyon"	18" hgt./cont.
* DWSR	Dwarf Shrub Rose	Rosa species - White	12" hgt./cont.
* EOUN	Burning Bush	Euonymus alata "Compacta"	24" hgt./cont.
* FPN	Fire Power Nandina	Nandina domestica "Fire Power"	12" hgt./cont.
* GFS	Gold Flame Spiraea	Spiraea japonica "Gold Flame"	18" hgt./cont.
* NBH	Northern Beauty Japanese Holly	Ilex crenata "Northern Beauty"	18" hgt./cont. Matched
* OG	Oregon Grape	Mahonia aquifolium	18" hgt./cont.
* OLL	Otto Luyken Laurel	Prunus laurocerasus "Otto Luyken"	18"-21" width/B&B, Matched
* RGB	Rose Glow Barbary	Berberis thunbergii "Rose Glow"	18" hgt./cont.
* ROD	Red Oster Dogwood	Cornus stolonifera	18" hgt./cont.
* RFC	Red Flowering Currant	Ribes sanguineum	18" hgt./cont.
* SBV	Spring Bouquet Viburnum	Viburnum lousianense "Spring Bouquet"	24" hgt./cont.
* SLP	Spiraea Little Princess	Spiraea japonica "Little Princess"	18" hgt./cont.
* YOD	Yellow Oster Dogwood	Cornus florida	24" hgt./cont.
* VC	Virginia Creeper	Parthenocissus quinquefolia	5 gal. cont. with 4" vine on stake
* BF	Blue Fescue	Festuca ovina "Glauca"	1 gal./cont. at 18" oc at triangular spacing
* CTY	Candy Tuft	Iberis sempervirens	1 gal./cont. at 36" oc at triangular spacing
* DLYA	Day Lilly - Red	Hemerocallis "Carnival"	1 gal./cont. at 24" oc at triangular spacing
* DLYB	Day Lilly - Yellow	Hemerocallis "Happy Returns"	1 gal./cont. at 24" oc at triangular spacing
* DLYC	Day Lilly - White	Hemerocallis "Ice Carnival"	1 gal./cont. at 24" oc at triangular spacing
* GVSF	Golden Variegated Sweet Flag	Acorus gramineus "Ogon"	1 gal./cont. at 36" oc at triangular spacing
* HTC	Cornish Heather	Erica vagans	1 gal./cont. at 18" oc at triangular spacing
* HT-P	Purple Heather	Erica carnea "Purple"	1 gal./cont. at 18" oc at triangular spacing
* JFG	Japanese Fountain Grass	Hakonechloa macra "Aureola"	1 gal./cont. at 18" oc at triangular spacing
* LAV	English Lavender	Lavandula angustifolia "Compacta"	1 gal./cont. at 24" oc at triangular spacing
* MOU	Mouduy Fountain Grass	Pennisetum alopecuroides "Mouduy"	1 gal./cont. at 18" oc at triangular spacing
* PFG	Purple Fountain Grass	Pennisetum setaceum "Rubrum"	1 gal./cont. at 18" oc at triangular spacing
* SHH	Dwarf Sarcococca	Sarcococca hookeriana "Humilis"	1 gal./cont. at 24" oc at triangular spacing
* VJSG	Variegated Japanese Silver Grass	Miscanthus sinensis "Variegatus"	1 gal./cont. at 18" oc at triangular spacing
* AC	Annual Color	Per Landscape Architect and Season	4" pots at 8" oc at triangular spacing
* STR	Barn Strawberry	Waldsteinia fragarioides	1 gal./cont. at 30" oc at triangular spacing
* KK	Kimickimick	Arcostaphylos uva-ursi	1 gal./cont. at 36" oc at triangular spacing
* LAWN	Fine Lawn Sod from approved source of Local Growers		

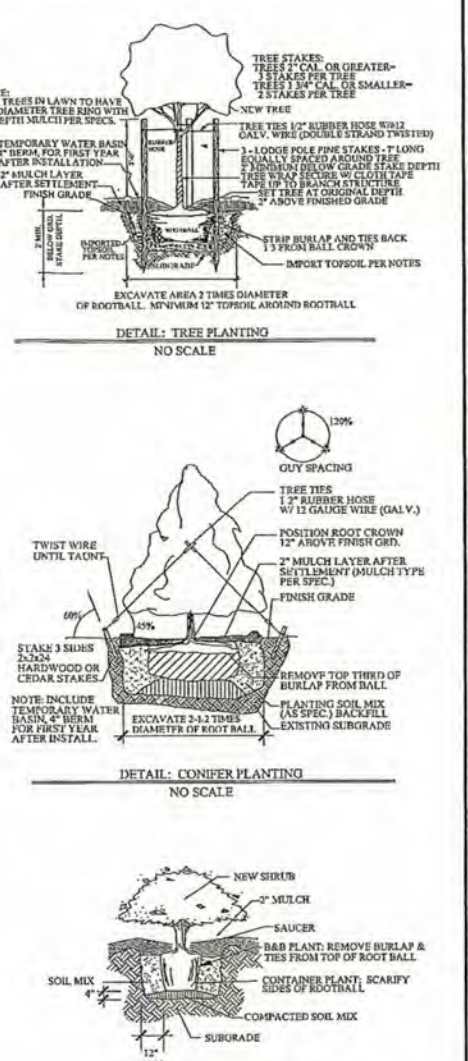
SITE AREA CALCULATIONS

ZONING -	PDC
SITE AREA -	55,605 SF
REQUIRED LANDSCAPE = 15% OF SITE -	8,340 SF
LANDSCAPE PROVIDED -	15,910 SF
LAWN AREA ALLOWED = 10% -	1,591 SF
LANDSCAPE TYPES:	
LAWN AREA - High Water Use -	2,200 SF or 14%
SHRUB BEDS - Medium Water Use -	7,250 SF
NATIVE SHRUB BEDS - Low Water Use -	3,700 SF
DETENTION POND - No Water Use -	2,760 SF

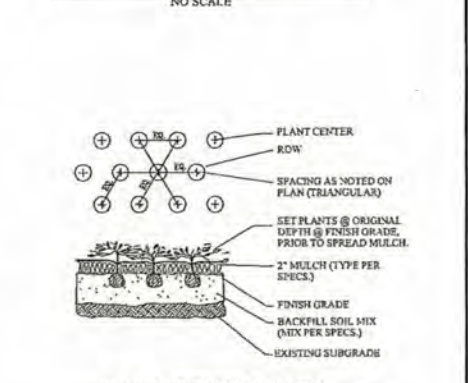
* More than 10% Lawn Allowed per Conversation with Planning Department due to Corner Lot and Large Street Frontage.

SITE SPECIFIC NOTES

- RESTORATION TO ADJACENT PROPERTY. Restore adjacent property to original condition, remove all construction debris and dispose of debris off-site, taper new grade to meet existing grade, and add 2" depth mulch per spec to all disrupted areas.
- COBBLE ROCK. Remove existing subgrade to 9" below adjacent finish grade. Dispose of off-site. Use caution around retaining walls and fence. Hand set 9" depth of washed Cobble Rock between retaining walls and sidewalk.
- SIGNAGE. Per owner. Under separate permit.
- RETAINING WALLS. Per Civil Engineer. All walls shown on Planting Plan are diagrammatic. Verify on-site prior to construction.
- FENCE. Fence by others.
- POND AREA. In disrupted areas, make smooth, remove all rocks, roots and construction debris greater than 1/2" in diameter, remove debris from site, and hydroseed per specifications.
- BERM. Berm to be constructed of free-draining fill, free from rocks, roots or debris greater than 1" in diameter. Final finished grade of crowned berm to be crowned 1'-0" height that tapers to adjacent sidewalk and top of extended curb. Berm to include 6" depth required 60-40 sandy loam topsoil from approved topsoil source and 2" depth mulch per spec.



FOR SUBMITTAL ONLY NOT FOR CONSTRUCTION USE



FOR SUBMITTAL ONLY NOT FOR CONSTRUCTION USE

Lauchlin R. Bethune Associates, Inc.
Landscape Architecture & Planning, ASLA
P.O. Box 1442
Maple Valley, Washington 98038
lauch@bethuneassociates.com
phone: (425) 432-9877
fax: (425) 432-9378
www.bethuneassociates.com

REVISIONS
1. PER PLANNING. 01/02/2013
2. REV PER PWR VAULT LOCATION. 4/22/13
3. REV PER BLDG CHG BY ARCH. 10/24/13
4. PER FIELD CHANGE. 11/02/13
5. PER OWNER CHANGE. 11/02/13

DATE: Dec-5-2012
BLDG. SUBMITTAL DATE:
BID DATE:
DATE NO.:
ARCH. NO.: 1199
SCALE:
SHEET: LANDSCAPE PLANTING PLAN
L 2.0 11/09/2012

ARCHITECTS
CB ANDERSON ARCHITECTS PLLC
7209 Greenwood Avenue N
Seattle, Washington 98103
206-782-2911
Fax 782-5624

CLIENT
Wilsonville Devco LLC
c/o Integrated Investment Partners
PO Box 916
Portland, OR 97207
(503) 448-9400

PROJECT
Boones Ferry Pointe
SW 95TH AVE & COMMERCE CIRCLE
WILSONVILLE, OREGON

DRAWING TITLE
LANDSCAPE PLANTING PLAN

THIS DRAWING IS NOT FOR CONSTRUCTION UNLESS THEY HAVE THE APPROVAL OF THE CITY OF WILSONVILLE OR OTHER RELEVANT REGULATORY AGENCIES

REGISTERED LANDSCAPE ARCHITECT
OREGON

DOORS																FRAMES																
SIZE				DESCRIPTION												DESCRIP		DETAILS														
#	W	H	T	THICKNESS	S	P	SOLID CORE WOOD	HOLLOW METAL	STAIN	PAINT	SEE DOOR TYPES				MATERIAL	FINISH	SCHLAGE LOCK	HINGES														
											NEW	FR	HW																			
D-1	3'-0"	7'-0"	1-3/4"	●			●				●	D-1	●	-	-	HM	PAINT	SC1 SC3	N	DOOR & FRAME TO MATCH SURROUNDING EXTERIOR FINISH GRADE P-1, 20X30" HALF LIGHT w/ INTEGRAL MINI BUND												
D-2	3'-0"	7'-0"	1-3/4"	●			●				●	D-2	●	-	-	HM	PAINT	SC2	N	PROVIDE WALL BUMPER, PAINT TO MATCH WALLS												
D-3	22"	30"	-	●																ALUMINUM DIAMOND PLATE FLUSH w/ TOP OF TILE												
W-1	7'-0"	8'-0"	4-3/4"		ALUMINUM STORE FRONT SYSTEM (DOUBLE GLAZED) "READY ACCESS" 600 DRIVE-THRU SLIDER 47X25" W/ 135" MANUAL OPEN & CLOSE														FINISH - CLEAR ANODIZED, TEMPERED, INSULATED SLIDER DIRECTION VARIOUS - SEE ELEVATIONS													
NOTES: EXTERIOR DOOR HARDWARE TO BE APPROPRIATE FOR EXTERIOR APPLICATION. LEVER HARDWARE WITH KEYED ENTRY AND DEAD BOLT, BRUSHED ALUM OR SATIN FINISH.																					DOOR LEGEND CONSTRUCTION: AL = AL STOREFRONT HM = HOLLOW METAL SB = SOLID CORE WOOD GLAZING: T = TEMPERED, INSULATED				FRAME: AL = AL STOREFRONT HM = HOLLOW METAL D1 = WELDED D2 = KD				HARDWARE: SC1 = SCHLAGE N53PD SC2 = SCHLAGE A40 SC3 = SCHLAGE B663R DB HINGES: N = SS-B6H NRP			

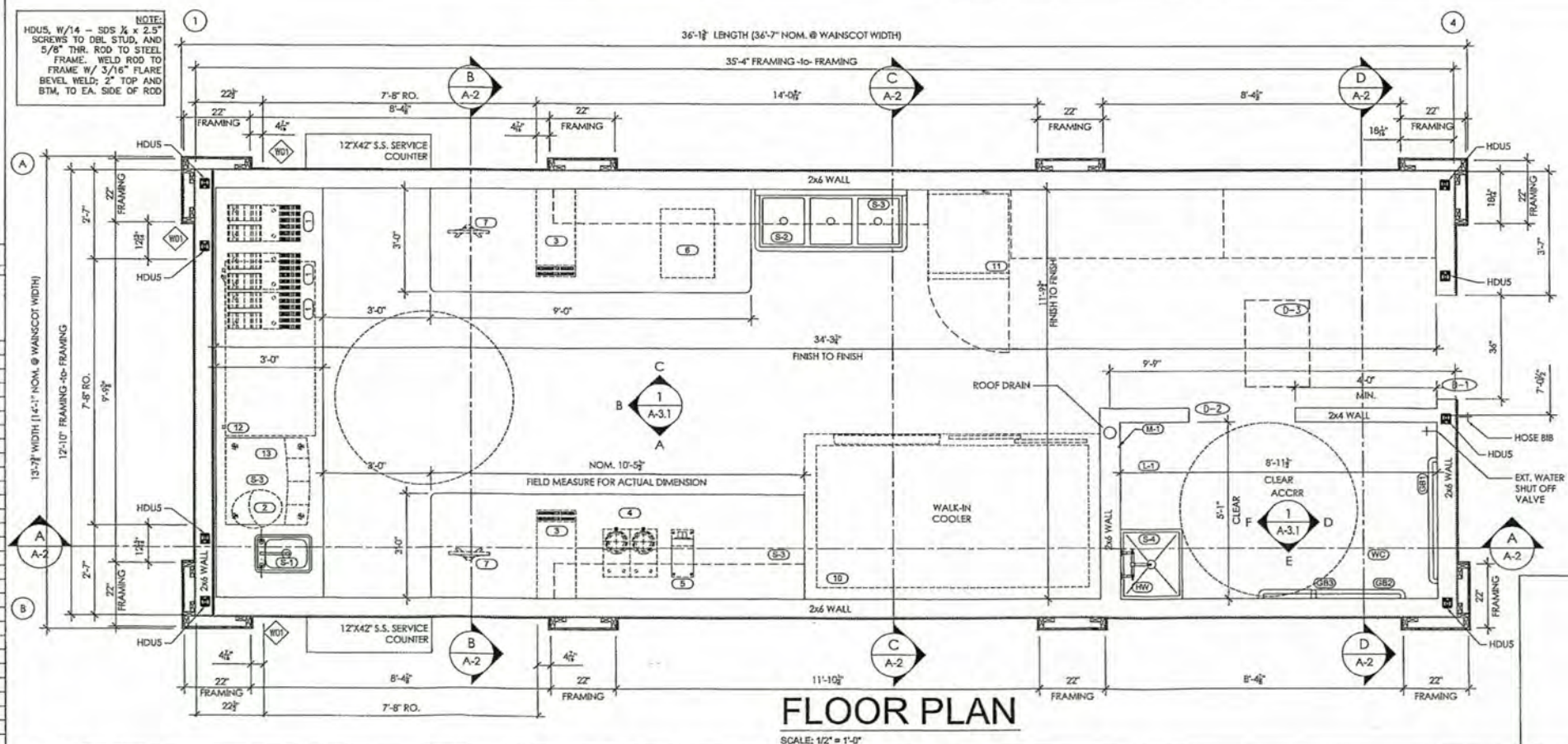
CEILING	SHEETROCK - LIGHT "ORANGE PEEL" TEXTURE	WAINSCOT	CULTURED STONE TO APPROX 38" OVER MASONRY SCRATCH COAT
FRAMING	2x10 D.F. #2 RAFTERS @ 16" oc	SIDING ABOVE 38"	SMOOTH FRC SIDING OVER TYPAR BUILDING WRAP w/ STUCCOLUX APPLIED FINISH (2 COATS)
RIMS (GRIDS 2.A,B)	21x59" LVL 2.0E (CONTINUOUS)	INT. PARAPET WALLS	VAL-RIB METAL SIDING
RIM (GRID 1)	21x59" GULAM (CONTINUOUS) 2x6-V4 STD CAMBER	SHEATHING TO 48"	3/4" CDX PT PLYWOOD, INCLUDING BUMPOUTS
INSULATION	2" RIGID INSULFOAM OVER DOUBLE LAYER R-15 BATT	SHEATHING ABOVE 48"	3/4" OSB
RAFTER SHEATHING	7/16" A.P.A. RATED (24/16)	INT. WALL SHEATHING @ GRID 1	3/4" OSB
INSULATION	TAPERED INSULFOAM (ABOVE RAFTERS)	FRAMING TO 112"	EXT: 2x6 D.F. #3 or "STUD" or BETTER @ 16" oc INT: 2x D.F. STUDS @ 16" [SEE PLAN FOR WIDTH]
ROOFING SHEATHING	3/4" LP FLAMEBLOCK	TOP PLATE	2x LUMBER (WALLS UNDER 20')
ROOFING ROOFING	EPDM 45 MIL, NON-REINFORCED, DIRECT TO FLAMEBLOCK	TOP PLATE	2x6 LVL 2.0E (CONTINUOUS) (WALLS OVER 20')
ROOFING ROOFING	EPDM 45 MIL, NON-REINFORCED, DIRECT TO FLAMEBLOCK	BOTTOM PLATE	2x D.F.
COVERING	CERAMIC TILE	TERM.	NONE
DECORING	1st: 1/2" A.P.A. RATED T&G 2nd: 3/8" DUROCK	INSULATION	EXT: R21 FIBERGLASS
INSULATION	R30 (USE TWO LAYERS R15 FIBERGLASS)	INTERIOR FINISH	5/8" SHEETROCK - LIGHT ORANGE PEEL FINISH TRF WAINSCOT TO 4" ON ALL BR WALLS FRP BELOW SERVICE WINDOWS
BOTTOM COVER	29ga. GAL. STEEL VAL-RIB 36" WIDE	FRAME:	
		TYPE	PERIMETER STEEL
		PERIMETER FRAME	11S10x20 3/4"
		CROSS MEMBERS	W10x15 @ 12' & 24'
		JOISTS	GALV. 12ga x 8" FORMED C-MEMBERS @ 24" oc.

SHEARWALLS:
[ALL SHG IS 1/4" RATED]
GRID 1: SHEAR BOTH SIDES. 0.131"x2 3/4" NAILS @ 3'oc. P.E., 12" FIELD
GRID 4: 0.131"x2 3/4" NAILS @ 4'oc. P.E., 12" FIELD
GRIDS A,B: 16ga. x 1.5" STAPLES @ 6" oc. P.E., 12" FIELD

LEGEND		FURNISHED	INSTALLED	QUANTITY	MANUFACTURER/ MODEL	COMMENTS
O = OWNER (TENANT)						
GC = GENERAL CONTRACTOR						
V = OWNER CONTRACTOR/SUPPLIER						
EQUIP. #	DESCRIPTION					
(1)	ESPRESSO MACHINE	O	D	1	E/GRD ONE PURE TOUCH	230V, 6700 W, 30A, w/ dedicated ground wire NEMA L8-30P plug, 3/8" water
(2)	SMOOTHIE MACHINE	O	D	1	HAMILTON BEACH HBS 1200	
(3)	GRANITA MACHINE	O	D	2	CRATICO, WILCH 5011 SPINNER	29Hx13Wx27D, 115V/11840W/115A, NEMA 5-20P
(4)	Coffee Brewer	O	D	1	37x16Wx17D, 220V/11 PHASE, 5100W, 3/8" WATER	
(5)	COFFEE GRINDER	O	D	1	CUKITS THERMO PRO G3 TWIN	23Hx7.5Wx18D, 120V/15A, NEMA 5-15P
(6)	SODA DISPENSER	O	V	1	BUNN G1	VERIFY WITH LOCAL VENDOR (115V)
(7)	POINT OF SALE REGISTER	O	D	2		STATIC IP ADDRESS REQUIRED AT REGISTER LOCATION (EACH WINDOW)
(10)	WALK IN COOLER	O	V	1	IMPERIAL 6'-0" x 8' x 7'-6" WALK IN	SEE SPEC SHEET FOR FULL INFO
(11)	FREEZER	O	V	1	TRUE - TS-231	79Hx27Wx30D, 115/60/1, 7.3A, NEMA 5-15P
(12)	UNDER COUNTER REFRIGERATOR	O	V	1	TRUE - TUC 60	30Wx60.5Wx30D, 115/60/1, 5.1A, NEMA 5-15P
(13)	ICE MACHINE	O	V	1	MANITOWOC QY-274A	38Hx30Wx21D, 115/60/1, 10.7A, NEMA 5-15P, 1/2" FPT WATER, 2.5" CASTER KIT
(E-1)	HAND WASH SINK	GC	GC	1	ADVANCE TABC0 G1-10	COMES WITH K-52 FAUCET
(E-2)	3 COMPARTMENT SINK	GC	GC	1	ADVANCE TABC0 K7-C8-29	K30S MODIFICATION (NO DRAIN BOARDS), K-1 12" FAUCET
(E-3)	FLOOR SINK	GC	GC	3	WATTS FS-732-92	12x26 CAST IRON, ACID RESISTANT 1/2" GRATE 2"
(E-4)	MOP SINK	GC	GC	1	ZURN Z-1955-24 (OR SIM)	WITH ADVANCE TABC0 K2-Q40 FAUCET
(G81)	42" GRAB BAR	GC	GC	1	BOBBICK B-6052-99 x 42	INSTALL BACKING IN WALL FOR SECURE MOUNTING
(G82)	48" GRAB BAR	GC	GC	1	BOBBICK B-6052-99 x 48	INSTALL BACKING IN WALL FOR SECURE MOUNTING
(G83)	18" GRAB BAR	GC	GC	1	BOBBICK B-6052-99 x 18	INSTALL BACKING IN WALL FOR SECURE MOUNTING
(M1)	MIRROR	O	D	1		
(L-1)	LAVATORY	GC	GC	1	GERBER 12-314	19x17 WALL HUNG, ONE PIECE WALL HANGER w/ AS7385.024 FAUCET
(WC)	TOILET	GC	GC	1	GERBER 21-718	HANDCAP HEIGHT, ELONGATED BOWL, GRAVITY TANK
(HW)	WATER HEATER	GC	GC	1	AO SMITH - Dura Power DEL 30	30 GALLON, 3KW
(C-1)	SERVICE COUNTER	GC	V	2	CUSTOM	12"x42" S.S. SHELF, MOUNTED w/ S.S. FASTENERS



SCALE: 1/2" = 1'-0"



FLOOR PLAN

SCALE: 1/2" = 1'-0"

COPYRIGHT 2012, BLAZER INDUSTRIES, INC.
THIS MATERIAL IS THE EXCLUSIVE PROPERTY
OF BLAZER INDUSTRIES, INC. AND SHALL
NOT BE REPRODUCED, USED, OR DISCLOSED
TO OTHERS EXCEPT AS AUTHORIZED BY THE
WRITTEN PERMISSION OF BLAZER INDUSTRIES

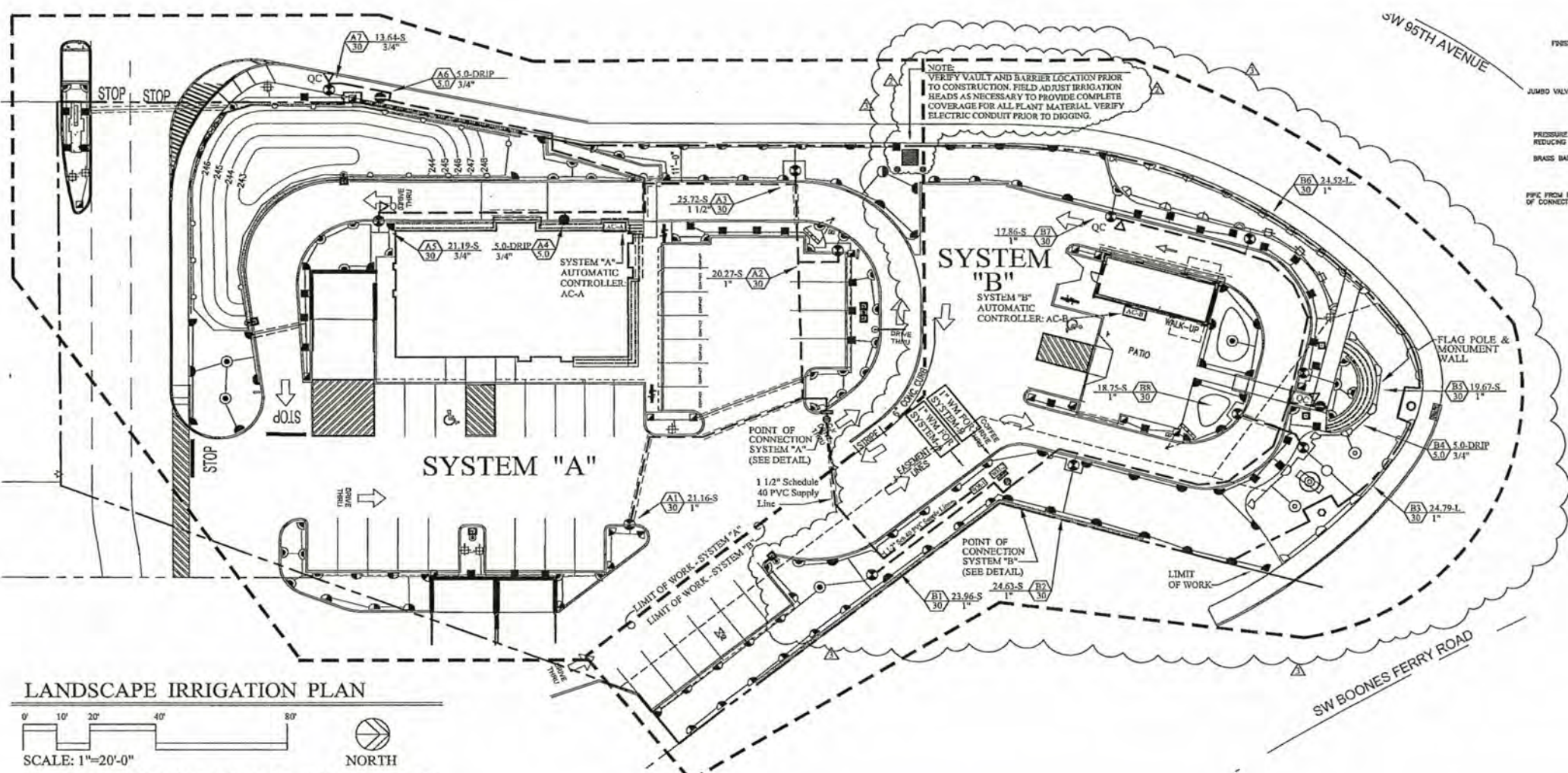


INDUSTRIES, INC.
www.blazerind.com
P.O. BOX 489 ■ Austville, OH 43125-0489

MODULAR
12'-10" x 35'-4"
WA. TAG

The Human Bean

Approved for Const:	Job No:	17693
File Copy:	A-1	
Drawn By: <i>RLT</i>		
Issue Date: <i>07/20/12</i>		



LANDSCAPE IRRIGATION PLAN

SCALE: 1"=20'-0"

BASE MAP FROM CB ANDERSON ARCH., PLLC.-SEATTLE, WA

IRRIGATION LINE AND SLEEVE SIZING

CLASS 200 PVC LATERAL LINE	SCHEDULE 40 PVC MAIN LINE
3/4" LINE UP TO 10 GPM	3/4" VALVE UP TO 17 GPM
1" LINE BETWEEN 11-15 GPM	1" VALVE BETWEEN 18-25 GPM
1 1/2" LINE BETWEEN 16-25 GPM	1 1/2" VALVE BETWEEN 26-44 GPM
2" LINE BETWEEN 26-33 GPM	2" VALVE OVER 61 GPM
2 1/2" LINE OVER 61 GPM	

SCHEDULE 40 PVC SLEEVING * ALL MAINLINE SLEEVING TO BE MINIMUM 4"

1 1/2" LINE UP TO 10 GPM	2" SLEEVE BETWEEN 11-15 GPM	2 1/2" SLEEVING BETWEEN 16-25 GPM
1 1/2" LINE UP TO 10 GPM	2" SLEEVE BETWEEN 11-15 GPM	2 1/2" SLEEVING BETWEEN 16-25 GPM
2" SLEEVE BETWEEN 11-15 GPM	2 1/2" SLEEVING BETWEEN 16-25 GPM	3" SLEEVE OVER 61 GPM

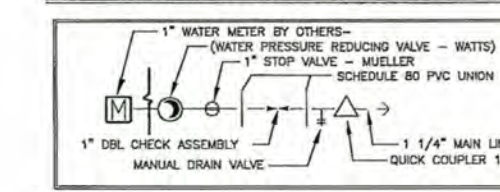
- IRRIGATION NOTES**
- Irrigation design and layout assumes minimum 40 lbs. static water pressure 35 GPM at point of connection. Verify PSI and GPM, if discrepancy exists report to Landscape Architect and owner before proceeding.
 - The Landscape Contractor shall inspect the site and verify existing conditions and dimensions prior to bidding and construction.
 - Landscape Architect to have 48 hour notice to review pressure test for project. Provide owner with backflow certification for review and approval.
 - Irrigation plan is diagrammatic. Adjust pipe, valves and irrigation heads according to field conditions and plant locations. Report any discrepancies to Landscape Architect.
 - Coordinate irrigation points of connection and location of automatic controller with General Contractor. Provide two (2) 1" Water Meter by General Contractor. Coordinate all work with other trades involved.
 - All valves will be placed in valve boxes in a manner which facilitates access for maintenance. Locate valves in shrub and ground cover beds unless approved by Landscape Architect. No valve boxes in lawn areas.
 - All components of irrigation system shall be installed and adjusted to provide adequate coverage and no over spray onto buildings, windows, or paved areas. Contractor is responsible for providing a complete working irrigation system.
 - Contractor is responsible for any damages to building and infrastructure during landscape construction.
 - Bury control wires below mainline and tape to mainline every 10' o.c.
 - Flush mainline before installing valves. Flush zone lines before installing nozzles. Test entire system before back filling trenches.
 - Electric Valves and Backflow prevention assembly to be placed in below grade valve boxes and installed in shrub beds. Verify that valve boxes are not placed where plant materials are to be installed. Provide sleeving under all paved surfaces.
 - Provide full coverage to all lawn and shrub beds. Install additional irrigation heads as necessary to achieve full coverage and water to all plantings.
 - 120 AC Electrical power source at controller locations shall be provided by General Contractor. The Landscape Contractor shall make the final connection from the electrical source to the controller. All wiring per I. & E. Codes.
 - All irrigation heads to be installed perpendicular to finish grade unless otherwise specified. Place all lawn heads in lawn areas, 4" from edge of paving or bedline. Place all shrub heads in shrub beds, min. 4" from bedline and min. 10" from all structures. CONNECT INTO BOTTOM INLET OF 12" POP-UP HEADS.
 - Winterizing the system: The irrigation contractor shall install a manual drain valve assembly. Draining the mainline shall be accomplished by introducing compressed air into the system through the quick coupler valve at the point of connection.
 - Demonstrate working system to building maintenance manager upon completion and acceptance.
 - Locate all utilities before digging. Call 1-(800) 424-5555.
 - Install irrigation system in accordance with all applicable codes and ordinances.
 - Mount Rain Sensor near top of building. Place in approved location with Landscape Architect.
 - From controller install one spare yellow wire to each valve box. All wire splices to be for wire connections: DBY-Direct Bury Splice by 3M.
 - Contractor to provide reproducible PDF As-built drawings to Landscape Architect prior to close-out of job.
 - Electrical control wires to be spliced in control boxes only.
 - Asphalt and/or concrete to be removed 2" from behind astraloid curb or sidewalk in planter.
 - Provide one (1) year warranty for parts, materials and workmanship upon final acceptance date from owner for work completed per Irrigation Plan.
 - All mainlines to be buried min. 18" depth below grade; lateral lines to be buried min. 12" depth below grade.
 - Sprinkler heads adjacent to head in parking, to be set on parking lot stripe.

IRRIGATION LEGEND

SYMBOL	MANUFACTURER	PSI	RADIUS	GPM	LOCATION	SYMBOL	MANUFACTURER
NOTE: PLACE ALL LAWN HEADS IN LAWN, MIN. 3" AWAY FROM PAVING OR BEDLINE.							
○	RAIN BIRD 1804 W/15F MPR PLASTIC NOZZLE	30	15'	3.70	LAWN	△	RAINBIRD QUICK COUPLER VALVE 44RC, ASSUME 1" UNLESS OTHERWISE NOTED ON PLAN. PROVIDE HOSE SWIVEL. INSTALL PER DETAIL.
○	RAIN BIRD 1804 W/15H MPR PLASTIC NOZZLE	30	15'	1.85	LAWN	△	SYSTEM "A" - RAINBIRD ESP-LX MODULAR SERIES-8 STATION AUTOMATIC CONTROLLER. EXTERIOR MOUNT ON BUILDING, COORDINATE WITH OWNER. PROVIDE CONDUIT TO POWER SOURCE AND CONNECT TO POWER.
○	RAIN BIRD 1804 W/15Q MPR PLASTIC NOZZLE	30	15'	0.93	LAWN	△	SYSTEM "B" - RAINBIRD ESP-LX MODULAR SERIES-8 STATION AUTOMATIC CONTROLLER. EXTERIOR MOUNT ON BUILDING, COORDINATE WITH OWNER. PROVIDE CONDUIT TO POWER SOURCE AND CONNECT TO POWER.
○	RAIN BIRD 1804 W/12F MPR PLASTIC NOZZLE	30	12'	2.60	LAWN	△	GLEN HILTON MC MINI CLICK II RAIN SENSOR WITH BY-PASS SWITCH. INSTALL PER OWNER.
○	RAIN BIRD 1804 W/12H MPR PLASTIC NOZZLE	30	12'	1.30	LAWN	△	SCHEDULE 40 PVC MAIN LINE, SIZE PER PLAN, MIN. DEPTH 18" BELOW FINISHED GRADE.
○	RAIN BIRD 1804 W/12Q MPR PLASTIC NOZZLE	30	12'	0.65	LAWN	△	CLASS 200 PVC LATERAL LINE, SIZE PER PLAN, MIN. DEPTH 12" BELOW FINISHED GRADE.
○	RAIN BIRD 1804 W/10F MPR PLASTIC NOZZLE	30	10'	1.57	LAWN	△	SCHEDULE 40 PVC SLEEVING, SIZE PER PLAN, MIN. DEPTH 18" BELOW FINISHED GRADE FOR MAINLINE. MINIMUM DEPTH 12" BELOW FINISHED GRADE FOR LATERAL LINES.
○	RAIN BIRD 1804 W/10H MPR PLASTIC NOZZLE	30	10'	0.78	LAWN	△	
○	RAIN BIRD 1804 W/10Q MPR PLASTIC NOZZLE	30	10'	0.39	LAWN	△	
○	RAIN BIRD 1804 W/55ST MPR PLASTIC NOZZLE	30	9x18'	1.73	LAWN	△	
○	RAIN BIRD 1804 W/15ST MPR PLASTIC NOZZLE	30	4x30'	1.21	LAWN	△	
○	RAIN BIRD 1804 W/15ST MPR PLASTIC NOZZLE	30	4x15'	0.61	LAWN	△	

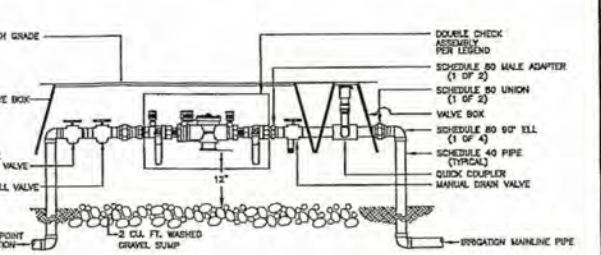
- NOTE:**
USE 12" HEIGHT POP-UP HEADS IN ALL OTHER LOCATIONS. CONNECT INTO BOTTOM INLET OF 12" POP-UP HEADS. USE 6" POP-UP HEADS ADJACENT TO HEAD IN PARKING STALLS.
- | SYMBOL | MANUFACTURER | PSI | RADIUS | GPM | LOCATION |
|--------|--|-----|--------|------|----------|
| ○ | RAIN BIRD 1812 W/15F MPR PLASTIC NOZZLE | 30 | 15' | 3.70 | SHRUB |
| ○ | RAIN BIRD 1812 W/15H MPR PLASTIC NOZZLE | 30 | 15' | 1.85 | SHRUB |
| ○ | RAIN BIRD 1812 W/15Q MPR PLASTIC NOZZLE | 30 | 15' | 0.93 | SHRUB |
| ○ | RAIN BIRD 1812 W/12F MPR PLASTIC NOZZLE | 30 | 12' | 2.60 | SHRUB |
| ○ | RAIN BIRD 1812 W/12H MPR PLASTIC NOZZLE | 30 | 12' | 1.30 | SHRUB |
| ○ | RAIN BIRD 1812 W/12Q MPR PLASTIC NOZZLE | 30 | 12' | 0.65 | SHRUB |
| ○ | RAIN BIRD 1812 W/10F MPR PLASTIC NOZZLE | 30 | 10' | 1.57 | SHRUB |
| ○ | RAIN BIRD 1812 W/10H MPR PLASTIC NOZZLE | 30 | 10' | 0.78 | SHRUB |
| ○ | RAIN BIRD 1812 W/10Q MPR PLASTIC NOZZLE | 30 | 10' | 0.39 | SHRUB |
| ○ | RAIN BIRD 1812 W/55ST MPR PLASTIC NOZZLE | 30 | 9x18' | 1.73 | SHRUB |
| ○ | RAIN BIRD 1812 W/15ST MPR PLASTIC NOZZLE | 30 | 4x30' | 1.21 | SHRUB |
| ○ | RAIN BIRD 1812 W/15ST MPR PLASTIC NOZZLE | 30 | 4x15' | 0.61 | SHRUB |
- DRIP LINE: MAXIMUM 18" WIDTH BETWEEN DRIP LINES**
RAIN BIRD DRIP LINE AND REQUIRED AIR/VACUUM RELIEF 30 TBD 1.50 SHRUB
- RAINBIRD PEB SERIES AUTOMATIC CONTROL VALVE, SIZE PER PLAN AND PROVIDE AMTEX CONTROL BOX & MIN. 2 CU. FT. PEA GRAVEL.
- RAINBIRD PEB SERIES AUTOMATIC CONTROL VALVE, SIZE PER PLAN AND RAINBIRD DRIP LINE VALVE - PER MANUFACTURE SPEC. PROVIDE AMTEX CONTROL BOX & MIN. 2 CU. FT. PEA GRAVEL.
- WATER PRESSURE REDUCING VALVE (IF NEEDED) - WATTS SERIES US, USB, SIZE PER P.O.C. DETAIL.
- MUELLER BRASS ISOLATION VALVE, SIZE PER P.O.C. DETAIL, INSTALL IN ROUND 6" AMTEX CONTROL BOX.
- FEBCO DBL CHECK VALVE, SIZE PER P.O.C. DETAIL, INSTALL IN LARGE AMTEX CONTROL BOX PER DETAIL.

SYSTEM "A" AND SYSTEM "B" - POINT OF CONNECTION DETAIL

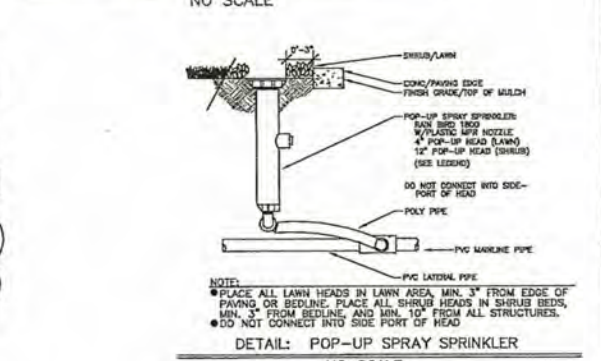


Lauchlin R. Bethune Associates, Inc.
 Landscape Architecture & Planning, ASLA
 P.O. Box 1442 phone: (425) 432-9877
 Maple Valley, Washington 98038 fax: (425) 432-9878
 lauch@bethunearchitects.com www.bethunearchitects.com

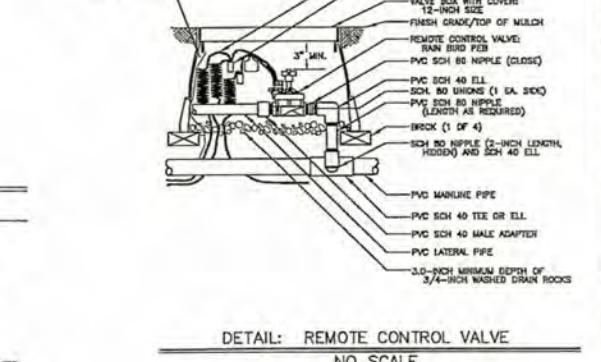
FOR SUBMITTAL ONLY - NOT FOR CONSTRUCTION USE



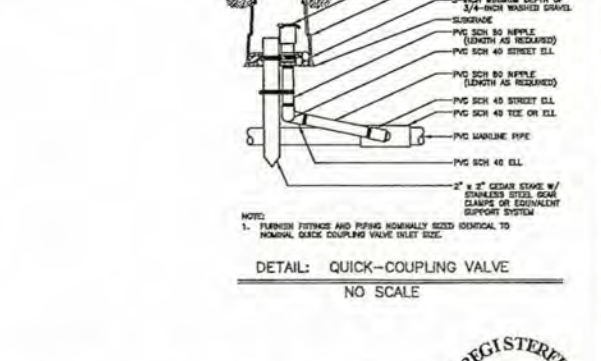
DETAIL: BACKFLOW PREVENTER
NO SCALE



DETAIL: POP-UP SPRAY SPRINKLER
NO SCALE



DETAIL: REMOTE CONTROL VALVE
NO SCALE



DETAIL: QUICK-COUPLING VALVE
NO SCALE

ARCHITECTS

CB ANDERSON ARCHITECTS PLLC

7209 Greenwood Avenue N
Seattle, Washington 98103
206-728-2911
Fax 782-5624

CLIENT

Wilsonville Devecro LLC
c/o Integrated Investment Partners
PO Box 916
Portland, OR 97207
(503) 688-9600

PROJECT

Boones Ferry Pointe
SW 95TH AVE & COMMERCE CIRCLE
WILSONVILLE, OREGON

DRAWING TITLE

REVISIONS

NO.	DATE	DESCRIPTION
1	01/02/2013	PER PLANNING
2	01/02/2013	REV PER PWR VAULT
3	01/02/2013	LOCATION, 4/22/13
4	01/02/2013	REV PER BLDG CHG
5	01/02/2013	BY ARCH, 10/24/13

STAMP

REGISTERED LANDSCAPE ARCHITECT

Lauchlin R. Bethune

DATE 06-24-2012

BLDG. SUBMITTAL ①

DATE ②

NO. DATE ③

CHE NO. ④

ARCH. NO. 1159

SCALE

SHEET LANDSCAPE IRRIGATION PLAN

L 1.0 11/09/2012

This document and the information disclosed herein (trade dress, branding, equipment, color profiles) are the exclusive copyrighted property of CKE Restaurants, Inc. They are not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of CKE Restaurants, Inc. No part of this document may be made available, copied, reproduced or distributed to others without written consent of CKE Restaurants, Inc. 2012

KWG CONVERSION BASED ON CKE PROTOTYPE VERSION 22-14

**Wilsonville City Hall
29799 SW Town Center Loop East
Wilsonville, Oregon**

**Development Review Board – Panel A
Minutes–February 10, 2014 6:30 PM**

I. Call to Order

Chair Mary Fierros Bower called the meeting to order at 6:31 p.m.

II. Chair's Remarks

The Conduct of Hearing and Statement of Public Notice were read into the record.

III. Roll Call

Present for roll call were: Mary Fierros Bower, Lenka Keith, Ken Ruud, Jerry Greenfield, and Simon Springall. Councilor Liaison Susie Stevens was absent.

Staff present: Blaise Edmonds, Barbara Jacobson, Steve Adams, Daniel Pauly, and Mike Ward.

VI. Citizens' Input: This is an opportunity for visitors to address the Development Review Board on items not on the agenda. There were no comments.

V. City Council Liaison Report

No City Council Liaison Report was given due to Councilor Stevens absence.

VI. Consent Agenda:

A. Approval of minutes of January 13, 2014 DRB Panel A meeting

Lenka Keith moved to approve the January 13, 2014 DRB Panel A meeting minutes. Simon Springall seconded the motion.

Jerry Greenfield noted the following corrections to the minutes:

[Note: additional language noted in bold, italic language]

- On Page 7 of 25, the third bullet of Mr. Pauly's staff report presentation should state, "Because the Applicant was **unable** to locate the tenants..."
- On Page 10, the second to the last line should read, "LaPoint Group memo, he **agreed** with Mr. Ward..."
- On Page 20, the fifth line of the third bullet should state, "usage for the subject site, **not** the coffee kiosk."

Ms. Keith withdrew her motion.

Lenka Keith moved to adopt the January 13, 2014 DRB Panel A meeting minutes as corrected. Simon Springall seconded the motion, which passed unanimously.

VII. Public Hearing:

- A. Resolution No. 268. Boones Ferry Pointe – The Human Bean Drive-up Coffee Kiosk: SFA Design Group and CB Anderson Architects – Representatives for Wilsonville Devco LLC – Applicant/Owner.** The applicant is requesting approval of a Stage II Final Plan revision, Site Design Review and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk at the corner of 95th Avenue

DRAFT

and Boones Ferry Road. The subject site is located on Tax Lot 302 of Section 2DB, T3S, R1W, Washington County, Oregon. Staff: Daniel Pauly

Case Files: DB13-0046 – Stage II Final Plan Revision

DB13-0047 – Site Design Review

DB13-0048 – Master Sign Plan Revision and Sign Waiver

This item was continued to this date and time certain at the January 13, 2014 DRB Panel A meeting.

Chair Fierros Bower called the public hearing to order at 6:39 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site.

Jerry Greenfield stated that when he visited the site, he was surprised to find the pavement and curb prepared for the building, which was the subject of the application. He declared for the record that seeing the site preparation would not bias his view of the matter and that he would treat that as if the ground were bare or, at most, that it had been prepared for the previously approved building.

No other Board member declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

Barbara Jacobson, Assistant City Attorney, reminded that the hearing was continued with the record open for 14 days to allow either side to submit additional evidence. In part, the record remained open because both Mr. LaPoints were unavailable to be at the hearing and the Board had wanted to ensure that both Mr. LaPoints had time, and the Applicant was agreeable to the same. Fourteen days were given for any evidence, whatsoever to be submitted with seven days following that time for either side to submit rebuttal evidence. All evidence had been submitted and carefully reviewed by the Staff and Dan Pauly would discuss proposed to the Staff report based on that evidence.

- As a second point of order, she noted the rebuttal period was allowed to avoid a last minute flurry of documents being submitted, especially lengthy submissions such as the CD's presented last time that the Board did not have time to review. Typically speaking, that would have been the rebuttal period; however, because both Mr. LaPoints had compelling reasons for being out of town, she recommended giving each side a brief forum to present final arguments as to their positions as a lot of information had come in. Because rebuttal had already been allowed, she had advised both sides that no new submittal of documents would be allowed. In their last closing statements, both parties would be free to talk about anything that had come in during the new evidentiary period or rebuttal period. The parties would be allowed to address any of that information, but she reiterated that she did not want any new information, for example, if there was a new accident on the site today. She did not want to hear about anything that had not previously been put into the record in some form. She asked that both sides respect that request and keep their remarks concise because the Board did hear at length from both sides earlier. She requested that remarks be kept to ten minutes, noting that Staff would begin, followed by the Applicant and then Mr. LaPoint, or whomever Mr. LaPoint chose to speak with him or on his behalf. Following normal hearing protocol, the Applicant would address the Board last. She confirmed that everyone understood and agreed with her statement.

Daniel Pauly, Associate Planner, reviewed his memorandum dated February 10, 2014, which he entered into the record as Exhibit A4, noting Staff still recommended approval of the project. His comments were as follows:

- At the last hearing, a lot was heard about The Human Bean being a coffee kiosk and that the traffic peak was in the AM, even though the City standard was to look at PM peak traffic for concurrency and to determine compliance with development standards.

- An AM peak traffic study had been completed since the last meeting and the report concluded that, "There are no operating concerns at the study intersections or the project driveway during the AM peak hours." Therefore, the traffic engineer had no concerns given that study.
- Another ongoing discussion point was internal site circulation and parking, especially for the larger vehicles including delivery trucks. The Applicant worked with City Staff and developed some of their own ideas regarding these issues. Shortly after the last hearing 'Do Not Enter' signs were put up and some additional striping and directional signage were proposed to aid traffic circulation.
- Exhibit E of Exhibit B6 showed the delivery truck initially coming through the Chevron property, but then reversing on to the Devco property for unloading. However, some disagreement remained between the property owners regarding the extent of the easement between the properties which was described as "that line."
 - He reminded that the Development Review Board (DRB) was not the arbitrator of what that easement meant as language in the easement addressed disputes. Essentially, there were two options depending on whether the easement allowed delivery trucks to drive across the LaPoint property. Otherwise, Exhibit B8 showed a workable option for trucks to deliver without using LaPoint's property.
- He discussed Staff's proposed amendments to the Staff report as noted in Exhibit A4 as follows:
 - In Finding A31, which discussed functional design of parking, loading and delivery areas, language was added regarding the additional pavement markings and signage, the easement and the alternative circulation plans.
 - He noted that under the Development Code, a truck loading birth or area was not required with this or any other fast food establishment less than 5,000 square feet.
 - In reviewing Wilsonville's history, truck circulation or semi circulation had not been heavily weighed in review of fast food type uses.
 - In Finding A34, added language discussed the additional signs and pavement markings to aid in the circulation.
 - In Finding B4, involving the design standards under site design review, the added language stated, "Among the design standards is a requirement that special attention be paid to general circulation of parking areas that are safe and convenient. As shown by the number of added signs and markings, as well as specific drawings for different truck circulation scenarios, the applicant has demonstrated special attention has been given to site circulation and safe convenient parking areas."
- He entered the following exhibits into the record:
 - Exhibit B6: Applicant Submittal, January 27, 2014
 - Exhibit D5: Wallace Lien Submittal, January 27, 2014
 - Exhibit D6: Traffic Photos and Videos submitted by LaPoint Business Group, LLC (Posted to the City's website)
 - Exhibit D7: LaPoint Response, January 31, 2014
 - Exhibit D8: Wallace Lien Rebuttal
 - Exhibit B7: Rebuttal from Applicant, Wilsonville Devco, LLC, dated February 3, 2014
 - Exhibit B8: Truck Turning Movement, February 3, 2014, using only the Devco property
 - Exhibit A4: Staff memorandum dated February 10, 2014 including recommended Finding changes.
- He confirmed that all the additional exhibits were submitted within the allowed 14-day or allowed 7-day rebuttal period.

Ken Ruud stated Mr. LaPoint submitted a letter dated January 29, 2014 that seemed to infer that an agreement existed between the parties and noted Exhibit B6, which he believed included the gate. However, there did not seem to be a mutual agreement.

Mr. Pauly clarified Exhibit D7 was the letter from Garry LaPoint that mentioned the fence. Exhibit B7 was the response from the Applicant. There were existing agreements with the operator of Carl's Jr but Staff would concur that was not something the DRB should require.

Ms. Jacobson agreed that because of that disagreement, it did not sound like there was total agreement on everything. The Applicant and Mr. LaPoint could speak to the matter as well.

Mr. Ruud noted the letter seemed to infer there was agreement, but in actuality, no agreement existed at this time.

Ms. Jacobson replied that was her understanding from what she believed to be the case.

Mr. Greenfield asked to what extent, if any, was approval of the Carl's Jr. application predicated on the cross easement.

Mr. Pauly replied the only language in the Development Code that addressed that regarded the purpose of having multiple entrances to prevent trips onto public streets. The second entrance would not be a City requirement because that second entrance would not generate any additional traffic onto City streets. The standard which speaks to having connections between different properties would not be applicable. If that was not shown on the original site plan, it would not have been something that the City would have used as a basis of denial.

Mr. Greenfield asked if approval of kiosk development would be conditioned on the existence of that easement.

Mr. Pauly said if the site circulation could be done on site without using the easement he could not think of any Development Code criteria that would be a basis for that type of condition.

Mr. Jacobson added the first circulation pattern proposed by the Applicant assumed they had a right to use the easement. Through the hearing process, the issue was raised in terms of interpreting that easement, which could not be done by the DRB; that was a separate, contractual matter between the two parties. The Applicant went back when the issue was raised and tried to determine if there was a way to use solely the Applicant's own property for the same circulation, where there would not be a need for that easement if it was determined that there was no easement right. Exhibit B8 assumed that cross easement was not there, which was why Staff recommended a change to the Staff report that incorporated that circulation pattern. The other option would work as well, but the Applicant and Mr. LaPoint would have to resolve that matter privately. The DRB would not be approving the use of the easement because they did not have the ability to do so.

Chair Fierros Bower asked about the Carl's Jr. circulation, noting a diagram showed one way directional arrows toward the drive thru for Carl's Jr. but cars would also be backing out of parking spots and going in the opposite direction of the arrows. The arrows showed one-way travel where it was really a two-way drive lane. She clarified her question regarded The Human Bean coffee kiosk and she was trying to understand the vehicle circulation shown on Exhibit D2. Only one directional arrow was shown in front of Carl's Jr. where there double-loaded parking area was located and it should be shown as two-way traffic.

Mr. Pauly replied that Community Development Director Nancy Kraushaar and the City Engineer suggested painting a line to clarify the division of traffic through that area, as well as arrows in both directions and that change was accepted by the Applicant.

Mr. Greenfield understood the entire discussion occurs under the rubric of Wilsonville Development Code 4.400(.02)A Purpose and Objective of Site Design Review which stated, "Assure that the site development plans are designed in a manner that insures proper functioning of the site and maintains a high quality visual environment." He noted visual environment was not an issue, but the proper functioning of the site was. The Applicant argued on Page 7 of Exhibit B7, submitted February 3, 2014, that this provision was an "aspirational purpose statement, not a clear an objective criterion, and therefore not directly applicable to the proposed development." He asked if Staff agreed.

Mr. Pauly believed it was applicable and that Ms. Jacobson would concur. It needed to be considered at a subjective level. For example, a loading berth could not be absolutely required because that was the only way the site would function. The Board must be careful about making specific requirements out of the subjective criteria. The DRB could look at whether or not the proper things were being done in terms of pavement markings and signage.

Ms. Jacobson added that the Board must be looked at the proposal within the constraints of the site itself and the zoning the City has imposed on that site. When an applicant made an application to do what the zoning allowed, sometimes the site was not going to be as optimal as it would in other situations. Both the DRB and Staff had to consider the current site conditions, what the zoning allowed, what conditions were reasonable, and clear and concise that could be legitimately imposed on the site and still allow it to be developed for its intended purpose. She agreed it was subjective and in some cases the Board would be able to provide a better solution than in all cases. The City had direct authority in the public areas and must ensure an optimal traffic situation, but circulation on private property was much more subjective and the public body did not have as much say about what people do on their private property.

Mr. Greenfield said it seemed that Staff made two different findings, one involved facts and the other involved judgment. Clearly, the DRB was bound to take those factual findings as determinative. He asked if the DRB's determination was constrained when Staff stated that criteria of judgment had been satisfied.

Ms. Jacobson replied that Board members could disagree with Staff.

Mr. Pauly agreed, adding that the end product of a DRB site design review was potential conditions of approval. Site design review also included language about conditions that would create a financial burden, which would also have to be considered.

Mr. Ruud asked for clarification regarding which exhibit was Exhibit B8.

Mr. Pauly replied Exhibit B8 showed the site plan showing the truck circulation with handwritten notes. The first page showed the truck pulling in, in front of The Human Bean, and the second page indicated the backing movements.

Simon Springall noted the exhibit showed a WB40 truck. He believed it had been mentioned that use of this delivery truck would be rare; normally a van would be making deliveries.

Mr. Pauly agreed the truck would be smaller. He reminded no loading birth was required for a truck that size for a 450 square foot building, which involved the subjective aspect of the Development Code. The Applicant could explain how often a truck of this size would make deliveries, but he understood that the drawing represented the worst case scenario.

Ms. Keith asked if there was enough room for people to get through or if The Human Bean drive thru would be entirely blocked.

Mr. Pauly replied the idea was that deliveries would be off peak, or possibly hours when they were closed. He understood that operators did not want trucks delivering when they were busy, so it would be self-patrolling because the Applicant would discourage the truck from coming when any customers were present. By nature with a fast food or quick service establishment, the truck would interfere with at least customer parking, if not circulation.

Ms. Keith questioned whether it was possible for the truck to back out and into the Carl's Jr. parking lot because it did not seem like the radius was large enough to safely maneuver.

Mr. Ruud noted it appeared the truck was going over a curb in the picture.

Mr. Pauly said it would be close. The City's engineers reviewed it and it looked doable to them.

Ms. Jacobson suggested asking the Applicant to address the question.

Mr. Pauly said that obviously, it was a tight site for that sort of truck movement. On the other hand, it would be a non-issue if the Applicant could use the easement.

Ms. Jacobson clarified the Board had to decide based on the circulation of Exhibit B8 because the outcome regarding the other circulation was unknown. If they have the right to use the easement, it would be a better solution for the Applicant. If that did not prove to be the case, this was doable for their business, so that was what the DRB needed to concentrate on.

Mr. Greenfield asked if the application for the Stage II Final Plan Revision effectively vacated the approval of the original application, or the unbuilt part of the original application. In other words, if the City did not approve this revision, would the Applicant be able to build the unbuilt part of the original plan?

Mr. Pauly answered yes. Once a part of the master plan had been constructed, the approval was vested so the Applicant could return and build the multi-tenant building.

Ms. Jacobson clarified the Board had already effectively had the rebuttal, but because Mr. LaPoint was not in town and wished to speak to the Board personally and because the Applicant was agreeable, the Board would hear from both Mr. LaPoints or whoever they wished to speak for their position. After both LaPoints were allowed to speak, the Board would hear from the Applicant. Talking points should be directed at the evidence on the record, including the evidence submitted at the original hearing within the 14 days, and the rebuttal. If Mr. LaPoint wished to talk about any of those things he was free to do so. The only thing being excluded was new evidence because that was after the period had closed. Other than that, the Board could proceed by calling Mr. LaPoint or whoever he had designated. She requested that remarks be kept to 10 minutes.

Chair Fierros Bower called for comments from Mr. LaPoint.

Garry LaPoint, 25410 SW 95th Ave, Wilsonville OR, stated he had one new piece of evidence that he would read into the record per Ms. Jacobson's request that he sent in today after other things were presented.

Ms. Jacobson added that Mr. LaPoint had information he would like to present in rebuttal to the circulation pattern. She would allow that email to be read into the record.

Mr. LaPoint stated so many things had been presented—

Ms. Jacobson interjected that she believed the other side wanted to object to the reading of Mr. LaPoint's email. She suggested that Mr. LaPoint give the rest of his testimony before reading the email.

Mr. LaPoint asked why the information that Staff put forward was on the website and why after the 7-day rebuttal period after the 14-day period, the Applicant rebutted and then Mr. LaPoint rebutted and then the Applicant rebutted his rebuttal. Today, information came forward regarding the circulation, etc., and the Board knew exactly what it said and why it needed to be read into the record tonight.

Jason LaPoint, 25410 SW 95th Ave, Wilsonville OR, explained that they considered Exhibit B8, the circulation plan, to be new evidence and they wanted to rebut it.

Steve Pfeiffer, Attorney, Perkins Coie, stated for the record that he objected to allowing new evidence into the proceeding.

Ms. Jacobson asked if Mr. Pfeiffer had seen it.

Garry LaPoint stated he would not call it new evidence; it addressed some of the questions and concerns raised by Mr. Rudd and Mr. Springall regarding Exhibit B8, the diagram presented after as evidence. He wanted to provide some information that came forward about that diagram.

Ms. Jacobson asked that Mr. LaPoint discuss his other issues before addressing Exhibit B8. She asked Mr. Pfeiffer if he had the opportunity to see the email.

Mr. Pfeiffer answered no, and restated his objection.

Ms. Jacobson suggested he might want to look at it.

Mr. Pfeiffer reiterated his objection.

Mr. LaPoint responded that if Mr. Pfeiffer was going to object to that, then he needed to object to all information presented by Mr. Pfeiffer after the 7-day rebuttal period. He explained that he was presenting rebuttal to Mr. Pfeiffer's rebuttal.

Ms. Jacobson asked Mr. LaPoint to indicate what information Mr. Pfeiffer provided after the 7-day rebuttal period. She believed the circulation drawing was presented during that period.

Jason LaPoint stated the new evidence they would like to rebut was Exhibit B8, because the LaPoints submitted information after the 27th and then the Applicant submitted information, which was new. This did not allow the LaPoints to respond to the information presented. Like the Board, the LaPoints had questions, got answers and wanted to present the answers they had received.

Ms. Jacobson stated the LaPoints were free to answer the DRB's questions about how they believed the circulation would or would not work.

Garry LaPoint stated he would like to address that question later in his testimony, unless Ms. Jacobson and the Board wanted to address it now.

Ms. Jacobson stated he could present his testimony however he chose.

Mr. Ruud asked what the official submission date was for Exhibit B8.

Mr. Pauly replied he received Exhibit B8 at 4:57 p.m. on Monday, February 1, 2014, just before the deadline.

Garry LaPoint asked Mr. Pauly to tell the Board when he submitted the rebuttal to the 14-day.

Mr. Pauly replied that it was before the deadline, he would have to research the exact date.

Garry LaPoint said it was submitted at noon on Friday to allow adequate time for review over the weekend, not on Monday at the last minute. One of his complaints to Ms. Jacobson was that the Applicant rebutted some things in his rebuttal with their rebuttal on Monday, very late in the afternoon. The LaPoints did not get any of that information until five or fifteen minutes before the deadline; whereas they submitted their information at noon, said where they stood, and offered solutions and suggestions. He noted at no time since late October, when they met on the property because of the drainage issue, had anyone from Wilsonville Devco contacted Mr. LaPoint with any questions or concerns. It struck him as funny that the Applicant was going to make such a major change without calling him to see if there were any problems with it. He said that he quickly wanted to say how the easement started, because a lot of this would go into play.

Ms. Jacobson interjected that the DRB would not make any decision on the easement. For purposes of the argument Mr. LaPoint presented, it was being assumed the circulation pattern could not be used unless and until the dispute was resolved. At present, the Board was just looking at the circulation pattern that was last proposed. She added that Mr. LaPoint and the Applicant could agree to the other one later.

Garry LaPoint said it starts out, "The internal site circulation of parking for larger vehicles including delivery trucks remains a discussion point." He had not heard until that evening that it had to be a 5,000 square foot building or larger. He asked Mr. Pauly to confirm if that was what he testified to earlier.

Mr. Pauly responded that language was in the Development Code.

Garry LaPoint stated he did not read that it was 5,000 square feet under Internal Loading Zone and Circulation. If so, why was there so much discussion prior to the Applicant's development, when he had called Mr. LaPoint to say that he would have to redo his entire site plan because he did not have a loading zone. The Development Code stated that a loading zone was required and an internal truck circulation for that loading zone. This was a big discussion point because a loading zone was required by WDC and nothing he had read in the packet stated 5,000 square feet, and if so, he did not understand why it was ever brought up as a discussion.

- As far as vehicle circulation, the Applicant had proposed, "additional striping and site directional signs to aid in circulation." He believed that aid was the big word there, because videos from his 24-hour cameras showed that signs and markings did not prevent people from going into the egress of the Holiday Inn or circulating in any manner they chose.
- Exhibit E.B6 showed a delivery truck circulating using LaPoint's property for ingress circulation, but parking on Wilsonville Devco property to avoid conflicts with deliveries. He noted they were parking on his lot all the time, not just for deliveries and it was an issue as he barely had enough room to operate their business.

Ms. Jacobson noted the DRB would be instructed that none of the Applicant's operations could occur on Mr. LaPoint's property. If trucks were parking there now, the Carl's Jr. was a separate issue. Tonight's decision regarded what The Human Bean could and could not do. The Applicant proposed circulation that no parking would be on Mr. LaPoint's property.

Garry LaPoint asked whether The Human Bean had its own tax lot. He was confused because Wilsonville Devco had signed all the agreements with him and if it had been separated—

Ms. Jacobson answered no, it was all one property owned by Wilsonville Devco. She clarified that this application was for The Human Bean, the Carl's Jr. application had already been approved.

Garry LaPoint noted that Carl's Jr. and the office complex were all one application. He asked how they were separated.

Jason LaPoint explained The Human Bean was a revised application because the Applicant could not find tenants for the other building. The LaPoints had agreed to a retail multi-unit building and did not have a problem with that; the change was where they had issues.

Garry LaPoint commented that the cart was before the horse. He was confused on how the easement did not make a difference when it was part of the original Wilsonville Devco application. He was confused about how it became separated and one did not mean something to the other.

- He noted Mr. Rudd's prior comment about this being a competition issue, but assured it was not a competition issue whatsoever. He had Covenants, Conditions and Restrictions (CC&Rs) on the property, which Ms. Jacobson had said not to pay attention to. Wilsonville Devco filed a lawsuit that was still ongoing against Mr. LaPoint on whether the CC&Rs applied, so, the Applicant did not even know if he would get to build this project because he had not been to court to find out if he violated the CC&Rs. He noted the Applicant sued him; he had not sued the Applicant.
- He noted another situation where the cart was before the horse, reading, "The easement disagreement will need to be resolved privately by the parties." He questioned why anyone would go through all of the work and expense to everyone before confirming that the easement agreement would hold up. The Applicant could have made a phone call because he had worked and cooperated with the Applicant on many different things, including getting special permission from Chevron to hang their sign on his, placing a monument over the Chevron's sewer line, and adding a red stripe around Carl's Jr. He offered to help the Applicant in any way get through this process, because he had been through it. It took him 2½ years to build his site. In this whole process, the Applicant never called to present this change, which was huge.
- He reiterated it was not competition, he only cared about one thing: that traffic was going in opposite directions through his lot. He was not concerned about the head-on traffic issue that Chair Fierros Bower pointed out on the Applicant's property. He cared about the 3,000 cars on his property. Using Exhibit B8, he indicated that traffic circulated on his site in a counterclockwise direction. He also described how Carl's Jr's delivery trucks park and interfered with that traffic as well as his fuel truck, which did not interfere with Chevron's traffic circulation.
 - When Carl's Jr. first opened, he indicated on Exhibit B8 how cars would travel head on into his outgoing traffic if there was any congestion coming into the Carl's Jr. site. This was his slowest time of year and there had already been three accidents since November. Prior to that, there had not been one accident on his lot in 15 years.
 - He was concerned about the 30 percent to 40 percent increased business volume he would have this summer. The only thing he cared about was the little section near the trash enclosures. He did not want the Applicant's cars coming head on into his cars.
 - DKS indicated that there was no problem and it would work, but he noted there was no competition with DKS in the city. If they were present, he would ask if DKS considered his service station a regular, low volume, 100,000 gallon site, when he did 500,000 to 600,000 thousand gallons in volume. His site was not normal and the Carl's Jr. was not going to be normal; it would get really busy this summer. He was happy for that, but the Applicant must contain their business on their property. He was already having an issue and no one from Carl's Jr. ever came over to address any of this.

- While this might not mean anything to Ms. Jacobson, how this went down meant a lot to him. He noted that two more legal proceedings were already getting ready to be filed next week. If the easement ended up existing, the situation near the trash enclosures was not workable. He suggested asking the operational manager that was there every day.

Jason LaPoint said he was already having trouble because it was easy for ~~over~~ oversized vehicles to park on Chevron's lot and block where their fuel trucks come in. As many as three loads of fuel are delivered per day and the trucks could not be impeded. Although a truck loading zone was not required, the Applicant's delivery truck came at 2:00 or 2:30 in the afternoon. As seen in the video, when both were loading or unloading it was a problem. The LaPoints had no control over when fuel deliveries came, it was automatically monitored. He did not know if The Human Bean could choose when their loads come. The Chevron used CoreMark, the same delivery company as The Human Bean, and CoreMark could not come after business hours. He could not imagine CoreMark packing a separate truck when delivering to the same general location. On busy days in January, he has had to have someone directing traffic and there was no Human Bean. In the summer, business would pick up two-fold and he assumed the Applicant's business would as well, again without The Human Bean. He has talked with Staff to try to find some solution, but he had not figured it out yet. One solution presented in their letter proposed that all Human Bean traffic be kept on The Human Bean's property, which would make his job easier. Since the development occurred, his job had been much harder.

Garry LaPoint said that in trying to be cooperative and make something happen, he paid Ben Altman \$1,600 in December. The LaPoints were trying to find a solution, but were at a disadvantage because the goal posts keep changing every time they got something from somebody. He suggested to Ms. Jacobson that he finish up with CoreMark and some of Jason LaPoint's comments, which he did not consider it evidence, but a continuation of his statements about CoreMark and CoreMark's truck.

Ms. Jacobson said okay and invited Mr. Pfeiffer to come forward.

Steve Pfeiffer, Land Use Lawyer, Perkins Coie, 1120 NW Couch St, 10th Floor, Portland, OR 97209, stated that with regard to the specific issues, Ms. Jacobson made it very clear and was required by law. Having the LaPoints and himself speak tonight was actually exceeding the statutory authority because the record was closed. The public at large was not re-notice that new testimony would be taken, evidence or otherwise, but he was happy on behalf of his clients to allow the LaPoints a chance to come to the microphone. It was with the understanding that they would limit themselves to the information that had been submitted during the very clear, open record, post hearing process the Board had set up; just like every other city. Those were the rules that were set; there were two windows of time and that was the limit.

- Under the statute, the Applicant and only the Applicant was entitled to written argument only, after that second window closed. But again, because of the confusion that the LaPoints' testimony laid out, and he now fully understand the basis for their confusion having listened tonight, the Applicants decided to let the LaPoints have one last word with the clear understanding that it would be evidence only. He had heard very little tonight that was not new information or new evidence. The opponents could call it what they wanted, but he was very concerned for this process because the Board's appeal at Council was on the record. If it were *de novo*, if there was a new evidentiary hearing at Council, he would not have a concern, whatsoever. But, the Applicant would live by these kinds of attitudes on appeal, should it go there, with a record that was flawed because the Applicant was not afforded a chance to rebut this kind of new information. Nobody was on notice of it tonight, it was here.
- Part of him wanted to ask the Board to strike virtually everything they had heard today because the Board could not be separate the information that was already in the record to the vast bulk of new information the LaPoints provided tonight, much of it unsubstantiated. There were answers to almost every allegation they made, but the time had passed for that, that was what the open record period was for; it was extensive, the Board had an extensive hearing and with that, he urged the Board to

take, as the Applicant was assured would be the case tonight, a very hard line from this point on new information.

- He did object to what the LaPoints themselves had conceded as new information in evidence. He objected to that being submitted, it had no place in a process that the Board established in good faith, everyone had participated in, except for these opponents, who were here tonight to try and breach it. The reason City Staff could speak to the Board and answer the Board's questions was because the statute afforded the Board the ability to have *ex parte* contacts at their leisure after the record was closed with City Staff, absolutely without any limitation. That was well established, the Board had used it before when closing the record, the Board asked Staff questions and they answered. When was the last time somebody stood up as an opponent in the audience and demanded to rebut what the Board had learned from Staff after the record closed? Most people in this room understood those rules clearly, some did not. That was why the LaPoints were not in a position to rebut City Staff with new evidence tonight. Honestly, it was very frustrating for him and his clients, who have participated in good faith in this process. He could not come up here and say, "Yes, go ahead and submit new evidence" because it substantially prejudiced their rights as an Applicant and frankly, it destroyed the process that the Board had established. He really had no basis to allow them to say anything more based on what he had heard already, let alone something that the LaPoints themselves admitted was new evidence. So, he was not sure what to do other than to object in advance because of what he had already heard tonight. He had no reason to think it would be any different.

Garry LaPoint stated that this piece of evidence was submitted after the 7-day period, after he submitted his, the Applicant rebutted this information against his rebuttal. The LaPoints did not have a chance to rebuttal that back. That evidence should have never been presented if it was allowed because the LaPoints were told they could submit it up to this deadline and it was telegraphed. This was not any different than what the Applicant did, that Mr. Pfeiffer just objected to.

Mr. Pfeiffer said he would make it very clear a second time. He cited a 2001 Land Use Board of Appeals (LUBA) case called *Norway Development v. Clackamas County*, which absolutely was on point and validated Ms. Jacobson's recommendation to the Board and her advice to the LaPoints' attorney earlier today, and which he had provided to the LaPoints' counsel earlier today and he never responded.

- The 2001 case made it very clear, and LUBA ruled in exactly these situations, under the statute if new information is submitted after a record is closed, any party may ask to have the record reopened to rebut, unless the local government sets up a procedure, as LUBA pointed out, where the first window of an open record was extended after the hearing, which the DRB did, and the local government sets up a second window for surrebuttal to information that came in in the first window, which the DRB had also done. LUBA acknowledged in that case, and in other cases, that was perfectly acceptable and the Board could cut off rebuttal. Most pay very clear attention to that, watch, and that was why they enter rebuttal in the second round. In this case, what the Board did was absolutely correct; LUBA has affirmed as much, and there could be no doubt that the information the Applicant submitted at 4:57 p.m., in a timely way, was absolutely correctly submitted under the Board's procedure and was due no rebuttal opportunity at any level. That was the gist of that case.
- He could not help it if somebody did not understand or play by the established procedures the Board put in place. However, he did have to object when the Board deviated from those procedures to their substantial prejudice where the Board's appeal at Council was on the record. Exhibit B8 was submitted appropriately during the record period and was directly in response to the LaPoints' wide ranging, free ranging testimony in the first two week window. The LaPoints have not alleged otherwise; that was notable. They could not point out anything in the Applicant's submittal that was not responsive to the first window. The Applicant supplied the mailing list to prove the LaPoints received notice. The Applicants supplied Exhibit B8 because it was directly in response to all the LaPoints' wild allegations in the first record period. The Applicant answered, not with evidence, but the question of the gate, politely explaining why they could not because it was relied upon by Carl's

Jr. from prior agreements of record that they entered into; Carl's Jr. relied on that access being in place under the development agreement.

- In 35 years of these hearings, he had not been in this situation, where somebody had pressed and not accepted the procedure that, unless he missed something in the last hearing, was pretty laid out from his review of the minutes, and LUBA has affirmed that approach. To deviate from that now put the entire proceeding and the Board's decision, ultimately, at risk.

Mr. Greenfield asked if Mr. Pfeiffer had seen the opponents' February 3, 2014 submission prior to his February 3rd submission.

Mr. Pfeiffer replied yes, adding it was notable because he was surprised anybody would submit before their time was right.

Mr. Greenfield asked if that was proper.

Ms. Jacobson answered yes; they could submit anytime during that 7-day period or not submit at all.

Mr. Greenfield explained what he meant specifically was whether sharing that submission was proper.

Ms. Jacobson replied that Staff had said they would post it when it came in and that was what—

Mr. Pfeiffer interjected it was actually a matter of public record by law.

Mr. Greenfield understood everyone knew that possibility existed.

Ms. Jacobson answered yes, adding unfortunately, that was part of the game that gets played; everyone waits until the last minute, which was why the Board tried to do the 14-days and then the 7-days to avoid a situation like this. The point was to not have more argument, but because Mr. LaPoint was out of the country, she had spoken with the Applicant who agreed to allow this conversation. She respected that the Applicant did come along to try to give everybody a fair opportunity.

Mr. Pfeiffer clarified the Applicant had allowed the conversation with the full understanding that it would be based exclusively on the record established by the 27th.

Ms. Jacobson stated it was to be based all on the record, no new evidence, so if the Applicant was objecting, the Board would let Mr. LaPoint summarize, in his own words, what issue he had.

Jason LaPoint asked to comment before his father finished. He noted he was obviously not a lawyer, and not really good at the game, or whatever this was. He knew this was his family's business which he had to run it for the next 20 to 30 years and pass it to his son, hopefully. He had concerns as he mentioned. Regardless of whatever was legally done incorrectly, by submitting it too early or whatever, he assured that he did respect the procedure, but he was a novice. This did affect his family and he would like to continue to run the business like they had for the past 15 years and keep it going, hopefully.

Ken Ruud confirmed Jason LaPoint was the everyday operations manager for Chevron. Exhibit B8, which was determined to have come in within the allowable time, proposed the Applicant solely performing business on the Wilsonville Devco property. Garry LaPoint mentioned the big concern regarded the area on the Chevron property. He asked if Mr. LaPoint would have any issues if everything held true and the Applicant's daily business stayed solely on the Wilsonville Devco as identified on Exhibit B8.

Jason LaPoint replied he did not have any issues if everything could be within the traffic patterns the Applicant submitted and everything could work solely on Wilsonville Devco's property; that was the

LaPoints' sole concern. How people pulling in would read everything or whether they would comply with a sign was known. The Chevron had people standing out there, and drivers did whatever they wanted to do. If the traffic did stay on their property without any other changes that was fine.

Mr. Ruud commented in a perfect world.

Garry LaPoint noted the Applicant's submittal included a sidewalk to nowhere that was brought out onto his property and put people in a dangerous truck loading zone and traffic circulation area. There was no safe way to get people to any other sidewalk, which was why the LaPoints had proposed the fence and a gate, which he indicated on a displayed map. The gate was a compromise on Mr. LaPoint's part to let the Applicant use a loading zone for the two big trucks Wilsonville Devco identified in their information. Another problem was that people cut straight across here, so continuing the fence to the end of the Applicant's property would insure that pedestrians, specifically from the Holiday Inn, did not cut through the lot to get coffee. Exhibit B8 did not show the painted sidewalk that had been there for 15 years which brought bicyclists and pedestrians back to that point. He was concerned about the Applicant's proposal of dumping people off near the trash enclosures and leaving that area open, not only because of the traffic concerns, but pedestrians from the Holiday Inn and other areas would want to get espresso at The Human Bean. People would not walk around the perimeter of the site to reach The Human Bean when they could cut straight across the property. That was the reason the LaPoints proposed the fence. This [Exhibit B8] did not work for the LaPoints at all given the amount of traffic in there and etc. He wanted to discuss the concern he had with the truck.

Ms. Jacobson interjected, noting Mr. LaPoint had been allowed double the original time limit. She advised that he use his last minute for a wrap up on that piece.

Garry LaPoint stated there would be no winners or losers tonight because whatever the decision was, it would continue from here. He could absolutely assure the Board that because it affected them, they would take it somewhere. They had tried to explain that this was a major traffic and safety issue for the LaPoints with pedestrians, bicycles and their internal circulation. Wilsonville Devco's property was not his concern; the Board could deal with the Applicant however it wanted. But where the Applicant had affected his property and people were coming head on at each other and pedestrians going into nowhere land on his property impacted his insurance and his customers, the people he had to worry about. The amount of choke points shown on the Applicant's site plan did not work for Chevron at all. He hoped the Board would consider that his business had been there 15 years. Ms. Jacobson stated that how the easement occurred could not be considered, but he believed the Board would have a little different feeling about the proposal. He would be able to explain the easement at some point in time as the application moved forward. In closing, he asked the Board to consider the Chevron's traffic and the impact the application had on the Chevron as well as the trouble the LaPoints have had already. Jason LaPoint had called him and asked how to deal with this because he was out of answers. There was no answer with the traffic patterns the Applicant proposed on the site. He noted he was still cooperative, as he had said to the Applicant and Staff in the beginning. He had presented the gate and fence issue in good faith to ensure the Applicant would have a delivery area and a place to get in, probably, safely and it would work. But, the Applicant could not just close their eyes and make demands and not care what happened to the LaPoints. The Chevron did not use any part of the Applicant's property at this time. He did not need it, unless he put in a coffee shop where his truck loading zone was and have traffic come through that area; imagine the traffic then. If the Applicant could just stay on their property and do their business that would be great. He offered to answer any questions.

Mr. Springall asked about the pedestrian access from The Human Bean along the south side of the site.

Garry LaPoint replied Exhibit B8 was not a good picture, a site plan within the materials showed a sidewalk that was required by him that comes from Holiday Inn across the front of his store and then down across the pump islands and connects to the existing sidewalk. That was the way he wanted pedestrians and bicyclists to travel. He did not want them cutting through the high traffic volume area.

Mr. Pauly explained that the sidewalk as originally proposed was meant to provide pedestrian access to the parking along the north side as well as limit the crossing for an employee coming from The Human Bean to the trash enclosure. Those were the two reasons Staff requested that a sidewalk be put along that north side. The sidewalk was not intended to connect to the Chevron property.

Garry LaPoint displayed Exhibit D7 titled, "Safety Solutions for Pedestrians/Employees/Deliveries" and indicated how people were being led and dumped into the parking area and the Applicant said there would be something painted on LaPoint property.

Mr. Springall noted Staff had said that sidewalk was not intended for the Chevron property.

Garry LaPoint replied that was what they say, but if you came from The Human Bean outside seating area, for example, and were going to the Holiday Inn or the Chevron, which way would you go? He did not have a problem with people coming across here back to the sidewalk a painted sidewalk that was located in a slow area for the Chevron, which usually had a person out there directing traffic. The LaPoints had good control over this area, but when pedestrians went the other way, they had less control. The Applicant's answer was to have the sidewalk just end on his property and then painting something on his lot. He had explained why the fence should be there. If the Applicant did consider writing up an easement, they should get something to allow the garbage truck to pick up their garbage because there was no provision to pick up Wilsonville Devco's garbage off of the Chevron's lot.

Ms. Jacobson believed that question could also be addressed to the Applicant because it was part of their application.

Chair Fierros Bower called for the Applicant's testimony.

Ms. Jacobson suggested that the Applicant address the question about the sidewalk before their time started. She asked that the Applicant limit their testimony to 10 minutes, but obviously, they had not—

Mr. Pfeiffer stated the Applicant's team would be fine with 10 minutes. In light of Ms. Jacobson's suggestion, he would have Mr. Veentjer explain Exhibit B8, which was in the record, and that it represented what the opponents just pointed out.

- First, he wanted to say that the Applicant was in favor of Staff's recommendations as modified up through and to Mr. Pauly's points tonight, as well as the conditions and additional findings.
- He could not recall whether Exhibit B8 had been incorporated verbatim as a recommended condition of approval. However, a more generic condition stated anything the Applicant represented became a condition. And because Exhibit B8 had been presented as the Applicant's modification, the Applicant regarded that as binding on the Applicant if the Board approved the application. The Applicant had no problems with that to the extent the Board felt the need to modify it, which was the Board's province.
- After Mr. Veentjer finished, he would explain the concerns with the gate because it was kind of linked to Exhibit B8.
- He first asked Mr. Veentjer to explain what was intended with Exhibit B8, but then agreed to address the sidewalk discussion since Exhibit D7 was already displayed.

Josh Veentjer, Wilsonville Devco, 4188 SW Greenleaf Dr, Portland, Oregon, 97221, clarified that Exhibit B8 was The Human Bean Truck circulation which illustrated the WB 40 truck, which would be the

largest vehicle used by CoreMark to deliver to the site. He understood from The Human Bean that CoreMark could be very accommodating. Due to The Human Bean's 450 square foot coffee kiosks, the sites were generally smaller and tighter, and CoreMark could be very accommodating on their deliveries.

- The WB 40 truck was illustrated as a worst-case scenario; it was not ideal, but feasible. He understood there were concerns about whether the truck could circulate properly as illustrated on the site plan. He explained that Exhibit B8 was created using an engineering program called AutoTURN, a very conservative program, and they were able to make it work with AutoTURN.
- This past week the Applicant had Carl's Jr. delivery truck, the WB 40 truck, maneuvering on the site to help illustrate with the AutoTURN program. No photos or video had been submitted, as they did not believe it was necessary.
 - Exhibit B8 was to show that the Applicant could strictly utilize their site for delivery, entering upon and in front of Carl's Jr. and exiting upon the same route.

Mr. Springall asked that Exhibit B8 be displayed for the discussion about the trucks. The Board could then return to the pedestrian discussion.

Mr. Ruud stated the program seemed to depict the truck was going over the curb.

Mr. Veentjer replied it did appear that way, which was why he stated that AutoTURN was very conservative. The truck maneuvered just fine, physically on the site.

Mr. Ruud asked whether this was new information that could be considered, as it was done after.

Blaise Edmonds, Manager, Current Planning, said it sounded similar to a new accident that Ms. Jacobson did not want to discuss.

Ms. Jacobson believed the Board had to go with what the drawing illustrated. She assumed, if the Board imposed a condition, this would be the pattern and the Applicant would not be able to go on anyone else's property. If the Applicant could not make it work, they would need to get a smaller truck.

Mr. Veentjer stated they were agreeable to that. As stated, a loading area was not required, but they had been working consistently throughout the process to be cooperative with the City and the LaPoints to create a feasible plan. Up to this illustration (Exhibit B8), they had worked on multiple other illustrations, cooperating with the City to gain feedback from Staff leading up to the plan.

Mr. Pfeiffer explained if the Board was to approve the application which would automatically include Exhibit B8, that as a mandatory condition, the Applicant would be required to maintain all deliveries on site, whether larger trucks were frequent, infrequent or otherwise, to be in compliance. The Applicant had reason to believe the nature of the deliveries were infrequent.

- He stated that the Board had heard a lot of testimony in opposition to Carl's Jr.; its operations, its presence, how it circulates and the like, and it was important to note that those issues were not before the Board tonight. Moreover, this case had seen more than its share of prior reviews with regard to Carl's Jr. and these overall properties.
- Being relatively new to the discussion, he was very surprised to hear concerns regarding the on-site circulation, the presence of an easement, whether the easement was valid and the like, when it had been memorialized in the development agreements in the record.
 - That easement had been addressed at the Stage I to Stage II and was endorsed by the opponents in the development agreement. The easement called for retail development on the Applicant's site and Carl's Jr. went in with that in mind. There was no objection to the Carl's Jr. and now they were hearing concerns that Carl's Jr. was violating the easement, the easement did not exist, and so on.

- The easement had no bearing on the decision, but it would play out in itself by others in the courts. For purposes of their review, the Board was urged to focus on this site, its issues, the circulation and what conditions could solve that.
- Carl's Jr. was committed at this point, as they had gone through the process, including the development agreement, with the expectation that that recorded easement would be in place and allow their traffic to go to and from the gas station site.

Mr. Veentjer explained that the development agreement spelled out the reciprocal cross easement that gave each other's consumers—or each other—access onto each other's property. The Applicant also gave an easement for LaPoint's trash enclosure on their property. The trash enclosures for both The Human Bean and Chevron were adjacent to each other and accessible by the trash company.

Mr. Springall asked the intent of the proposed striping from the end of the pathway to the northeast. The Applicant had proposed, in a later amendment, striping toward the Chevron convenience store, which Mr. LaPoint stated he did not want.

Mr. Pauly noted Mr. LaPoint had not signed the application, so the Board would not necessarily approve that through this action. If Mr. LaPoint was agreeable to the striping, Staff could probably do it administratively at a later time.

Mr. Springall understood it really did not impact that. He recalled Staff had stated earlier that the purpose of the sidewalk was primarily for The Human Bean employees to access the trash enclosure.

Mr. Pauly corrected the sidewalk was for to provide access from the parking stalls up to The Human Bean outside of the travel lanes. He noted the parking stalls belong to The Human Bean given the parking numbers throughout the site..

Mr. Veentjer explained they had designed the sidewalk along the northern portion of their property line to provide a safe passageway for the pedestrians who park their vehicles in those stalls on the northeast side of the property to be able to access The Human Bean.

- He believed Mr. Springall was referencing an exhibit the Applicant submitted with their rebuttal, where in lieu of the fence Mr. LaPoint proposed, the Applicant would be willing to extend their sidewalk onto Mr. LaPoint's property with his permission and cooperation. And then from the end of that sidewalk, there would be pedestrian striping to Mr. LaPoint's front door, which would provide a very safe passageway to the corner.

Mr. Pfeiffer added that to the extent that Exhibit D7 did include any improvements the Applicant proposed on their property, misguided or not, the Applicant had no problem eliminating improvements that were not confined on their site, pedestrian walkways included. He did agree with the LaPoints that the Applicant should not be imposing something on their site, as a result of the Applicant's misunderstanding or otherwise, or attempts to solve something that may or may not be a real problem. He confirmed the Applicant would not be concerned if the walkways were to be removed to the extent that they were off site.

Mr. Springall stated the Board's approval would not actually mandate the Applicant to draw a line over Mr. LaPoint's property.

Mr. Pfeiffer confirmed that was another way of saying he would prefer the Board did not. He explained it would be a complicated situation to have a condition of approval that the Applicant could not implement because someone would not let them do it.

Mr. Springall asked, regarding the intended pedestrian access to The Human Bean, which route someone would expect them to take from Holiday Inn to The Human Bean.

Mr. Veentjer replied along 95th Avenue.

Mr. Pauly stated Staff did look at that closely. Obviously a sidewalk could not be put diagonally through the site. In their analysis, that was the most direct route considering the other site constraints.

Mr. Veentjer stated three access points were provided to The Human Bean from every direction, which was more than adequate.

Mr. Springall inquired whether bicycle access was also intended to go via 95th Ave with access across the drive thru to the front of The Human Bean.

Mr. Veentjer answered yes. There was an ADA pathway from the corner of the intersection and along the side of 95th Ave was the closest, most direct pathway that the Staff found adequate.

Mr. Springall explained that, as a bicyclist, he would avoid gas stations wherever possible, given all the conflicts and there was not much reason for a bicyclist to be in a gas station.

Mr. Pfeiffer confirmed there was no existing sidewalks in the north/south drive aisle parallel to the property line. He noted the Applicants were happy to address any questions on Exhibits B7 or B8.

- He reiterated that Carl's Jr. was not a focus of tonight's review. To the extent that a mistake was made regarding whether Carl's Jr. should have been designed the way it was, in the classic land use sense, Carl's Jr. had already been vested, approved and was beyond appeal.
- Currently, before the Board was a narrow modification of a Stage II for purposes of a [unknown] use, still within a retail with less traffic impact. If it was a different circulation plan, the Applicant hoped that with Exhibit B8 they had developed a plan, together with the sidewalk or headway plans, that confined any and all impacts to their site.
- The Applicant remained confused as far as how they had reached this point through the Stage I, Stage II and the particularly development agreement with the cross easement being in place and still have this debate.
- The last point of discussion was the gate. He suspected a provision existed in the Code with language stating that where possible or where practicable, cross easements and cross circulation be provided to minimize curb cuts, and other good reasons, between properties. Property owners typically did not like this provision because of the liability associated with someone leaving another property while driving through their own, but it was accommodated on occasion.
 - This situation was unusual, as this had already been resolved by the property owners in the interest of a more uniform development concept in form of the development agreement. He noted another easement had been terminated and this cross easement was put in place.
 - Seeing the cross easement in place was a surprise, as it was not the historical approach of retail neighbors unless a unique circumstance existed, such as a single curb cut on a state highway that required the need to funnel traffic to one or two specific points. In this case, the cross easement was in place after the negotiation of the development agreement, and called for and acknowledged retail uses on both sides with ingress and egress to both properties.
 - That debate had been a source of frustration, but in working through it, the Applicant believed this last solution, together with B8, to the extent that the Board could avoid imposing improvements for pedways offsite or markings, was probably the best solution possible.
 - The gate was a problem, not just for The Human Bean, but he believed the Applicant could probably live with the gate notwithstanding the fact that, by their interpretation of that easement, it was a serious limitation of an easement that was otherwise available to serve both properties. The Applicant could probably live with the gate to make everyone's life easier.

- The problem was that Carl's Jr. entered, built, financed and operates in reliance upon that easement recorded as it was required under a recorded development agreement. When Carl's Jr. was approached about the easement, it was very difficult to explain why they should remove it from their business model and depriving themselves, or agree to let the Applicant deprive them, of an easement right enjoyed as a matter of law.
- Questions were raised earlier about whether the gate could be imposed if it were premised on The Human Bean concern without regard to prior approvals, including the development agreement. He believed the Board would have to find the basis for the gate, specific and unique to the extent to which The Human Bean could or could not meet the criteria. All of the Board's conditions must be linked to one or more of the development standards that need to be conditioned, or you can't find compliance and, it could not be based on any traffic, vehicular or freight mobility or delivery traffic associated with Carl's Jr. As noted by Staff, he did not see a basis to impose that gate.
 - Secondly, he was considering what would happen if the gate were imposed in the land use decision where it probably was contrary to the legal easement rights, of a third-party like Carl's Jr. The situation was pretty complicated at that point because they were not even a party of the proceedings that literally undid some of what they relied upon.
 - These were the reasons for the no, which he did not take to be evidence as much as a fact that the Applicant had to respond and do they did with that answer and reason for no, which was explained in that February 7th submittal—or 3rd rather.
- The Applicant was available for any questions. He apologized for making the procedural situation more difficult than it needed to be with regard to new evidence, but it was a unique situation, and he had to be mindful of the record process. Had the Board not established a very clear, two-stage process and simply left the record open, he stated that unequivocally, Mr. LaPoint would be correct in demanding or asking that the record be reopened to respond to information. This was very clear and had been clear since ORS 197.763(6) was adopted many years ago to deal with this situation. That was why cities, such as Wilsonville, developed the phased approach, and LUBA ruled in 2001 that was the way to stop a process from going on forever. He believed Staff would say that was why over the years, the Board and others had developed the exact approach put in place, but the approach only worked if it worked.

Mr. Veentjer stated that he and his partners, three principles including himself, of Wilsonville Devco had contributed a lot through businesses and projects throughout the state as native Oregonians. Upon entering this situation of acquiring the property on behalf of Carl's Jr., they were excited but understood it came as a very complex site with some challenges, costly challenges. They entered the situation with a team approach from day one, as indicated in the development agreement established in 2012, with Holiday Inn, LaPoint Business Group and the City as a party amongst themselves. The Applicant had been very cooperative on every level, dedicating a portion of their site to add another egress lane to the shared driveway to improve circulation. Wilsonville Devco gave Mr. LaPoint the right turn out for his trucks and paid to move his sign. Everything had been outlined in the development agreement, but throughout this whole process, they had been very cooperative and generous, and were very happy that they had been able to accomplish what they had to date, to almost complete. They were very hopeful they could complete one of the entrances to the City of Wilsonville, as they found what had been accomplished so far had been very complementary to what the City was trying to achieve in their overall design. The Applicant hoped the residents and workforce could enjoy the project, 100 percent complete for many years to come. He thanked the Board for their patience and time throughout the process.

Chair Fierros Bower read the hearing format for the remainder of the meeting and began to declare the public hearing closed.

Mr. Springall interjected.

Ms. Jacobson advised the Chair to make sure the Board was ready.

Mr. Springall said he was listening to the Chair's wording and noted that he did have a few questions. He believed Mr. Pauly mentioned approval would include all of the attached exhibits, as well as all evidence submitted by the Applicant. Some of the items submitted by the Applicant were not necessarily appropriate to the approval. For example, the painted lines and some things mentioned and described in later responses from the Applicant seemed to be a bit out of scope of this proposal. He requested clarification about whether any particular amendments needed to be made, if the Board was to approve the application.

Mr. Pauly confirmed that Mr. Springall meant things like the sidewalks off the property. He explained that generally, the site circulation and pavement, it could be understood, and it was clear in the record, that with passage of time, they were different iterations of similar things. The latest version was the one the Board was adopting. In terms of things that were offsite, it would be wise to be specific that the Board was not approving that.

Ms. Jacobson added that everything submitted by the Applicant, Mr. LaPoint, or anyone else who submitted written or oral testimony, would be included in the record and needed to be noted as part of what Staff had looked at in the Staff report, which was the reason for listing out the exhibits. She clarified that two circulation patterns were proposed. One assumed an easement right, which was in dispute. Because of that dispute, the circulation pattern was reconfigured by the Applicant to be fully on their property, which was something the Board would want to make clear. Mr. Pauly had attempted amending the Staff report to do that. When making a resolution, the Board should clarify that the approval was based on the circulation occurring 100% within the Applicant's own property, and not trespassing onto Mr. LaPoint's property in any way.

- Regarding the sidewalk, Mr. LaPoint submitted a letter that stated some items that would make the development work for him. The Applicant attempted to respond to the letter and a sidewalk was one of the items offered. However, as pointed out by Mr. Pfeiffer, the Applicant could not be told to put a sidewalk on Mr. LaPoint's property. She believed the Applicant had indicated a willingness to do that, and if he and Mr. LaPoint had further discussions, they could come back to Staff and ask for any approvals required to do that. For tonight's purposes, the Board needed to be clear they were not ordering anything to happen on Mr. LaPoint's property. The proposal had to be fully contained within the Wilsonville Devco site, which happened to be where both the Carl's Jr. is and where the proposed Human Bean would be.

Mr. Pauly restated, to ensure it was correct on the record, that there was a scenario where the Applicant could go through the arbitration described in the easement document, and find that it was okay for Wilsonville Devco to take trucks across Mr. LaPoint's property. If that was the case, he wanted to be clear whether the Board was okay with the alternative circulation plan.

Ms. Jacobson said that was a good point. That plan was an acceptable circulation if a legal right existed to do so. For purposes of granting the application, there had to be an alternative that the Board was certain was legal. The only alternative the Board was certain was legal this evening was the one that was fully contained within the Wilsonville Devco property.

Mr. Greenfield confirmed that if a subsequent agreement were struck to allow that access through the easement, it would not require any further approval.

Mr. Pauly stated that was why the Board might want to be careful, if that was their will, to not close that door if it ended up being agreeable to the parties or being as of right. A possibility existed, regardless of whether Mr. LaPoint liked it or not, that a legal right had already been granted to the Devco property

owner as determined through another legal proceeding. The Board should be cautious as this could be a scenario that came up, and to not inadvertently close the door on something that the Board did not want to.

Ms. Jacobson explained if that was something the Board wanted to do, Staff could help phrase a resolution. She reiterated the only thing that could be approved tonight was something that could operate without going onto another party's property that was not the Applicant's property.

- She advised the next step was for the Board to ask for a motion to amend the Staff report to include the additional exhibits. And then, a motion was needed to either accept Staff's recommendations or to add clarifying language that all the Board was approving was the circulation pattern that was wholly contained within the Devco property, but agreeing, should it be determined that a legal right to use the easement existed, that was also fine with the DRB, but the Board could not say it was allowable or not.

Ken Ruud moved to approve the Staff report adding Exhibits B6, D5, D6, D7, D8, B7, and B8, which were submitted within the allowed timeframe agreed upon by both parties, and Exhibit A4, submitted to the Board earlier today. Lenka Keith seconded the motion.

Mr. Greenfield confirmed the Board was not voting to approve the application, but to approve the Staff report with the inclusion of all the exhibits.

Mr. Ruud confirmed that the hearing had not been closed.

Ms. Jacobson apologized, saying the hearing must first be closed.

Chair Fierros Bower closed the public hearing at 8:35 pm.

Ken Ruud moved to accept the Staff report, including Exhibits A4, B6—

Mr. Greenfield interjected, saying that was not what he heard.

Mr. Pauly asked if the exhibits were being added or if the whole Staff report was being accepted as written.

Mr. Edmonds noted the Staff report made a recommendation for approval.

Mr. Pauly clarified if the intent was only to add the exhibits then that should be stated.

Ken Ruud amended his motion and moved to add to the Staff report, Exhibit A4, submitted to the Board earlier today, as well as Exhibits B6, D5, D6, D7, D8, B7, B8, which were submitted before the agreed upon timeframe for response and rebuttal from both parties. Lenka Keith seconded the motion, which passed unanimously.

Ms. Jacobson stated now the Board would look to a motion, if someone wanted to make it, to approve the recommendation in the Staff report as amended by Exhibit A4, or additional recommendations or clarifications could be made in the motion as well.

Ken Ruud moved to reject Resolution No. 268. Jerry Greenfield seconded the motion.

Ms. Keith commented that the traffic flow was complex enough and she did not believe keeping The Human Bean traffic on the Devco property was enforceable because there was a problem with the Carl's Jr. traffic already. Additional traffic on the site would just compound the problem.

Mr. Ruud agreed, adding his big concern was the one exhibit the Board could consider tonight, Exhibit B8. He appreciated that Mr. Veentjer noted this was the worst-case scenario, it was a scenario and ~~it was~~ the one before the Board. According to what was depicted in Exhibit B8, which was what the Board could actually consider, the truck could not operate/maneuver adequately within the space.

Mr. Springall understood the Board could amend the report with the requirement to clarify that it was possible, in practice, to maneuver a WB 40 truck to be able to deliver to The Human Bean entirely within the Devco property.

Mr. Ruud replied that was new evidence presented by the Applicant.

Mr. Springall said he was not talking about new evidence, but that the Board could require conditions in order to approve the application.

Mr. Pauly confirmed the Board could make conditions in order to make the application approvable, which could be anything from modifying a curb to doing any number of things.

Ms. Jacobson explained the Board could accept the circulation pattern the Applicant represented would work entirely on their property, but condition that it must work entirely within their property, and if not, that was the risk the Applicant would be taking and they would not be able to operate if they could not operate entirely within their property. The Applicant would have to change their trucks, or whatever was needed. The Board did not have to know if the trucks could maneuver completely around or would go up on the curb to do it, but the Board could condition that the Applicant must operate within the site, and there could be no operation on Mr. LaPoint's property, unless and until the easement issue was resolved.

Mr. Ruud understood and appreciated that approach, but voiced concern about whether that could be enforced. The evidence before the Board was that trucks tend to enter the property and did not necessarily go where they were supposed to regardless of the signs. There were issues today, which he understood concerned the Carl's Jr. property not The Human Bean property. He was concerned that what he was looking at tonight, even though it was a worst-case scenario, did not work and his assumed the program would find a way that would work, and this did not work. The Board could discuss modifications to sidewalks, but that brought into question was how far the curb was from the property line and whether that met Code; it just opened up other questions in his mind, rather than it being nice and clean.

Mr. Greenfield stated he was not stuck on the truck problem. It seemed to him that a much more fundamental issue existed. The core issue was whether the application met criteria in WDC 4.400, regarding proper functioning of the whole site. The opponent argued that it did not and much of the evidence the opponent presented was to that point. The Applicant asked the Board to disregard much of the evidence as pertaining to the previously approved Carl's Jr. development and, therefore, not within the scope of the present application. He agreed with this argument as it regarded to traffic videos and their analysis, which described existing conditions that could not be attributed to the proposed coffee kiosk and were not to remain to this application. However, to the extent that those problems already existed, that would be exacerbated by this development. He must agree with the opponent that the existing conditions were pertinent and could not be disregarded. The opponent was not calling for a mitigation of existing problems, only for not amplifying them at any rate not beyond what had already been approved in prospect of the multi-tenant commercial building, which was described in the former application.

- The cumulative effect of all the late exhibits was to produce a tortured circulation pattern within the property, which simply did not make sense. Technically, it could be made to work, but it certainly was not efficient or convenient, and it did not seem to be good business.

Chair Fierros Bower added that originally an office building was planned for the corner and now it was a coffee kiosk. These were two different uses that generate different types of traffic in addition to pedestrians traveling to and from the site. She noted if she were staying at the Holiday Inn, she would probably would not take the sidewalk, but walk straight across the site to get coffee in the morning. Peoples' lives would probably be endangered in that not a very safe circulation was created for pedestrians or vehicles entering and exiting the site. She was hesitant with the way the circulation was laid out. She had been taught that pedestrian safety was the first priority when a site plan was laid out and the paths, circulation, and routes that pedestrians might take are considered. As much as she would like it to work, the proposed plan did not work for her, as she had concerns with the layout and the way it was proposed at this time.

Ms. Keith agreed, adding that people tend to take the path of least resistance and, whether it was the right or wrong property, they would drive wherever room was available. Traffic was already an issue and she believed the site would be compounded by adding additional traffic.

Mr. Greenfield said if the application reached the appeal stage, LUBA would read the whole case and it seemed both sides had defects in their presentations. There were also serious defects in the opponents' presentation, though some had been corrected in later submissions. It seemed that the bottom line was that the Chevron business would be seriously damaged by the approval of this application. To the extent that the proposed circulation was voluntary and depended on self-policing and good manners, as noted by Mr. Altman in the previous hearing, any approval based on self-policing and good manners was probably not very sound.

Mr. Ruud asked for clarification about the Chevron property being seriously damaged with approval of the resolution.

Mr. Greenfield apologized, saying he had misspoke; he was going through a previous stage of consideration. He clarified that if the Board's approval was conditioned on self-containment within the Carl's Jr./kiosk property, the Chevron would have minimal harm. The only harm would result from increased traffic on the shared driveway, which had not really been an issue to date. If that condition exists, then the harm was probably minimal. He stated then they were left with a very difficult and chaotic traffic pattern within the Carl's Jr. site.

Mr. Springall believed a lot of the chaos shown on the video and described by the opponent was largely caused by circulation issues with the delivery trucks. He noted Exhibit B8 showing delivery trucks on the two Devco properties would largely address many of the circulation issues, in addition to some clear signage improvements and a clear intent to keep circulation, including deliveries, for The Human Bean and Carl's Jr. traffic within the Devco property also existed.

- He was unsure the traffic pattern could be classified as chaotic; it was certainly tight. He noted the Board might be influenced by the truck-reversing maneuver, which would be an unusual situation but that truck drivers were trained for.
- The other issue mentioned was pedestrian access. Both as a cyclist and pedestrian, he would avoid traveling through a gas station, particularly from the Holiday Inn to The Human Bean, so walking onto the sidewalk on 95th Ave would be very reasonable. He was unsure whether the concerns were that serious, noting the Applicant had addressed each concern one by one. The circulation was tight, but not chaotic.

Ms. Keith believed it would be foolish to assume that traffic could be contained entirely within the Devco site, unless it was somehow physically blocked. People would drive wherever they wanted, and if something was in their way, they would find another way. She confirmed that she did not believe the plan would work without the gate.

Chair Fierros Bower imagined having the property heavily patrolled would help keep people from doing what they were not supposed to be doing.

Mr. Ruud believed the Board had given the opponent quite a bit of time to consider and had made many concessions toward the opponent, especially at that last hearing. He asked whether the Board would consider reopening the hearing to give the Applicant a chance as well.

Ms. Jacobson stated the Board certain could if they wanted, but if additional information existed that might be helpful, the Board could continue the hearing and ask the Applicant to return.

Mr. Pauly confirmed the 120-day land use clock would end April 8, 2014.

Mr. Edmonds added that included any appeal to the City Council.

Mr. Greenfield asked what was likely to change in the time period between now and the next meeting.

Mr. Ruud explained he was suggesting reopening the record tonight to give the Applicant a little time to address concerns the Board raised.

Ms. Jacobson stated the Board could reopen the hearing again if the Board had a question for the Applicant.

Mr. Greenfield believed the parameters had been pretty well plumbed.

Ms. Jacobson explained the Board had the Applicant stating that they had looked at this and that, regardless of how close the truck looked on the drawing, that they could and would do what it took to stay within their own space. She understood the situation was not perfect. The site had always been constrained and was when the Carl's Jr. application came forward, and it would remain constrained. All the signage in the world could be installed and people could still drive in the opposite way. It might take a while for the situation to work out.

- The Board had limited ability to restrict what took place on private property and had no authority whatsoever to say the Applicant could cross over onto Mr. LaPoint's property. If the Board were to consider approving the application, they needed to be clear that the Applicant had to stay within their own site, unless and until their dispute concerning the easement was resolved because the easement would be a key factor in allowing things to flow more smoothly. The dispute would take some time to resolve. If the Applicant represented they could do it this way and approval was given to do so, the Applicant would have to work within that parameter and that would be their burden. She believed the Applicant had stated that they could do that. The Board just had to decide in looking at the land use regulations and Staff report, in addition to questioning Staff without reopening the record, if needed, whether or not the application could be approved based on strict compliance with the circulation presented, staying completely off Mr. LaPoint's property.

Mr. Greenfield believed the core issue did not involve discrete criteria that could simply be checked. The general criteria of safety and efficiency, and he hated to call it subjective because it was not exactly that either, was efficient in making maximum use of that property. The property was efficient to the point of being overbuilt. In some respects, it was overbuilt in that too much was going on in such a small, contained area. The property was under built with respect to the absence of some facilities that ought to be there and usually were in a fast food restaurant application, namely and especially in an industrial area such as this, a place where trucks could pull in and park; where adequate parking was available for a maximum customer base; and where safe and convenient parking of customer cars existed. In those respects, it seemed the site was under built to cram in a new high volume, which had not really been discussed, as much as 40 to 60

cars per hour through the tight site would overburden it considerably. The situation did not make good sense to him. He would hate to be responsible, or even feel responsible, for mishaps that could occur as a result of the over built situation in which he had some hand in approving.

Chair Fierros Bower called the question.

The motion passed 4 to 1 with Simon Springall opposed.

Chair Fierros Bower read the rules of appeal into the record.

The Board took a brief recess and reconvened at 9:09 pm.

B. Resolution No. 269. 110th Avenue Street Vacation: Stacy Connery, AICP, Pacific Community Design, Inc. – Representative for Fred Gast, Polygon Northwest Company – Applicant/Petitioner. The applicant is requesting approval of a request for the City to vacate portions of SW 110th Avenue between SW Mont Blanc Avenue and SW Tooze/Boeckman Road. Staff: Daniel Pauly

Case File: DB14-0001 – Street Vacation

The DRB action on the Street Vacation is a recommendation to the City Council.

Chair Fierros Bower called the public hearing to order at 9:09 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site. No other board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No Board member participation was challenged by any member of the audience.

Daniel Pauly, Associate Planner, announced that the criteria applicable to the application were stated on page 2 of the Staff report, which was entered into the record. Copies of the report were made available to the side of the room.

Mr. Pauly noted that street vacations were not typical for the Development Review Board (DRB). The last street vacation was completed for Fred Meyer and went through the Planning Commission because the Fred Meyer application had not been approved at that point. This vacation was presented to the DRB because it was related to an application the DRB had previously reviewed for Phases 3 and 4 East of Villebois, which were contingent upon approval of the 110th Ave street vacation. He noted the decision was a recommendation to City Council, as laid out in the City's Code and the statute that City Council takes action on this type of application by ordinance. He presented the Staff report via PowerPoint with these key additional comments:

- He briefly reviewed the history of street's layout, using several slides to depict the progression of the connection through Villebois from 1997 to 2008 when the historical alignment of 110th Ave began changing. He also described the various traffic routes used as 110th Ave changed over time and how portions of the 110th Ave right-of-way were essentially converted into Costa Cir beginning in 2012, and improved from a two-lane, rural road to having two lanes with bike lanes and sidewalks.
- Using an overlay on the 2012 slide, he indicated three additional tracts shown in red that were proposed to be vacated and would become park areas, as shown in the plans the DRB had previously reviewed and approved contingent upon this action. The orange indicated how the north/south connectivity would come into a roundabout at what would be Costa Cir and Villebois Dr, and then come up a new segment of Villebois Dr to the existing roundabout just west of the Boeckman Bridge and then onto Tooze Rd.

- A close-up of the exact areas to be vacated was displayed and he explained that the in between areas not being vacated would remain right-of-way either at the intersection of Villebois Dr and Berlin Ave or, further up, at what would be Stockholm Ave and Villebois Dr.
- Figure 8 from the Villebois Village Master Plan showed the historical alignment of 110th Ave in black and the plan from 2005 showed 110th Ave as an existing street that would be replaced as Villebois developed. He noted Barber St and Villebois Dr, plus the new alignment of Tooze Rd and Boeckman Rd, all replacing the historic alignment of 110th Ave throughout that area. Figure 7 was the Street Plan from the Villebois Village Master Plan that also showed parts of 110th Ave being replaced with Villebois Dr.
- A map from the Transportation System Plan (TSP) also showed a red X for a road closure, so City documents, both the Villebois Village Master Plan and TSP clearly displayed portions of 110th Ave being eliminated and replaced by alternative circulation patterns.
- The phasing for Phases 3 and 4 East was based on the current ownership, and Polygon Northwest had either closed or was close to closing on the purchase of both properties. As allowed by Code, Polygon already had the phasing approved administratively because it made more sense to build in it different phases. Building the park areas that would replace 110th Ave, as well as the new segment of Villebois Dr, were all part of the Phase 1 development, which Polygon hoped to complete this year.
- According to State statute, all adjacent property owners sign the petition when a right-of-way is vacated. In this case, two owners were Polygon, or entities controlled by Polygon, and the third was Mr. Bischoff, who signed an agreement to sell, and if the purchase had not closed, it would soon.
- The right-of-way being vacated would return to the adjacent property and then be platted as part of those subdivisions' property as park tracts.
- He noted that people do travel via 110th Ave all the time and a number of inquiries were received from the public as they saw the notice. Over the years, many questions were asked about when sidewalks would be provided at 110th Ave. Polygon's plan would provide that sidewalk and bike connectivity north/south through Villebois. Those with inquiries were directed toward information and no feedback had been received about any concerns about portions of 110th Ave being eliminated.

Mr. Greenfield asked the age of the street plan.

Mr. Pauly replied the street plan for this area with 110th Ave going away and Villebois Dr was part of the original Villebois Village Master Plan, which dated back to 2003. This particular street plan was dated 2013 because the 2013 amendment placed the streets into what was formally the Living Enrichment Center.

Ms. Keith asked how traffic would be diverted when the street was closed.

Mr. Pauly said many of those details would be worked out with the contractor. The City was very aware of wanting to minimize closures and detours.

Steve Adams, Development Engineering Manager, noted it was well understood between the City and the developer that the impacts to the traveling public were to be minimized. The situation would be similar to what was done last summer when Grahams Ferry Rd was rebuilt and Grahams Ferry Rd and Barber St were rebuilt as a roundabout. The City negotiated with that contractor to close the road for about three weeks, except for local traffic, and do as much as possible ahead of time. This project would be the same way. Not knowing exactly how the contractor would handle it, the City would have to negotiate, but he estimated the project taking about four weeks, perhaps.

Mr. Pauly noted the stockpile and explained that a fair amount of grading was required to build in the area. The actual level of the road would change and that could also extend the length of the project because a lot of earth had to be built up and moved around.

Mr. Adams said he did not have an exact date, as that would have to be negotiated, but it had all been brought up in early discussions between the City, Polygon and Pacific Community Design. A contractor had not been hired yet. During the interim, the detour route would be Barber St to the roundabout, north of Tooze Rd and then over. The detour would just be a few short blocks out of the way. Currently, not many cars were traveling north on 110th Ave, and 80 percent of those that did turn left and go out to Sherwood. Those drivers would now travel down Barber St, up Grahams Ferry Rd and turn left to go to Sherwood.

Mr. Springall asked if the Villebois Dr north connection would be built and opened before the closure of 110th Ave for Wilsonville centric traffic coming towards Villebois along Boeckman Rd.

Mr. Adams answered no, adding it would be built but not open. He envisioned that Villebois Dr would be built south of the roundabout up to where it connects to 110th Ave, and at that point, 110th Ave would be shut down so Villebois Dr and Costa Cir could be built out and connected. Just like Barber St and Grahams Ferry Rd, much of the project would be built ahead of time and at the very last minute, the road would be shut down, demolished and rebuilt; however, that portion of Villebois Dr would not be usable as it would dead end and go into a shallow street network that was built for this subdivision. It would have no connecting streets until the work was completed. Coming from Wilsonville heading west, one would travel to Grahams Ferry Rd, turn left and travel back in on Barber St to access a Villebois residence for that period of time.

Mr. Springall said it was a frustrating situation for that central Wilsonville connection on Boeckman Rd. The Boeckman Bridge had just been reopened after being closed for so long and essentially that connection would be closed again, unless one was traveling toward Sherwood.

Mr. Adams explained that no other alternative existed. The City had known this would occur for 11 years, as the plan was first passed in August of 2003. The developer came in with an application, which went to DRB the previous year, and the plans were currently being reviewed.

- He agreed it would have been better to do the project when the Boeckman Bridge was closed, but noted that 110th Ave had been used as the detour. If 110th Ave and Boeckman Rd were closed, Barber St would have been the detour and residents on Barber St would have complained about the 5,000 vehicles using their street each day. He did not believe any alternative would have worked well, people would complain about traffic regardless.

Mr. Springall asked how long the street was expected to be closed when neither street would be available.

Mr. Adams confirmed with Jim Lange that it would be three or four weeks. Construction on this portion would begin in late summer, around September. Nothing had been negotiated yet. All that existed was a condition stating that the City would negotiate and would work on the minimal time.

Jim Lange, President, Pacific Community Design, 12564 SW Main St, Tigard, OR, stated this project had been in the works for a long time. He reinforced Mr. Adam's comments, noting the Applicant had waited for a strategic time to do the project. They did not want to do it when the Boeckman Bridge was closed because it would leave only one way out, which they did not believe would be good. The second element they wanted to complete was the Barber St Extension so now Barber St traversed the site. One

could get to Graham's Ferry from anywhere in Villebois, including north and south that way as well as east and west via Boeckman Rd.

- The anticipated construction sequence was to first grade the site and the road would not be touched. Grading would occur on both sides of the road and take six weeks. Next, they would lay all the underground utilities which would involve a few crossings of 110th Ave that would be trenched in a day, plated over and completed. Those closures would be temporary as they trenched across the road.
 - On the east side, the road from 110th Ave down to the traffic circle would be completed. It would still be barricaded off and the roundabout would be built on the other side of the road. So both sides would be paved and the utilities installed, so the streets would just need to be connected. The closure would allow just enough time to tear out pavement, lay and compact the base, lay the curbs and pave it, which he believed would be completed in a couple weeks, if not sooner.

Mr. Adams suggested a minimum of three to four weeks just to provide some coverage, noting that whenever two weeks were promised and not delivered, people tended to get upset.

Mr. Springall noted the homes on the east side of I-5 in the Lowrie School District and that school buses had to divert when Boeckman Rd was closed. Traveling along Boeckman Rd toward the school along these roads would be a much shorter trip than having to travel out to Grahams Ferry Rd and back through Villebois.

Mr. Lange commented everyone would be happy if the project were completed before school opened.

Mr. Ruud asked about whether it was up to the City to build the road and if funds had been set aside.

Mr. Adams explained that in the development agreement with Polygon Northwest, the City was the responsible party for certain items in Tonquin Meadows. He noted the piece of Villebois Dr in brown leading up to Boeckman Rd on the map was offsite development and all on urban renewal land. The City wanted a connection to Boeckman Rd and part of the development agreement was that the City would pay 100 percent of that because it was not developer-driven. For the rest of Villebois Dr, the City was responsible for the bike lanes. The developer was only responsible for building 24 feet of travel lane to get to and from his site. Any time bike lanes were added to a residential subdivision, the City reimbursed that cost.

- In addition, the developer was responsible for building a local residential street and typically, two inches of additional rock were laid under a Villebois Dr style street. The City would reimburse for the extra rock, as it was a structural difference not required for a residential development. Funds had been set aside for this project, which went to DRB a year ago. The City knew Polygon planned to build the project and a Capital Improvements Plan (CIP) account of approximately \$350,000 had been set aside for reimbursement of the City's share of Villebois Dr. Another account had been set aside for the City's reimbursement of some water line work also occurring in the same subdivision, so funds were available to pay for the work.

Chair Fierros Bower called for public testimony in favor of, opposed or neutral to the application. Seeing none, she closed the public hearing at 9:34 p.m.

Simon Springall moved to accept Resolution No. 269. Ken Ruud seconded the motion, which passed unanimously.

VIII. Board Member Communications: None

IX. Staff Communications

Blaise Edmonds, Manager, Current Planning, thanked Jerry Greenfield for being on the DRB and remaining on the Board for a second public hearing on The Human Bean. He believed Mr. Greenfield's wisdom was amazing and that he had provided valuable input for the short time he was on the Board.

- He noted that City Council had approved Kristen Akervall who lived on the east side of Villebois and was an operations analyst. He and Chris Neamtzu would meet with her next Friday. If a Panel A meeting was held in March, she would be there to fill Mr. Greenfield's shoes.

The Board members thanked Mr. Greenfield for his work and wished him luck on the Planning commission.

Mr. Greenfield stated he would take his experience from the DRB to the Planning Commission.

Mr. Pauly noted that several of his fellow Planning Commissioners had been on the DRB. Having taken Code revisions through the Planning Commission, he knew that having DRB experience was very valuable at the Planning Commission.

X. Adjournment

The meeting adjourned at 9:37 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for
Shelley White, Planning Administrative Assistant

Wilsonville City Hall
29799 SW Town Center Loop East
Wilsonville, Oregon

Development Review Board – Panel A
Minutes–January 13, 2014 6:30 PM

Approved as corrected
(corrections in bold italics)

February 10, 2014

I. Call to Order

Chair Mary Fierros Bower called the meeting to order at 6:31 p.m.

II. Chair's Remarks

The Conduct of Hearing and Statement of Public Notice were read into the record.

III. Roll Call

Present for roll call were: Mary Fierros Bower, Lenka Keith, Ken Ruud, Jerry Greenfield, and Simon Springall. Councilor Liaison Susie Stevens was absent.

Staff present: Blaise Edmonds, Barbara Jacobson, Chris Neamtzu, Daniel Pauly, and Mike Ward

IV. Citizens' Input This is an opportunity for visitors to address the Development Review Board on items not on the agenda. There were no comments.

V. City Council Liaison Report

No report was provided due to Councilor Stevens' absence.

VI. Election of 2014 Chair and Vice Chair:

• Chair

Lenka Keith nominated Mary Fierros Bower as the 2014 DRB-Panel A Chair. Ken Ruud seconded the nomination. Mary Fierros Bower was elected as the 2014 DRB-Panel A Chair by a 4 to 0 to 1 vote with Jerry Greenfield abstaining.

• Vice-Chair

Lenka Keith nominated Ken Ruud as the 2014 DRB-Panel A Vice-Chair. Mary Fierros Bower seconded the nomination. Ken Ruud was elected as the 2014 DRB-Panel A Chair by a 4 to 0 to 1 vote with Jerry Greenfield abstaining.

VII. Consent Agenda:

A. Approval of minutes of December 9, 2013 DRB Panel A meeting

Ken Ruud moved to approve the December 9, 2013 DRB-A meeting minutes as presented. Lenka Keith seconded the motion, which passed 4 to 0 to 1 with Jerry Greenfield abstaining.

VIII. Public Hearing:

- A. **Resolution No. 267. Jory Trail Parking Lot Addition and Modification: Otak, Inc – Representative for CRP Holland Brenchley Estates, LP – Applicant/Owner.** The applicant is requesting approval of modifications to the approved Stage II final plan and Site Design Review plans for Jory Trail Apartments for 40 additional parking spaces and modification of 26 existing parking spaces to add carports. The subject site is located on Tax Lot 100 of Section 14A, T3S, R1W, Clackamas County, Oregon. Staff: Blaise Edmonds

Chair Fierros Bower called the public hearing to order at 6:37 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site. No board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

Blaise Edmonds, Manager of Current Planning, announced that the criteria applicable to the application were stated on page 3 of the Staff report, which was entered into the record. Copies of the report were made available to the side of the room.

Mr. Edmonds presented the Staff report via PowerPoint with the following key additional comments:

- He entered into the record as Exhibit B3 an email received from Brenner Daniels, Development Director of Holland Partner Group to City Planner Amanda Hoffman agreeing to the elimination of four parking spaces near the right in/right out as recommended by the City. He read the email message and noted that Exhibit B3 was emailed to the Board earlier in the day.
- The application requests A for a revised Stage II Final Plan and site design review primarily involved adding additional parking and new carports to the existing project. He noted the locations of the nearby Napa store and Wilsonville Family Fun Center. The Jory Trail at the Grove Apartments were almost fully occupied, and even though the parking exceeding minimum Development Code parking requirements when approved, there was demand for additional parking on site.
 - He indicated the proposed locations of the additional parking spaces, which included 27 spaces in the southeast corner of the site; 24 carports located mostly at the west end of the project; and 13 spaces in five different locations throughout the site. He noted the trees in the southeast corner next to the apartments would be preserved, and that three parking spaces would need to be removed to create a driveway access to the proposed 27 spaces in the southeast corner.
 - On the Landscape Plan, the Applicant proposed a Pink India Hawthorn hedge, an evergreen flowering hedge that would grow to a substantial size, and Kinnikinnick ground cover to create a nice buffer between SW Parkway and the new parking lot. Two-inch caliber English Oak trees were also being added throughout the site.
- One issue was that the Applicant originally proposed removing two trees in order to add four additional parking spaces close to the entrance on SW Parkway Ave; however, DKS & Associates believed it would be dangerous to have parking so close to a major driveway into the project given the 40 mph speed limit on SW Parkway Ave. The Application had agreed to not remove the trees to create those parking spaces, reducing the original request of 40 new parking spaces to 36 spaces.
 - He reviewed Staff proposed Finding A20 under the Stage II Approval that reflected that change in the proposed number of parking spaces. One critical point was that the proposal would result in the project having 98 spaces above the minimum Parking Code requirements. Hopefully, it would provide sufficient parking so that the upset residents would not cancel their leases and move.
- He concluded that Staff recommended approval of the applications with conditions, displaying a picture of the southeast corner of the site where the new 27 space parking lot was proposed. (Slide 9)

Jerry Greenfield noted the location for the hedge seemed very narrow, so tight pruning would be needed.

Mr. Edmonds explained the space on the slide appeared narrow, but the actual space for the hedge was approximately two feet wide. He believed that grass was shown extending around the corner toward the driveway entrance, but deferred to the Applicant for clarification.

Simon Springall noted the paragraph at the top on Page 17 of 47 in the Staff report regarding a permanent built-in irrigation system referenced proposed Condition PDP 2 at the end of the sentence, but he could not find that condition.

Mr. Edmonds replied he did not see a Condition PDP 2 either, but one could be added that all landscape coverage be fully irrigated by an automatic or drip irrigation system. The Development Code required that landscaping be irrigated. The Applicant had fully irrigated the site and he assumed they would irrigate but the Board could add a condition if they wanted to play it safe or delete that last sentence.

Mr. Springall asked if the paved trail shown in Slide 6 that ran east-west along the south edge and extended along the west corner of the site would be replaced since the Applicant would not want people walking across the parking lot.

Mr. Edmonds replied the trail would be eliminated as he understood the Applicant thought enough sidewalks would now exist along the south side of the apartments for the residents to use as a path.

Mr. Springall asked if pedestrian connectivity was being discouraged by moving the trail.

Mr. Edmonds deferred to the Applicant. He acknowledged that no pedestrian exit existed through the hedge, adding he believed the Applicant made a conscious effort to focus the pedestrian system down the sidewalk and not through the parking lot.

Mr. Springall noted the existing did extend onto SW Parkway Ave near the Napa parking lot.

Ken Ruud noticed no changes were proposed to the outdoor lighting and asked if the existing lighting would be moved or be retained.

Mr. Edmonds replied there were no proposals for lighting in the new parking area, but it was a discussion topic in the Staff report. In the event the Applicant decided lighting was necessary, a Class I Administrative Review would be required for approval. There was no lighting in the area currently proposed to be a new parking lot.

Mr. Ruud noted there were three or four light posts lighting the existing pathway.

Mr. Edmonds deferred to the Applicant, adding that Amanda Hoffman had written the Staff report, but had recently resigned from her position so he was not aware of all the details at this time. He confirmed Staff sent notices to the respective departments, including police and fire. He had talked with Ms. Hoffman on her last day and she had not received any comments from those divisions.

Lenka Keith asked if the crushed rock path, shown as a dashed line, was the only direct connection between the new parking lot and Building 6.

Mr. Edmonds answered yes, noting that crushed rock or bark protected the roots of the trees better than excavating for a concrete pathway.

Ms. Keith inquired about possibly installing an elevated wooden path, similar to a deck or ramp.

Mr. Edmonds replied that gravel paths were commonly used through natural areas, adding that a wooden path required a lot more maintenance and could be slick during certain times of the year.

Ms. Keith stated that her questions stemmed from considering women having to walk through the crushed rock wearing heels, which would be uncomfortable and a possible safety issue.

Mr. Edmonds replied women would not want their heels to get stuck in between the wooden boards either.

Chair Fierros Bower asked if the number of proposed parking spaces would be sufficient long term.

Mr. Edmonds replied the Applicant had looked at every conceivable corner of the site and had maxed out their parking options. He believed the Applicant needed to do more policing on how residents utilized their garages, which should be used only for cars and not storage. Part of the issue was that the Applicant did not anticipate more than one family renting the four-plexes. College students sharing rooms in the four-plexes resulted in many more cars per unit, thereby increasing the parking demand beyond what was originally planned. The Applicant was also trying to attract college students from OIT, but they could speak to the issues that lead to a higher demand for parking.

Chair Fierros Bower called for the Applicant's presentation.

Brenner Daniels, Development Director, Jory Trail at the Grove, Holland Development, 1111 Main Street, Suite 700, Vancouver WA, 98660 stated Jory Trail at the Grove had 324 total units and the original Development Plan had 530 parking spaces, which included 118 garages, 138 carports, and 270 surface spaces. Most of the unanticipated parking demand was coming from roommate situations the two-bedroom units because a lot of the time four people instead of two would be occupying the units, resulting in four cars per unit instead of just two.

- The parking shortage resulted in excess cars parking at the south and southeast end of Ash Meadows at the main entrance to The Grove. In addition, guests were also taking parking spaces during the day, and specifically at night, which prevented some residents from parking near their building.
- At the southeast corner specifically, there was a problem with the zonal parking. People obviously wanted to park by their building, but as the full site plan revealed, Building 6 had the least amount of zonal parking and was the main area that needed the additional parking.
- He confirmed 24 new carports were proposed on the southwest corner of the property.
- Jory Trail was currently 95 percent leased, and the Applicant did anticipate that with the addition of the 27 spaces and modifying the 24 open spaces into carports would alleviate the parking issues and provide a long term solution.

Don Hanson, OTAK, 1111 Main Street, Suite 700, Vancouver WA, 98660, stated that while the Applicant was happy the roommates were occupying those units, they brought more cars than anticipated. The best way to address most of the parking issues was on the southwest corner of the property, which was behind the auto parts store, so no one would be disrupted. In addition, screening already existed on the south side and that location was where the parking was most needed.

- The Applicant completely agreed with the City on eliminating the four spaces near the entry, so 36 spaces were proposed to solve the problem along with some parking property management.
- He confirmed an irrigation system was already present in the subject area that watered the lawn, so it would be modified to fit around the edge of the new parking area.
- Lighting was not shown on the plan; there was a lot of spill over lighting from the public right-of-way from Parkway Ave, as well as the can lighting off the three levels of the building that illuminate the sidewalk.
 - If the parking lot were lit, the Applicant would use the same fixtures as used on the other portions of the property, which he believed were about 16-ft to 18-ft poles and adding those could easily be worked out with Staff when the construction drawings were submitted. He indicated that he

would put any additional lighting in parking lot area between two other poles indicated because it would illuminate the area that was furthest from a light source.

- He explained that an understory native seed mix was used in the dotted areas of the Landscape Plan near Building 6 because of the over story trees that had been saved. To preserve those native trees, their arborist advised not over irrigating that area and let the native mix flourish.
 - Preserving the trees was the reason for the gravel path, adding they did not want to do any more hard surface area within the canopy of the trees. The path would not be loose gravel, but rather compacted and rolled to create a safe walking surface from the parking lot to the walkway.
- Additional landscaping would also be placed around the parking lot, giving it a pleasant edge against Parkway Ave, which was the most visible side.
- He displayed Staff's photo with the street level view (Slide 9), noting that the stakes roughly indicated the parking area and that the over story trees, the existing native trees, were on the right hand side with the auto parts store seen over the hedge to the south.
- He noted the Applicant had widened the sidewalk all along Parkway Ave to provide a combination bike pedestrian way.

Mr. Ruud asked if the two or three existing light posts shown over the path near the hedge would be removed.

Mr. Hanson replied the light poles would be retained and indicated that additional light poles could be placed at the turn point in the parking lot. The Applicant did not want any lighting to glare over into the public right-of-way because a controlled light zone ran along Parkway Ave.

Mr. Springall said it appeared that the existing lights along the hard trial on the southwest side of the site would have to be removed because they would be in the new parking spaces.

Mr. Hanson agreed they would be shifted out of the pavement area and to the north because he anticipated pedestrians would walk along that edge.

Mr. Springall asked how pedestrian access would be maintained to Town Center from the south side of the development.

Mr. Hanson noted the Applicant's drawing did not show a potential walkway link from the new parking area, but he suggested placing a walkway along the north side of the new parking lot, which would align with where people might walk in the parking lot and link to the gravel pathway creating better connectivity. He agreed with Mr. Springall's assessment that there was a destination to the southeast, the Town Center.

Mr. Greenfield asked the height of the hedge.

Mr. Hanson replied the intent was for the hedge to rise above the headlights so the residents could still see over it but not have the glare from the headlights.

Ms. Keith asked how many one-bedroom units the complex had because she was trying to understand the parking demand as it related to the unit types.

Mr. Daniels replied the complex was made up of about 80 percent of one and two bedroom units, 4 percent of four-bedroom units, and the remainder was three-bedroom units. While the four-bedroom units did cause some of the problem, it was mainly the two- and three-bedroom units.

Mr. Greenfield asked if all the carports were spoken for.

Mr. Daniels replied yes, the majority were, adding the carports were assigned to allow people to park closer to their building.

Mr. Hanson summarized that the changes discussed included a walkway link to Parkway Ave directed towards Building 6 past the parking lot and that lighting would be adjusted as required to fit the new circulation and parking pattern.

Chair Fierros Bower called for public testimony in favor of, opposed and neutral to the application. There was none.

The Board briefly reviewed the proposed changes to the Staff report that had been discussed and Mr. Edmonds providing language for new Conditions PDB2 and PDB3.

Chair Fierros Bower closed the public hearing at 7:18 pm.

Simon Springall moved to amend the Staff report with the following changes:

- **Add Exhibit B3.**
- **Amend Finding A20 as shown in Staff's PowerPoint.**
- **Delete the last sentence of the second paragraph on Page 17 of 19, "~~With proposed condition PDB2 this can be accomplished.~~"**
- **Add Condition PDB2, "The Applicant shall install a pedestrian walkway directed toward Building 6 on the north side of the 27 space parking lot connecting the new parking lot to SW Parkway Ave."**
- **Add Condition PDB3, "Maintain existing lighting levels in the parking lot with consideration of additional lighting if necessary for safety."**

The motion was seconded by Lenka Keith and passed unanimously.

Jerry Greenfield moved to adopt Resolution No. 267. **Simon Springall** seconded the motion, which passed unanimously.

Chair Fierros Bower read the rules of appeal into the record.

- B. Resolution No. 268. Boones Ferry Pointe – The Human Bean Drive-up Coffee Kiosk: SFA Design Group and CB Anderson Architects – Representatives for Wilsonville Devco LLC – Applicant/Owner.** The applicant is requesting approval of a Stage II Final Plan revision, Site Design Review and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk at the corner of 95th Avenue and Boones Ferry Road. The subject site is located on Tax Lot 302 of Section 2DB, T3S, R1W, Washington County, Oregon. Staff: Daniel Pauly

Case Files: DB13-0046 – Stage II Final Plan Revision
 DB13-0047 – Site Design Review
 DB13-0048 – Master Sign Plan Revision and Sign Waiver

Chair Fierros Bower called the public hearing to order at 7:22 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site. No board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

Daniel Pauly, Associate Planner, announced that the criteria applicable to the application were stated on page 2 of the Staff report, which was entered into the record. Copies of the report were made available to the side of the room.

Mr. Pauly entered several new exhibits into the record as follows:

- Exhibit A3: Email dated January 13, 2014 from Daniel Pauly to Barbara Jacobson noting the dates that information was submitted to Garry LaPoint over the last month on the project.
- Exhibit B4: Email correspondence received from the Applicant on January 8, 2014 regarding patio furniture.
- Exhibit B5: Site Plan, Sheet A1.0 submitted by the Applicant showing maximum queuing for The Human Bean drive-thru.
- Exhibit C4: Comments received from the Public Works Department Plan Review.
- Exhibit D2: Cover letter and Memorandum in Opposition from Wallace W. Lien, which included a number of pictures of the site and several site maps indicating circulation flows for the subject businesses and
- Exhibit D3: Traffic videos and photos submitted by Wallace W. Lien that were included on DVDs and flash drives received January 14, 2014, originally entered into the record as Exhibits D3 and D4.
- Exhibit D4: Letter received on January 14, 2014 from Garry LaPoint via email titled, "Proposed—Convenient Coffee Store Business" requesting a continuance of the public hearing.
- He noted the Cease and Desist Order dated November 19, 2013 that was distributed to the Board was already part of existing Exhibit D1, as was the Washington County document regarding the recording of a Restrictive Covenant.

Mr. Pauly presented the Staff report via PowerPoint, noting the site's location and surrounding properties, with these comments:

- He provided a brief history of the area, explaining that the subject property was part of Edwards Business Center Industrial Master Plan, which dated back to the 1970s and envisioned a variety of industrial and commercial uses typical in that era. The Master Plan designated the subject site as commercial but did not designate a specific type of commercial.
- Previously, the City had received an application for an office building, which was never built. In March 2013, the Development Review Board (DRB) reviewed an application that included the Carle's Jr. along with a multi-tenant building.
- Because the Applicant was *unable* to locate the tenants for the multi-tenant building, they were requesting to replace the multi-tenant building with the proposed coffee kiosk.
- The Stage II Final Plan revision regarded the function of the development along with the traffic, parking, circulation and overall aesthetics. The area subject to the proposed revisions was highlighted in yellow on the Site Plan (Slide 5), and included a 450 sq ft coffee kiosk drive thru with an adjacent patio area surrounded by the drive thru lane as well as landscaping and parking.
- Traffic. Generally, PM peak hours were used to determine level of service (LOS). While the PM Peak trips shown in the table of Slide 7 were not usual for this kind of project, compared to what was previously planned for the site, it was not an issue in terms of the City's PM peak levels of service at the adjoining intersections.
- Parking. The proposed project had 35 spaces, just over the minimum parking requirement of 33 spaces.
- Circulation. Added Exhibit B5 showed how the drive thru was placed on that area of the site to allow for the maximum queuing of vehicles. A lot of vehicles would be coming in and out, and although the circulation was not ideal, based on testimony and the information received from the traffic consultants in preparation of the Staff report, Staff did not see any criteria that would lead them to believe the circulation would not work. Information about the circulation was available in

the videos submitted, but as this point, Staff recommended approval based on the circulation on this portion of the site.

- Pedestrian Circulation & Bike Facilities. Since the original Stage II Final Plan was adopted, additional standards had been adopted in the City's Transportation System Plan (TSP) to increase pedestrian circulation and bicycle facilities.
 - With all the vehicle circulation interior to the site, the safest and most direct area for pedestrian traffic would be the sidewalk. Separating pedestrians through the middle of the site would be really difficult with the amount of necessary circulation.
 - Good connectivity would be provided by connecting pedestrians to the sidewalk to the west of the site. A pathway would also be provided from the parking spaces on the east side of the property near the trash enclosures up to the coffee drive thru to allow employees to carry trash down to the receptacle location previously approved at the center of the site for easier access by collection vehicles.
 - New Development Code spacing standards required bike racks to have five feet of clearance and to be no more than 30 ft from the main pedestrian entrance. A condition of approval required the Applicant to work with Staff on these particular items since there would be some room on the patio to adjust those distances to ensure all the bike standards were met.
- Mixed Solid Waste and Recycling Enclosure. No changes were proposed to the original approval. The enclosure was actually oversized since the proposed building was smaller than that previously approved.
- Site Design Review considered the architecture and materials of a project. The original application for Boones Ferry Point discussed using small town architecture and traditional materials similar to Old Town Square or along Wilsonville Rd.
 - The proposal continued that same theme by using the same brick used on the base of Carl's Jr and similar to what had been proposed on the multi-tenant building. The variety of vertical lap siding and board and batten siding would also match the Carl's Jr but with different colors. Similar to Carl's Jr the new building would also have a tower with the same shape, but with different colors to complement but not look exactly the same as the Carl's Jr Architecturally, Staff believed the proposed building would blend in well with the rest of the site.
 - Most of the landscaping was already installed and provided the necessary landscaping typical for this type of development so Staff definitely supported what was proposed and had been installed.
 - The Applicant used the performance method of the outdoor lighting ordinance. Staff looked at the horizontal foot candles, which were essentially the same low level at the property line as before, and assumed that the vertical foot candles at the property would be similar. No issues had been identified with the outdoor lighting which complied with the Development Code.
- Revisions were proposed to the Master Sign Plan, as obviously, the building was changing, and a Sign Area Waiver was requested. No changes were proposed to the free standing signs previously approved and built; only the panels would be changed for the appropriate tenants.
 - According to the updated Sign Code, all four facades of the proposed building would be sign eligible. The Applicant only proposed signs on three facades, but each sign's area was allowed to be equal to the linear length of the façade. The Development Code would allow just less than 13 sq ft of signage the north façade and slightly more than 34 sq ft on the east and west facades
 - In the Applicant's submittal requested a waiver to allow the sign on the north facade to be increased to match the other signs, which made sense, architecturally, the sides of the building were the same on that portion.
 - Although the Applicant's measurement method in the submittal did not match the Development Code, the main thing was that the Sign Code revisions allowed more flexibility for future rebranding or new tenants with less process because the prior Sign Code was too specific.
 - Staff recommended approving the waiver as well as 25.4 sq ft on the other two signs which was essentially the area within a rectangle drawn around the entire sign.

- Pictures of the building signs were displayed. The signs were typical of similar tenants in Wilsonville and fit nicely within the architectural feature and the area of the building designed as a sign band.
- The Applicant's directional signs were not exempt from the Sign Code because they were illuminated. The signs were shown to be slightly more than six sq ft, so a condition required that the signs stay within the Code allowed six sq ft.
- A hedge was required for Carl's Jr to screen the menu board from offsite view, but the menu for the proposed coffee kiosk was oriented so not to be visible from offsite, therefore screening was not required. The Staff report noted that if that changed over time, a hedge might be required in the future.
- He noted Staff had specifics on the Development Code criteria regarding circulation and whether the traffic generation met the LOS. Section 4.421 stated, "Drives, Parking, Circulation. With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location number of access points, general interior circulation, separation of pedestrian vehicle or traffic, an arrangement of parking areas that are safe and convenient and in so far as practicable, do not detract from the design of proposed buildings and structures and neighboring properties." He asked the Board to keep that language in mind as they listen to testimony and review submitted materials.
- He reiterated that as Staff prepared the report, no compelling evidence was found indicating that the parking and circulation would not work. It might be less than perfect, but it was acceptable under the Development Code format.

Lenka Keith asked about the location of the Thank You and Do Not Enter on-site directional signs.

Mr. Pauly indicated the signs' locations on the Site Plan, on the right adjacent to the sidewalk at the drive thru entrance and on the left side of the drive thru exit.

Ms. Keith stated her concern was that the landscaping or Do Not Enter sign at the end of the drive thru would block visibility and create conflict between the cars exiting the drive thru and those backing out of the ADA parking space.

Mr. Pauly stated most drive thrus have that type of parking and circulation. He noted the traffic consultant might have some ideas about providing extra safety in that area.

Ken Ruud asked if the Staff had adequate time to review the new information and if so, did Mr. Pauly recommend any changes based on the new information provided.

Mr. Pauly deferred to Mike Ward and Scott Mansur of DKS & Associates since they had more time to review the information, especially the video exhibits. Mr. Ward and Mr. Mansur worked on how the shared driveway functioned, which was one of the biggest questions when all the changes occurred with the development of the property. There seemed to be enough area for queuing and for cars to move around internally, but whether the entrance and exit off 95th Ave would remain consistent was the question.

Mike Ward, City Engineer, stated the City was predominantly concerned with traffic on the public roadways and intersections, and how those facilities operate, and whether they maintain a LOS "D" and above, which this proposal did. In terms of internal circulation, the City was concerned with safety, but none of the issues raised today gave Staff or the consultants any concern. All the issues that had been raised were things they had already thought about and still believed were as safe as they could be made. There were several instances in the videos where people could be seen pulling into an exit lane, even

though big thermoplastic arrows were painted on the ground clearly showing the drivers not going in the right direction.

- The shared driveway involved development agreements between the City and the owners of Carl's Jr, the Chevron and Holiday Inn, and if everyone would agree, the City would be happy to install Do Not Enter signs on the exit only lanes which could make it a little safer. However, to some degree the issue was people were driving where they were not allowed to drive and the City could not necessarily impact that situation. He asked Scott Mansur to address some of the issues that had been raised today.

Scott Mansur, DKS & Associates stated he was the original traffic engineer that reviewed and approved the traffic study for the original Carl's Jr development and also did the supplemental memo dated September 5, 2013 related to the coffee kiosk before the Board this evening, so he had been involved since the beginning. He had reviewed all the information in detail and wanted to respond to a few things.

- With regard to using PM peak hours, City Code Section 4.140 discussed evaluating the peak hour of adjacent streets. In the City of Wilsonville, the PM peak hour was the critical peak analysis period that had been selected and used for the last 20 years when analyzing traffic volumes.
 - The LaPoint Group discussed using the AM peak hour. While there would be considerable additional traffic from the coffee kiosk in the AM peak hour, it was important to realize that those coffee kiosk trips were 90 percent pass by traffic, which was documented in his September 5, 2013 memo. The majority of the traffic going to the kiosk was already on the adjacent street and would be making the maneuver to go in and out of the driveway. He agreed it would add traffic internally to the site, but when analyzing offsite intersections, the proposal would not impact the traffic; it was more of an internal circulation evaluation.
 - The internal circulation was also evaluated along with the type of queuing and storage that would be made, even in the AM peak hour, and he had no concerns that the traffic volume from the kiosk would backup off the Carl's Jr site. While there may be some queuing that backed up onto the Carl's Jr site, he did not see traffic backing up on the Chevron site.
- He noted there was discussion about the LaPoint Group talking to DKS & Associates, and clarified that DKS did not speak to anyone that has been involved in the process, and nothing had been documented from DKS.
 - From his evaluations, some of the information was not correct, so he believed there was some misunderstanding in the discussion, and he recommended that the LaPoint Group go through the City and talk to the Staff who were actually working on the project.
 - Page 13 of the memo from the LaPoint Group referred to the coffee kiosk and a study from Gibson Traffic Consultants, which he also reviewed. That memo referred to the coffee kiosk as a proposed 2,790 sq ft site with a coffee drive thru; however, as indicated in Staff's PowerPoint, the drive thru kiosk would actually be 450 sq ft, making it significantly lower than what the LaPoint Group estimated. The 450 sq ft was consistent with the original memo from DKS. The estimates in the LaPoint Group's memo were based on a little more than five times the kiosk's size, resulting in an inaccuracy.
 - The LaPoint Group also referenced ITE Code 934 and the reference from the Gibson Traffic Consultants was probably an old study that was before the ITE Trip Generation Handbook, which was a national handbook that looks at different uses and creates trip generation rates that are applied per square foot. Code 934 was actually for a fast food use. The September 5, 2013 memo from DKS stated the correct ITE Code for the coffee kiosk was actually ITE 938, which was a coffee shop with drive thru and no indoor seating. Therefore, the references in the LaPoint Group's memo were based on an inaccurate ITE Code for the actual use for the coffee drive thru.
- He concluded that based on DKS & Associates' evaluation and analyzing the information in the LaPoint Group memo, he **agreed** with Mr. Ward that there was no information that would make him recommend any changes that were different from their original reports.

Mr. Pauly stated Staff had time to look at the newly submitted information this afternoon and felt comfortable with what they had reviewed, but he certainly understood that the DRB had not been able to view the reading materials and videos mentioned. The Board could either view some of the videos this evening or choose to leave the record open and continue the hearing in order to review them at a later time.

Chair Fierros Bower asked what the hours of operation were for the coffee kiosk.

Mr. Pauly replied the hours of operation were 5 am to 9 pm, which was also stated in the materials.

Mr. Ruud asked what type of specialty vehicles would be entering and exiting the site given the three unique businesses, convenience store/gas station, fast food restaurant, and upscale coffee kiosk, and if there were any concerns with the time of day they would be allowed with regard to the safety of the lot.

Mr. Pauly replied one of the issues raised, and seen in the video, was the Carl's Jr delivery truck was not parking at the place designated in the original DRB approval for delivery parking. If the delivery trucks complied with that original approval, it would alleviate some of the issues.

Mr. Ward added Staff did question whether a grease interceptor pump truck could pass through that area since the grease interceptor would be placed in the drive thru for the coffee kiosk. Engineering had been told the pumping company had cleared the drive thru as being able to accept the grease interceptor pump truck. Garbage would be collected at the shared station by the Chevron's garbage facility so it would not be directly on the coffee kiosk site. Staff did not anticipate any other large vehicles that would need to enter the site.

Mr. Pauly stated the Applicant would be better able to address the nature of the deliveries for The Human Bean. He understood deliveries were to be at the same location as the original approval which was by the trash enclosure. Obviously, it would take some coordination amongst the property owners since at one point in the videos, the Carl's Jr delivery truck and Chevron fuel truck were there at the exact same time, which caused some issues on the site.

Mr. Mansur believed that was one good point that was raised because a managed approach would be needed to ensure both facilities were not occurring at the same time. There was also an issue raised regarding emergency vehicles. DKS evaluated the site, which had two entrances and exits to both new businesses, but if both of those areas were blocked at the same time, it would create a problem and need to be worked out.

Chair Fierros Bower asked if the Applicant would be sharing the trash enclosures with the other business on the site.

Mr. Ward replied the Carl's Jr had its trash enclosure on the south side of the Carl's Jr building, while the Chevron and proposed trash enclosures were adjacent to each other. He noted the enclosure for The Human Bean was highlighted in yellow on Slide 11.

Mr. Pauly added they were adjacent, but separate and had different height and depths.

Simon Springall noted the water pooling issue in the Staff report and asked Mr. Pauly to explain what was happening and how it affected the application.

Mr. Pauly responded the grading for the part of the site affected by the pooling water was not changing with the application. The Building Department was working on obtaining a permit to fix the issue, but

that was being resolved by Building through technical means and based on the necessity to give final occupancy, even for Carl's Jr Nothing that the DRB was looking at would affect that one way or another.

- The real issue was that runoff from the original site, which had been just dirt, was pooling over the area where gas deliveries took place and water mixing with the gasoline could be a big issue. A trench was put in as an ad hoc measure, which also caused issues even in the circulation because it was quite severe and also made some of the parking spots on LaPoint's property not as useable, unless one had tall vehicle. All these items were in the process of being resolved through the parties working with the Building Department.

Mr. Springall confirmed there would be four bike parking places on the drive thru and that the report stated the bike rack was too close to the building but too far from the drive thru window. He asked how close it currently was to the building.

Mr. Pauly replied it would be about 3½ to 4 ft; he was uncertain of the exact distance. He explained that from Staff's perspective there was room to make adjustments to meet those needs, so just recommending the condition of approval to allow the Applicant to work with Staff would ensure the best location.

Mr. Springall said he did not see a problem with it being slightly more than 30 ft from the window because it was close to the building, but having enough space to get the bikes in and out of the bike rack would be most important. He asked if legal counsel had a chance to review the LaPoint memo, which mentioned her name a few times.

Barbara Jacobson, Assistant City Attorney, suggested allowing the Applicant to give their testimony along with any other parties, and then once all the testimony had been heard, the Board could discuss the issues and next steps.

Ms. Keith asked about the entrance to The Human Bean drive way leading up to the stacking lane. She noted the landscaped projection with the light pole near the six parking spaces and asked if some of those spaces could be moved to the Carl's Jr parking, because she was worried the little projection would force people to face the traffic exiting the drive thru. She wanted to know if there was a way to remedy the issue and not have the projection out there, such as having angled parking that might provide more space.

Mr. Pauly noted some required landscaping was also included there. The Applicant only had two extra spaces, so parking was pretty tight. He was sure there could be other solutions and the Applicant could respond to that as well. He knew from his own experience that the Applicant looked long and hard to make parking work and provide the necessary circulation on the tight site.

Chair Fierros Bower called for the Applicant's presentation.

Ben Altman, SFA Design Group, representing the Applicant, commended Mr. Pauly on his summary of the application, noting he would not spend time repeating the same information, but wanted to focus on a couple things in reference to the site circulation and queuing.

- He noted Exhibit B5 the Board received this evening showed the maximum queuing capability for the two drive ups for Carl's Jr and the coffee kiosk. There was potential for 16 cars to queue up for the coffee kiosk and 18 cars for Carl's Jr and that was without interfering with site circulation exiting or spilling over onto the Chevron site.
- Recognizing people's impatience when waiting in line, he believed the queue would be somewhat self-regulating because people would not stack up and wait ten minutes for a coffee; if the line was backed up too far, they would go to the Chevron or somewhere else. He did not see a situation happening where the traffic backed up clear to the street because people were too impatient to wait in

line that long. He believed the self-policing manner provided for on the site was consistent with the Development Code requirement for providing a safe and convenient circulation pattern.

- Additional pedestrian circulation was provided from the street to the site, as well as from the parking to the back of the building.
- The projection noted by Ms. Keith served two key functions. One, it protected the cars parked there from other vehicles passing between Chevron and The Human Bean. Second, it met the City's Code requirement for a landscape island linked with parking to provide shade tree coverage. The curve of the projection would also help customers find the drive thru lane.
- Regarding the challenges with the truck deliveries, he noted that the original approval designated that the delivery trucks park adjacent to the trash enclosure, which was actually located within the cross easement between the two properties.
 - Since Carl's Jr had been open, Chevron employees had been chasing the trucks out of there, which was why they were not parked where the approval had shown. He agreed truck deliveries still needed to be worked out between the two sites, since there was an issue when the fueling trucks were there in the same general area. It was always the general intent that the delivery trucks would be there for a short period of time and that they might possibly block some parking temporarily, but the main issue was to resolve the deliveries between the two sites, so they would not interfere with each other.
- Regarding the storm drainage, he clarified that the area in question was at the transition between the two sites. The original paving for the Chevron site tapered out and was graded so it sheet flowed off the northwest corner of the site onto what was now the subject Boones Ferry Pointe Site. When this site came in with the current project plan, a ridge was created with the pavement to separate the flow and control the drainage on the Boones Ferry Pointe site, but it was not picked up because it did not top off site enough to show that once the ridge went in, there was nowhere for the water to drain off site again. It was being worked out so the runoff water drained back into the drainage system the Chevron had in the northwest corner of the site.
- He said he had nothing more to add at this point, but knew the Applicant would need to respond to some testimony.

Josh Veentjer, Wilsonville Devco, LLC, stated, in response to Ms. Keith's concern about potential accidents between cars exiting the drive thru and handicap vehicles backing up, he noted that identified on the Site Plan opposite of the Do Not Enter sign was a Yield to Pedestrians sign.

Jerry Greenfield asked who would be responsible for correcting the drainage problem.

Mr. Veentjer replied he was, adding that they had done everything in their power to draft an engineered plan showing specifications of everything that they would do and had submitted that to the City and LaPoint. The City had approved that plan which was ready for permit and the Applicant was waiting for LaPoint's response and approval to provide consent to finish the remedial work on the site.

Mr. Springall stated that shortly after the Carl's Jr opened, a large inflatable star was put up as advertising that was not approved. He asked if a large inflatable coffee cup would be put up.

Mr. Veentjer answered no. He was not aware of the star until after it was put up by the tenant; It was the tenant's decision, and not within his control. He believed the City addressed that issue almost immediately and the star was taken down.

Chair Fierros Bower stated if the vehicles were to queue up in the drive thru as shown in Exhibit B5, she did not see enough room for a vehicle to exit past the vehicles waiting in line. She asked the Applicant to show the Board how a vehicle would exit in that situation.

Mr. Altman replied the Board could expect to take one car out of the Carl's Jr link of queued cars for a pass through, because the driveway between Carl's Jr and the nine parking spaces to the east was a two-way flow and a driveway exit for the coffee kiosk. He indicated on the slide the direction and flow of the traffic through the two-way driveway, adding that at the transition point, it would have to be a "good driver policy" where someone would let another through.

Mr. Veentjer added Exhibit B5 was a bit deceiving because there was more room on site for circulation than it appeared. The exhibit over exaggerated the extent of the queuing lane because no one would have the patience to wait in a queuing lane that far out on the property. The exhibit illustrated that maximum queuing on the Applicant's site would not conflict with Chevron's property and circulation. Traditionally, these coffee kiosks they have double drive thrus and customers actually order from a person at the drive up window. On this site with one drive thru, the Applicant implemented a pre-order menu, as illustrated in Mr. Pauly's presentation, so orders would be taken at a menu similar to Carl's Jr to speed up the process of the queuing lane.

Mr. Altman noted the exit arrows going this way on Exhibit B5 were missing on the drawing.

Mr. Veentjer stated they could address the arrows very easily and confirmed they would be painted on the pavement.

Mr. Springall stated that he went to look at the site on Sunday so it was pretty quiet, but it looked like the direction for The Human Bean drive thru was to the Carl's Jr side of the parking lot, in the center where the trash enclosures were, rather than on the east side, on the Chevron side. If there was no queuing, it seemed traffic would likely continue straight through and he asked if that would cause an issue or was the Applicant going to specifically sign the traffic for the coffee kiosk to the east.

Mr. Veentjer replied the coffee business was very complementary to the Carl's Jr business because their peak would be in the morning when Carl's Jr's was not; so the access and circulation for both businesses would also be complementary. Naturally, when someone drove into the site, they would immediately take a left at the stop bar to enter into through the parking lot in front of Carl's Jr. This would be the primary entrance to the site and where the Applicant preferred to have the vehicles. The intent with the cross easement was to have another access point, but also for the benefit of the consumers to be able to get gas or lunch after they had a cup of coffee.

Mr. Springall confirmed that the queue shown in Exhibit B5 for The Human Bean would most likely never be that long, and that vehicles would queue up toward the Chevron.

Mr. Veentjer stated approximately 16 vehicles were stacked up for The Human Bean in Exhibit B5, which drafted that way to illustrate the maximum amount of vehicles that could potentially be in either queuing lane at any given time. The likelihood of it happening was probably zero, but it showed the maximum number of vehicles that could be on the Applicant's site without conflicting with Chevron's property.

George Morris, Holland & Knight, LLP, 111 SW 5th Ave., Portland, representing Wilsonville Devco, LLC, stated as Mr. Pauly mentioned, this property was the subject of the comprehensive development agreement that was entered into between the property owners before the initial development was approved. That development agreement addressed in great specificity many of the issues that were raised about the reciprocal use of the adjoining properties. He added there was also a reciprocal easement agreement that was entered into between the Chevron property and Wilsonville Devco property which contemplated and governed the reciprocal use of the access. Many of the issues raised in Mr. Lien's memorandum were issues that exist between Carl's Jr and Mr. LaPoint's property.

- He noted that Mr. Veentjer had conversations with Mr. LaPoint as early as July about The Human Bean, and the concept that he just found out about it in mid-December was not accurate. He had an email in the file where the Site Plan was emailed to Mr. LaPoint on August 7th, and Mr. Veentjer would indicate that he had at least two other conversations with Mr. LaPoint in October about the coffee kiosk, during which no objection was raised until they received the letter placed into the record in November from Mr. Lien.
- Given the fact that Mr. Lien submitted these documents and Mr. LaPoint submitted a letter that everyone received at 3:00 pm today, the Applicant was amenable to leaving the record open for a couple weeks, or however long the City believed it needed to adequately evaluate and address the issues, to ensure a full ventilation of the issues and no one was rushed into making a premature decision, and to allow opportunity for their land use counsel, Steve Pheiffer, respond.

Mr. Altman added the Applicant team had not seen the video that mentioned the traffic problems, so they would need to review that and respond in some way. As Mr. LaPoint described it, he understood that it was more related to the exit that the City Engineer spoke about of people entering the exit lane rather than the entry lane. He confirmed there was some confusion with the change in the design of the driveway that still needed to be sorted out by working with the City.

Chair Fierros Bower called for public testimony in favor of, opposed, and neutral to the application.

Wallace Lien, Land Use Lawyer, 1775 32nd Place NE, Salem, OR, 97301 apologized for getting the large amount of information to the Board so late, but he sent it as soon as possible as it played into the whole notion of the continuance that the Board heard counsel speak about.

- Mr. LaPoint had sent a letter requesting a continuance, even though he and his son, also an operator, could not attend tonight's meeting, even though they wished to testify directly being the owners of the adjacent property. They had asked him to put together a formal motion for continuance, but he did not believe an open record situation where they did not come back to look and talk would be appropriate because of the videos and new evidence that had come in this evening.
 - He had not seen the queuing map (Exhibit B5) and there were a lot of things the Applicant had not seen either. Their motion for continuance was really to come back physically after the Board and everyone had an opportunity to look at the videos and sort through all the material to have a frank and complete discussion about the issues, rather than trying to sort out all the material provided by the attorneys, now and in rebuttal, which the Board would be stuck listening to or trying to read. He explained that his motion was for a true continuance where the Board sets a time, whether it was two weeks or longer, when the LaPoint's could talk to the Board about the situation and the Board could ask questions after viewing the videos.
- The videos were remarkable and showed a graphic accident that happened in late November at the entrance to this property that was really hard to believe. There was a 20-minute section that involved four different cameras, which was a bit difficult to follow, as one had to track a car from one panel to another, the video was a bit annotated to point things out.
 - The video clearly showed the incredible problems with circulation, not just at the entrance of 95th Ave which was a big problem. The accident was caused by a car turning left from 95th Ave into the exit row, another car just followed it, and while the third car tried to make it too, but were T-boned by a semi-truck right at that entrance. There were countless entries into the exit areas, U-turns, and exits out of entry areas.
 - He indicated the south access into the Holiday Inn on the Site Plan and noted that video after video showed cars from the Carl's Jr going across the traffic and the wrong way into the Holiday Inn and he indicated other driver errors that create tremendous conflict.
 - There was about a 15-minute file on the video that showed the blockage everyone referred to earlier in the discussion. It was not his client's problem and it was not their delivery truck. Where was Carl's Jr? The burden of proof was on the Applicant's site design, so it was their problem.

- He showed where the Carl's Jr delivery trucked parked and the video showed that in order for the truck to get into the spot, it took about three turns for the truck to be able to get in and then it completely blocked the area. From a timing point, it appeared the truck was parked there about 20 to 40 minutes so that entire time, that area, which was identified as the main entrance and exit to Carl's Jr and The Human Bean, would be completely blocked. The video showed the delivery truck sitting in that location and he understood the truck came about three or four times a week, which Carl's Jr would have to confirm. He indicated that the gasoline tanker trucks parked near the trash enclosure when they deliver one to three times a day to the Chevron, and the 15-minute video showed the tankers blocking the entire area to the east across the easement and a delivery truck blocking the entrances to the Carl's Jr and Human Bean, completely blocking vehicle access to Carl's Jr and The Human Bean.
- The manipulations seen on the video were incredible. He indicated some of the amazing maneuvers people did to get around the delivery trucks when both entrances were blocked, including driving and backing into the Carl's Jr drive thru, but Mr. Altman had stated it would get congested sometimes and that people would just turn around and leave.
- The gas station's circulation ran counter clockwise on the site, as indicated in yellow on the drawing labeled, "Chevron Circulation" included in the packet he provided to the Board. He described the traffic circulation for the Chevron, adding that when blockage, queues, or parking issues occur, and a driver hit the area blocked by the delivery truck they would look for another place to go, just as Mr. Altman stated, and likely go against the flow of Chevron's traffic and create conflict, which could be seen on the video. There were no accidents in the 15 and 20 minute videos, but there were probably a dozen near collisions due to people crossing traffic and going head on without following the traffic patterns.
- He noted the area on the site plan with arrows that pointed to each other and asked what if the cars could not go the way the arrows directed because the delivery trucks blocked their path. There was direct conflict even on the Site Plan with the arrows pointing to each other.
- Another reason for the request for a continuance rather than the open record period was because they believed there were some defects in the notice and he had laid those out in his packet. The issues were more technical, but as a land use lawyer he was required to raise everything he could think of because he had to get it into the record and if not, they could not raise it on appeal later.
 - He believed a corrective measure would be to re-notice for the continued hearing, which would fix those items.
- They wanted to ensure that his memo and attachments (Exhibit D2), as well as the DVD and thumb drive, were officially placed in the record. He noted the information on the thumb drive and DVD were identical, but they did not know how everyone would want to access it, so two different ways were provided to access the video. He added Mr. Laidlaw submitted a packet of materials early on and he requested that it also officially be included in the record. (Exhibit D1)
- Another issue he wanted to discuss involved the property line separating the LaPoint Group property from the Devco property. As noted, some reciprocal easements existed, but that land was owned by LaPoint. He and his client's position was that because the City was approving a Site Plan that utilized traffic circulation on the LaPoint property, jurisdictionally the LaPoint's were parties and would need to be signers on the application or it would be jurisdictionally defective. He had laid out all those technically legal matters out in the memo.
- He said he got pinched by Mr. Mansur from DKS regarding the traffic study who said the site was only about 400 sq ft and that the ITE Code was 938, not 934. Mr. Lien stated he had only been handling this case for a week and all he had was the Staff report that had been posted. Attached to the Staff report was a DKS memo from Scott Mansur, which he confirmed was a part of the Applicant's notebook (Exhibit B). The memo identified the land use code for the coffee kiosk as fast food restaurant with drive thru ITE 934, but now Mr. Mansur was stating that it was 938 so he questioned which one was correct. Mr. Lien agreed with Mr. Mansur's report dated September 5, 2013, which stated it was ITE 934, a current designation. He suggested Mr. Mansur look at his own report.

- The report also showed 2,790 sq ft, not 490 sq ft, so again, it seemed like when it was convenient, it was smaller and when it was in the report, it was larger. Mr. Lien explained he did not like to get tweaked when he was using the data provided in Mr. Mansur's own report at the hearing.
- He understood the Wilsonville Code wanted the PM peak looked at first, but that did not mean putting blinders on and ignoring reality. Everyone in the room realized that the actual critical peak traffic period for The Human Bean was that period of time in the morning. According to the ITE manual, it was 7 am to 9 am not from 4 pm to 6 pm. The Board was deliberately ignoring the traffic when they blindly followed a code that stated the primary thing they wanted to look at was PM peak when in fact they had a specific use everyone agreed was AM peak. The numbers for AM peak were incredible; the difference between what the DRB approved last year for a small multi-use to a drive thru was incredible.
 - He asked the Board to imagine adding even 200 more traffic trips an hour on that site at 7 am on a Tuesday morning, and to really think about that when they watched the videos, because it simply would not work.
- Regarding the notion of pass by trips, the DKS representative told the Board correctly, but in a backward fashion. When looking at traffic count data from a City perspective, they would look only at the entrance at 95th Ave because that was the public facility. So, if a car was already on that facility and it simply pulled in and pulled back out that was a pass by trip. It would not have any impact on 95th Ave because it was already in the traffic stream, but once it entered the site, it was longer be a pass by trip, it was an onsite trip. Therefore, the notion of pass by trips did not count only on 95th Ave, but once they were on the site, they counted.
 - The numbers and extrapolation completed for the coffee shop further north on I-5 were dramatic: 300 trips and then a ratio was applied. He did not know who talked to who between DKS and LaPoint, but the bottom line was that the ITE use, which the Gibson folks did, also using ITE 934, they found that the AM peak would be 330 trips, which would be 175 in and a 155 out, and that was for the much smaller 1,800 sq ft property in Bellingham, WA. He did not know the exact square footage, but this proposal was larger and the ITE manual used square footage because that was what DKS did in their September 5th memo. He had extrapolated the 330 because it was a bigger site, and that was what the ITE said to do, and at 25 percent bigger it came to 419. But if it was not that big, say only 330 or even 200 trips; again imagine that much more traffic when looking at the video, the site simply could not handle the traffic safely or efficiently and therefore it violated the provision of the Wilsonville Code that Mr. Pauly pointed out. The traffic circulation was too much; it was marginal and perhaps functional when they had a multi-tenant building, but with a drive thru with an AM peak of that high of number, it would not work.
- He concluded that he looked forward to returning again after the Board had a chance to look at the video and he had a chance to look at all of Mr. Pauly's report. He noted he only got into the traffic issue simply because he did not have time to do anything else. He appreciated the Board's time.

Mr. Ruud confirmed Mr. Lien had visited a Human Bean and asked him to describe their business.

Mr. Lien replied he had visited one in Albany and it was almost identical to the one being proposed.

Mr. Ruud asked if The Human Bean used a similar process as Dutch Bros Coffee for ordering and waiting for coffee.

Mr. Lien replied The Human Bean was a Cadillac and Dutch Bros was a Chevrolet; The Human Bean was more than just driving up either side and getting your order.

Mr. Ruud stated it seemed that with 200 cars an hour in one drive thru lane, a little more than three people a minute would be going through the drive thru, which did not seem feasible with specialty coffee

and if multiple people were in the car. During a normal trip to Dutch Bros, it took a lot more than 15 seconds to get his coffee.

Mr. Lien said that Mr. Ruud might correct, adding that they did not have any specific information about this particular site and did not even know the right ITE classification to use, the one Mr. Mansur presented tonight or three months ago. He could not emphasize enough that this was the Applicant's problem; they had the burden of proof. If in fact, the deviation from this particular use was such that it was lesser traffic than what the ITE manual stated then it was up to the Applicant to bring that information in and hopefully they could provide that information at the next meeting.

Mr. Ruud stated as Mr. Lien mentioned, they had to think through the safety concerns, and he did not think it was feasible for 200 cars in an hour to go through that type of an establishment.

Mr. Lien stated he questioned how they would even do 70 cars in an hour based on that traffic. He visited the property several times that week, watched at videos taken over the last month or so, and looked at the report. Even if the report was right, if the PM peak was used with 70 cars and that was what it would be in the morning, could they imagine 70 cars, because he could not imagine 25 more cars that were there for the Carl's Jr now. If there were any issues with a delivery truck, garbage truck, or someone's stalled car it would be grid lock. He asked the Board to think about 70 cars while they watched the videos and how many more cars could really fit in that drive thru.

Mr. Ruud asked Mr. Lien to share the timeline of when the videos were captured. He recalled one letter mentioned they were given permission to take video of the site for an 18-hour period on a Sunday through Monday or was selected taping used to create the videos.

Mr. Lien replied he had not looked at the video material, but the files he viewed that were emailed to him had dates on them. He believed the accident was November 26, 2013, and then there was a short video on December 2, 2013 and another on December 6, 2013 which showed the blockage. Dates could be seen as the videos were viewed so the Board would know the time period they were viewing.

Mr. Ruud stated that it was different to him if they were looking at instances over a six-month period rather than over an 18-hour period due to the frequency. As an example if one went to a mall during the holidays, they could come up with a video of 200 to 500 near misses and incidents.

Mr. Lien added part of the problem was that the Carl's Jr just opened so they did not have a long period of time to track the traffic. Each video covered a certain period of time. The video for December 6th was 20 minutes long, so the Board would clearly see the chaos that happened during that period of time. The video of the accident was only about 20 seconds, but it was all in actual time.

Mr. Edmonds asked if Mr. Lien was proposing to provide to the DRB with the videos to review at their own leisure.

Mr. Lien stated a DVD and thumb drive had been provided to the City and he assumed the City could email them.

Mr. Pauly stated the files were fairly large, and suggested the Applicant provide additional files for the City to provide.

Mr. Edmonds asked counsel if the video had to be presented in a format of a full presentation during a public hearing or could it be sent to the Board members for their review. The videos lasted about an hour.

Mr. Lien noted still pictures were included as well the videos.

Mr. Edmonds noted some audience members did not get a chance to view the video either, and was concerned whether that was a legal issue if they said they did not get the opportunity to see the video because it was not presented during a public hearing format.

Mr. Lien believed it was like any other Staff report or file or traffic report that was available at City Hall; people could go in and view it but it had to be available during that period of time.

Mr. Edmonds clarified that if it was to be entered into the record, each Board member would need to have their own copy because they could not share a copy within the group since it would be collaboration outside of the public hearing format. He confirmed at least eight copies would be needed.

Mr. Lien stated he had the original information and he would leave the two packets he had with him and obtain six more copies to give the Board members. He noted each packet had two ways of viewing the material and included a DVD and flash drive.

Mr. Pauly clarified that the exhibit numbers in the record should reflect one DVD and flash drive as one exhibit.

Ms. Jacobson suggested the material be provided to the Applicant first, and then Mr. Lien could send the City a full set to distribute to the DRB.

Mr. Lien replied he would consider that.

Tom Berg, 15871 SE Van Zyl Dr, Damascus, OR, described his experience with the site, noting that he worked as a contractor for LaPoint Business Group in the subject location as well as others, and was also the primary contractor for the AGC Center, immediately west of the subject site across 95th Ave. He was familiar with the development of the Chevron station, the original South Sea's parcel acquired by George Brice who had submitted the office development complex, and with the traffic and impact of 95th Ave to Boones Ferry Rd and Commerce Circle, which went around the industrial and office development to the west.

- Tonight's discussion had been mostly about traffic, the impact on the sites and how they fit in a chronological order with the overall development, along with a few issues with the drainage. He noted the City had done an excellent job trying to control some of the major issues that have occurred on 95th Ave.
- He stated that the project, and particularly the drawings before the Board should have encompassed a larger, overall picture because of the nature of the impact. What was not emphasize enough was the size of the Holiday Inn, convention center, restaurant, and bar located directly south of the subject which used the majority of the access at the same entrance onto the subject parcels.
 - The changes made to 95th Ave reduced access on the two lanes south bound by removing one of the left turn only lanes for traffic flow and access for bike lanes and sidewalks.
- Since the Carl's Jr development started, he had been involved on a project for the AGC Center. Much of the work was on the exterior and roof, so he observed the subject site and traffic plan many times first hand being adjacent to the site on top of a four-story building which provided a good opportunity to view the site and establish some opinions.
- Regarding the ingress and egress, he said he participated in some of the meetings with City engineers and the planning department and some signage that was supposed to occur out on the street had not yet occurred. First and foremost was giving the Holiday Inn the access through this particular entrance way onto the subject site.

- Again, the Board should be looking at the overall impact on all parties involved, which would be a larger section of the Holiday Inn, all of the Chevron, Carl's Jr, and the proposed coffee kiosk.
- Some of the videos mentioned showed some of the difficulties with traffic that had occurred in the months of November and December and into January. Since the sign was relocated, additional cameras were put up for security on the property and a whole new system was added, so a tremendous amount of data was available that could be extracted to provide the Board all the information they wanted.
- The original plan showed that the multi-use facility on the north end of the property would not have a large effect on overall traffic plan. However, he could see how that could be handled through what was proposed. He knew that if Mr. LaPoint was present, he would talk about the conditions of the easement and that the easement and the development agreement were established with that particular usage for the subject site, *not* the coffee kiosk. They had not been involved with any change in the easements or access through the LaPoint property from any documents that occurred in the development agreement for that particular usage; so the LaPoints should be present.
- He noted all the documentation, videos, and traffic issues were during the winter months which had the lowest volume of the Chevron station.
 - He noted Mr. LaPoint has been involved his whole life in the operation of service stations, gas stations, and convenience stores, but he had developed a reputation in the industry as being first and foremost. This Chevron location has pumped the highest gallon volume in a Chevron station in the three western states and the convenience store was the highest used convenience store in the region.
 - This was a huge impact now, in the middle of the winter when people were not on the roads. He had observed traffic that filled the entire left hand turn lane from the entrance onto the subject site all the way to the corner on 95th Ave where Commerce Circle went to the west, which indicated how popular the service station was in prime time.
- Carl's Jr was an asset being an excellent restaurant chain and it showed tremendous popularity. He noted comments made about the operator of Carl's Jr liking the idea of having a coffee kiosk and stated if he was operating a Carl's Jr at any location and was serving 250 to 500 breakfasts an hour and someone told him they wanted a coffee kiosk next door in the driveway, he would find that hard to believe. Coffee would be the number one beverage that they would sell all morning long and he could not believe that to be a common denominator for a good business relationship.
 - He knew that the number one and three items inside the convenience store was coffee; so there was definitely opportunity between those two locations for good coffee to be served. Coffee was also available at Holiday Inn.
- He wanted to emphasize the whole picture of what the gas station traffic looked like, adding that in pumping that much gas, Mr. LaPoint primarily won the game because he had a real high service ratio with people out on the islands. He provided quality service to the customers that came into the station which was why they came back. To continue providing quality service, one thing he needed was traffic flow, which had been designed from the beginning in a counter clock wise rotation that Mr. Lien mentioned, and Mr. Altman was aware of having worked on the site for a long time.
 - He indicated the corner of the canopy of the Chevron station and large concrete pad set up for refueling. He explained that if cars were queued going into the driveway of the Carl's Jr location, the assumption was that people wanting to go to the coffee kiosk would veer to the east toward the station, against the Chevron's flow of traffic, and along the property boundary line and supposed common easement (near the trash enclosures) to access the coffee kiosk. That did not fly very well.
 - The circular flow of traffic going counter clock wise enabled Chevron's customers to get quick and courteous service, but they would be confronted with a lot of oncoming traffic when trying to leave the property. He understood it was a tight site, but obvious problems would be created by approving this type of traffic flow in areas that were private property available to the public.

- The deliveries to both the Carl's Jr and Chevron station had been discussed, but deliveries to a food service location, not a mixed used, office-type facility, would also have to be added. Where were they going to park for deliveries, on the Chevron location?
 - He saw parking stalls and traffic plans that worked for cars, but that area of Wilsonville was an industrial zone with offices and businesses with a lot of boxed vans as well as vehicles with trailers. Where they would park? They could not fit through the drive thru or park at the Holiday Inn because the radii were too tight. Parking a tractor/trailer near the trash enclosures would block the designated fuel location for LaPoint Chevron and the designated parking for Carl's Jr's delivery trucks, which were supposed to be there afterhours.
 - The Holiday Inn parking lot was reconfigured with ingress and egress with this new plan to try to handle some of the problems, but it busted the lot up into smaller areas and put in landscape dividers which did not allow for larger trucks on the site. Big trucks could not park at the Chevron, or Carl's Jr and could not drive around the coffee kiosk, so how would all those people working in that area with those types of vehicles be accommodated?
 - He noted that he, Mr. Pauly, Mr. LaPoint and others were on the site talking about the drainage issue when a boxed van arrived. The person double parked and blocked traffic in the designated truck delivery parking area near the trash enclosures. He noted if that happened again with 400 customers passing through in an hour at seven or eight in the morning was unconsciousness.
 - This was not only something that was an inconvenience for traffic, but it regarded life safety issues and impact on a piece of property not designed for that type of traffic. If the subject area was properly used, it would provide more parking for a very good quality Carl's Jr and also provide services for the trucks and traffic, which should be a primary consideration instead of more density.
- He indicated the location of the fuel tank cover and asked if the City of Wilsonville and DEQ would really allow water to flow across tank filling areas onto a lot. He indicated that there was an extruded curb that directed the water into the existing drainage area and another catch basin which was the subject one for the improper drainage coming off of the new asphalt from the delivery route. He did not want to call it an ingress or egress because that was not the purpose of intent originally discussed when it was a mixed use building.
- He concluded by stating that Wilsonville had the highest volume Chevron in the region, a really good restaurant and he asked the Board to give those businesses an opportunity to grow and operate their businesses, and to be realistic about having the coffee kiosk. The whole site would be impacted.
- He strongly disagreed.

Chair Fierros Bower called for the Applicant's rebuttal.

Mr. Veentjer stated he appreciated the Boards patience and made the following comments regarding the issues raised:

- One of the biggest areas of concern raised by the LaPoint Group was the ingress and egress onto 95th Ave, and if they referenced the development agreement, the right turn out from the site at 45 to 50 degrees was actually proposed by Mr. LaPoint to service his large vehicles that frequented the site.
- The monument sign of Chevron's was relocated at the request of Mr. LaPoint to create an island and the Applicant complied with that request. All the improvements seen on site and reflected in the shared access agreement were all improvements they made and paid for to the benefit of Mr. LaPoint, Holiday Inn, their tenant and their future tenant.
- With regard to the concerns about the delivery trucks, he noted the deliveries for the Carl's Jr were all new routes since it just opened on November 12th, 2013. The agreement, which Mr. Pauly mentioned was in the original approval for the DRB, was that the delivery trucks were to park in front of the trash enclosures where a property line and reciprocal cross easement existed. The delivery trucks had

not had an opportunity to park at that designated location, because they have been requested to move by Chevron.

- The main point of access for The Human Bean was in front of Carl's Jr which was a natural ingress to The Human Bean. On the northeast side of the property was a reciprocal cross easement, and most vehicles entering the site did not know that existed, which was a large benefit to the Chevron customers to go onto the subject property after they have fueled their vehicles.
- He addressed the concern with large vehicles and parking by stating that most of those vehicles were Chevron's consumers. While Mr. Berg had raised a concern about large vehicles parking in front of the trash enclosures, he believed they had to lead by example, because if they parked their large vehicle there other people might think they could park there as well.
- There had been a large discrepancy between the traffic counts The Human Bean might generate. The Human Bean on average completed about \$1,000 a day in business, so between 5 am and 9 pm about 175 to 200 maximum trips would probably be generated per day.
- Regarding the relationship between Dutch Bros and The Human Bean, he noted The Human Bean had 50 locations and Dutch Bros had more than 200. Dutch Bros had been around longer and did a much higher volume of business.

Mr. Morris believed Mr. Lien was playing a little bit of a slight of hand with his traffic account. The Gibson Study was done for a building that was about 1,800 sq ft and he extrapolated based on the hypothetical view that the proposed building was 2,700 sq ft, but the building was 450 sq ft, which was in the record, application, and Staff report, so the traffic impact needed to be based on a 450 sq ft building.

- He stated that the Applicant was happy to continue leaving the record open, but were opposed to renoticing the hearing and a motion for a continuance, but he would leave that to Ms. Jacobson to decide and if she felt the City needed to do that, she could advise the Applicant.
- There was a lot of discussion about the cross easements and it was very important to understand that the development agreement was entered into about a year and half ago, and the easements were negotiated last summer, long after Mr. LaPoint was aware that Wilsonville Devco was proposing The Human Bean coffee kiosk at that location. Mr. LaPoint even supported the idea in his earlier conversations with Mr. Veentjer, and at one point, asked if he could manage the restaurant. The reciprocal easements and access agreement were negotiated, signed and recorded.
- The first time the Applicant had heard any dismay about the coffee kiosk being located was in the letter from Mr. Lien to Mr. Veentjer in which he suggested the operation of a coffee kiosk was a convenience store and that matter was now in litigation at Washington County, and as Ms. Jacobson correctly advised Mr. Laidlaw, it was a private matter of litigation between the parties.
- He noted that Mr. Berg was not aware that he represented Carl's Jr and spoke to Mr. Gjurgevich on the way to tonight's hearing that they were very much in favor of the Coffee Bean restaurant going in at this location, so any indication the application did not meet with the Carl's Jr approval was incorrect.

Mr. Veentjer added Carl's Jr favored The Human Bean so much they were actually the franchise operator; that was how complementary the business was to Carl's Jr.

Mr. Morris clarified that they were the franchisee.

Mr. Pauly suggested having Mr. Mansur address the discrepancies mentioned.

Chair Fierros Bower called for a brief recess at 9:28 pm and reconvened the meeting at 9:33 pm.

Mr. Mansur responded to some of the comments raised about the September 5, 2013 memo, noting that he had reviewed it again and there were no discrepancies in the memo.

- He explained that Table 1 referred to the original traffic study and the two land uses that were assumed: one was the fast food and drive thru, which was actually the 2,790 sq ft Carl's Jr, and a specialty retail center which was a little more than 3,000 sq ft. He clarified that he was referring to Table 2 on the next page, which regarded the current proposal and showed the size of Carl's Jr changed to 2,867 sq ft, and The Human Bean was 430 sq ft, which was the correct ITE land use code 938 for a coffee kiosk with a drive thru.
- The letter from the LaPoint Group referred to the coffee kiosk as 2,790 sq ft and they applied the fast food ITE Code 934, but both the square footage and ITE coder were incorrect. Table 2 of the DKS memo indicated the ITE Code was 938 and the square footage was 430.

Mr. Ward added that even if the 1,800 sq ft was compared to a 450 sq ft facility, which was exactly a quarter of the size, and it was incorrectly assumed to be fast food and not the coffee generation, there would be a quarter of the trips in and out. Using that analysis and assuming it was similar to an I-5, Bellingham, WA in and out, instead of going from 330 to 412, 330 would be divided by four, which brought the trips down to about 82 trips.

- He said Mr. Mansur had noted a more conservative number, at about 100 trips, which was a trip in and a trip out. So the Bellingham equivalent, if the coffee kiosk was incorrectly assumed to be a fast food restaurant, would provide for 41 separate vehicles, or a vehicle every minute and a half. Mr. Mansur's analysis revealed that the coffee kiosk would handle a vehicle roughly every minute or slightly less. Those numbers were in line with the numbers the Applicant had provided as far as financials, and that was during AM peak hours, the morning rush. He clarified the coffee kiosk would serve a vehicle every minute to a minute and a half on average which totaled between the opposition's 41 to 65 vehicles being served in an hour.

Mr. Springall requested clarification from counsel about the discussion to leave the record open or have a continuance.

Ms. Jacobson replied the Board had two options. Although she was not worried about renoticing, she believed Mr. LaPoint's attorney was asking to have a continuance that kept the record fully open so the next time the Board met, on February 10th, the record would be completely left open and the Board would continue the hearing so that new people could come in and testify. For example, Mr. LaPoint could come in and give new testimony, as could the Applicant, and both sides could have people come in and testify in favor or in opposition of the application.

- The second option of leaving the record open was a bit more limiting because more written evidence could come in. In both instances, the Board would have time to review the video and all the other information that has come into the record tonight.
- The Board could continue the hearing, keeping the record fully open and allowing anyone to testify that wanted, or leave the record open to written testimony and at that point in time, request if someone wanted to make one to present additional evidence based the written testimony.
- If the Board was inclined to hear directly from Mr. LaPoint when he returned, she would continue the hearing and keep the record fully open; and she believed that everyone was open to a continuance.

Mr. Ruud asked to hear from the Applicant, as he heard one to two weeks was requested.

Mr. Veentjer stated the Applicant would agree to a continuance of two weeks to allow sufficient time for additional documentation and provide the Board time for a review and to make a decision.

Mr. Edmonds believed the Board would have to meet February 10th because the City could not meet the noticing requirements within two weeks.

Ms. Jacobson noted that this Board would not meet again until February 10th, and moving the hearing to a different DRB panel would not be fair to anyone. Staff would put the hearing on as the first agenda item for February 10th. She believed the application had until April to go through the land use process.

Mr. Morris agreed it did not make sense to start again with a new panel.

Ms. Jacobson confirmed that February 10th worked for the Applicant and reviewed the options available to the Board.

Mr. Springall confirmed the Board could leave the hearing open or closing the hearing and reopen the record at the February meeting.

Chair Fierros Bower moved to continue the public hearing for Resolution No. 268 to February 10, 2014. Simon Springall seconded the motion.

Mr. Ruud stated he was fully open to coming back on February 10th for further discussion, but after hearing the concerns from Mr. LaPoint's letter, he believed it was more about competition rather than traffic flow or the business itself. Mr. LaPoint had raised those issues with the City in the past and the City and Applicant have incorporated quite a few of his suggestions into the design for the existing Carl's Jr. Experts from both the City and Applicant had prepared, shown studies, assessed the situation, and had given the Board feedback that it would be safe, even though it would be tight and not ideal; but Wilsonville was a growing city and this issue would come up more often as more people come into the city.

Mr. Pauly added that the Board was likely to receive a pile of new materials last minute for the hearing in February. Pushing the decision to March could make meeting the 120-day land use deadline tight if there was an appeal to City Council. The Board could also leave the hearing open for two weeks in order to receive all the materials from both sides a couple weeks before the actual meeting date to be able review the submitted materials and be up to speed to be able to deliberate and make a decision on February 10th.

Ms. Jacobson confirmed the Board could keep the record open and allow additional testimony but make a cut off time for entering any additional material.

Mr. Pauly suggested identifying a deadline date for the material to be submitted.

Mr. Morris stated from the audience that would be the Applicant's preference.

Mr. Ruud understood Mr. LaPoint was on vacation outside the continental US until February 5th.

Mr. Pauly said Mr. LaPoint had called him today and he did have access to a computer to provide written testimony.

Ms. Jacobson noted the Board could allow materials to come in until February 6th which would help Mr. LaPoint's counsel and then the Board would decide on the 10th. She added there was always the option to continue the hearing or leave the record open again, but it would probably give them more assurance to get it done.

Mr. Greenfield clarified Staff was not suggesting a continuance, but leaving the record open until February 6th to avoid having material coming in on that day, and then the matter would be decided on February 10th.

Mr. Pauly suggested that the Board consider how much time they would need to feel comfortable with the volume of material that might be received before making its decision in February.

Ms. Keith stated that she preferred two weeks.

Ms. Jacobson agreed with leaving the record open for two weeks because it would allow either side time to review the materials and respond within seven days.

Chair Fierros amended her motion to hold the record open until January 27, 2014. Simon Springall seconded the motion, which passed unanimously.

Mr. Pauly reviewed the exhibits entered into the record, confirming that Exhibit D3 was the videos submitted on DVD and flash drive. He confirmed that he would also email the Board the exhibits list.

Mr. Ruud noted Mr. Greenfield was moving to the Planning Commission and asked if there was any issue with a new member coming on the Board who did not hear the testimony this evening.

Ms. Jacobson responded that the timing was not ideal. The new member could participate after listening to the full record; otherwise, the Board would still have a quorum without Mr. Greenfield.

Mr. Pauly confirmed Mr. Greenfield's first Planning Commission meeting would be Wednesday, February 19th, so technically, he could still continue on the Board for the February 10th meeting.

Ms. Jacobson asked if everyone was clear on how they were going to proceed.

Mr. Morris confirmed he understood correctly that the record would be kept open for two weeks, they would have seven days to respond and the next hearing would be on February 10, 2014.

IX. Board Member Communications:

There was none.

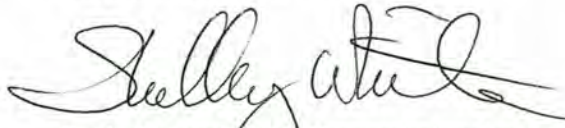
X. Staff Communications:

There was none.

XI. Adjournment

The meeting adjourned at 9:54 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Shelley White', is written over a circular stamp.

Paula Pinyerd, ABC Transcription Services, Inc. for
Shelley White, Planning Administrative Assistant

DB13-0046 et seq
Boones Ferry Pointe:
The Human Bean Drive-Up Coffee Kiosk

February 10, 2014 DRB Panel A meeting record, including:

Exhibits entered into the record at the January 13, 2014 DRB Public Hearing:

- Exhibit B4: Email correspondence received from the Applicant on January 8, 2014 regarding patio furniture.
- Exhibit B5: Site Plan, Sheet A1.0 submitted by the Applicant showing maximum queuing for the Human Bean drive-thru.
- Exhibit C4: Comments received from the Public Works Department Plan Review.
- Exhibit A3: Email dated January 13, 2014 from Daniel Pauly to Barbara Jacobson noting the dates that information was submitted to Garry LaPoint over the last month on the project.
- Exhibit D2: Cover letter and Memorandum in Opposition from Wallace W. Lien, which included a number of pictures of the site and several site maps indicating circulation flows for the subject businesses and
- Exhibit D3: Traffic videos and photos submitted by Wallace W. Lien that were included on DVDs and flash drives received January 14, 2014. (*Posted to the City's web site*)
- Exhibit D4: Letter received on January 14, 2014 from Garry LaPoint via email titled, "Proposed—Convenient Coffee Store Business" requesting a continuance of the public hearing.

Exhibits received after the January 13, 2014 meeting:

Added January 27, 2014:

- Exhibit B6: Applicant Submittal, January 27, 2014
- Exhibit D5: Wallace Lien Submittal, January 27, 2014
- Exhibit D6: Traffic Photos and Video (*Posted to the City's web site*)

Added January 31, 2014:

- Exhibit D7: LaPoint Response, January 31, 2014
- Exhibit D8: Wallace Lien Rebuttal

Added February 4, 2014:

- Exhibit B7 – Applicant Rebuttal, February 3, 2014
- Exhibit B8 – Truck Turning Movement, February 3, 2014

Added February 10, 2014:

- Exhibit A4 – Memo from Staff to DRB



Pauly, Daniel

From: josh@pdvco.com
Sent: Wednesday, January 08, 2014 3:43 PM
To: Pauly, Daniel; Ben Altman (baltman@sfadg.com)
Subject: RE: Tables for Human Bean Patio Area

Hi Dan,

The Human Bean has selected the below patio furniture. Still waiting on specs but am told the fiberglass octagonal umbrellas will match the lighter beige of the building.



Let me know if you have questions in the interim.

Thank you,

Josh Veentjer, President
Pacific Development Ventures
503.201.1309 M
971.400.8552 O
josh@pdvco.com



Integrated Investment Partners is now Pacific Development Ventures. Please note my email address has changed.

From: Pauly, Daniel [<mailto:pauly@ci.wilsonville.or.us>]
Sent: Thursday, January 02, 2014 11:10 AM
To: Ben Altman (baltman@sfadg.com)
Cc: josh@pdvco.com
Subject: Tables for Human Bean Patio Area

Have the furnishings for the Patio area next to the Human Bean been selected. If so can you provide me information on the design.

Thanks



Daniel Pauly, AICP | Associate Planner | City of Wilsonville | Planning Division
29799 SW Town Center Loop East | Wilsonville OR 97070 | ☎: 503.682.4960 | ✉: pauly@ci.wilsonville.or.us

Disclosure: Messages to and from this E-mail address may be subject to Oregon Public Records Law.



City of Wilsonville
Exhibit B5 DB13-0046 et seq

DATE
JUL 2014

LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN LOT 7, EDWARDS BUSINESS INDUSTRIAL PARK, IN THE SOUTHWEST ONE-QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF WILSONVILLE, COUNTY OF WASHINGTON AND STATE OF OREGON, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 7, EDWARDS BUSINESS INDUSTRIAL PARK, RECORDED IN BOOK 31 AT PAGE 14 IN THE PLAT RECORDS OF WASHINGTON COUNTY, OREGON; THENCE SOUTH 89°30'33" WEST, ALONG THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 579.55 FEET TO A POINT 12.00 FEET EAST OF THE EAST LINE OF PARCEL 1 AS DESCRIBED IN DEED FROM JOHN O. WILSON TO THE STATE OF OREGON, BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, DOCUMENT NO. 99-07728, RECORDED APRIL 21, 1995; HEREINAFTER REFERRED TO AS "POINT", THENCE NORTH 02°09'24" EAST, PARALLEL TO SAID EAST LINE, 18.00 FEET TO THE TRUE POINT OF BEGINNING, THENCE CONTINUING NORTH 02°09'24" EAST, ALONG SAID SOUTHERLY LINE, 341.18 FEET, THENCE ALONG THE ARC OF A 118.18 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 49°43'29", AN ARC LENGTH OF 167.78 FEET, THE CHORD OF WHICH BEARS NORTH 34°31'50" EAST, 93.63 FEET, THENCE ALONG THE ARC OF A 45.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 87°23'57", AN ARC LENGTH OF 53.94 FEET, THE CHORD OF WHICH BEARS NORTH 82°35'24" EAST, 10.84 FEET, THENCE ALONG THE ARC OF A 180.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 180°00'00", AN ARC LENGTH OF 28.70 FEET, THE CHORD OF WHICH BEARS SOUTH 87°30'41" EAST, THROUGH A CENTRAL ANGLE OF 62°43'38", AN ARC LENGTH OF 84.36 FEET, THE CHORD OF WHICH BEARS SOUTH 43°55'54" EAST, 65.63 FEET TO A POINT ON THE WESTERLY LINE OF BOONES FERRY ROAD AS DESCRIBED IN SAID "POINT" DEED, THENCE ALONG SAID WESTERLY LINE, ALONG THE ARC OF A TANGENT 565.85 FOOT RADIUS CURVE TO THE LEFT, THE CHORD BEARS NORTH 87°30'41" EAST, THROUGH A CENTRAL ANGLE OF 62°43'38", AN ARC LENGTH OF 84.36 FEET, THE CHORD OF WHICH BEARS SOUTH 43°55'54" EAST, 65.63 FEET TO A POINT ON THE WESTERLY LINE OF BOONES FERRY ROAD AS DESCRIBED IN SAID "POINT" DEED, THENCE ALONG SAID WESTERLY LINE, SOUTH 81°57'41" WEST, 25.00 FEET, THENCE SOUTH 27°45'49" WEST, 188.67 FEET TO A POINT THAT IS 18.00 FEET MEASURED AT RIGHT ANGLES FROM THE SOUTH LINE OF SAID LOT 7, THENCE PARALLEL TO SAID SOUTH LINE OF LOT 7, SOUTH 89°30'33" WEST, 121.22 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF CONNECTED TO THE CITY OF WILSONVILLE FOR RIGHT-OF-WAY PURPOSES IN WARRANTY DEED RECORDED NOVEMBER 23, 2009 AS DOCUMENT NO. 2009-102082, WASHINGTON COUNTY DEED RECORDS.

SITE KEY NOTE:

- PEDESTRIAN CROSSING STOP SIGN TO BE CROSSING PANEL WITH FIXED BASE BY SAFETYSHIELD CORP. CROSSING BLADE SIGN ITEM 1406 / PATTERN RI-2A

ADA PATH TO PUBLIC SIDEWALK ALONG EXISTING CONTOUR IN 10% TO 12% SLOPE. ANY DIRECTION AND 5/8" TURNING CLEARANCES AT ENDS - KEY SPOT ELEVATIONS SHOWN - REFER TO CIVIL FOR ADDITIONAL ELEV.

IDENTIFIED POINT ON PROPERTY LINE WHERE CURVE BEGINS

STAMPED ASPHALT - STRIPE BORDER

NOTE: SEE CIVIL DRAWINGS FOR MORE COMPLETE CONTOUR INFORMATION

NOTE: ALL DIMENSIONS SUBJECT TO FIELD VERIFICATION AND VERIFYING APPROPRIATE SETBACKS OF BUILDING, BOLLARDS FROM DRIVE-THRU

NEAR 42" WIDE CONCRETE SIDEWALK - NO RAMP

STRIPE CROSSWALK

"YIELD TO PEDESTRIANS" SIGN

ANGLE RELATIVE TO 100% (EAST PROPERTY LINE)

DISTANCE FROM FACE OF CURB IN DRIVE-THRU TO BE 20' MIN. - VERIFY DISTANCE WITH H.B. PRIOR TO STAKING

AREA OF REVISION

LANDSCAPED AREAS PER CIVIL AND LANDSCAPE DRAWINGS

"BOONES FERRY POINT" MONUMENT SIGN PREVIOUSLY APPROVED (40" H.B. HIGH, SURFACE ILLUMINATED)

EXISTING FEE SIGNAL POLE

PREVIOUSLY APPROVED 30' FLAG POLE W/ LANDSCAPE LIGHTS

REVISED SIDEWALK CONFIGURATION WITH UNIQUE MATERIAL AT DRIVE-THRU CROSSING TO PATCH EXISTING (PREVIOUSLY APPROVED)

EXISTING TRAFFIC SIGNAL

SIGN PER PASTER SIGN PLAN

SITE PLAN

GRAPHIC SCALE



1" = 20' FT.

TRANSFORMER PER ELECTRICAL DRAWINGS

LIGHTING PER ELECTRICAL

NOTES: DIMENSIONS AT BUILDINGS ARE TO FACE OF FOUNDATION

FACE OF STED IS 3/4" IN FROM FACE OF FOUNDATION

VICINITY MAP



GENERAL DEVELOPMENT REQUIREMENTS 4.119.1.10

- Setback: 30'
- Lot Coverage: 100%

SITE ANALYSIS DATA

Item	Value	Unit
Building Area	13,337	Sq. Ft.
Parking & Drive	21,280	Sq. Ft.
Landscaping	13,337	Sq. Ft.
Total Site Area	48,000	Sq. Ft.

PARKING CALC.

FAST FOOD W/ DRIVE-THRU

MIN. 8.00 PER 1000 SF MAX. 14.0 PER 1000 SF, & MIN. 4

2.887 SF + 450 SF = 337 SF = 33 MIN. 48 MAX

38 PROVIDED = OK

STALL SIZES

STANDARD: "AT LEAST" IF WIDE X 10' LONG

COMPACT: "AT LEAST" 7.5' WIDE X 10' LONG

NOTE: ALL PARKING CURBS AT FRONT END OF PARKING STALLS ARE PULLED BACK 18 INCHES INTO STALL TO ACCOUNT FOR AVERAGE OVERHANGS

SECTION 4.105.1.02

2. PARKING SPACES ALONG THE BOUNDARY OF A PARKING LOT SHALL BE PROVIDED WITH A STURDY RUMPER GUARD OR CURB AT LEAST

36 INCHES HIGH AND LOCATED 18 INCHES FROM THE BOUNDARY TO PREVENT ANY PORTION OF A CAR WITHIN THE LOT FROM EXTENDING OVER THE PROPERTY LINE OR INTERFERING WITH REQUIRED SCREENING ON SIDEWALKS



CB ANDERSON ARCHITECT

7230 Greenwood Avenue NE
Seattle, Washington 98105
206-782-2911
Fax 206-782-5024

CLIENT

Wilsonville Devco LLC

C/o Pacific Development Ventures

Project # 13-0007

DATE 06/24/14

PROJECT

Boones Ferry Point

SW 95TH AVE & COMMERCE CIRCLE

WILSONVILLE, OREGON

ARCHITECTURAL SITE PLAN

430 SF Coffee Tenant

REVISION

DATE 07/3-2013

NO DATE

Drawn: Sam Felt

ANCL: MCL: 11/10/2012

SCALE

SHEET

A1.0

KOK Foods CONVERSION BASED ON CKE PROTOTYPE VERSION 22-14

Public Works Plan Review Comment Form

Plans for Review: The Human Bean
Return All Comments To: Dan Pauly
Due Date: December 20, 2014

Name	Page No.	Comments	Engineering's Response
Randy Watson		I may have been missing it but where is the trash enclosure in the drawing? Also it may not be possible for grease pumping truck to drive through the drive through to service the grease interceptor? There shall be a water spigot located outside within 10 ft of the grease interceptor to allow for maintenance (pressure washing of the interceptor).	
Matt Baker			
Steve Munsterman			
Arnie Gray			
Jason Labrie			
House/Gering		No Comments	
Folz/Havens			





Pauly, Daniel

From: Pauly, Daniel
Sent: Monday, January 13, 2014 4:33 PM
To: Jacobson, Barbara
Subject: Dates for Getting info to Garry on Project

12/04/13 10:10 AM (503) 720-0341 Garry LaPoint

IN-NEW

The above phone record shows I spoke with Garry on December 4 and offered to allow him to come in and look at the plans we had.

Sent application materials and staff report via email 12/20

Emailed PHN 12/23

Cease and desist submitted 11/22



Daniel Pauly, AICP | Associate Planner | City of Wilsonville | Planning Division

29799 SW Town Center Loop East | Wilsonville OR 97070 | ☎: 503.682.4960 | ✉: pauly@ci.wilsonville.or.us

Disclosure: Messages to and from this E-mail address may be subject to Oregon Public Records Law.

WALLACE W. LIEN
A PROFESSIONAL CORPORATION



Wallace W. Lien

Attorney at Law

Contact by e-mail at
wallace.lien@lienlaw.com

January 13, 2014

Daniel Pauly, AICP
Associate Planner
City of Wilsonville
Planning Division
29799 SW Town Center Loop East
Wilsonville, OR 97070

RECEIVED
JAN 13 2014

BY: *DEL* *around 2pm* to the
best of my knowledge
Received by B. Baker

Re: DB13-0046 (Stage II Final Plan Revision)
DB13-0047 (Site Plan Review)
DB13-0048 (Master Sign Plan Revision and Sign Waiver)

Dear Mr. Pauly:

Enclosed please find an original and ten copies of my client's Memorandum in Opposition to Applications for tonight's Development Review Board hearing on the above-referenced applications.

If you have any questions regarding this matter, please feel free to contact me at your convenience.

Yours truly,

WALLACE W. LIEN, P.C.

By: Wallace W. Lien

WWL:sdf

Enc: Memorandum in Opposition to Applications



City of Wilsonville
Exhibit D2 DB13-0046 et seq

BEFORE THE DEVELOPMENT REVIEW BOARD OF THE
CITY OF WILSONVILLE

In the Matter of the Application for)	
a Stage II Final Plan Revision,)	
Site Design Review and Master Sign	)	Case Nos.
Plan Revision and Sign Waiver of:	)	DB13-0046 (Stage II Final Plan Revision)
	)	DB13-0047 (Site Plan Review)
WILSONVILLE DEVCO, LLC	)	DB13-0048 (Master Sign Plan Revision and
	)	Sign Waiver)
On property addressed as)	
25250 SW 95 th Avenue and identified as)	
TL 302, Section 2DB, Township 3 South,	)	MEMORANDUM
Range 1 West, Willamette Meridian,	)	IN OPPOSITION
City of Wilsonville, Washington County,	)	TO APPLICATIONS
Oregon)	

COMES NOW, LaPoint Business Group, LLC, by and through its attorney, Wallace W. Lien, of Wallace W. Lien, P.C., and does hereby submit the following opposition memorandum to the above-referenced applications.

1. Motion for Continuance

My client does hereby move the DRB for a continuance of this hearing to a date certain in the future. A continued hearing is requested rather than an open record period in order to allow for clarity in the information being presented and the opportunity for questions related to the material.

This motion is made pursuant to ORS 197.763(6), which states as follows:

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

(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial

evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

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

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

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

ORS is directly applicable to these applications both as state law, and as provided for the procedure for the conduct of this hearing in the Public Hearing Notice issued December 23, 2013.

This motion is made on the grounds and for the reason that my client is the adjoining property owner in this case, and it is most immediately and adversely impacted by the proposed change from a low traffic impact office/retail building, to a high traffic impact drive thru convenience coffee store.

My client did not learn about this proposed change until mid-December when a dispute arose as to the location and functioning of a storm drain outlet serving the applicant's property, but trespassing onto my client's property. At a meeting to review this situation with City staff, my client's learned of the change from an office building to the convenient coffee store. My client's did

not receive the Public Hearing Notice until shortly thereafter. That gave them only 12-13 business days to address the issues raised by the proposed intensification of use of the adjoining property. To compound matters, that period occurred during the week of Christmas and New Years, when few professionals were available for consultation. I personally was out of the country from December 16, 2013 through January 7, 2014. Mr. LaPoint and his son, who operate and manage the Chevron station and fountain mart through their LLC have both been out of their offices, and in fact, both are currently on vacations that were planned long before notice of this hearing was received, and are unable to attend this DRB hearing.

This is a complex restructuring of a previously approved site plan, which my client got notice of just before the holidays. This timing has prevented a thorough analysis of the applications due to these previously planned vacations and holidays.

While this Memorandum will attempt to address, at least in summary fashion, important issues, my client reserves the right to raise additional issues as time permits further investigation into this application and its impacts during the continuance period.

2. Defective Public Hearing Notice

Pursuant to ORS and the WC, the notice of public hearing in a land use case is required to list the applicable approval criteria that governs the application. ORS 197.763(3)(b). In this case the notice lists 25 code provisions (some with multiple parts) as the approval criteria. In many cases the code sections cited do not appear to be approval criteria at all, but more importantly the list fails to include WC 4.003 which requires applications initiated under WC Chapter 4 to be consistent with the Comprehensive Plan. This is a mandatory provision, and must be listed in order for the notice of public hearing to be correct.

Further, ORS 197.763(3)(b) requires that all applicable criteria from the Comprehensive Plan must be listed as well. Since WC 4.003 requires consistency with the Comprehensive Plan, then it is necessary for the public hearing notice to also list those portions of the Comprehensive Plan that must be complied with.

With regard to WC 4.400 through 4.450, the notice does not specify which specific provisions in that code string that are applicable approval criteria. The notice simply says "as applicable." Such a generic reference is not sufficient to put the public on notice of what the City believes the approval criteria among those code provisions actually are. Basically, such a reference simply leaves it up to the reader to make up their own mind which of the provisions of WC 4.400 through 4.450 apply to this case. It is the City's responsible to determine which code provisions are applicable according to ORS 197.763(3)(b), and abrogating that responsibility to the public to sort out is error.

It is necessary for the City to re-notice this case and correct these errors before this proceeding is commenced again. Since a continuance is required to be granted as noted above, it is a convenient opportunity for the City to correct these notice issues when it issues the notice for the continued hearing.

3. Clarification of Contents of the Record

During my absence, the firm of Laidlaw & Laidlaw was engaged to provide assistance and coverage for litigation matters relating to this applicant and the legal disputes being raised. Mr. Alec Laidlaw submitted a brief letter to the City with attached pleadings putting the City on notice of litigation filed by the applicant against my client with regard to this change in use. This letter outlined the dispute between the applicant and my client about the legality of placing a convenient

coffee store on the applicant's property in light of a restrictive covenant that my client asserts prohibits that use. The pleadings attached to his letter laid out in some detail that controversy.

Ms. Jacobson, Assistant City Attorney answered the Laidlaw letter on January 3, 2014, by indicating that the provided information had no bearing on the land use case. My client respectfully disagrees with that analysis, as Wilsonville Code (WC) 4.006 specifically states that "A development may be used only in a manner that is not prohibited by law...." There is a restrictive covenant that is applicable to the subject property. If the court determines that the convenient coffee store proposed here violates that restrictive covenant (as my client asserts it will), a judgment will be entered declaring the use of the applicant's property for the convenient coffee store to be prohibited as a matter of law. Upon the entry of that judgment, WC 4.006 will come into play and the proposed use will then also be prohibited by City code. As such all information regarding the litigation is relevant to this proceedings.

My client does hereby request that the Laidlaw letter and attachments be officially entered into the Record of these proceedings, and that WC 4.006 be recognized as applicable to this application.

Since this case is dependent upon the prior approval of the complex, it is hereby requested the all planning files related to the original approval of the subject development be included in the official Record of this proceeding.

Attached to this Memorandum is a disk of photographs, and two videos, each of which will be discussed below. This disk, together with this Memorandum are requested to be made part of the official Record of this proceeding.

4. Jurisdictional Defect

This application is jurisdictionally deficient in that a necessary property owner is not a party, nor did that party consent, or sign onto the change in the site plan. My client owns the adjacent property, which is relied on to provide the primary access to the new convenient drive thru coffee store. Throughout the application in relationship to compliance with criteria, as well as on the site plan, it is clear the LaPoint property is a necessary and integral piece to this plan in order to provide internal traffic circulation and pedestrian access. As such the LaPoint property must be included in any site plan review of this change.

Further, there is no justification provided for a right to use the LaPoint property by the applicant for this new changed use. It is my client's position, one that will be taken up in Washington County Circuit Court at the appropriate time, that the easement referenced in the application and the site plan, which provides the necessary vehicular and pedestrian circulation and access was granted based on the intent of the parties that it would be used only for the office/retail building. The increase in traffic over the easement that will occur with the change from a small office/retail building to a drive through convenience coffee store is significant to the point of overburdening the easement as it is currently constituted. The law in Oregon is that the intent of the parties to an easement control its scope, and therefore the easement may not be used by the more intensive drive through convenience coffee store.

The application is jurisdictionally defective where there is no evidence provided that there is the legal right to use adjoining property for necessary access and internal circulation., and where the adjoining property owner is not a party to the applications.

5. Application Defects

My client's position, based even on its limited ability to review what materials were posted online, believes the application is substantively deficient and should not be approved. There is a lack of substantial evidence, and failure to comply with approval criteria that currently exists with this application. What follows is a short brief summary of currently identified issues. As noted above, additional material and issues may be raised during the continuance period.

A. Traffic - The primary issue in this case is the increase in traffic, particularly the am peak hour traffic that will be generated by the new convenient coffee store. In the prior approved site plan a low impact office retail building was proposed. Traffic would amount to a few employees who would come in the morning and leave at night, together with some customer traffic that would be dispersed over the course of the day. The proposed change adds a significantly higher number of traffic trips, particularly in the am peak hour. This is a proposed drive thru convenient coffee store, where the primary activity is going to be in the morning hours when customers traditionally drink coffee.

The access to the subject property as well as its internal circulation was marginal at best with a small office building, and will be a disaster with the high volume of morning traffic that will be generated from the proposed drive thru convenient coffee store. A simple review of the proposed site plan shows conflicting traffic with that of the LaPoint's Chevron and Fountain Mart, as well as conflicting internal cross traffic that will be incomprehensible to most drivers. With the stream of traffic already there going to the Chevron and to Carl's Jr, adding to that the significant increase from a drive thru coffee store will make a totally untenable situation.

Already there are problems being created by the opening of Carl's Jr. Semi-trucks making

product deliveries to Carl's Jr at the loading bay on the south side of the building regularly block the entire driveway to and from Carl's Jr forcing all Carl's Jr traffic onto the LaPoint property, which then causes a traffic conflict for those cars entering in to the traffic circulation of the Chevron station. There are photographs of this situation on the attached disk, and it should be noted that during the course of a meeting on-site regarding the storm drainage problems caused by the new development, city staff was able to observe the blockage, and in fact made contact with the driver, who apparently indicated he had no other place to off load the products and therefore could not move the truck.

It also must be remembered that the Chevron station is one of the highest volume gas sellers in the region. Double tanker gasoline trucks are in and out of the Chevron property once and sometimes twice every day to deliver gasoline. These deliveries take place opposite the trash receptacle area shown on the site plan, and invariably will block the driveway that connects the Chevron to the coffee store. In those cases, coffee store traffic will have to use the Carl's Jr access only, providing further circulation conflicts. Obviously if a gasoline off load occurs at the same time as the Carl's Jr. delivery, then all access to both the Carl' Jr and the drive thru convenient coffee store will be blocked and none of those customers will move at all.

On the attached disk is a 20 minute video of what happens when the Carl's Jr semi truck makes a delivery at the same time as a gasoline delivery to the Chevron. This video was made on January 8, 2014 and shows the chaos in traffic caused by Carl's Jr customers that arrive but are unable to access the main entrance because it is blocked by the Carl's Jr delivery truck, and are also unable to enter from the back entrance on the Chevron property due to its being blocked by the gasoline delivery truck.

What the video demonstrates is that the thwarted Carl's Jr customers stop in the traffic lanes;

they back up across lanes; they drive in the hotel exit only lane; they park in traffic lanes and walk to the store across traffic lanes; they circle in confusion around the gas aisles; they go across traffic directional lanes; one attempted to access the Carl's Jr by driving into the drive thru exit; and another tried the same thing but only backed into the drive thru exit. During this 20 minute period when both delivery trucks were on site, there were multiple near miss and close call accidents. The total blockage of ingress and egress to the applicant's property was not an isolated incident. As noted, gasoline deliveries occur daily at the Chevron, and my client reports that the Carl's Jr deliveries occur multiple times a week, and that at least once per week both deliveries occur at the same time causing the chaos shown on the video.

It should also be noted that the video shows that the Carl's Jr delivery truck takes several attempts at backing into the load out area before actually achieving success, and that upon exiting this truck blocks all of one main entrance lane of traffic and nearly all of the other. This means that during that exit maneuver, the entire entrance drive is blocked momentarily, and if there are cars incoming, the truck would not be able to exit and would be stopped in a position that would block all exit lanes to the highway.

This chaotic situation exists now with only the Carl's Jr in operation. When the drive thru convenient coffee store opens up and adds significantly more traffic to this property, gridlock is the only result.

The Chevron station was designed for a counter clockwise traffic circulation pattern, taking into account parking for the Fountain Mart and the gasoline truck deliveries. Cars enter the pump aisles, and leave in a circular fashion on the Chevron property and exit to the highway. No other property is needed, and all contingencies are accounted for. This Chevron traffic pattern, which has

worked so well, now is thrown into chaos by Carl's Jr traffic going in the wrong direction; crossing traffic directions; parking and backing up in the travel lanes; all of which disrupt the traffic pattern for the Chevron. Attached hereto is a packet of drawings using the proposed Site Plan as the master. These drawings show 1) the Chevron circulation pattern; 2) the Carl's Jr circulation pattern; 3) the proposed convenient coffee store circulation pattern; 4) the location of the delivery blockages; and 5) the circulation conflicts that arise normally and when the blockages occur.

The City should not allow further development on the applicant's property to adversely impact the existing Chevron business.

Given the current conditions, it would appear that the loading area for Carl's Jr is not correctly located. It also appears that as the Carl's Jr business grows, there will be a need for more deliveries; more traffic will come and go and the need for more parking will arise. It would further appear the Carl's Jr and the Chevron developments provide the maximum development that should be allowed on the applicant's property. The area proposed for a drive thru convenient coffee store should be better used to provide additional parking and to relocate the loading area so that deliveries do not block the Carl's Jr entrance/exit. In short, the current problems with traffic should be fixed before any thought is given to adding more traffic to the site.

In addition to the significant issues with internal vehicular circulation conflicts, there is no safe way for pedestrians to get to and from the drive thru convenient coffee store. For any pedestrian access to the coffee store, they have to cross over a line of cars going into the drive thru. For those coming from the Carl's Jr, there is not even a marked crossing provided. For those coming from the hotel or the Chevron, there is no marked path to get those pedestrians to the sidewalk. There are bike racks provided but no bike lanes to show the way for access to the coffee store. Adding the problems

with safe pedestrian and bike access, to the nightmare of the conflicting internal circulation pattern of the site with significant morning traffic is simply too much to be safe, and such should not be approved.

What is of major concern is what happens when an emergency occurs and the internal circulation is so convoluted, and/or the parking/unloading are such that emergency vehicles are unable to access any of the buildings. Fire protection and adequate access for fire equipment is critical to the Chevron. Any gasoline station must be careful about fire protection. Should traffic conflicts cause delay or inability of fire equipment to access the gas station or Carl's Jr, serious consequences will obviously arise. My client is very concerned about being able to maintain liability insurance, with the change in site plan and the traffic nightmare that will develop on the site from the coffee store. Not only is the gasoline component a concern for fire and emergency response, Carl's Jr has a full service kitchen with the potential for fire, and the coffee store will have high powered heating equipment again which is a concern for fire response. While it is understood these buildings and facilities are all designed to prevent fires, if something goes wrong and a fire does break out, it is imperative that the traffic generated on site not be so convoluted as to prevent timely emergency response.

While the internal circulation pattern is a current mess, and will be exacerbated significantly with the increase in morning traffic from a drive thru convenient coffee store, access from the highway to the development remains a critical concern and safety issue. The highway access is shared between the hotel, the Chevron, the Carl's Jr and whatever ends up where the office building is currently approved. The highway access is confusing. There are two entrance lanes to the south, one of which has an immediate conflict with the hotel ingress/egress then bends to the north and is

then segregated by lane dividers to a point where the second hotel entrance is located. Almost directly across from this hotel exit only is supposed to be the main entrance to the Carl's Jr. and supposedly also now to the coffee store. There are also two exit lanes, one left out only, the other right out only, plus the exit only access to the Chevron driveway.

The geography of the road and this entrance has caused confusion among drivers since the Carl's Jr. open. A typical problem is that drivers heading southbound and turning left across traffic to enter the premises use the exit lanes instead of the entrance lanes. In late November, a pickup was southbound and turned left into the exit lanes. The pickup cleared oncoming traffic, but it was followed by a passenger car who made the same incorrect turn and was hit full side on by a truck heading northbound. This accident was captured on the LaPoint security camera, and is included on the attached disk.

My client has not yet had the opportunity to retain its own traffic expert, but until that can happen several deficiencies in the applicant's traffic submittals must be pointed out. The DKS report dated September 5, 2013 analyzes only the pm peak hour change in traffic. My client contacted DKS who advised that they only reported pm peak hour changes because that is what they were instructed to do. Presumably by the applicant. DKS also advised my client that the am peak hour traffic would be five (5) times or more that which is reported for the pm peak. The ITE manual advises that for drive through coffee stores the critical peak hour is the am peak (7am to 9am), followed by the period from noon to 1pm, and with the pm peak significantly less in traffic counts at that period between 4pm and 6pm. It is disingenuous to submit a pm peak hour traffic analysis for a use that is generally accepted as having its highest traffic counts during the am peak hour. It would appear this was an attempt by the applicant to submit average daily traffic counts that do not accurately reflect

what will happen at the site.

Attached hereto is a packet of information from Gibson Traffic Consultants regarding a smaller (1,800 sq feet as compared to the proposed store here which is to be 2,790 sq feet - 45% bigger than what was analyzed) coffee drive through store near I-5 in Bellingham, Washington. This coffee store was also evaluated as an ITE §934 use. In this report the pm peak trips were set at a total of 70, with 33 in and 37 out. This is comparable to the DKS pm peak here for the larger store at 94, with 49 in and 45 out. Essentially the larger store generated approximately 25% more traffic, which is within the margin of error for the store size differential.

For the am peak hour, which is the critical analysis for this case, the total number of traffic trips in the am peak was 330, with 175 in and 155 out. Extrapolating those numbers by the 25% size increase we learned from the pm peak hour comparison, and it is believed that the am peak hour traffic count for this proposed coffee store will be 412, with 219 in and 193 out. This appears to be verified by the information provided by DKS to my client, that the am peak would be five (5) times the pm peak, a figure which would be 470 trips.

Therefore it is clear that new and accurate traffic data is necessary that reflects the worst case traffic situation that will occur on site. It is difficult to imagine the congestion on site when you add somewhere between 412 and 470 traffic trips to the existing traffic on site from Carl's Jr. and the Chevron. The site simply can not handle that volume of traffic.

In addition, the notion of pass-by trips not counting is not relevant to this analysis, as the primary problem here is internal traffic circulation and congestion, not ingress and egress to the site that negate pass by trips. Once those cars are on the site to go to the coffee store, they are no longer pass by trips, they are actual cars in the parking lot and the driveways, and crossing the other cars,

pedestrians and bikes that are also on site. While it is difficult to imagine adding over 400 cars going in and out from the site to the highway in the morning, once the cars are on-site they no longer become pass by trips and they must be accounted for.

B. Utilities - Storm drainage remains an issue for this development. A storm drain ditch was constructed by the applicant on the LaPoint property without permission or advance notice. City staff was placed on notice of this situation and has been on site to address corrective action. It is unknown what the current status of that situation is. To the extent storm water is generated from impervious surfaces constructed on the applicant's property, that storm water must be disposed of on the applicant's property and then only in accordance with city regulation and with city oversight and approval. This situation is not addressed in the current application which is a deficiency.

6. Conclusion

Traffic and congestion is already a problem for the subject development. Between cars coming in the exit aisle; Carl's Jr delivery semi-trucks off loading in front of the restaurant blocking all internal access not only to the subject property, but also providing significant impediment to traffic flow in and out of my client's property and businesses. And, these problems are occurring regularly now, when the Carl's Jr has only been open a short while and there is no development on the remainder of the property. To add a high volume drive thru convenient coffee store with significant am peak traffic counts to an already marginal to poor traffic circulation pattern is not good planning and this application should be denied.

HAND DELIVERED this 13th day of January, 2014.

/s/ Wallace W. Lien

Wallace W. Lien, OSB 79-3011
Attorney for LaPoint Business Group, LLC

ATTACHMENTS

- 1 Photo Disk
- 2 Gibson Traffic Report
- 3 Photo's of the site
- 4 Packet of Site Plan Drawings (5)

1309 Lakeway
GTC #07-220

TABLE 1
TRIP GENERATION SUMMARY

Proposed Land Use	Size	Average Daily Trips	Percent Average Daily Trips	AM Peak-Hour Trips			PM Peak-Hour Trips			Percent PM Peak-Hour Trips
				Total	Inbound	Outbound	Total	Inbound	Outbound	
Condominium	8 units	47	3.66%	4	1	3	4	3	1	1.75%
General Office	7,728 SF	85	6.63%	12	11	1	12	2	10	17.54%
Specialty Retail	5,828 SF	258	20.11%	4	2	2	16	7	9	15.79%
Coffee Shop	1,800 SF	893	69.60%	330	175	155	70	33	37	64.91%
Single-Family (Remove)	-2 units	-19	—	-2	-1	-1	-2	-1	-1	—
Condominium (Remove)	-4 units	-23	—	-2	0	-2	-2	-1	-1	—
Internal Crossover Reduction	—	-64	—	-27	-14	-13	-8	-4	-4	—
Pass-By Reduction	—	-477	—	-150	-80	-70	-36	-17	-19	—
TOTAL		700	100.00%	169	94	75	54	22	32	100.00%

1-47

GIBSON
TRAFFIC
CONSULTANTS

1309 Lakeway
GTC #07-220

Trip Generation for: Weekday
(a.k.a.): Average Weekday Daily Trips (AWDT)

			NET EXTERNAL TRIPS BY TYPE																	
			Gross Trips						Internal Crossover		IN BOTH DIRECTIONS				DIRECTIONAL ASSIGNMENTS					
LAND USES	VARIABLE	ITE LU code	Trip Rate	% IN	% OUT	In+Out (Total)	% of Gross Trips	Trips In+Out (Total)	In+Out (Total)	% of Ext. Trips	In+Out (Total)	% of Ext. Trips	In+Out (Total)	In+Out (Total)	PASS-BY		DIVERTED LINK		NEW	
															In	Out	In	Out	In	Out
Condominium	8 units	230	5.86	50%	50%	47	5%	2	45	0%	0	0%	0	45	0	0	0	0	23	22
General Office	7.728 ksqft	710	11.01	50%	50%	85	5%	4	81	0%	0	0%	0	81	0	0	0	0	41	40
Specialty Retail	5.828 ksqft	814	44.32	50%	50%	258	5%	13	245	25%	61	0%	0	184	31	30	0	0	92	92
Coffee Shop	1.800 ksqft	934	498.12	50%	50%	893	5%	45	848	49%	416	0%	0	432	208	208	0	0	216	216
Single-Family (Remove)	-2 units	210	9.57	50%	50%	-19	0%	0	-18	0%	0	0%	0	-19	0	0	0	0	-10	-9
Condominium (Remove)	-4 units	230	5.86	50%	50%	-23	0%	0	-23	0%	0	0%	0	-23	0	0	0	0	-12	-11
Totals						1241		64	1177		477		0	700	289	238	0	0	350	350

The daily trip generation rate for Coffee Shop is based on the daily trip generation rate for fast-food restaurant with drive-through window.

1309 Lakeway
GTC #07-220

Trip Generation for: Weekday, Peak Hour of Adjacent Street Traffic, One Hour between 7 and 9 AM
(a.k.a.): Weekday AM Peak Hour

LAND USES	VARIABLE	ITE LU code	Gross Trips						NET EXTERNAL TRIPS BY TYPE									
			Trip Rate	% IN	% OUT	In+Out (Total)	% of Gross Trips	Trips In+Out (Total)	IN BOTH DIRECTIONS					DIRECTIONAL ASSIGNMENTS				
									TOTAL In+Out (Total)	PASS-BY		DIVERTED LINK		NEW In+Out (Total)	PASS-BY		DIVERTED LINK	
										% of Ext. Trips	In+Out (Total)	% of Ext. Trips	In+Out (Total)		In	Out	In	Out
Condominium	8 units	230	0.44	17%	83%	4	8%	0	4	0%	0	0%	0	4	0	0	0	0
General Office	7.728 ksqft	710	1.55	88%	12%	12	8%	1	11	0%	0	0%	0	11	0	0	0	0
Specialty Retail	5.828 ksqft	814	0.74	61%	39%	4	8%	0	4	25%	1	0%	0	3	1	0	0	0
Coffee Shop	1.800 ksqft	934	183.07	53%	47%	330	8%	26	304	49%	149	0%	0	155	79	70	0	0
Single-Family (Remove)	-2 units	210	0.75	25%	75%	-2	0%	0	-2	0%	0	0%	0	-2	0	0	0	0
Condominium (Remove)	-4 units	230	0.44	17%	83%	-2	0%	0	-2	0%	0	0%	0	-2	0	0	0	0
Totals						346		27	319		150		0	169	80	70	0	0

Specialty Retail Trip Rate was calculated from Shopping Center ratio of PM peak-hour trips multiplied by the Shopping Center AM Trip Rate.
Coffee Shop trip generation rate is based on the coffee/bread/sandwich shop information under Land Use Code 934.

1309 Lakeway
GTC #07-220

Trip Generation for: Weekday, Peak Hour of Adjacent Street Traffic, One Hour between 4 and 6 PM
(a.k.a.): Weekday PM Peak Hour

			NET EXTERNAL TRIPS BY TYPE																	
			Gross Trips						Internal Crossover		IN BOTH DIRECTIONS				DIRECTIONAL ASSIGNMENTS					
LAND USES	VARIABLE	ITE LU code	Trip Rate	% IN	% OUT	In+Out (Total)	% of Gross Trips	Trips In+Out (Total)	TOTAL In+Out (Total)	PASS-BY		DIVERTED LINK		NEW In+Out (Total)	PASS-BY		DIVERTED LINK		NEW	
										% off Ext. Trips	In+Out (Total)	% of Ext. Trips	In+Out (Total)		In	Out	In	Out	In	Out
Condominium	8 units	230	0.52	67%	33%	4	8%	0	4	0%	0	0%	0	4	0	0	0	0	3	1
General Office	7.728 ksqft	710	1.49	17%	83%	12	8%	1	11	0%	0	0%	0	11	0	0	0	0	2	9
Specialty Retail	5.828 ksqft	814	2.71	44%	56%	16	8%	1	15	25%	4	0%	0	11	2	2	0	0	5	6
Coffee Shop	1.800 ksqft	934	38.9	47%	53%	70	8%	6	64	50%	32	0%	0	32	15	17	0	0	15	17
Single-Family (Remove)	-2 units	210	1.01	63%	37%	-2	0%	0	-2	0%	0	0%	0	-2	0	0	0	0	-1	-1
Condominium (Remove)	-4 units	230	0.52	67%	33%	-2	0%	0	-2	0%	0	0%	0	-2	0	0	0	0	-1	-1
Totals						98		8	90		36		0	54	17	19	0	0	23	31

Coffee Shop trip generation rate is based on the coffee/bread/sandwich shop information under Land Use Code 934.

1309 Lakeway
GTC #07-220

AM Peak-Hour

%	New ADT	New AM Peak Hour Trips		
		In	Out	Total
100%	700	94	75	169
1%	7.00	0.94	0.75	1.69
2%	14.00	1.88	1.50	3.38
3%	21.00	2.82	2.25	5.07
4%	28.00	3.76	3.00	6.76
5%	35.00	4.70	3.75	8.45
6%	42.00	5.64	4.50	10.14
7%	49.00	6.58	5.25	11.83
8%	56.00	7.52	6.00	13.52
9%	63.00	8.46	6.75	15.21
10%	70.00	9.40	7.50	16.90
11%	77.00	10.34	8.25	18.59
12%	84.00	11.28	9.00	20.28
13%	91.00	12.22	9.75	21.97
14%	98.00	13.16	10.50	23.66
15%	105.00	14.10	11.25	25.35
16%	112.00	15.04	12.00	27.04
17%	119.00	15.98	12.75	28.73
18%	126.00	16.92	13.50	30.42
19%	133.00	17.86	14.25	32.11
20%	140.00	18.80	15.00	33.80
21%	147.00	19.74	15.75	35.49
22%	154.00	20.68	16.50	37.18
23%	161.00	21.62	17.25	38.87
24%	168.00	22.56	18.00	40.56
25%	175.00	23.50	18.75	42.25
26%	182.00	24.44	19.50	43.94
27%	189.00	25.38	20.25	45.63
28%	196.00	26.32	21.00	47.32
29%	203.00	27.26	21.75	49.01
30%	210.00	28.20	22.50	50.70
31%	217.00	29.14	23.25	52.39
32%	224.00	30.08	24.00	54.08
33%	231.00	31.02	24.75	55.77
34%	238.00	31.96	25.50	57.46
35%	245.00	32.90	26.25	59.15
36%	252.00	33.84	27.00	60.84
37%	259.00	34.78	27.75	62.53
38%	266.00	35.72	28.50	64.22
39%	273.00	36.66	29.25	65.91
40%	280.00	37.60	30.00	67.60
41%	287.00	38.54	30.75	69.29
42%	294.00	39.48	31.50	70.98
43%	301.00	40.42	32.25	72.67
44%	308.00	41.36	33.00	74.36
45%	315.00	42.30	33.75	76.05
46%	322.00	43.24	34.50	77.74
47%	329.00	44.18	35.25	79.43
48%	336.00	45.12	36.00	81.12
49%	343.00	46.06	36.75	82.81
50%	350.00	47.00	37.50	84.50
51%	357.00	47.94	38.25	86.19
52%	364.00	48.88	39.00	87.88
53%	371.00	49.82	39.75	89.57
54%	378.00	50.76	40.50	91.26
55%	385.00	51.70	41.25	92.95
56%	392.00	52.64	42.00	94.64
57%	399.00	53.58	42.75	96.33
58%	406.00	54.52	43.50	98.02
59%	413.00	55.46	44.25	99.71
60%	420.00	56.40	45.00	101.40
61%	427.00	57.34	45.75	103.09
62%	434.00	58.28	46.50	104.78
63%	441.00	59.22	47.25	106.47
64%	448.00	60.16	48.00	108.16
65%	455.00	61.10	48.75	109.85
66%	462.00	62.04	49.50	111.54
67%	469.00	62.98	50.25	113.23
68%	476.00	63.92	51.00	114.92
69%	483.00	64.86	51.75	116.61
70%	490.00	65.80	52.50	118.30
71%	497.00	66.74	53.25	119.99
72%	504.00	67.68	54.00	121.68
73%	511.00	68.62	54.75	123.37
74%	518.00	69.56	55.50	125.06
75%	525.00	70.50	56.25	126.75
76%	532.00	71.44	57.00	128.44
77%	539.00	72.38	57.75	130.13
78%	546.00	73.32	58.50	131.82
79%	553.00	74.26	59.25	133.51
80%	560.00	75.20	60.00	135.20
81%	567.00	76.14	60.75	136.89
82%	574.00	77.08	61.50	138.58
83%	581.00	78.02	62.25	140.27
84%	588.00	78.96	63.00	141.96
85%	595.00	79.90	63.75	143.65
86%	602.00	80.84	64.50	145.34
87%	609.00	81.78	65.25	147.03
88%	616.00	82.72	66.00	148.72
89%	623.00	83.66	66.75	150.41
90%	630.00	84.60	67.50	152.10
91%	637.00	85.54	68.25	153.79
92%	644.00	86.48	69.00	155.48
93%	651.00	87.42	69.75	157.17
94%	658.00	88.36	70.50	158.86
95%	665.00	89.30	71.25	160.55
96%	672.00	90.24	72.00	162.24
97%	679.00	91.18	72.75	163.93
98%	686.00	92.12	73.50	165.62
99%	693.00	93.06	74.25	167.31
100%	700.00	94.00	75.00	169.00

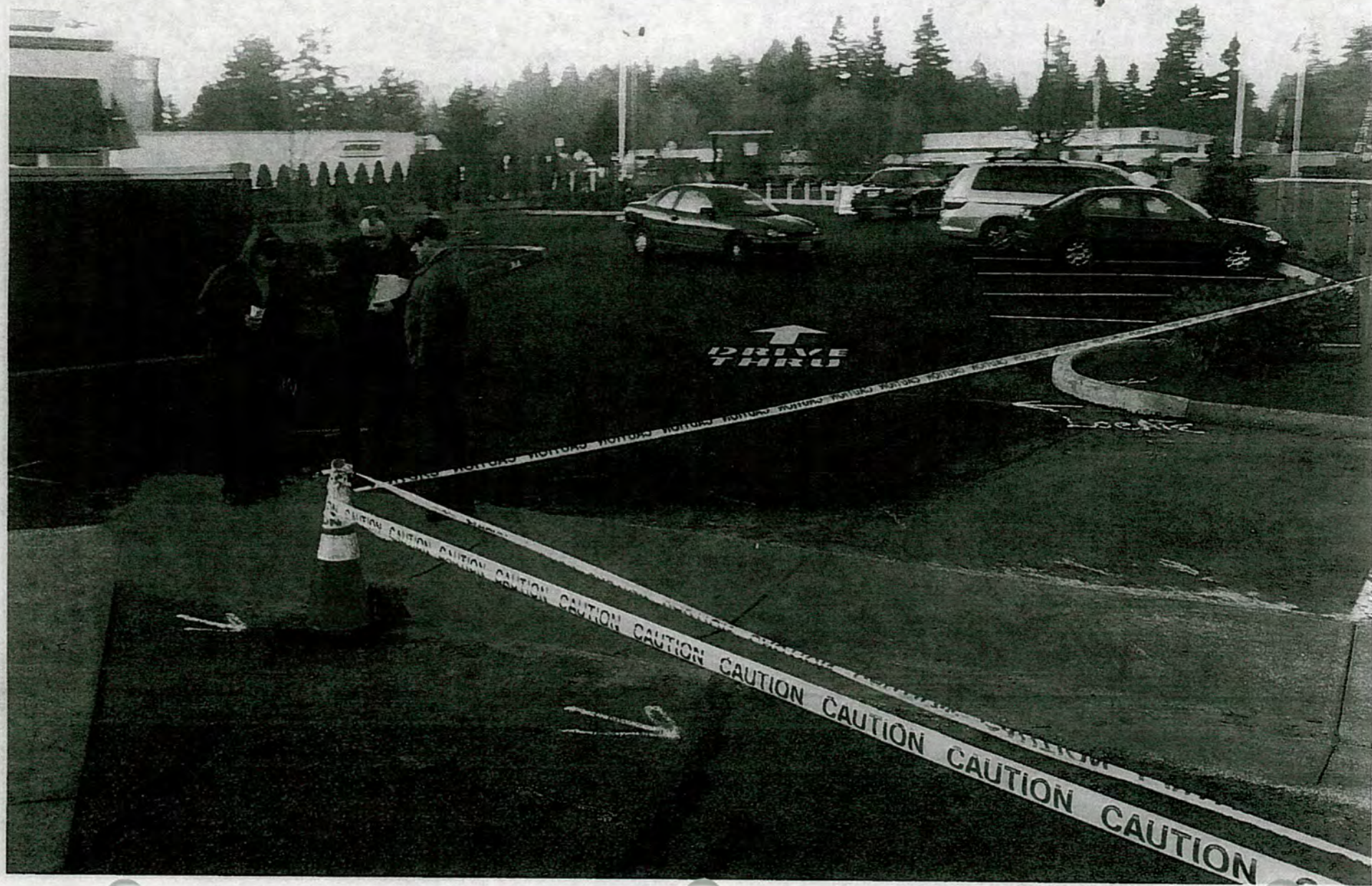
1309 Lakeway
GTC #07-220

PM Peak-Hour

%	New ADT	New PM Peak Hour Trips		
		In	Out	Total
100%	700	23	31	54
1%	7.00	0.23	0.31	0.54
2%	14.00	0.46	0.62	1.08
3%	21.00	0.69	0.93	1.62
4%	28.00	0.92	1.24	2.16
5%	35.00	1.16	1.56	2.70
6%	42.00	1.38	1.88	3.24
7%	49.00	1.61	2.17	3.78
8%	56.00	1.84	2.48	4.32
9%	63.00	2.07	2.79	4.86
10%	70.00	2.30	3.10	5.40
11%	77.00	2.53	3.41	5.94
12%	84.00	2.76	3.72	6.48
13%	91.00	2.99	4.03	7.02
14%	98.00	3.22	4.34	7.56
15%	105.00	3.45	4.65	8.10
16%	112.00	3.68	4.96	8.64
17%	119.00	3.91	5.27	9.18
18%	126.00	4.14	5.58	9.72
19%	133.00	4.37	5.89	10.26
20%	140.00	4.60	6.20	10.80
21%	147.00	4.83	6.51	11.34
22%	154.00	5.06	6.82	11.88
23%	161.00	5.29	7.13	12.42
24%	168.00	5.52	7.44	12.96
25%	175.00	5.75	7.75	13.50
26%	182.00	5.98	8.06	14.04
27%	189.00	6.21	8.37	14.58
28%	196.00	6.44	8.68	15.12
29%	203.00	6.67	8.99	15.66
30%	210.00	6.90	9.30	16.20
31%	217.00	7.13	9.61	16.74
32%	224.00	7.36	9.92	17.28
33%	231.00	7.59	10.23	17.82
34%	238.00	7.82	10.54	18.36
35%	245.00	8.05	10.85	18.90
36%	252.00	8.28	11.16	19.44
37%	259.00	8.51	11.47	19.98
38%	266.00	8.74	11.78	20.52
39%	273.00	8.97	12.09	21.06
40%	280.00	9.20	12.40	21.60
41%	287.00	9.43	12.71	22.14
42%	294.00	9.66	13.02	22.68
43%	301.00	9.89	13.33	23.22
44%	308.00	10.12	13.64	23.76
45%	315.00	10.35	13.95	24.30
46%	322.00	10.58	14.26	24.84
47%	329.00	10.81	14.57	25.38
48%	336.00	11.04	14.88	25.92
49%	343.00	11.27	15.19	26.46
50%	350.00	11.50	15.50	27.00

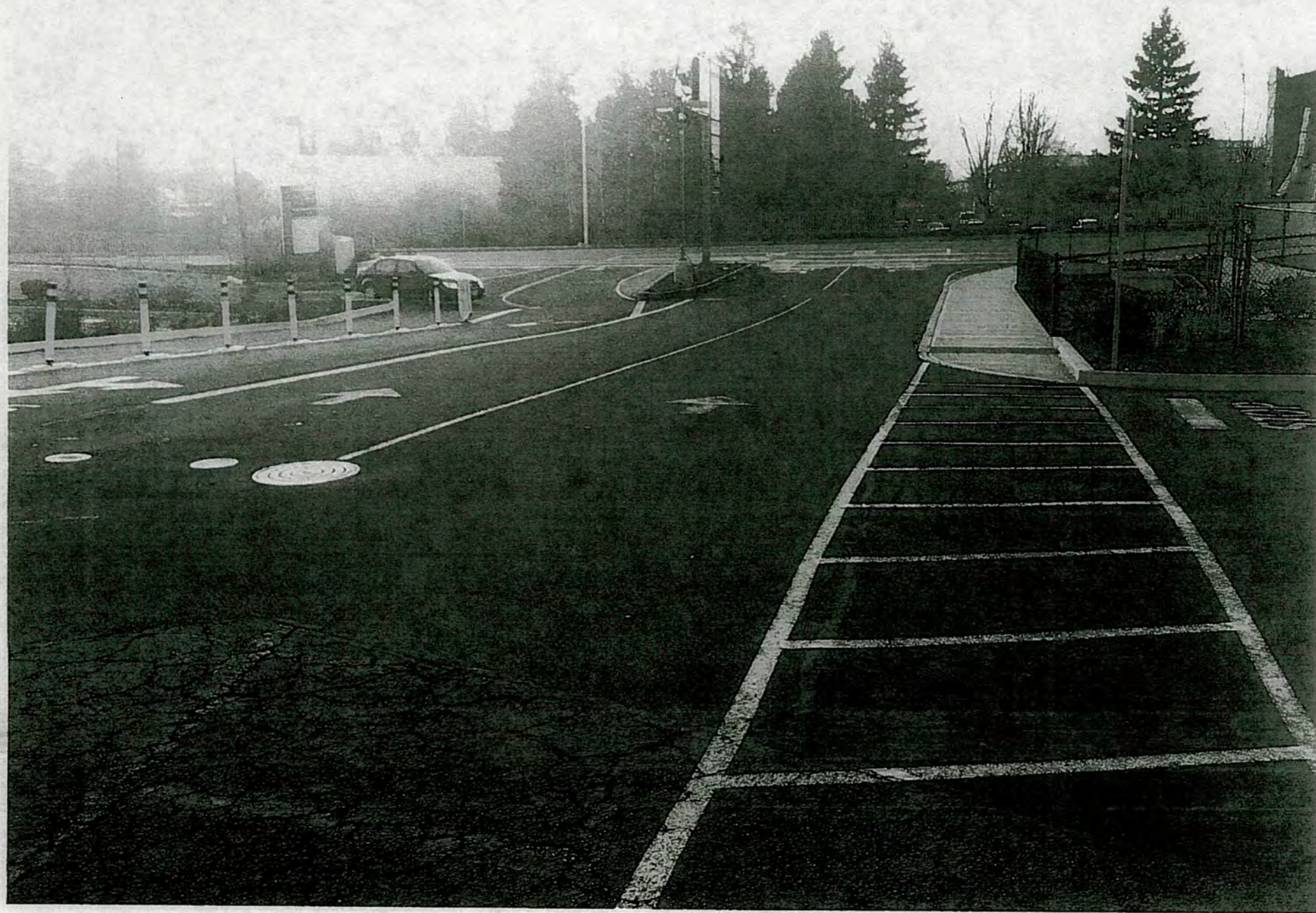
%	New ADT	New PM Peak Hour Trips		
		In	Out	Total
100%	700	23	31	54
51%	357.00	11.73	15.81	27.54
52%	364.00	11.96	16.12	28.08
53%	371.00	12.19	16.43	28.62
54%	378.00	12.42	16.74	29.16
55%	385.00	12.65	17.05	29.70
56%	392.00	12.88	17.36	30.24
57%	399.00	13.11	17.67	30.78
58%	406.00	13.34	17.98	31.32
59%	413.00	13.57	18.29	31.86
60%	420.00	13.80	18.60	32.40
61%	427.00	14.03	18.91	32.94
62%	434.00	14.26	19.22	33.48
63%	441.00	14.49	19.53	34.02
64%	448.00	14.72	19.84	34.56
65%	455.00	14.95	20.15	35.10
66%	462.00	15.18	20.46	35.64
67%	469.00	15.41	20.77	36.18
68%	476.00	15.64	21.08	36.72
69%	483.00	15.87	21.39	37.26
70%	490.00	16.10	21.70	37.80
71%	497.00	16.33	22.01	38.34
72%	504.00	16.56	22.32	38.88
73%	511.00	16.79	22.63	39.42
74%	518.00	17.02	22.94	39.96
75%	525.00	17.25	23.25	40.50
76%	532.00	17.48	23.56	41.04
77%	539.00	17.71	23.87	41.58
78%	546.00	17.94	24.18	42.12
79%	553.00	18.17	24.49	42.66
80%	560.00	18.40	24.80	43.20
81%	567.00	18.63	25.11	43.74
82%	574.00	18.86	25.42	44.28
83%	581.00	19.09	25.73	44.82
84%	588.00	19.32	26.04	45.36
85%	595.00	19.55	26.35	45.90
86%	602.00	19.78	26.66	46.44
87%	609.00	20.01	26.97	46.98
88%	616.00	20.24	27.28	47.52
89%	623.00	20.47	27.59	48.06
90%	630.00	20.70	27.90	48.60
91%	637.00	20.93	28.21	49.14
92%	644.00	21.16	28.52	49.68
93%	651.00	21.39	28.83	50.22
94%	658.00	21.62	29.14	50.76
95%	665.00	21.85	29.45	51.30
96%	672.00	22.08	29.76	51.84
97%	679.00	22.31	30.07	52.38
98%	686.00	22.54	30.38	52.92
99%	693.00	22.77	30.69	53.46
100%	700.00	23.00	31.00	54.00





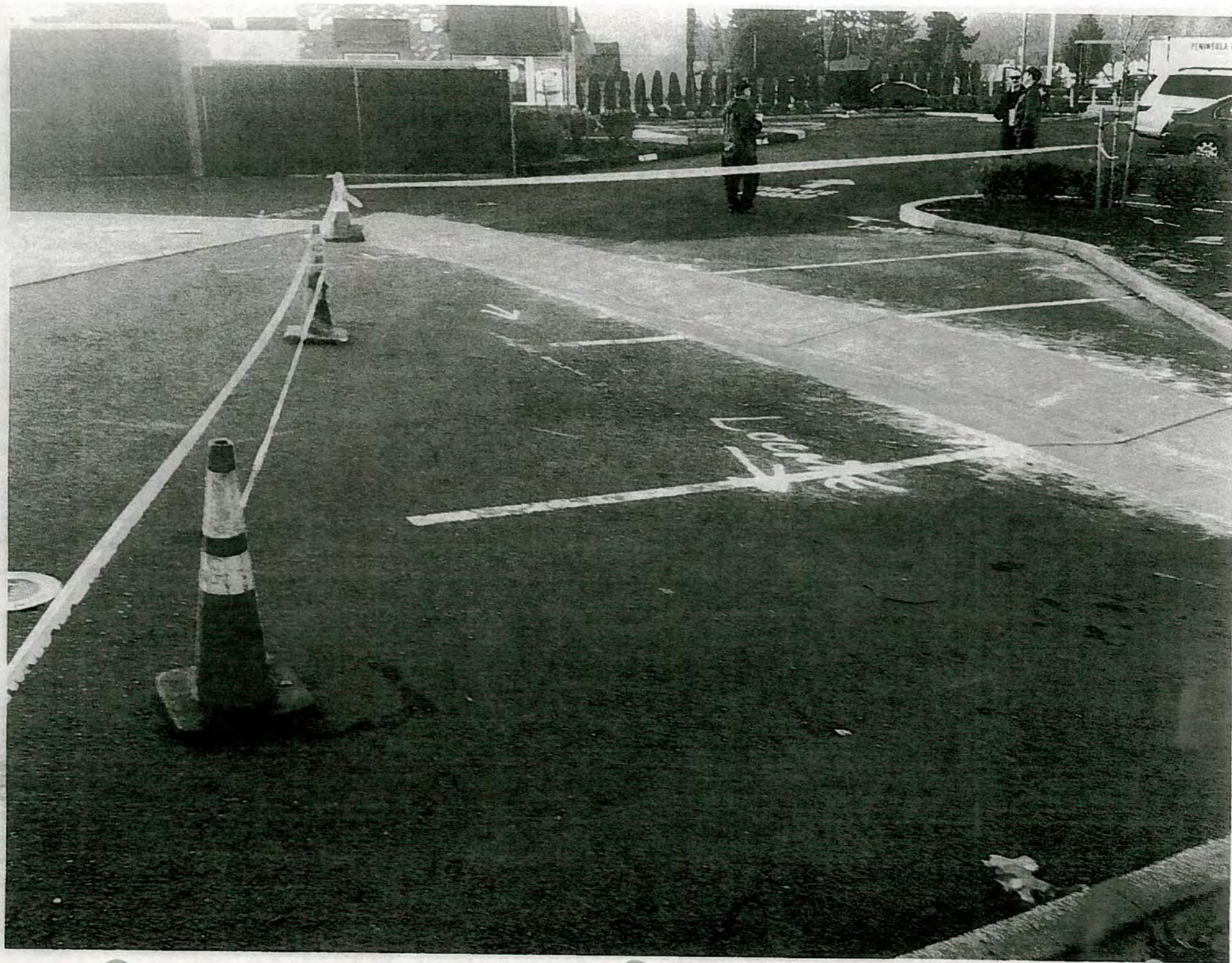


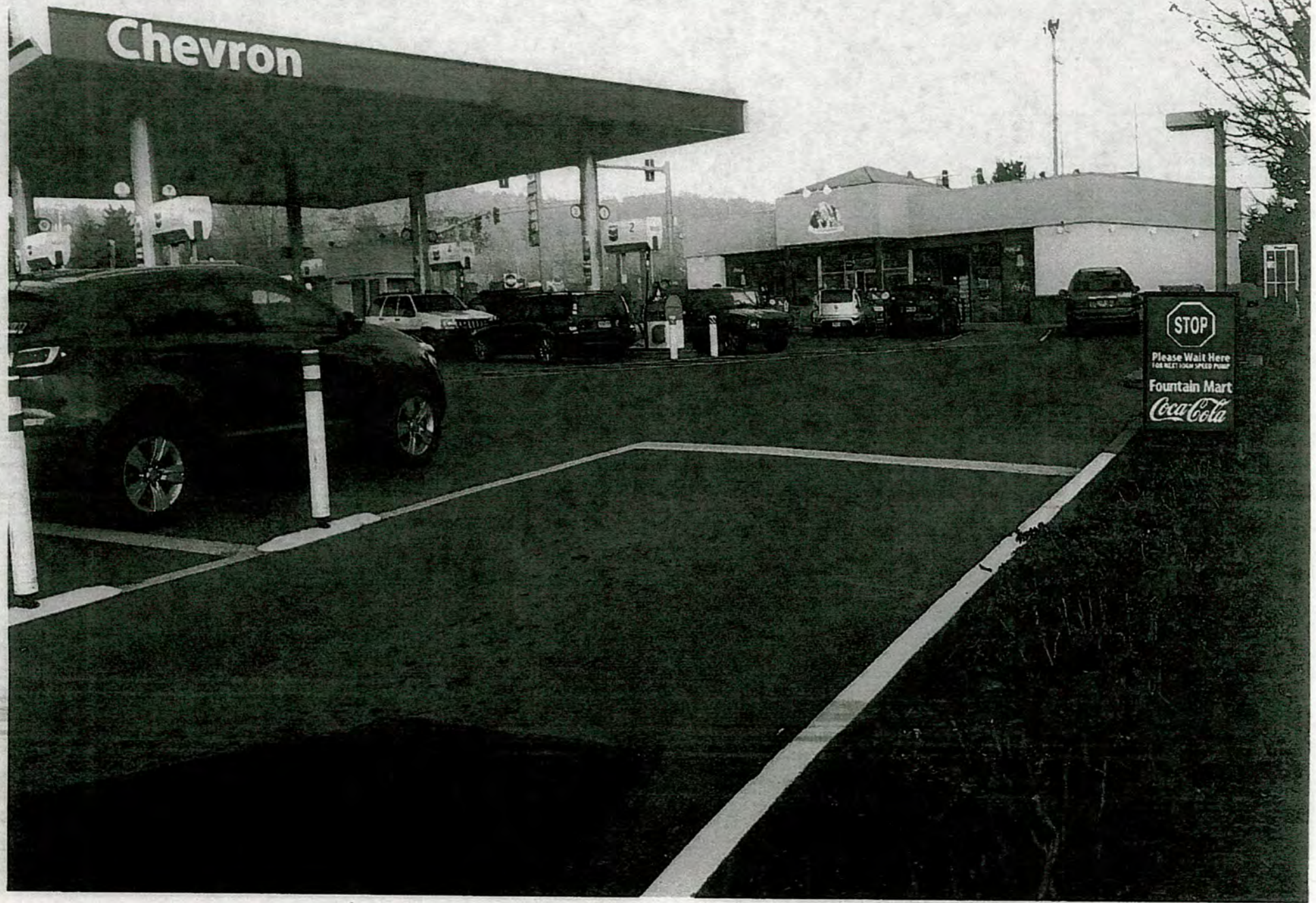


















LaPoint Business Group, LLC
Dba, Chevron North Wilsonville
Coca Cola Fountain Mart
25410 SW 95th Avenue
Wilsonville, Oregon 97071

Proposed - Convenient Coffee Store Business

DEVCO Property Development

DRB Meeting January 13, 2014

6:00 PM

I am the property owner and operator of the Chevron and Coca Cola Fountain Mart adjacent to the DEVCO development.

I ask the members of the hearing to grant a continuance for any additional development on our adjacent site by DEVCO.

I am not here in person tonight because of a scheduled vacation with non-refundable tickets or rooms, to meet with friends in Hawaii (Jan 5th – Feb. 5th). The trip was scheduled over a year ago after I (we) found out my wife's cancer had returned and is terminal. We also made an unexpected trip to San Diego for Christmas to see my daughter's first child (Frankie), which she adopted in September. We stayed to babysit with Frankie so my daughter and son-in-law could celebrate her 40th Birthday with friends on December 31, 2013 or New Year's Eve.

This continuance should be granted due to the date the notice of hearing was sent to me. December 23, 2013 I received an email from Dan Pauly that officially notified me of the proposed development and hearing date. Let's look at a calendar. December 23rd is a Monday, Christmas Eve is Tuesday, Christmas Wednesday, etc.....What were you folks doing that week and how busy were you? Then the next week was more special for us because after years of trying to have a baby my daughter was able to adopt our new grandson and needed us to babysit on December 31st so she could attend the overnight New Years Eve birthday party her husband and friends had arranged. To top it off, my attorney, Wallace Lien was out of the country from December 16, 2013 until January 7, 2014.

If you take out the holidays from this notice of hearing I did not have the normal three weeks to prepare for this hearing. In the future I think that holidays should be considered in the notice so that there is fifteen working days to prepare for a hearing.

The south bound traffic in the center lane on 95th trying to enter the multiple businesses here now is getting backed up because of the traffic speed and number of vehicles traveling north on 95th Ave. With all the new improvements we have created many new problems that did not exist prior to the DEVCO Development. Adding another high traffic business will only exacerbate all of the above problems.

The south bound 95th /Commerce Circle traffic that uses our new ingress/egress for a U-turn's on the DVD is unbelievable. I have counted 25 vehicles doing that one day when I was on site.

The south stop light at 95th Avenue and Commerce Circle needs to be re-timed during peak hours to eliminate some of the problems above.

The Development Agreement with DEVCO and Holiday Inn is not complete with the Carl's Jr. Development. These defaults should be corrected before any further development begins on the DEVCO site.

Daniel Pauly asked me to call Dan Gjurgevich, franchise of Carl's Jr., as Mr. Gjurgevich would like to speak with me. I knew Mr. Gjurgevich as a longtime customer of my Chevron site. The first thing he said to me is that he wanted to be a good neighbor and I concurred with Mr. Gjurgevich. I explained that Mr. Josh Veentjer had made several statements to the city and me that were not what Mr. Veentjer intended to following through with. Mr. Veentjer is a developer from Southern California that is only looking to maximum the return on his investment. The problems we have will be left behind when Mr. Veentjer returns to Southern California and Mr. Gjurgevich and I will have to live with them. Mr. Gjurgevich lives in Wilsonville and I live just south of Wilsonville but have been doing business in Wilsonville since 1978. This is our home and community. We can do better.

With the above information, what my attorney was able to prepare and the DVD that took my manager from 9am Sunday to 2am Monday morning to prepare for you this weekend. I ask you to grant a continuance to discuss and resolve the many issues we have now before us. If developing a high traffic volume "Convenience Coffee Store" is a solution to the above problems, then you should approve the proposed development as submitted.

Sincerely,

Garry LaPoint



1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

Steven L. Pfeiffer
PHONE: (503) 727-2261
FAX: (503) 346-2261
EMAIL: SPfeiffer@perkinscoie.com

January 27, 2014

VIA EMAIL

Daniel Pauly, AICP
City of Wilsonville
Planning Department
29799 SW Town Center Loop E
Wilsonville, OR 97070

**Re: The Human Bean, Wilsonville Devco LLC
DB13-0046, DB13-0047, DB13-0048**

Dear Daniel:

This office represents Wilsonville Devco, LLC, the applicant in the above-referenced applications. Enclosed for timely submittal in the first open record period, please find the following documents:

- Letter from me, dated January 27, 2014, responding to opposition comments and submitting additional testimony and evidence in support of the proposed coffee kiosk;
- Letter from Dan Gjurgevich, Carl's Jr. franchisee, dated January 24, 2014, in support of the proposed coffee kiosk; and
- Revised Site Plan, Automobile Turning Movement Plan, and Truck Turning Movements Plan with accompanying narrative, dated January 27, 2014.



City of Wilsonville
EXHIBIT B6 DB13-0046 et seq

LEGAL29155012.1

ANCHORAGE BEIJING BOSTON BOYSE CHICAGO DALLAS DENVER LOS ANGELES MADISON NEW YORK
PALM SPRINGS PHOENIX PORTLAND SAN DIEGO SAN FRANCISCO SEATTLE SHANGHAI TAIPEI WASHINGTON D.C.

Perkins Coie LLP

Daniel Pauly, AICP
January 27, 2014
Page 2

Please place these materials before the DRB and add these documents, and all attachments and exhibits, to the official record of this DRB proceeding.

Very truly yours,



Steven L. Pfeiffer

SLP:crl

Enclosures

Cc: Ben Altman, SFA Design Group (via email) (with encls.)
Craig Anderson, CB Anderson Architects (via email) (with encls.)
Wallace Lien, Esq.(via email) (with encls.)
Client (via email) (with encls.)
George J. Gregores, Esq. (via email) (with encls.)



Steven L. Pfeiffer
PHONE: (503) 727-2261
FAX: (503) 346-2261
EMAIL: SPfeiffer@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

January 27, 2014

VIA EMAIL

Daniel Pauly, AICP
City of Wilsonville
Planning Department
29799 SW Town Center Loop E
Wilsonville, OR 97070

**Re: The Human Bean, Wilsonville Devco LLC
DB13-0046, DB13-0047, DB13-0048**

Dear Daniel:

This office represents the applicant, Wilsonville Devco, LLC ("Applicant"), in the above-referenced applications for Stage II Final Plan Revision, Site Design Review and Master Sign Plan Revision and Sign Waiver (together, "Applications") related to its proposal to construct a coffee kiosk at the corner of Boones Ferry Road and 95th Avenue (the "Site"). As you know, the Applicant had previously obtained Stage II Final Plan approval for a 3,150 square foot multi-tenant commercial building on the Site. The present Applications seek to replace the approved, but unbuilt, commercial building with a new 450 square foot drive-through coffee kiosk.

A hearing on this matter was held before the Development Review Board ("DRB") on January 13, 2014. On that day, comments were submitted in opposition to the Applicant's proposal by Garry LaPoint and his attorney, Wallace Lien (together, the "Opponent"). At the close of the hearing, the DRB held the record open for an additional fourteen (14) days to allow all interested parties to submit additional testimony and evidence. The purpose of this letter is to respond to the Opponent's comments and to submit additional testimony and evidence in support of the Applications. As discussed in more detail below, the Opponents fail to demonstrate that the Applications violate any applicable Code standard or do not comply with any applicable approval criteria; therefore, the DRB should approve these Applications.

This letter is timely submitted within the first open record period. Please add this letter and its attachments to the official record of the DRB proceeding.

LEGAL29122709.4

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

Perkins Coie LLP

Daniel Pauly, AICP
City of Wilsonville
January 27, 2014
Page 2

1. The notice of the hearing was adequate, and the Opponent had actual notice.

The Opponent argues that the notice of the January 13, 2014 DRB hearing, received by Mr. LaPoint on December 23, 2013 was inadequate. To the contrary, however, it is clear that not only did the notice fulfill applicable legal requirements, the Opponent had actual notice and was able to meaningfully participate in the hearing, rendering any argument that the notice was defective irrelevant.

Pursuant to Wilsonville Development Code ("WDC") 4.012(.02), notice of a quasi-judicial land use action that involves a public hearing must be mailed at least twenty (20) days and no more than forty (40) days prior to the public hearing to all owners of real property within 250 feet. Oregon Revised Statute (ORS) section 197.763(3)(f)(A) also requires that notice to surrounding property owners be mailed at least twenty (20) days prior to a hearing. In the present matter, notice of the DRB hearing scheduled for January 13, 2013 was issued on December 23, 2013. In fact, the Opponent admitted that on "December 23, 2013 I received an email from Dan Pauly that officially notified me of the proposed development and hearing date." Letter from Garry LaPoint, dated January 13, 2013, p. 1. This amounts to a notice period of twenty-one (21) days, which exceeds the minimum notice of twenty (20) days required by WDC 4.012.02 and ORS 197.763. Accordingly, the Opponent was provided legally sufficient notice of the DRB hearing.

Moreover, the Opponent had actual notice of the proposed development. In his submittal, Mr. Lien asserts, "My client did not learn about this proposed change [to a coffee kiosk] until mid-December . . ." Memorandum in Opposition, p. 2. However, an email from Mr. LaPoint to Mr. Veentjer, dated October 17, 2013, in which Mr. LaPoint asked if the "Coffee Shop" is going to be done belies Mr. Lien's present statement. The October 17, 2013 email is attached as **Exhibit 1**. In addition, Mr. Lien wrote a letter to the Applicant, dated November 19, 2013, demanding that the Applicant cease and desist all activities relating to the siting and construction of the Human Bean coffee kiosk, which also contradicts the Opponent's assertion regarding notice. The cease and desist letter is attached as Exhibit A, p. 12 to the letter from Alec Laidlaw to Daniel Pauly, dated January 3, 2014 and included in the hearing packet. Clearly, the Opponent knew about the proposed coffee kiosk by early to mid-October, well before sending the cease and desist letter to the Applicant to try to prevent its development. Additionally, the Opponent had actual notice of the hearing in this matter, as evidenced by his meaningful participation in the DRB proceeding.

Therefore, the Opponent's substantial rights were not prejudiced and any deficiencies in the notice do not constitute reversible error. LUBA has held that technical deficiencies in a notice are mere procedural errors and do not provide a basis for reversal or remand unless the

Daniel Pauly, AICP
City of Wilsonville
January 27, 2014
Page 3

error prejudices a party's substantial rights. *Lange-Luttig v. City of Beaverton*, 39 Or. LUBA 80, 83-85 (2000). Here, the Opponent had the opportunity to be heard at the hearing and had enough lead time with the staff report to prepare a detailed, fifteen-page written testimonial in time for the hearing. That testimony belies the Opponent's assertion that an earlier notice was required and clearly demonstrates that the Opponent's substantial rights were not prejudiced.

The Opponent further asserts that the content of the notice, which lists the approval criteria applicable to the proposed development, was defective because it failed to list those criteria with the specificity required by ORS 197.763(3)(b). For the reasons discussed more fully below, the Opponent is mistaken, and his argument should be rejected by the DRB.

First, WDC 4.003, "Consistency with Plans and Laws," is a generic consistency requirement common to most development codes, which does not require a full listing of comprehensive plan provisions because such goals and policies are embodied in the direct decisional criteria contained in the WDC. Moreover, where goals and policies are not used as decisional criteria, they are not required to be listed on the notice. *See, e.g. BCT Partnership v. City of Portland*, 27 Or. LUBA 278 at *8 (1994) (finding that a failure to list plan policies that were not applied as decisional criteria by the local government does not constitute a violation of ORS 197.763(3)(b)).

Second, with regard to the alleged failure to list the individual criteria listed in WDC § 4.400 through 4.450, "Site Design Review," the notice provided sufficient specificity to put the Opponent on notice that certain sections within that range are applicable. The Oregon Land Use Board of Appeals ("LUBA") has found that ORS 197.763(3)(b) requires a local government to simply provide the detail necessary to direct the public to the actual code provisions that are deemed to be approval criteria. *Kingsley v. City of Sutherlin*, 49 Or. LUBA 242, 247 (2005). The City's notice clearly indicates which chapter and sections (chapter 4, sections 400 through 450) contain the site design review criteria, thereby informing the public that they may apply. LUBA has held that listing the criteria by section number provides acceptable notice. *Fjarli v. First Interstate Bank*, 33 Or. LUBA 451 (1997). Here, the City did just that by providing the public with a clearly-defined range of code sections that apply to the proposed development.

As demonstrated above, the notice in this matter was legally sufficient, and the DRB should reject the Opponent's assertions that the City committed any procedural error.

2. The Restrictive Covenant contractual dispute is not pertinent to the City's review.

The Opponent has asserted that the proposed development is "not permitted by law" pursuant to WDC 4.006 because of pending litigation between it and the Applicant (Wa. Co.

Daniel Pauly, AICP
City of Wilsonville
January 27, 2014
Page 4

Case No. C138125CV). This litigation concerns a restrictive covenant that applies to the Applicant's use of the subject property. The restrictive covenant is a private contract between the Applicant and the Opponent, to which the City is not a party. Not only has that dispute yet to mature to the point where a court can rule on it, any such ruling pertains only to the contractual relationship between the parties. It cannot constitute a "law" for the purposes of WDC 4.006, which is reasonably interpreted to denote a law of general applicability. Private covenants are not land development criteria. In the event of a breach of a private restrictive covenant, a party may have recourse at law or equity, but cannot elevate such a dispute to the status of development criteria. Such an assertion would beg the City to circumvent due process requirements applying to the creation of a "law."

As Assistant City Attorney Barbara Jacobson stated in her letter to Alec Laidlaw, dated January 3, 2014, "[the private contractual dispute] has no bearing on the application made by the property owner to the Wilsonville Development Review Board. . . . I trust that if you and your client believe that approval of the application, if granted, will violate a contractual agreement and cause your client harm, you will seek the proper legal resource with the Washington County Circuit Court before which this matter is being heard, as and when needed to protect your client's interests." Ms. Jacobson's letter is attached as **Exhibit 2**. We fully concur with Ms. Jacobson's assessment. This unresolved private contractual dispute is irrelevant to the DRB's determination about whether the proposed development meets all applicable approval criteria and does not constitute a valid reason to deny approval.

Even if the City were to consider the restrictive covenant to be a law under WDC 4.006, it clearly allows a coffee kiosk because it restricts only those uses that would compete with the nearby Chevron: the dispensing of petroleum products and a "convenience store business." The restrictive covenant is attached as **Exhibit 3**. The Opponent's assertion that a small coffee stand is a "convenience store business" strains credulity and in any event, it is irrelevant to this land use action.

3. The Opponent is not a "necessary party."

The Opponent argues that the City does not have jurisdiction to review the proposed development for failing to add a "necessary party." A "necessary party" is a term of art in American civil procedure and is pertinent to litigation, but it has no application in a non-adversarial quasi-judicial land use review. The Opponent goes on to suggest that the "the LaPoint property must be included in any site plan review of this change." Memorandum in Opposition at 6. The Opponent's argument is confusing and unclear. To the extent the Opponent contends his consent to file the Applications was required, such argument should be

rejected. The Opponent's consent was not required because he does not own the property subject to the proposed development.

With regard to site access, the primary access and egress to/from the proposed coffee kiosk is via the shared driveway off of SW 95th Avenue. From this primary access/egress point, customers to the proposed coffee kiosk do not cross the LaPoint property. *See* revised Site Plan and accompanying narrative, dated January 27, 2014. The proposed coffee kiosk has a secondary access that crosses the LaPoint property. Applicant benefits from a reciprocal access cross-easement between the Applicant and the Opponent. The cross-easement is attached as **Exhibit 4**. This cross-easement provides ingress and egress over both properties benefitting the Applicant's property and the LaPoint property. It was created by the parties according to a development agreement dated August 3, 2012 ("Development Agreement"), a copy of which is attached as **Exhibit 5**. The City is aware of these reciprocal rights and is a party to the Development Agreement. Accordingly, it determined that the Applicant provided sufficient evidence of site access. Contrary to the bare assertions that the cross-easement restricts a coffee-kiosk, the cross-easement and Development Agreement contain no such express restriction. The Development Agreement contemplates "other yet to be determined retail" on the Site, and a coffee kiosk fits squarely into such retail category. Opponent has provided no evidence to contradict the evidence provided by the Applicant, and the findings by the City, that demonstrate adequate site access.

Lastly, the Opponent's assertion that the outcome of possible future litigation¹ involving this reciprocal easement should be determinative of the City's consideration of the proposed development is legally unsupportable. Such future litigation, if it were to occur, has no bearing on this present quasi-judicial land use action.

4. The proposed coffee kiosk will not create an adverse traffic impact on nearby affected intersections.

The City's designated traffic engineer, DKS, provided a trip generation estimate ("TGE") dated November 5, 2013, demonstrating that the Proposed Development will generate approximately five (5) more driveway and thirteen (13) fewer primary p.m. peak trips than what was previously estimated for the site.² As such, the study found that "the small increase in driveway trips is not expected to negatively impact intersection operations." TGE at 3. We

¹ We note that the Opponent has admitted that a legal dispute concerning the access easement has yet to mature by indicating that the issue "will be taken up in the Washington County Circuit Court at the appropriate time." Memorandum in Opposition at 6.

² The baseline estimate is derived from case files DB 12-0074 through DB 12-0076, which approved an approximately 3,150 sq. ft. retail center where the 450 sq. ft. is now proposed.

reiterate this point because the trip generation of the proposed development must be viewed in the context of what was previously permitted as part of the prior site master plan—an approximately 3,150 sq. ft. “specialty retail” building. The bottom line is that this proposed coffee kiosk will generate fewer p.m. peak trips than the development previously contemplated and will not adversely affect intersection levels of service.

Additionally, DKS performed an AM Peak Hour Traffic Analysis, dated January 27, 2014 (“AM Peak Analysis”), attached as **Exhibit 6**. This AM Peak Analysis showed that the proposed coffee kiosk would generate only two (2) additional primary trips than at the PM peak hour. AM Peak Analysis, pp. 3-4. Given that the AM peak hour traffic volumes are lower than the PM peak hour traffic volumes at the study intersections, and that the coffee kiosk would generate minimally more primary trips at the AM peak hour, DKS found that the addition of the proposed coffee kiosk would produce minimal impacts to the study intersections, and that all study intersections, including the project driveway, would comfortably meet the City’s operating standards. AM Peak Analysis, pp. 5-8. Taken together, DKS’s initial TGE and the AM Peak Analysis demonstrate that the proposed coffee kiosk will not adversely impact study intersections in the AM or PM peak, and that all levels of service of affected intersections remain operating within the City’s standards.

While the Opponent asserts that pass-by trips have the same impact as primary trips on internal site circulation, , they do not have the same impact on the levels of service of affected intersections. The TGE specifically notes that while the proposed development “would generate slightly more trips than the previously-proposed retail center...it has a much higher pass-by trip rate...and therefore generates fewer primary trips.” TGE at 2. It goes on to state that “the small increase in driveway trips is not expected to negatively impact intersection operations.” Id. Compliance with WDC 4.140(.09)(J) does not hinge, as the Opponent suggests, on internal site circulation: it hinges on the levels of service of affected intersections. The TGE and AM Peak Analysis is sufficient proof of compliance with WDC 4.140(.09)(J) because DKS evaluated all likely-affected intersections and determined that the AM and PM peak levels of service would not be substantially affected by the proposed development.

Finally, the Opponent’s citation of the Gibson Traffic Consultant’s study of a 1,800 SF coffee shop is irrelevant because the proposed coffee kiosk is a different use than analyzed in that study (ITE § 938 vs. § 934), is substantially smaller, and affects different roadways for level of service purposes. For all of the above reasons, the DRB can find that the proposed development will not create an adverse traffic impact on surrounding intersections.

5. On-site circulation is adequate and safe.

The majority of the Opponent's arguments pertain to site circulation. At the outset, it is important to note that this property has been reviewed in at least six prior land use actions.³ In several of these, including the Stage II Final Plan for the 3,150 square foot multi-tenant commercial building, the City was provided the opportunity to review site circulation. The City found that the Site would provide adequate on-site circulation for a 3,150 square foot commercial building, and the Opponent did not oppose such project. The Applicant now proposes a much smaller building, a 450 square foot coffee kiosk, on the Site. Additionally, the Applicant proposes directional signs, directional striping, and a revised delivery truck circulation pattern to further ensure safe on-site circulation and to further accommodate deliveries for the Chevron station, the Carl's Junior, and the proposed coffee kiosk. See revised Site Plan, signage, delivery truck circulation/parking and accompanying narrative, dated January 27, 2014.

The Opponent's implication at the hearing that the Carl's Junior franchisee opposed the proposed coffee kiosk because of concerns about traffic congestion and on-site circulation is patently false. As shown in the letter from Dan Gjurgevich, franchisee of the Carl's Junior, to Daniel Pauly, dated January 24, 2014, Mr. Gjurgevich believes that the site circulation is sufficient to support the addition of a coffee kiosk and encourages the City to approve the proposed coffee kiosk. We suggest that the Opponent's strenuous objection to this new proposal is less about adequate on-site circulation and largely about trying to avoid market competition. In any event, the Opponent was fully aware of the complex circulation on the site—Mr. LaPoint entered into a detailed development agreement in 2012 that was largely intended to resolve site access and circulation challenges, and executed the reciprocal easement providing access to both properties. That the Opponent now regrets the promises made in that agreement does not provide an adequate basis upon which to challenge the Proposed Development.

In this case, the City carefully reviewed proposed site circulation, found it to be adequate, and provided specific site circulation findings to that effect under WDC 4.154. Moreover, as part of its review the City provided the opportunity for the Tualatin Valley Fire and Rescue (TVFR) to review the Proposed Development and recommend conditions of approval. The City received no concerns or comments from TVFR regarding the Proposed Development. It is

³ According to the Staff Report, prior land use actions include:

1. Edwards Business Center Industrial Park Plat-Stage I;
2. 97DB28 Stage II, Site Design Review, LaPoint Center;
3. DB06-0041, DB06-0043, DB06-0057, DB06-0042 Stage II Final Plan, Site Design Review;
4. Waiver to Building Height, Master Sign Plan for Brice Office Building (Expired);
5. DB12-0074 through DB12-0076 Stage II Final Plan, Site Design Review, and Master Sign Plan for fast food restaurant and multi-tenant commercial building; and
6. DB13-0027 Site Design Review for accent lighting on fast food restaurant.

Daniel Pauly, AICP
City of Wilsonville
January 27, 2014
Page 8

important to note, however, that for fire/life/safety purposes, the proposed development has a much smaller impact than the originally-proposed retail building. TVFR did review the prior master plan (case file DB 12-0074, 0075, and 0076) and indicated that "Tualatin Valley Fire and Rescue endorses this proposal." The TVFR comment is attached as **Exhibit 7**. That it provided no substantive comment regarding this proposal is clear evidence that TVFR's endorsement has not been revoked and that the proposed development can be adequately accessed by emergency vehicles.

As to the Opponent's other arguments regarding site circulation, we note that the Opponent did not cite any applicable approval criteria that the Proposed Development failed to meet. The twenty-seven minute-long video showing site circulation similarly demonstrates nothing that relates to an applicable criterion. What it does show is that during the rare periods when both the trucks serving the Carl's Junior restaurant and the Chevron station are on site at the same time, patrons have some difficulty accessing the Carl's Junior. This is neither surprising, nor is it enlightening for the purposes of a coffee kiosk. The collision captured by the Chevron's cameras is unfortunate, but as it occurs off-site due to a motorist's failure to yield during a left turn, it demonstrates nothing about the circulation of vehicles on the site and could have happened at any intersection with an unprotected left turn. For these reasons, such arguments should be disregarded.

6. Drainage facilities are sufficient to accommodate the coffee kiosk.

The Opponent argues that the Applicant constructed a drainage ditch over the Opponent's property without permission. Regardless of the veracity of this allegation, it is at most a private trespass that has no bearing on the proposed development. The Opponent goes on to argue that the City did not address storm water in its review. Opponent is mistaken. Conditions of approval listed as PF 3 and PF 4 require that the proposed development connect its onsite storm drainage collection system to the Boone Ferry Point project, which will provide sufficient detention and storm water quality for the site. The City's Engineering and Building divisions accordingly found that the proposed development meets all applicable storm water standards, as proposed and with the conditions of approval mentioned above.

Therefore, the Opponent's argument regarding adequacy of drainage facilities should be rejected.

Conclusion.

For the reasons discussed above, at the DRB hearing, and in the Applicant's Application submittals, the proposed development meets all applicable approval criteria, and the City

Daniel Pauly, AICP
City of Wilsonville
January 27, 2014
Page 9

observed proper procedures in processing the Applications. Therefore, the DRB should reject the Opponent's arguments and approve the Applications.

Very truly yours,



Steven L. Pfeiffer

SLP:crl
Enclosures

cc: Ben Altman, SFA Design Group (via email) (with encls.)
Craig Anderson, CB Anderson Architects (via email) (with encls.)
Wallace Lien, Esq.(via email) (with encls.)
Client (via email) (with encls.)
George J. Gregores, Esq. (via email) (with encls.)

From: Garry LaPoint [<mailto:gl@eoni.com>]
Sent: Thursday, October 17, 2013 12:25 PM
To: josh@pdvco.com; LaPoint, Jason
Subject: Re: Development Agreement final 7-6-12

Josh,

1. I talked with Tony and he said he has no one that can do the connections and wiring for the cameras. He said he does not do that type of work. Who will be doing the work?
2. When will your trash enclosure be done? I have two estimates for approx. \$7500.00 but have not scheduled any work yet. If you or your contractor can match or beat that estimates I will contract with you to do the work. If not, I need a reasonable amount of time to schedule masonry work and doors to be build and power coated.
3. What is your completion date? and is it firm? Is the Coffee Shop going to be done?

I just got home. I have the Easement Agreement and Amendment. I will try to get notarized and returned.

Garry



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

January 3, 2014

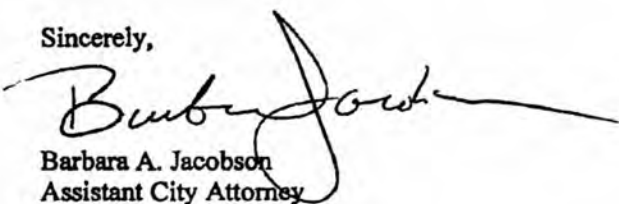
Alec J. Laidlaw
Laidlaw & Laidlaw
21590 Willamette Dr
West Linn OR 97068

Re: The Human Bean Coffee Store

Dear Mr. Laidlaw:

The City is in receipt of your letter dated January 3, 2014. Although we appreciate knowing that the dispute exists, it has no bearing on the application made by the property owner to the Wilsonville Development Review Board, which will be considered as scheduled. I trust that if you and your client believe that approval of the application, if granted, will violate a contractual agreement and cause your client harm, you will seek the proper legal recourse with the Washington County Circuit Court before which this matter is being heard, as and when needed to protect your client's interests.

Sincerely,



Barbara A. Jacobson
Assistant City Attorney

baj:tec

cc: Wallace W. Lien
Daniel Pauly



"Serving The Community With Pride"

EXHIBIT 2

Washington County, Oregon 2005-025345
03/10/2008 03:14:18 PM
0.4/8 One-1 Bore A DUYCK
\$26.00 \$6.00 \$11.00 - Total = \$37.00



00734670700500753450040018

I, Jerry Thompson, Director of Assessment and Taxation
and Washington County Clerk for Washington County,
Oregon, do hereby certify that the within instrument of
writing was prepared and recorded in the books of
records of said county.
Jerry R. Thompson, Director of Assessment and Taxation
Washington County Clerk



AFTER RECORDING MAIL TO:

Name Garry M. LaPoint
Address 10618 Crosby Road NE
City/State Woodburn, OR 97071

Document Title(s) (for transactions contained therein):
1. Restrictive Covenant

371-6

FARCO NC NLS-M677-0A

Title Data, Inc. CH FOR10583 WN 2005025345.001

EXHIBIT B
Page 1 of 4

EXHIBIT A
PAGE 8



RESTRICTIVE COVENANT

FOR GOOD AND VALUABLE CONSIDERATION, the undersigned, hereby creates and imposes upon the real property described in Exhibit A attached hereto and by this reference made a part hereof, to be binding upon itself, its successors and assigns forever, the following restriction on use of the property:

The property described in Exhibit A attached hereto and by this reference, incorporated herein, shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

IN WITNESS WHEREOF, the undersigned, being the owner of the real property described above, has executed this restrictive covenant on the 8th day of March, 2005.

SOUTH SEA, LLC, an Oregon Limited Liability Company

BY George F. Brice III
George F. Brice III, Member

BY Zsuzsanna Brice
Zsuzsanna Brice, Member

STATE OF OREGON

County of Multnomah

}
}
"

Before me, a notary public in and for the State of Oregon, personally appeared George F. Brice, III and Zsuzsanna Brice and acknowledged the foregoing to be their voluntary act and deed.



[Signature]
Notary Public for Oregon
My commission expires: 12/31/07



EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammors to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 341.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to Exton Wilsonville, LLC, an Oregon limited liability company, by instrument recorded June 19, 2000 as Fee No. 2000-46397 and being more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:



Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet to the true point of beginning; thence North $89^{\circ}38'33''$ East parallel to said South line of Lot 7, 95.10 feet; thence South $20^{\circ}29'49''$ West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North $00^{\circ}09'24''$ East parallel to said East line, 6.00 feet to the true point of beginning.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet; thence North $89^{\circ}38'33''$ East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North $20^{\circ}29'49''$ East, 170.00 feet; thence North $57^{\circ}57'47''$ East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South $38^{\circ}02'13''$ East, 2.34 feet; thence leaving said Westerly line South $51^{\circ}57'47''$ West, 20.00 feet; thence South $20^{\circ}40'49''$ West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

Title Data, Inc. CH POR10583 WH 2006025345.004

EXHIBIT B
Page 4 of 4

EXHIBIT A
PAGE 11

55
31

**Recorded At The Request Of
And When Recorded Mail To:**

George J. Gregores
Holland & Knight LLP
111 SW Fifth Ave, Suite 2300
Portland, OR 97204

Washington County, Oregon
11/12/2013 11:41:50 AM
D-E Cnt=1 Stn=12 S PFEIFER
\$55.00 \$5.00 \$11.00 \$15.00 - Total = \$86.00

2013-097514



01894749201300975140110117

I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Office County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.

Richard Hobernicht, Director of Assessment and
Taxation, Ex-Office County Clerk



AMENDMENT TO EASEMENT AGREEMENT

Date: October 24, 2013

Among: **WILSONVILLE DEVCO, LLC**
an Oregon limited liability company ("Wilsonville Devco")

And: **LAPOINT BUSINESS GROUP, LLC**
an Oregon limited liability company ("LaPoint")

RECITALS

A. ~~Wilsonville Devco~~ is the ~~owner~~ of the real property legally described in attached ~~Exhibit A~~ (the "Wilsonville Devco Property").

B. ~~LaPoint~~ is the ~~owner~~ of the real property legally described in attached ~~Exhibit B~~ (the "LaPoint Property").

C. Exxon of Wilsonville, L.L.C., an Oregon limited liability company, predecessor in interest to La Point as a previous owner of the LaPoint Property, and South Sea, L.L.C., an Oregon limited liability company, predecessor in interest to Wilsonville Devco as a previous owner of the Wilsonville Devco Property, executed and recorded a ~~Common Ingress and Egress Easement~~ on April 30, 2002 at Recorder No. 2002-051321, Official Records of Washington County, Oregon (the "Prior Agreement").

D. ~~Wilsonville Devco~~ and LaPoint wish to amend the Prior Agreement in accordance with the terms of this Agreement, including vacating a portion of Wilsonville Devco's easement over the LaPoint Property, which area to be vacated is described in attached ~~Exhibit C~~ (the "Old Easement Area"), in exchange for the parties granting to each other a reciprocal cross-easement over the easement area described in attached ~~Exhibit D~~ (the "New Easement Area").

AGREEMENT

For valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Wilsonville Devco and LaPoint agree as follows:

EXHIBIT 4

1. **Vacation of Old Easement Area.** The Old Easement Area described in attached Exhibit C is hereby vacated and deleted from the Prior Agreement.

2. **Grant of Reciprocal Cross-Easement.** The parties hereby grant and convey to each other a permanent, mutual, reciprocal easement on, over, across and along the New Easement Area described on attached Exhibit D. A description of the New Easement Area and its relation to the Wilsonville Devco Property and the LaPoint Property is illustrated on attached Exhibit E. The New Easement Area is to be used principally for curb cuts between the Wilsonville Devco Property and the LaPoint Property, vehicular ingress and egress in connection therewith, and LaPoint's access to its trash enclosure on the Wilsonville Devco Property.

3. **Maintenance and Repairs.** Any maintenance and necessary repair of the pavement located on the New Easement Area, as determined necessary by Wilsonville Devco in its sole and absolute discretion, shall be paid for by Wilsonville Devco.

4. **Term.** The New Easement Area contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the Official Records of Washington County, Oregon, and shall remain in full force and effect thereafter, unless amended or terminated in accordance with Section 5 hereinafter.

5. **Modification.** This Agreement may only be modified, amended, revised or terminated by written instrument signed by Wilsonville Devco and LaPoint, or their respective successor(s) as the case may be.

6. **Indemnification.** Each party hereto agrees to defend, indemnify, and hold harmless the other party from and against any and all losses, claims, demands, or other liabilities whatsoever arising out of said party's own use of the roadway, or use by said party's successors, assigns, lessees, invitees, guests, tenants, customers, agents and employees.

7. **Attorney Fees.** In the event of any litigation arising under this Agreement, the prevailing party shall recover from the other reasonable attorney fees as determined by the trial or appellate court, as the case may be.

8. **Dispute Resolution.** Any controversy, dispute or question arising out of this Agreement shall be submitted to arbitration before a single arbitrator in Washington County, Oregon. Each party shall bear its own costs in any such proceeding. The decision of the arbitrator shall be final and binding upon the parties and may be enforced in any court of competent jurisdiction. To the fullest extent permitted by law, the parties irrevocably submit to the jurisdiction of such forum, and waive any objections they may have to either the jurisdiction or venue of such forum. Nothing contained herein shall in any way deprive either party of their right to obtain injunction or other equitable relief.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of Oregon.

10. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and

acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document, which will be recorded in the Official Records of Washington County, Oregon.

11. Binding Effect. The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

[Signature Page Follows]

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

WILSONVILLE DEVCO, LLC,
an Oregon limited liability company

By: _____

Name: Josh Veentjer

Title: Managing member

LAPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: _____

Name: _____

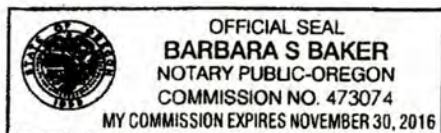
Title: _____

STATE OF OREGON)

) ss

County of Clackamas)

This instrument was acknowledged before me on October 24, 2013 by
Joshua Veentjer as Managing Member of Wilsonville Devco, LLC.



Barbara S. Baker
Notary Public - State of Oregon

STATE OF OREGON)

) ss

County of)

This instrument was acknowledged before me on _____, 2013 by
_____ as _____ of LaPoint Business Group, LLC.

Notary Public - State of Oregon

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

WILSONVILLE DEVCO, LLC,
an Oregon limited liability company

By: _____

Name: _____

Title: _____

LAPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: *[Signature]*

Name: Garry L. LaPoint

Title: Member

STATE OF OREGON)

) ss

County of)

This instrument was acknowledged before me on _____, 2013 by
_____ as _____ of Wilsonville Devco, LLC.

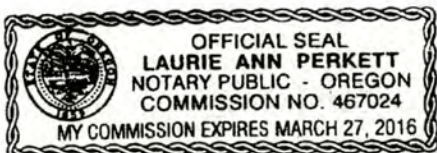
Notary Public - State of Oregon

STATE OF OREGON)

) ss

County of)

This instrument was acknowledged before me on October 18, 2013 by
Garry LaPoint as member of LaPoint Business Group, LLC.



[Signature]
Notary Public - State of Oregon

Exhibit A

**Legal Description of
Wilsonville Devco Property**

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.83 feet to a point on the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

Exhibit B

Legal Description of LaPoint Property

TRACT 2: A tract of land located in Lot 7, "Edwards Business Industrial Park" in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the City of Wilsonville in the County of Washington and State of Oregon, being further described as follows:

Beginning at the Southeast corner of said Lot 7 "Edwards Business Industrial Park" recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon, the TRUE POINT OF BEGINNING; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East parallel to said East line of Parcel 1, 18.00 feet; thence North $89^{\circ}38'33''$ East parallel to said South line, 121.22 feet; thence North $20^{\circ}40'49''$ East, 186.07 feet; thence North $51^{\circ}57'47''$ East, 20.00 feet to the westerly line of Boones Ferry Road as described in said Hammons to "ODOT" deed; thence along said westerly line South $38^{\circ}02'13''$ East, 77.66 feet; thence North $46^{\circ}33'47''$ East, 48.10 feet; thence South $40^{\circ}56'40''$ East, 81.06 feet; thence along the arc of a 2,837.79 foot radius non-tangent curve to the right, said curve having a radial bearing of South $51^{\circ}12'39''$ West, a central angle of $01^{\circ}19'57''$, an arc length of 66.00 feet, the chord of which bears South $38^{\circ}07'22''$ East, 66.00 feet; thence along the arc of a 116.96 foot radius non-tangent curve to the left, said curve having a radial bearing of South $74^{\circ}41'25''$ East, through a central angle of $30^{\circ}31'07''$, an arc length of 62.30 feet, the chord of which bears South $00^{\circ}03'01''$ West, 61.56 feet more or less to the TRUE POINT OF BEGINNING, containing an area of 37,106 square feet, or 0.85 acres, more or less.

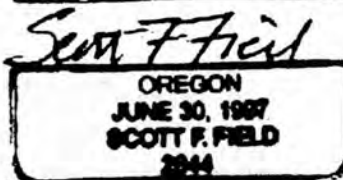
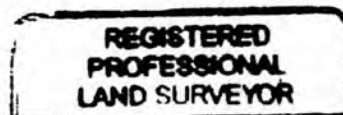
Exhibit C
Old Easement Area

September 24, 2013
NWS Project No. 787
Vacated Easement

A tract of land being a portion of that Common Ingress & Egress Easement described in Document No. 2002-051321, Deed Records of Washington County, Oregon, said tract of land being located in the southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Lot 7, Edwards Business Industrial Park, thence along the south line of said Lot 7, South 89°38'33" West a distance of 207.12 feet to the southeast corner of said Common Ingress & Egress Easement and the Point of Beginning; thence along the most easterly line of said easement, North 00°21'27" West a distance of 150.29 feet to the most northerly corner thereof, said point being on the easterly boundary of that property conveyed to Wilsonville Devco, LLC by deed recorded May 24, 2012 as Document No. 2012-042053, Deed Records of Washington County, Oregon; thence along the easterly boundary of said Wilsonville Devco, LLC property, South 20°40'49" West a distance of 59.48 feet to a point; thence departing said easterly boundary, South 00°09'24" West a distance of 94.77 feet to a point on the south line of said Lot 7; thence along the south line of said Lot 7, North 89°38'33" East a distance of 22.20 feet to the Point of Beginning.

Said described tract of land contains 2,657 square feet, more or less.



RECEIVED 12/31/2013

Exhibit C (continued)

EXHIBIT MAP - VACATED EASEMENT

LOCATED IN THE SE 1/4 OF SECTION 2, T. 3 S., R. 1 W.,
W.M., CITY OF WILSONVILLE, WASHINGTON COUNTY, OREGON
SEPTEMBER 24, 2013

REGISTERED
PROFESSIONAL
LAND SURVEYOR

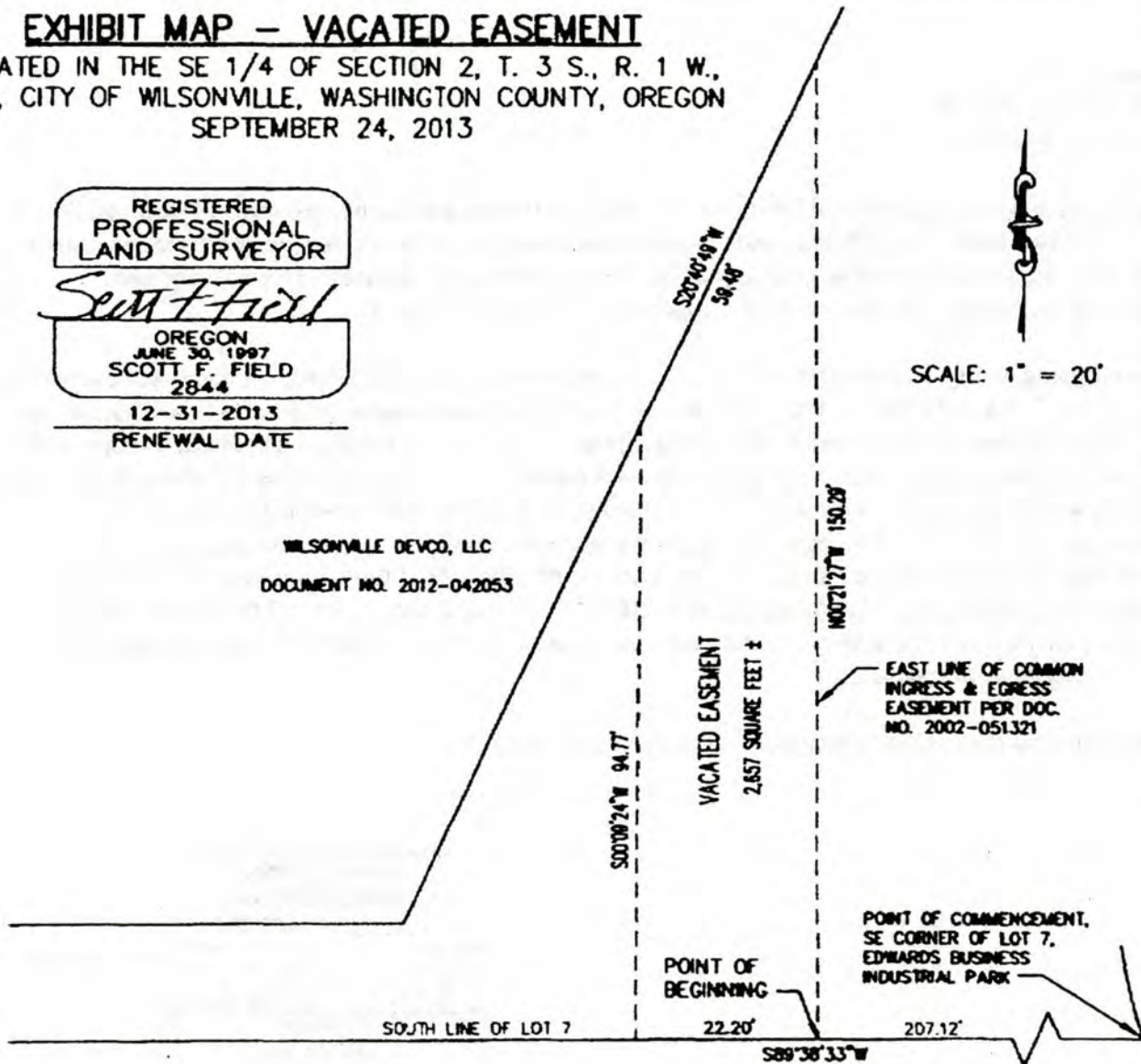
Scott F. Field

OREGON
JUNE 30, 1997
SCOTT F. FIELD
2844

12-31-2013
RENEWAL DATE

WILSONVILLE DEVCO, LLC
DOCUMENT NO. 2012-042053

SCALE: 1" = 20'



JOB NAME:	WILSONVILLE CARL'S JR.
JOB NUMBER:	787
DRAWING NUMBER:	787 EASE
DRAWN BY:	SFF
CHECKED BY:	CHS

**NORTHWEST
SURVEYING, Inc.**

1815 NW 169TH PLACE
SUITE 2090
BEAVERTON, OR 97006
PHONE: (503) 848-2127
FAX: (503) 848-2179

Exhibit D
New Easement Area

September 23, 2013
NWS Project No. 787
Cross Access Line

A line located in the southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Lot 7, Edwards Business Industrial Park, thence along the south line of said Lot 7, South $89^{\circ}38'33''$ West a distance of 379.33 feet to a point 12.00 feet east of the east line of Parcel I as described in deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, recorded April 21, 1995 as Document No. 95-027726, Deed Records of Washington County, Oregon; thence parallel with said east line, North $00^{\circ}09'24''$ East a distance of 18.00 feet to a 5/8 inch iron rod located at the southwest corner of that property conveyed to Wilsonville Devco, LLC by deed recorded May 24, 2012 as Document No. 2012-042053, Deed Records of Washington County, Oregon; thence along the south line of said Wilsonville Devco, LLC property, North $89^{\circ}38'33''$ East a distance of 121.17 feet to the most southerly southeast corner thereof; thence along the easterly boundary of said Wilsonville Devco, LLC property, North $20^{\circ}40'49''$ East a distance of 112.99 feet to the Point of Beginning; thence continuing along said easterly boundary, North $20^{\circ}40'49''$ East a distance of 60.55 feet to the Point of Terminus.



RENEW 12/31/2013

EXHIBIT MAP - CROSS ACCESS LINE

LOCATED IN THE SE 1/4 OF SECTION 2, T. 3 S., R. 1 W., W.M.,
CITY OF WILSONVILLE, WASHINGTON COUNTY, OREGON
SEPTEMBER 23, 2013

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Scott F. Field

OREGON
JUNE 30, 1997
SCOTT F. FIELD
2844

12-31-2013
RENEWAL DATE

SW 95TH AVENUE

N00°09'24"E
18.00'

12.00'

EAST LINE OF PARCEL 1,
DOC. NO. 95-027726

N89°38'33"E 121.17'

379.33'

SOUTH LINE OF LOT 7

WILSONVILLE DEVCO, LLC

DOCUMENT NO. 2012-042053

S89°38'33"W 391.33'

CROSS-ACCESS LINE

POINT OF
TERMINUS

80.55'
N20°40'49"E

POINT OF
BEGINNING

POINT OF COMMENCEMENT,
SE CORNER OF LOT 7,
EDWARDS BUSINESS
INDUSTRIAL PARK

SCALE: 1" = 20'

JOB NAME: WILSONVILLE CARL'S JR.

JOB NUMBER: 787

DRAWING NUMBER: 787 EASE

DRAWN BY: SFF

CHECKED BY: CHS

NORTHWEST
SURVEYING, Inc.

1815 NW 169TH PLACE
SUITE 2090
BEAVERTON, OR 97008
PHONE: (503) 848-2127
FAX: (503) 848-2179

Illustration of New Easement Area
Exhibit E



01738562201200681010210219

I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.
Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk



Eph
After recording, return to:
City Recorder
City of Wilsonville
29799 SW Town Center Loop E.
Wilsonville OR 97070

DEVELOPMENT AGREEMENT

This Development Agreement is entered into by and between the City of Wilsonville ("City"), Wilsonville Devco LLC, an Oregon limited liability company ("Developer"), and two neighboring impacted businesses, LaPoint Business Group, LLC, an Oregon limited liability company, operating a Chevron gasoline station and a convenience store ("LaPoint"), and WHI Hotel, LLC, an Oregon limited liability company operating as a Holiday Inn hotel ("Holiday Inn"). The effective date of this Development Agreement is July 3, 2012 ("Effective Date"). All of the foregoing parties are referred to collectively as the "Parties" and in the singular as a "Party." "Shared Driveway Parties" are all of the Parties listed above, excluding the City.

RECITALS

- A. Developer proposes to construct a Carl's Jr. fast food restaurant and other yet to be determined retail ("Development") on its property located adjacent to the Holiday Inn and LaPoint businesses ("Developer Property"). The locations of the LaPoint property, Holiday Inn property, and Developer Property are legally described and depicted on the map attached hereto as Exhibit A, and are collectively referred to as the "Neighboring Properties."
- B. The proposed Development is located adjacent to 95th Avenue in Wilsonville, Oregon and would be accessed via 95th Avenue. The Neighboring Properties, including the Developer Property, share a common driveway ("Shared Driveway") that allows for access to 95th Avenue.
- C. The City intends to make certain improvements to 95th Avenue this summer ("Roadway Improvements"), whether or not this Development Agreement is entered into. Based on a traffic study recently conducted for the City by DKS Associates in conjunction with the proposed Development, dated May 2012, DKS, Developer, and the City have discussed a driveway configuration requiring certain enhancements and modifications be made to the proposed Roadway Improvements in order to better serve the proposed Development ("Enhanced Roadway Improvements"). The proposed Enhanced Roadway Improvements will cost the City approximately Forty Thousand Dollars to Sixty Thousand Dollars (\$40,000-\$60,000) more than the current scope of work for the Roadway Improvements.

- D. The City is willing to make the Enhanced Roadway Improvements in consideration for Developer making certain on-site improvements to the Neighboring Properties in order to help relieve congestion on the Shared Driveway and to make the traffic flow more smoothly to and from 95th Avenue ("Developer Improvements"). In consideration of the City making the Enhanced Roadway Improvements, Developer has agreed to make the Developer Improvements, more particularly described in **Section III** below.
- E. Holiday Inn and LaPoint support the Enhanced Roadway Improvements and Developer Improvements and agree to fully cooperate with the City and Developer in the construction of the Enhanced Roadway Improvements and Developer Improvements.
- F. Developer will be solely responsible for all costs associated with the Developer Improvements.

AGREEMENT

In consideration of the foregoing Recitals, and incorporating all of the above Recitals by reference in this Development Agreement as if fully set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all of the above-named Parties agree as follows:

I. NEW DEVELOPMENT

Developer intends to construct a retail development on Developer's Property, which may contain a Carl's Jr. fast food restaurant and other retail stores. Nothing in this Development Agreement ensures that Developer's proposed development will be approved by the City. Developer will be required to go through all application and permitting processes required by the City for commercial development and to pay all fees required by the City to be paid for such commercial development in order to obtain approval to move forward with Developer's proposed Development ("Development Approval"). Nothing contained herein is a guarantee that Development Approval will be granted by the City.

II. CITY'S ENHANCED ROADWAY IMPROVEMENTS (City Obligations)

In consideration for Developer making the Developer Improvements, described in **Section III**, the City agrees to make the Enhanced Roadway Improvements generally depicted on **Exhibit B** and generally described as follows:

- Install a concrete sidewalk along the length of the Shared Driveway adjacent to 95th Avenue in the right-of-way.
- Bring storm manhole in right-of-way to grade.
- Install curb along northeast return of the Shared Driveway and 95th Avenue.
- Install concrete commercial Shared Driveway for access to 95th Avenue that lies within right-of-way north of the existing driveway back of curb;

- Transition existing sidewalk north of and adjacent to access drive to meet grades of new concrete driveway.
- Paint and maintain an approximately 50 foot "DO NOT BLOCK DRIVEWAY" signage on 95th Avenue at the inbound and outbound lanes, using eight inch or larger lettering.
- Allow one (1) inbound and two (2) outbound lanes of traffic into the Shared Driveway area at 95th Avenue within the right-of-way. (First 20 feet is one-way inbound and then converts to two lanes within the Shared Driveway.)
- Provide required legal notice to the Parties with respect to any changes being made to their access to 95th Avenue and an opportunity for the Parties to provide comments, understanding the Oregon Department of Transportation has the final authority with respect to any roadway modifications.
- City to stripe egress within the right-of-way.

III. DEVELOPER IMPROVEMENTS (Developer Obligations)

In consideration of the City's installation of the above-described Enhanced Roadway Improvements, Developer agrees to make the Developer Improvements generally depicted on **Exhibit B** and generally described as follows:

- Remove and install curb, gutter, and storm facilities, as necessary, to close the existing Holiday Inn egress to the Shared Driveway and create a new egress. The new egress shall include a driveway that is 16.6 feet wide and Developer shall place "Do Not Block" signage across twelve feet of space in front of the driveway so that cars in the stacking lane do not block Holiday Inn's egress driveway, as depicted on **Exhibit B**.
- Widen the existing Holiday Inn ingress from the Shared Driveway by approximately 5 feet by removing and installing the curb surrounding the Holiday Inn sign and replacing with crushed rock base and asphalt drive.
- Remove a parking stall island and existing tree on Holiday Inn property and replace with asphalt parking with section matching existing parking lot section.
- Add a parking stall island on Holiday Inn property.
- Narrow parking stall island on Holiday Inn property by removing and installing curb and asphalt.
- Remove the median island in the Shared Driveway and install asphalt.
- Install an entry landscape island and a pedestrian refuge island in the middle of the relocated portion of the Shared Driveway.
- Widen the Shared Driveway to four (4) lanes.
- Stripe the Shared Driveway to four (4) lanes, excepting the Shared Driveway entrance (right-of-way), which will be striped to three (3) lanes to discourage travel.
- Remove curb along LaPoint's western property line and install asphalt, as depicted on **Exhibit B**.
- Install stop bars and signs at Developer Property egress to the Shared Driveway and at Holiday Inn egress to the Shared Driveway, as depicted on **Exhibit B**.
- Provide construction easement to the City in order to allow the City to install NE curb return of Shared Driveway, to 95th, and for sidewalk transition and driveway construction.

- Adjust manholes and area inlets in the Shared Driveway to grade.
- All construction within the Shared Driveway or on Holiday Inn property shall be of the same standard as existing construction.
- Relocate Chevron sign and security cameras to either the Landscape Entry Island, centered North/South but as close to the right-of-way as LaPoint wishes to place the signage, as long as it does not overhang the right-of-way, including the sidewalk or, in the alternative, to be located on the southwest corner of Developer's Property next to or within the detention pond location to be agreed upon between Developer and LaPoint and as close to the right-of-way as LaPoint wishes to place the signage, as long as it does not overhang the right-of-way, including the sidewalk. If sign is relocated to Developer's Property, Developer shall provide LaPoint with a sign, access and maintenance easement. LaPoint will seek approval from Chevron to enter into a shared signage agreement with Developer for Developer's proposed fast food sign.
- If a shared signage agreement is entered into between Developer and LaPoint/Chevron, each party will be responsible for the maintenance of their own signage and will share in the maintenance cost or replacement of the pole equally, if any.
- Agreements between LaPoint and Developer, to be agreed upon in terms of markings and placement in order to dedicate the right-hand ingress lane for use as a stacking area for LaPoint gasoline station customers. LaPoint reserves the right to install reflective buttons or flexisticks to further identify the stacking area if gasoline station traffic later warrants, at LaPoint's sole cost and expense.
- Provide Holiday Inn a non-exclusive easement for egress over Developer's property located within the Shared Driveway.
- Preparation of Exhibit B, to this Development Agreement, as approved by all Parties and as attached hereto.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.
- Provide an easement for and allow LaPoint to construct a trash enclosure and recycling area on Developer's property, adjacent to the proposed trash enclosure on Developer's eastern property line. LaPoint's trash enclosure must be constructed with like kind materials, craftsmanship and resemble the same aesthetic look as Developer's trash enclosure.
- Developer and LaPoint have agreed to amend the existing easement agreement by vacating a portion of Developer's easement over LaPoint's property in exchange for LaPoint granting Developer a reciprocal cross-easement on Developer's eastern property line and LaPoint's western property line for curb cuts between the properties and LaPoint's access to trash enclosure on Developer's Property, as illustrated on Exhibit C attached hereto. The amended easement agreement will be part of a separate agreement between Developer and LaPoint.
- Developer will include LaPoint's trash enclosure as part of Developer's plans for the purpose of DRB review and permit approval. The cost of the trash enclosure permit and construction will be at LaPoint's sole cost and expense.

The foregoing Developer Improvements shall be made at Developer's sole expense and are agreed to be a reasonable and agreed upon exchange for the Enhanced Roadway Improvements that the City has agreed to make in order to improve traffic flow to and from the Neighboring

Properties onto 95th Avenue. The foregoing Developer Improvements must be completed, inspected by the City, and deemed complete by the City before the City will issue any temporary occupancy permits to Developer, assuming Development Approval. In addition, regardless of whether Development Approval by the City is granted or denied, Developer will be legally obligated to make the Developer Improvements set forth herein, unless the City agrees otherwise, in its sole discretion to release Developer from any or all of the foregoing obligations, because the City will be constructing the Enhanced Roadway Improvements in consideration of and in reliance upon this Development Agreement, including Developer's agreement to make the Developer Improvements in exchange for the Enhanced Roadway Improvements. Developer's obligations hereunder will therefore run with the land and this Agreement will be recorded against all of the Neighboring Properties.

IV. LAPOINT AGREEMENT (LaPoint Obligations)

In consideration for the City's installation of the above-described Enhanced Roadway Improvements and Developer's construction of the Developer Improvements, both as generally described herein and generally depicted on **Exhibit B**, LaPoint agrees to allow the following with respect to its property, as also generally depicted on **Exhibit B**:

- Allow the current Chevron sign and light pole with security cameras to be relocated as described in Section III above.
- Cooperate with Developer in making all of the required improvements to the Shared Driveway, at Developer's cost, as provided for in Section III and as depicted on **Exhibit B**.
- Allow the Holiday Inn egress driveway portion of its easement to be relocated to the location on LaPoint property, as described above and as depicted on **Exhibit B**.
- Allow pavement signage to be installed by Developer across a twelve-foot area directly in front of the new egress driveway reading DO NOT BLOCK.
- Provide construction easement to allow construction of private ingress and egress improvements, as depicted on **Exhibit B**.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.
- Pay all of the costs associated with the installation and maintenance of any reflective buttons or flexisticks to identify the stacking area.

Except for installation and maintenance of reflective buttons or flexisticks, which shall be LaPoint's responsibility, all of the foregoing work described in this Section IV will be done by Developer, at Developer's cost. LaPoint and Developer will work cooperatively with respect to timing of the foregoing removals and installations.

V. HOLIDAY INN AGREEMENT (Holiday Inn Obligations)

In consideration for the City's installation of the above-described Enhanced Roadway Improvements and Developer's construction of the Developer Improvements, both as generally described herein and generally depicted on Exhibit B, Holiday Inn agrees to allow the following with respect to its property, as also generally depicted on Exhibit B:

- Allow its current egress driveway to the Shared Driveway to be vacated and permanently closed and replaced by Developer, at Developer's cost and expense, with a new egress. The new egress shall include a driveway that is 16.6 feet wide, as depicted on Exhibit B.
- Relinquish three (3) parking spaces to accommodate the Developer Improvements, including relocation of Holiday Inn's easement to egress.
- Allow its existing ingress to be widened by approximately 5 feet in order to better accommodate trucks access.
- Restripe its parking stalls, as needed, at Holiday Inn's expense.
- Provide construction easement to allow construction of private ingress and egress improvements, as depicted on Exhibit B.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.

Except for stall restriping (which shall be Holiday Inn's responsibility), all of the foregoing work described in this Section V will be done by Developer, at Developer's cost and expense. Holiday Inn and Developer will work cooperatively with respect to timing of the foregoing improvements.

VI. Obligations of All Shared Driveway Parties

All Shared Driveway Parties will use good faith reasonable efforts not to unreasonably interfere with or impede Shared Driveway usage. Developer and Holiday Inn agree that the right ingress lane will be used primarily by LaPoint as a stacking lane for gasoline station customers. The left ingress lane shall be used primarily by customers of Developer's Property and LaPoint's C-Store customers, vendors, diesel pumps and fuel deliveries. Holiday Inn recognizes and agrees that the egress driveway across the LaPoint property may occasionally be temporarily blocked by fuel trucks, RV's, delivery trucks, or large trucks with trailers from time-to-time entering the site, however, such blockage will be short term as the vehicles maneuver into place as the egress driveway crosses over the stacking lane. An area twelve feet (12 ft) in width will be clearly marked with DO NOT BLOCK letters painted on the pavement. LaPoint will use reasonable good faith efforts to monitor public compliance with this signage and require customers to move out of the DO NOT BLOCK area but Holiday Inn recognizes and agrees that at times a customer may fail to abide by the signage and LaPoint shall not have liability for such blockage. Holiday Inn customers will not be allowed to cut into the stacking lane and if such customers wish to get gasoline, they will be required to circle around to the end of the stacking lane. Developer and LaPoint may make minor revisions to striping, signage and traffic flow within the Shared Driveway area as they agree as long as such minor revisions do not impact traffic coming to or from 95th Avenue, do not impede the Holiday Inn ingress or egress, are not in violation of Development Review Board conditions of approval, and are in compliance with City permit

requirements. Redirection of traffic that could create a negative impact on traffic flow to and from 95th Avenue must be approved, in writing by the City, in accordance with City permitting requirements. The Parties agree that except as modified hereby, all ingress, egress and common area easements and other agreements between some or all of the Parties with respect to or relating to use of the Shared Driveway and Neighboring Properties shall remain in place (collectively "Shared Driveway/Neighboring Property Agreements"). Wherever those Shared Driveway/Neighboring Property Agreements directly conflict with the provisions of this Development Agreement, this Development Agreement will control.

VI. MISCELLANEOUS PROVISIONS

Section 6.1 – Further Assurances

Each Party shall execute and deliver any and all additional drawings, specifications, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, in good faith to carry out the intent of the Parties hereto. Developer understands and agrees that no occupancy permit will be granted for the Development until the Developer Improvements have been completed and approved by the City as meeting the requirements set forth herein.

Section 6.2 – Modification or Amendment

No amendment, change, or modification of this Development Agreement shall be valid unless in writing and signed by the Parties hereto.

Section 6.3 – Relationship

Nothing herein shall be construed to create an agency relationship or a partnership or joint venture between the Parties.

Section 6.4 – Maintenance

Nothing contained herein is intended to address anything concerning maintenance of the Shared Driveway. Maintenance is an issue to be negotiated between the owners of the Neighboring Properties who use the Shared Driveway.

Section 6.5 – Burden and Benefit

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

Section 6.6 – No Continuing Waiver

The waiver of any Party of any breach of this Development Agreement shall not operate or be construed to be a waiver of any subsequent breach.

Section 6.7 – Applicable Law

This Development Agreement shall be governed by and construed under the laws of the State of Oregon. Jurisdiction is in Clackamas County, Oregon.

Section 6.8 – Legal Fees

If any Party commences legal proceedings, including arbitration, mediation, or bankruptcy, for any relief against any other Party arising out of or related to this Development Agreement, or the breach thereof, the losing Party shall pay the prevailing Party's legal costs and expenses, including, but not limited to, arbitration costs, reasonable attorneys' fees, and expert witness fees, as determined by the court or the arbitrator at the trial level or on any appeal.

Section 6.9 – Time of Essence

Time is expressly declared to be of the essence of this Development Agreement.

Section 6.10 – Notices

All notices, demands, consents, approvals, and other communications which are required or desired to be given by any Party to each other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States Mail at its address set forth below, or at such other address as such Party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three (3) days after mailing by United States Mail, or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City:	City of Wilsonville Attn: City Engineer 29799 SW Town Center Loop East Wilsonville OR 97070
To Developer:	Wilsonville Devco, LLC Attn: Josh Veentjer, Managing Member 4188 SW Greenleaf Drive Portland OR 97221
To LaPoint:	LaPoint Business Group, LLC Attn: Garry L. LaPoint, Registered Agent 850 Lawson Ave Woodburn OR 97071

To Holiday Inn: Holiday Inn, Portland South Hotel & Convention Ctr.
 Attn: General Manager
 25425 SW 95th Ave
 Wilsonville OR 97070

Section 6.11 – Rights Cumulative

All rights, remedies, powers, and privileges conferred under this Development Agreement on the Parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

Section 6.12 – Counterparts

This Development Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Section 6.13 – No Third-Party Beneficiaries and No Assignment

None of the duties and obligations of any Party under this Development Agreement shall in any way or in any manner be deemed to create any rights in any person or entity other than the Parties hereto or their respective heirs, successors and assigns.

Section 6.14 – Obligations Run with Land

This Development Agreement shall run with the land and be binding upon any successors and assigns of any of the Parties hereto.

Section 6.15 – Dispute Resolution

6.15.1 **Mediation.** All disputes arising out of this Development Agreement shall first be submitted to mediation. Any Party desiring mediation shall provide the other Parties with a written notice (the "Request to Mediate"), which shall set forth the nature of the dispute. The Parties shall in good faith cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the Parties, in the Parties' sole discretion, within twenty (20) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon in writing by the Parties, any Party may make demand for arbitration pursuant to the following paragraph.

6.15.2 **Arbitration or Litigation.** Any dispute arising under this Development Agreement which is not resolved through mediation, may be submitted by any Party to arbitration, to be conducted in Wilsonville, Oregon before a single arbitrator selected by mutual agreement of the Parties. The arbitrator shall have substantial experience in commercial real estate and construction disputes. If the

Parties are unable to mutually select an arbitrator within twenty (20) days, then any Party may file an action in Clackamas County Circuit Court in lieu of arbitration and there will be no obligation to arbitrate. If arbitrated, judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter.

Section 6.16 – Representations and Warranties

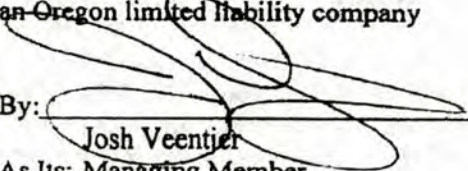
Each of the Parties hereto represents and warrants that he/she is the authorized representative of the owners of each respective Neighboring Property and hereby warrants full authority to enter into this Agreement and bind all persons with ownership interest in the respective properties. The Parties signing below also hereby warrant that entry into this Development Agreement and the enforcement of its terms will not violate any loan covenants or other agreements pertaining to any of the land or improvements impacted hereby.

Section 6.17 – Legal Review

All of the Parties to this Development Agreement hereby affirm that they have been represented in the negotiation hereof by their own independent legal counsel who have reviewed this Development Agreement and advised their respective client concerning the same. Therefore it shall be interpreted accordingly and shall not be construed against the drafter. Any revisions that the Shared Driveway Parties wish to make to their respective easements not otherwise covered by this Development Agreement will be negotiated between them and the City will not be a party thereto.

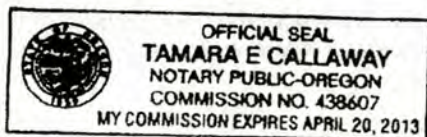
IN WITNESS WHEREOF, the Parties have hereunto set their hands as of the day and year first written above.

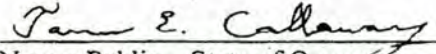
WILSONVILLE DEVCO, LLC
an Oregon limited liability company

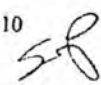
By: 
As Its: Managing Member

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on August 3, 2012,
by Josh Veentjer, as Managing Member of
Wilsonville Devco, LLC.




Notary Public – State of Oregon

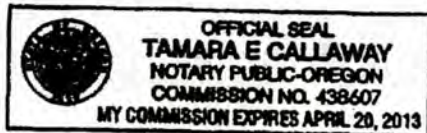


LAPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: [Signature]
Garry L. LaPoint
As Its: Active Member

STATE OF OREGON)
) ss.
County of Clackamas

This instrument was acknowledged before me on August 3, 2012,
by Garry L. LaPoint, as Active Member of
LaPoint Business Group, LLC.



Tamara E. Callaway
Notary Public - State of Oregon

WHI HOTEL, LLC,
an Oregon limited liability company



By: [Signature]
Sungmin Park
As Its: Owner

STATE OF OREGON)
) ss.
County of Clackamas

This instrument was acknowledged before me on 07/27/12, 2012,
by Sung-min Park, as Owner of
WHI Hotel, LLC.

Melissa Marie Lopez FKA Melissa Marie Lopez
Notary Public - State of Oregon
[Signature]

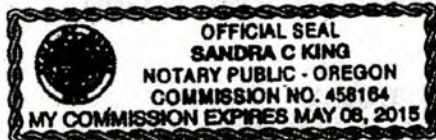
CITY OF WILSONVILLE,
an Oregon municipal corporation

By: *Bryan A Cosgrove*
Bryan Cosgrove
As Its: City Manager

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on August 6, 2012,
by Bryan Cosgrove, as the City Manager of the City of Wilsonville.

Sandra C. King
Notary Public – State of Oregon



carl's jr development agr

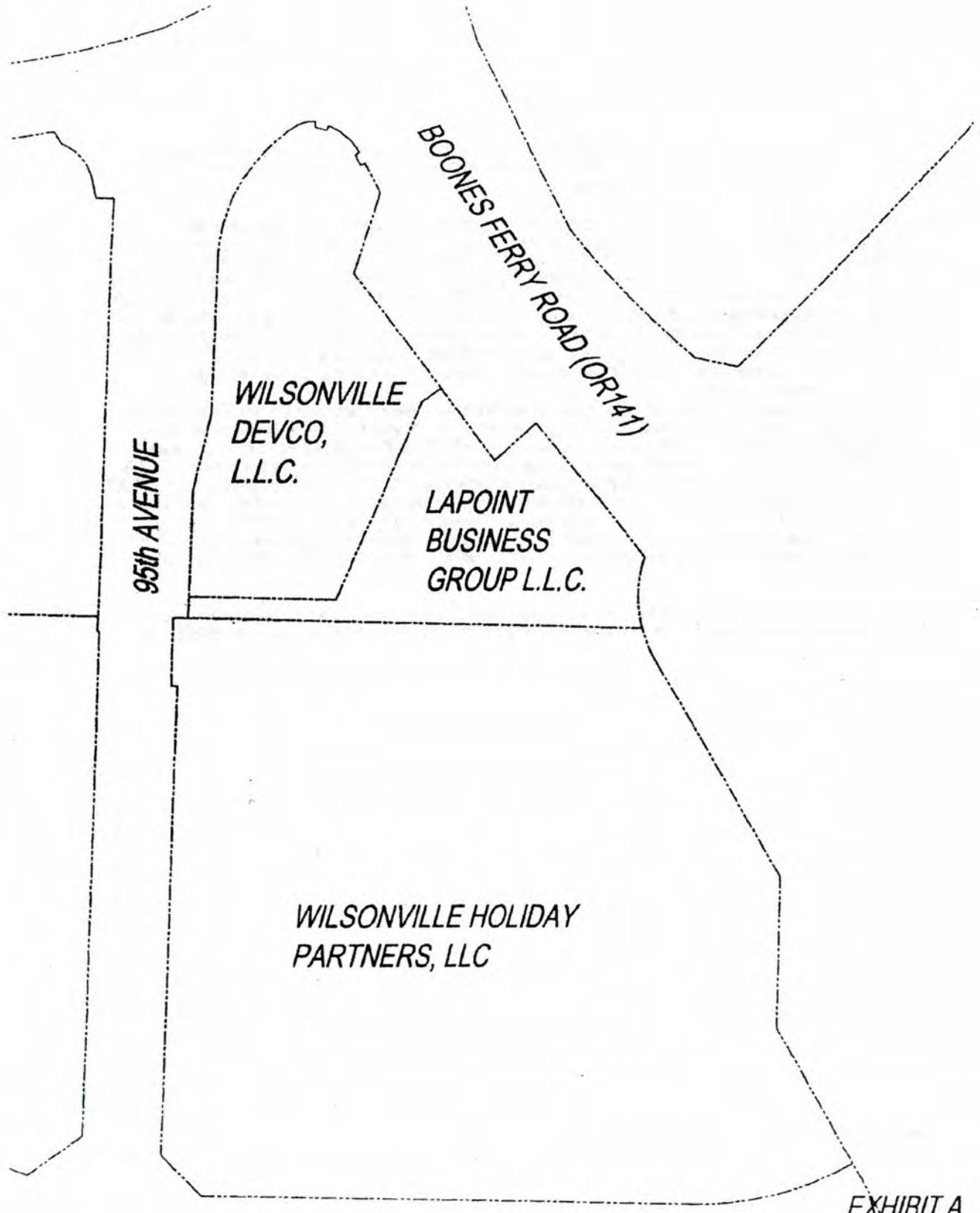


EXHIBIT A

SR

EXHIBIT "A"

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.83 feet to a point on the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

EXHIBIT "A"

PARCEL I:

A parcel of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 391.33 feet to the East line of Parcel I in Deed from John Q. Hammons, to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North 00°09'24" East, along said "ODOT" Deed, a distance of 359.27 feet; thence continuing along said "ODOT" Deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of 082°51'50", a chord bearing of North 31°35'19" East, a chord length of 133.67 feet to the intersection with the South line of SW Commerce Circle as dedicated in the plat of EDWARDS BUSINESS INDUSTRIAL PARK; thence non-tangent North 70°34'24" East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius 25.00 feet, arc length of 32.72 feet, central angle of 074°59'06", a chord bearing of South 71°56'03" East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of 000°41'10", a chord bearing of South 24°13'24" East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 595.65 feet, arc length of 85.44 feet, central angle of 008°13'06", a chord bearing of South 25°08'24" East, and a chord length of 85.36 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South 15°09'35" West, a distance of 83.41 feet, South 38°02'13" East, a distance of 200.44 feet, North 46°33'47" East, a distance of 48.10 feet, South 40°56'40" East, a distance of 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of 00°21'11", a chord bearing of South 38°36'45" East, and a chord length of 17.49 feet to a point 100.00 feet North of, when measured at right angle to, the South line of said Lot 7; thence continuing along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of 00°58'46", a chord bearing of South 37°56'47" East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of 030°31'07", a chord bearing South 00°03'01" West, and a chord length of 61.56 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to and 12.00 feet Easterly of said "ODOT" line, a distance of 347.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of

EXHIBIT "A"

(Continued)

61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Prairie Corp., an Oregon corporation, by instrument recorded July 19, 2000 as Fee No. 2000-48398, more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof conveyed to State of Oregon, by and through its Department of Transportation, in Deed recorded April 21, 1995, as Fee No. 95027726.

FURTHER EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet; thence South 20°29'49" West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North 00°09'24" East parallel to said East line, 6.00 feet to the true point of beginning.

EXHIBIT "A"
(Continued)

EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

EXHIBIT "A"

PARCEL I:

A portion of Lot 8, EDWARDS BUSINESS INDUSTRIAL PARK NO. 2, a duly recorded subdivision in Washington County, Oregon located in the Southeast one quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, said portion of Lot 8 being more particularly described as follows:

Beginning at a 2 inch iron pipe at the initial point of said Edwards Business Industrial Park No. 2, said initial point being on the Westerly line of S.W. Frontage Road, also known as Lower Boones Ferry Road; thence following the boundary of said Lot 8, along the arc of a 117.00 foot radius non-tangent curve left through a central angle of 15°30'25", an arc distance of 31.67 feet (the chord of which bears South 22°58'48" East, a distance of 31.57 feet) to a 5/8 inch iron rod (Plat record: central angle, 15°30'50"; radius 117 feet; arc length 31.68 feet; chord, South 22°56'17" East, a distance of 31.58 feet); thence South 30°34'43" East a distance of 213.04 feet to a 5/8 inch iron rod (Plat record: South 30°34'28" East a distance of 212.92 feet); thence South 00°05'07" East a distance of 130.27 feet to a 5/8 inch iron rod (Plat record: South 00°07'50" East a distance of 130.27 feet); thence South 30°06'16" east a distance of 136.08 feet to a 5/8 inch iron rod (Plat record: South 30°03'30" East a distance of 136.04 feet); thence South 59°37'27" West a distance of 13.17 feet to a 5/8 inch iron rod (Plat record: South 59°56'30" West a distance of 13.10 feet); thence Southwesterly along the arc of a 243.00 foot radius curve right through a central angle of 29°42'03" an arc distance of 125.97 feet to a 5/8 inch iron rod (the chord of which bears South 74°47'32" West a distance of 124.56 feet) (Plat record: central angle 29°42'03"; radius 243.00 feet; arc length 125.97 feet; chord, South 74°47'32" West, 124.56 feet); thence South 89°38'33" West (Plat record: South 89°38'33" West) a distance of 410.18 feet (Survey Number 26,398 Record: 410.17 feet) to a 5/8 inch iron rod at the intersection of the Southerly boundary of said Lot 8 and the Easterly right of way line of 95th Avenue; thence North 44°12'00" West a distance of 50.04 feet to a 5/8 inch iron rod 36.00 feet opposite and Easterly of Engineers Centerline Station 86+45.00, when measured at right angles to the centerline of 95th Avenue; thence North 00°08'50" East a distance of 405.00 feet to a 5/8 inch iron rod 36.00 feet opposite and Easterly of Engineer's Centerline Station 70+50.00 when measured at right angle to the centerline of 95th Avenue; thence North 89°51'10" West a distance of 5.00 feet to a 5/8 inch iron rod 31.00 feet opposite and Easterly of said Engineer's Centerline Station 70+50.00; thence North 00°08'50" East a distance of 58.91 feet to a 5/8 inch iron rod marking the intersection of the Easterly right of way line of 95th Avenue and the Northerly boundary of said Lot 8; thence leaving the Easterly right of way line of 95th Avenue and following the Northerly line of said Lot 8 North 89°37'29" East (Plat record: bearing North 89°38'33" East) a distance of 391.26 feet to the 2 inch iron pipe marking the initial point of said Edwards Business Industrial Park No. 2 and the point of beginning of this described tract of land.

PARCEL II:

Easement rights as set forth in Reciprocal Easement Agreement dated December 27, 1996 and recorded January 6, 1997 as Records's Fee No. 97-005009, described as follows:

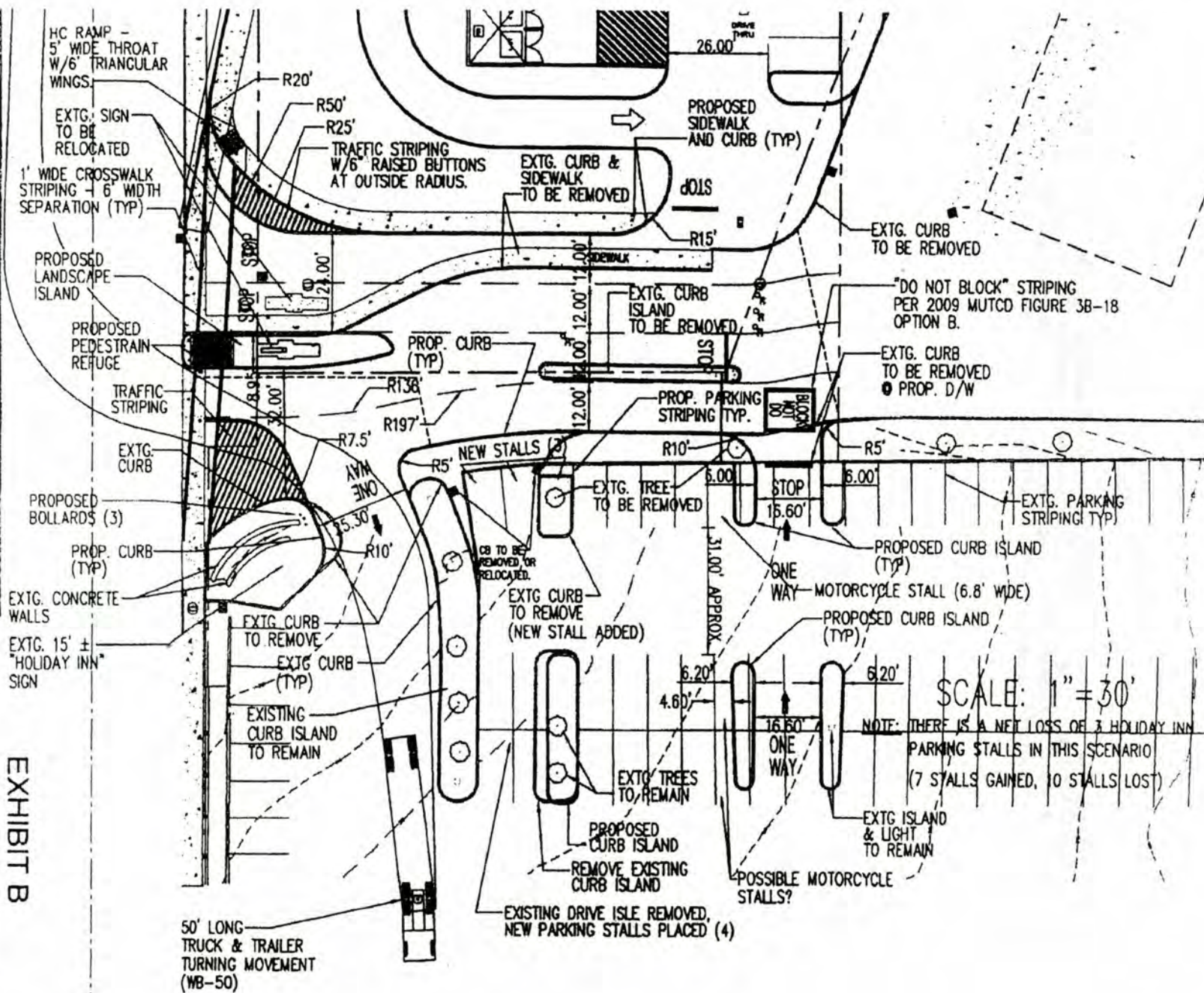
A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK as recorded in Book 38, Page 14, Washington County, Oregon Plat Records, being situated in the Southeast one quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, Washington County, Oregon, said tract of land being more particularly described as follows:

Beginning at a 2 inch iron pipe marking the initial point of said Edwards Business Industrial Park; thence South 89°37'29" West (Plat record: Bearing South 89°38'33" West) along the Southerly boundary of said Lot 7, a distance of 391.26 feet to a point marking the intersection of the Southerly line of said Lot 7 and the Easterly line

EXHIBIT "A"
(Continued)

of 95th Avenue as acquired by the State of Oregon and the true point of beginning of this described tract of land; thence North $00^{\circ}08'50''$ East along said Easterly line, 20.00 feet; thence South $89^{\circ}51'10''$ East leaving said Easterly right of way, 51.00 feet; thence South $53^{\circ}16'00''$ East, 32.38 feet to a point on the Southerly line of said Lot 7; thence South $89^{\circ}37'29''$ West along the Southerly line of said Lot 7, a distance of 77.00 feet to the true point of beginning.

EXHIBIT B



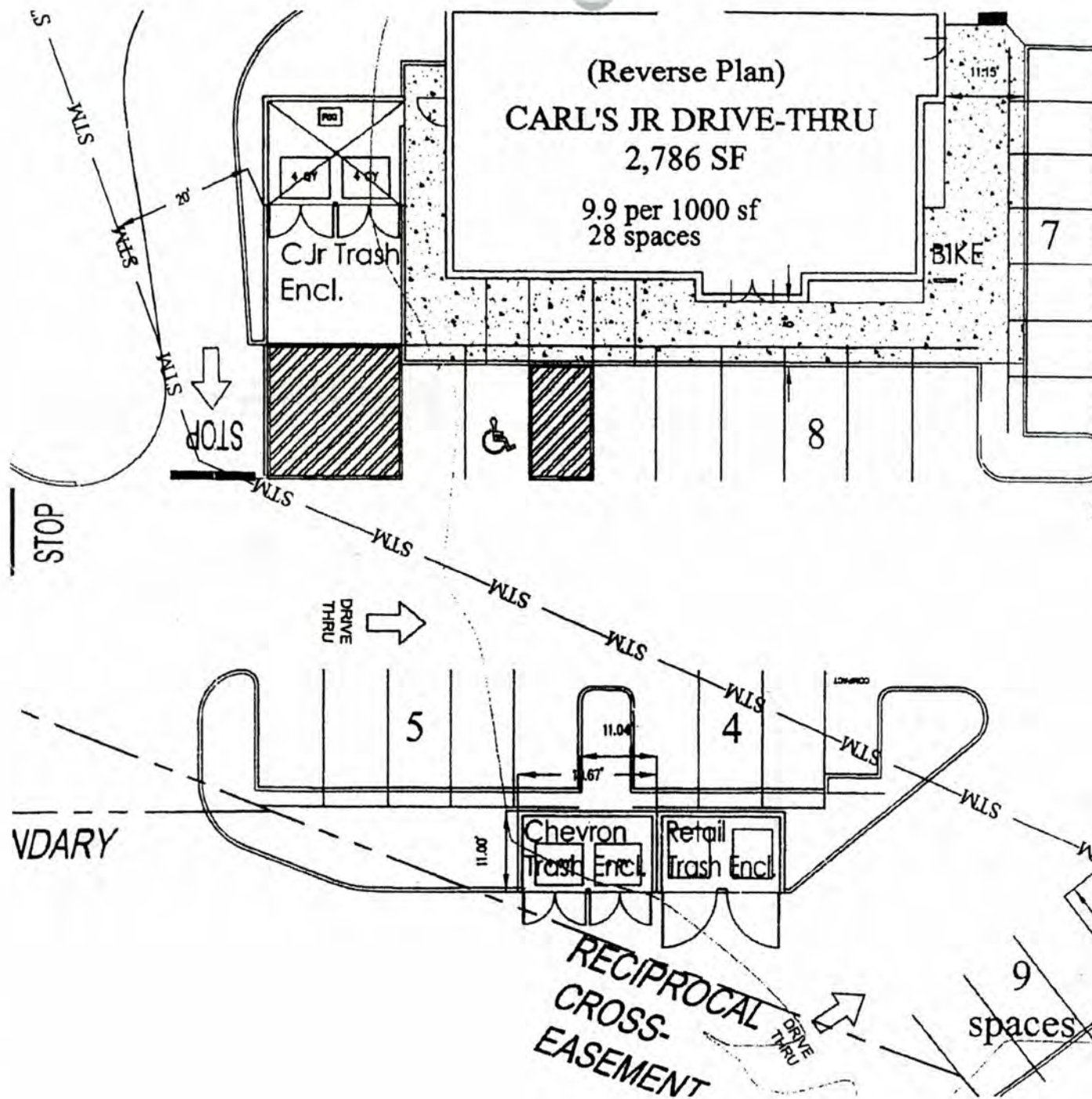


EXHIBIT C

Handwritten signature/initials

DKS

117 Commercial Street NE
Suite 310
Salem, OR 97301
503.391.8773
www.dksassociates.com

MEMORANDUM

DATE: January 27, 2014

TO: Mike Ward, City of Wilsonville
Steve Adams, City of Wilsonville

FROM: Scott Mansur, P.E. *SM*
Brad Coy, P.E.

SUBJECT: Carl's Jr./Human Bean A.M. Peak Hour Traffic Analysis



P13003-001

This memorandum documents the a.m. peak hour traffic analysis of the proposed Human Bean coffee kiosk building adjacent to the Carl's Jr. restaurant on the southeast corner of the Boones Ferry Road/95th Avenue intersection in Wilsonville, Oregon. The purpose of this memorandum is to determine what traffic impacts the proposed coffee kiosk is expected to have on the site driveway and adjacent intersections during the a.m. peak hour. Figure 1 shows the proposed project site and the study intersections. Traditionally, the City of Wilsonville has focused peak hour operations during the p.m. peak hour which is when the highest adjacent street traffic volumes typically take place.

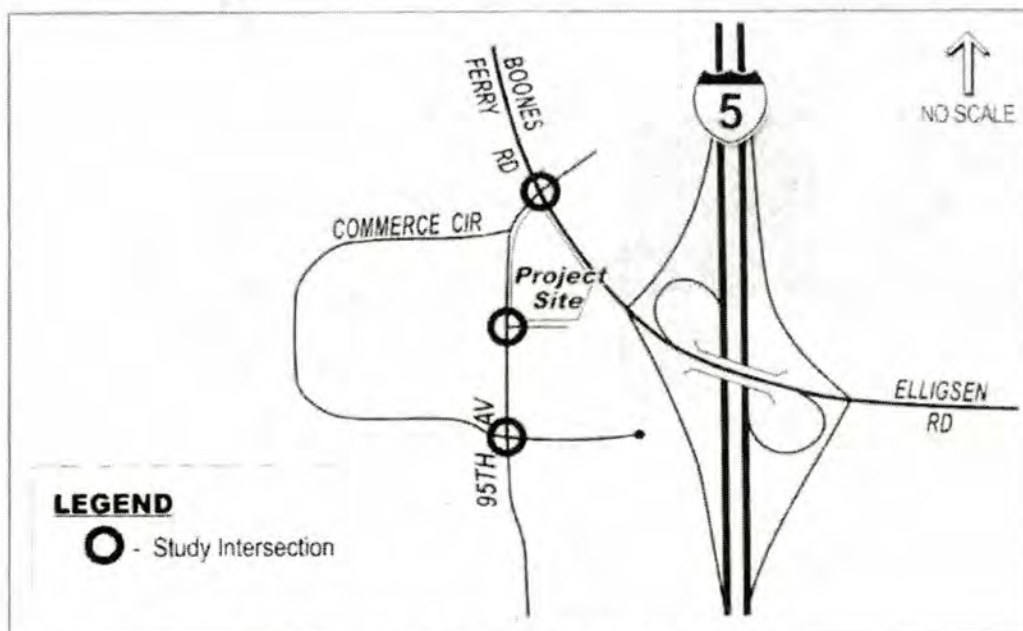


Figure 1: Project Site and Study Intersections

EXHIBIT 6



The sections of this memorandum address trip generation for "The Human Bean" coffee kiosk, trip generation comparison (p.m. peak hour), existing traffic conditions, and a.m. peak hour project impacts.

Trip Generation for "The Human Bean" Coffee Kiosk

Trip generation is the method of estimating how many vehicles a development is expected to add to the roadway network during a specified period (i.e., such as the number trips from a coffee kiosk during the a.m. peak hour). The standard method for performing trip generation is outlined in the Institute of Transportation Engineers (ITE) *Trip Generation Manual*.¹ This manual also provides average trip rates that can be considered for various land uses. However, some land uses (such as ITE Land Use Code 938: "Coffee/Donut Shop with Drive-Through Window and No Indoor Seating") have significantly less data and may not even include the most important independent variables (such as the trip rate associated with the number of drive-thrus, which is not included for a coffee kiosk). In these situations, the rates provided may not be accurate and traffic engineers are highly encouraged to collect local data.

In order to account for the particular vehicle trip generation characteristics specific to The Human Bean coffee kiosks and ensure more accurate trip generation rates, a.m. peak hour trip counts were performed for three existing "The Human Bean" coffee kiosks in the region, which were coordinated with City staff.²

- **The Human Bean:** 8355 SW Beaverton-Hillsdale Hwy, Beaverton
- **The Human Bean:** 952 Lafayette St SE, Albany
- **The Human Bean:** 998 SE Oak St, Hillsboro

Table 1 summarizes the results of the a.m. peak hour vehicle trip generation surveys. Because the kiosk is specialized to target drive-thru vehicles, this is the most important independent variable that influences the number of vehicles that a kiosk can serve. The number of drive-thru windows provides a more accurate correlation with total vehicle trips than the typical kiosk's square footage. Of the sites counted, two kiosks had two drive-thru windows while one had only one drive-through window. As shown in Table 1, the site with only one drive-thru window served approximately half as many vehicles as the other two sites. All three sites served approximately 50 to 60 vehicles per drive-thru window (with an average rate of 54 trips per drive-thru window).

Table 1: A.M. Peak Hour Trip Generation for Existing "The Human Bean" Coffee Kiosks

Coffee Kiosk Location	Size	Date	A.M. Peak Hour Trips (Vehicles)	Rate (Trips per Drive-thru Window)
Beaverton (8355 SW Beaverton-Hillsdale Hwy)	2 drive-thru windows	1/24/2014	120 (60 in, 60 out)	60
Albany (952 Lafayette St SE)	2 drive-thru windows	1/24/2014	98 (49 in, 49 out)	49
Hillsboro (998 SE Oak St)	1 drive-thru window	1/24/2014	52 (26 in, 26 out)	52
Average A.M. Peak Hour Trip Rate:				54

¹ *Trip Generation, 9th Edition*, Institute of Transportation Engineers, 2012

² Phone call with Mike Ward, City of Wilsonville, January 23, 2014.



Table 2 provides the trip generation estimates for the proposed "The Human Bean" coffee kiosk adjacent to the Carl's Jr. restaurant on the southeast corner of the Boones Ferry Road/95th Avenue intersection. Consistent with previous analysis for the project site, a 10% internal trip rate was assumed for drivers visiting multiple land uses on the site (including the existing Carl's Jr., Chevron, and Holiday Inn). In addition, coffee kiosks are very significant attractors of pass-by trips, as documented in the ITE *Trip Generation Manual*.³ As shown in Table 2, the proposed "The Human Bean" coffee kiosk would generate approximately 50 (25 in, 25 out) a.m. peak hour driveway trips, with 44 (22 in, 22 out) a.m. peak hour pass-by trips (attracted from 95th Avenue) and 6 (3 in, 3 out) a.m. peak hour primary trips.

Table 2: "The Human Bean" Coffee Kiosk Trip Generation

Land Use (ITE Code)	Size	A.M. Peak Hour Trip Generation Rate	A.M. Peak Hour Trips		
			In	Out	Total
"The Human Bean" Coffee Kiosk with Drive-Through Window and No Indoor Seating (Comparable to ITE 938)	1 drive-thru window	54 trips/drive-thru window	27	27	54
Total Trips			27	27	54
<i>Internal Trips (10% of Total)</i>			-2	-2	-4
Driveway Trips			25	25	50
<i>Pass-by Trips (89% of Driveway)</i>			-22	-22	-44
New Primary Trips			3	3	6

Trip Generation Comparison (P.M. Peak Hour)

To better understand the context of the a.m. peak hour trip generation, a comparison was performed with the p.m. peak hour trip generation estimates previously performed for the project site. In providing this comparison, it is very important to note that the p.m. peak hour has higher overall traffic volumes on the study area roadways. Therefore, no conclusions related to operations should be drawn from this comparison, which is only provided for illustrative purposes. The most important analysis that should be used as the basis for project impacts is the a.m. peak hour intersection operations analysis, which is provided later in this memorandum.

The project site was originally intended to include a Carl's Jr. restaurant and a 3,150 square foot specialty retail center. Table 3 shows the trip generation from the original transportation impact analysis, but only as it relates to the specialty retail center (because the Carl's Jr. restaurant has now been constructed).⁴ The original analysis estimated the non-restaurant portion of the site would generate 27 (12 in, 16 out) p.m. peak hour driveway trips and 18 (8 in, 10 out) p.m. peak hour primary trips. While this includes approximately half as much driveway traffic, it also includes more than triple as many new trips being added to the total study area network.

³ *Trip Generation, 9th Edition*, Institute of Transportation Engineers, 2012

⁴ *Carl's Jr. Traffic Impact Study*, DKS Associates, May 2012



Table 3: Carl's Jr. and Retail Center Trip Generation from Original Analysis

Land Use (ITE Code)	Size	P.M. Peak Hour Trip Generation Rate	P.M. Peak Hour Trips		
			In	Out	Total
Specialty Retail Center (814)	3.38 KSF ^a	8.88 trips/KSF ^a	13	17	30
Total Trips			13	17	30
<i>Internal Trips</i>			-1	-2	-3
Driveway Trips			12	15	27
<i>Pass-by Trips</i>			-4	-5	-9
New Primary Trips			8	10	18

^a KSF = 1,000 square feet

When the proposed specialty retail center was instead changed to a drive-through coffee kiosk, additional p.m. peak hour trip generation was performed.⁵ Table 4 shows the trip generation for the coffee kiosk only (because the Carl's Jr. restaurant has now been constructed). In the p.m. peak hour, the coffee kiosk is expected to generate 28 (14 in, 14 out) p.m. peak hour driveway trips and 4 (2 in, 2 out) p.m. peak hour primary trips. This is only slightly less than the a.m. peak hour trip generation estimates, particularly with regards to the new primary trips.

Table 4: Proposed Carl's Jr. and Coffee Kiosk Trip Generation

Land Use (ITE Code)	Size	P.M. Peak Hour Trip Generation Rate	P.M. Peak Hour Trips		
			In	Out	Total
Coffee/Donut Shop with Drive-Through Window and No Indoor Seating (938)	0.43 KSF ^a	75.0 trips/KSF ^a	16	16	32
Total Trips			16	16	32
<i>Internal Trips</i>			-2	-2	-4
Driveway Trips			14	14	28
<i>Pass-by Trips</i>			-12	-12	-24
New Primary Trips			2	2	4

^a KSF = 1,000 square feet

⁵ Wilsonville Carl's Jr. Coffee Kiosk Trip Generation, memorandum prepared by DKS Associates, September 5, 2013.



Existing AM Peak Traffic Conditions

Existing AM peak hour traffic conditions were evaluated for the study intersections. The existing traffic volumes and operating conditions are provided in this section.

Existing Traffic Volumes

Traffic volume turn movement counts were performed at the project driveway for the a.m. peak period (i.e., between 6:00 a.m. and 9:00 a.m.) on January 24, 2014. Figure 2 shows the highest hourly volumes assumed for the intersection analysis. It should be noted that the a.m. peak hour volumes are lower than the p.m. peak hour volumes at the study intersections.

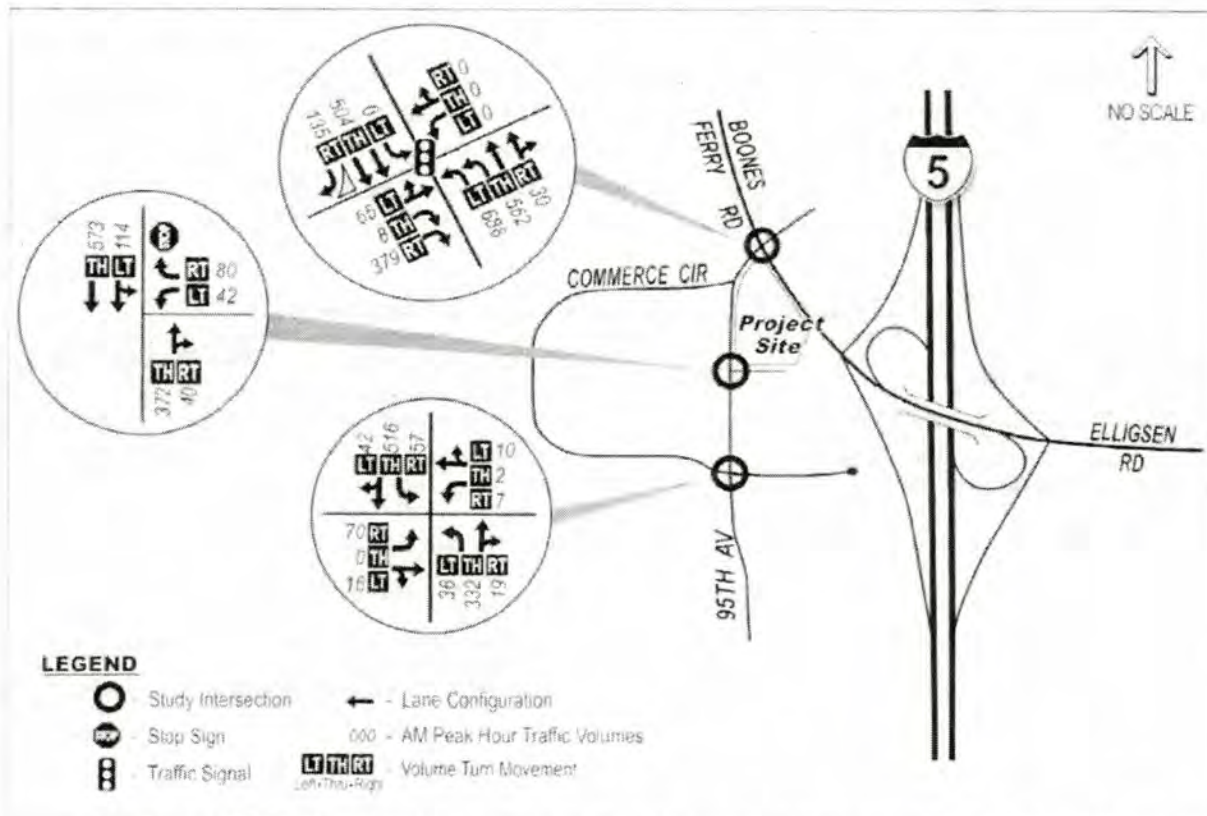


Figure 2: 2014 Existing Study Intersection Turn Movement Volumes (A.M. Peak Hour)

Existing Intersection Operations

The existing a.m. peak hour intersection operations at the study intersections were determined based on the 2000 Highway Capacity Manual methodology.⁶ The estimated average delay, level of service (LOS), and volume

⁶ 2000 Highway Capacity Manual, Transportation Research Board, Washington DC, 2000.



to capacity (v/c) ratio are shown in Table 5. The Boones Ferry Road/95th Avenue and Commerce Circle/95th Avenue intersections currently meet the City of Wilsonville's level of service (LOS) "D" operating standard. The LOS standard does not apply to the 95th Avenue/Holiday Inn-Chevron Gas driveway because it is designated as a private driveway, however its operations are still within the desired range.

Table 5: 2014 Existing A.M. Peak Hour Intersection Operating Conditions

Intersection	Operating Standard	A.M. Peak Hour			Meets Standards?
		Delay	LOS	V/C	
Signalized					
Boones Ferry Road/95 th Avenue	LOS D	18.9	B	0.54	Yes
Commerce Circle/95 th Avenue	LOS D	5.7	A	0.50	Yes
Unsignalized Two-Way Stop					
95 th Avenue/Holiday Inn-Chevron Gas	N/A ^a	17.3	A/C	0.26	N/A ^a

Signalized Intersections.

LOS = Level of Service of Intersection

V/C = Volume-to-Capacity Ratio of Intersection

Unsignalized Intersections.

LOS = Level of Service of Major Street/Minor Street

V/C = Volume-to-Capacity Ratio of Worst Movement

Bold Underlined values do not meet standards.

^a The City's LOS D standard does not apply to private driveways.

A.M. Peak Hour Project Impacts

Traffic analysis was also performed for the a.m. peak hour with the addition of project traffic from the proposed "The Human Bean" coffee kiosk. Trip distribution was performed to determine where to add the project traffic. Then, the future traffic volumes were estimated and future study intersection operations were performed.

Trip Distribution

The trip distribution for the proposed "The Human Bean" coffee kiosk project traffic was based on existing traffic patterns in the study area and is consistent with prior analysis. Figure 3 shows the trip distribution percentages as well as the resulting project traffic volumes (both primary and pass-by trips) that were routed through the study area roadway network.

Future Traffic Volumes

The project traffic volumes (shown in Figure 3) were added to the existing traffic volumes (shown in Figure 2) to estimate the future traffic volumes, which are shown in Figure 4. These volumes were the basis for the estimating project impacts during the a.m. peak hour.

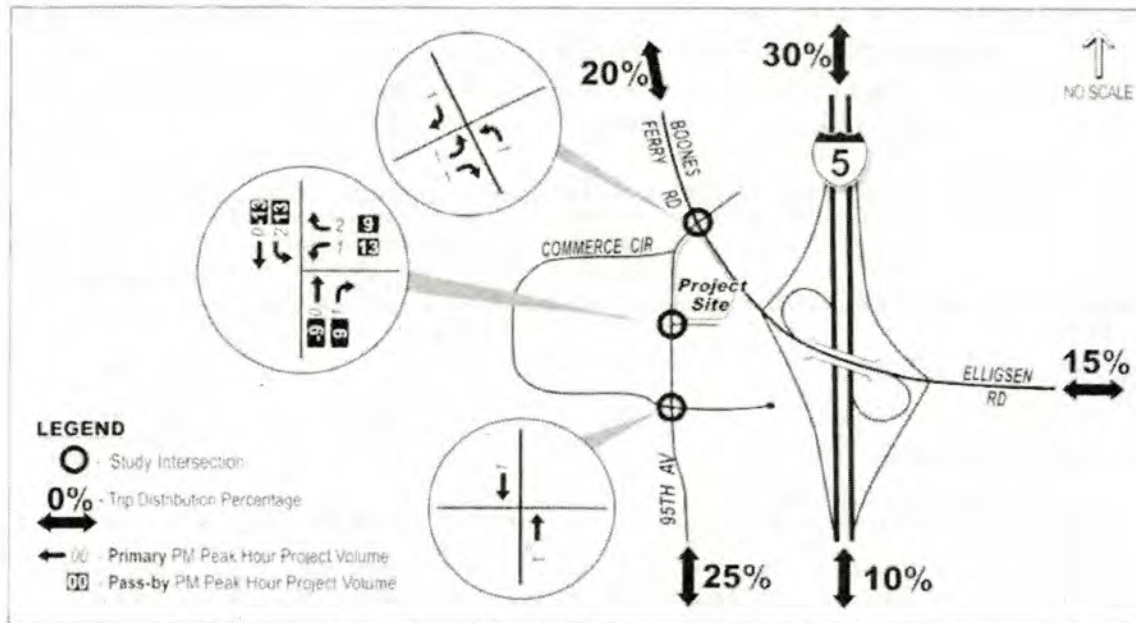


Figure 3: Project Traffic Volumes and Trip Distribution

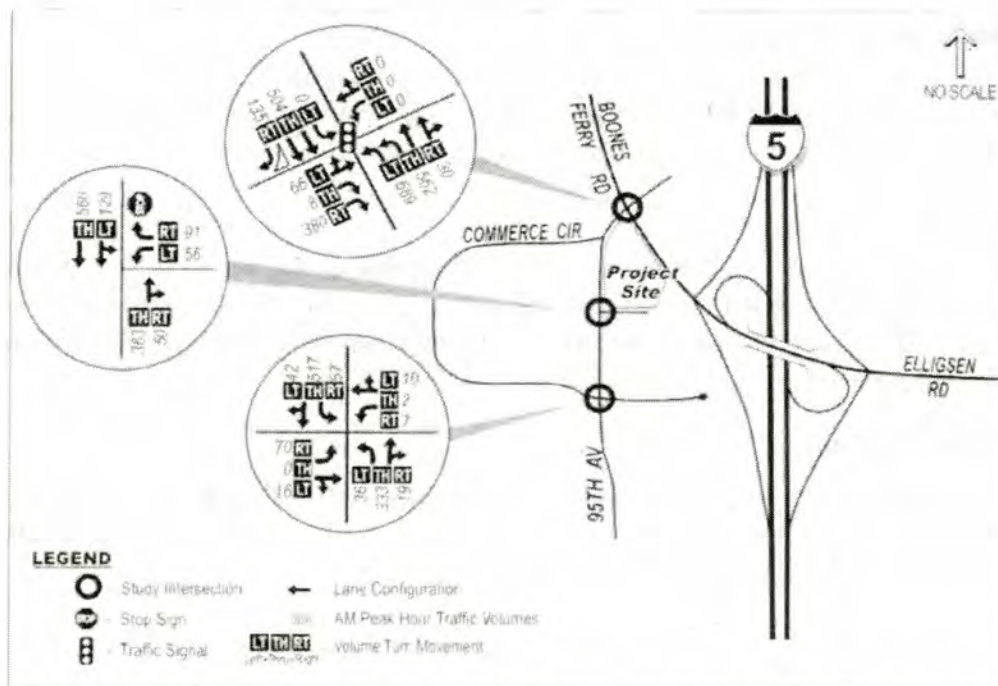


Figure 4: Future Study Intersection Turn Movement Volumes with Addition of Coffee Kiosk (A.M. Peak Hour)



Future Study Intersection Operations

Table 6 lists the average delay, level of service (LOS), and volume to capacity (v/c) ratio for the study intersections under a.m. peak hour conditions with the addition of the coffee kiosk traffic volumes. As shown, all study intersections—including the project driveway—would comfortably meet the City's operating standards. Very minimal impacts are expected to occur at the study intersections from the addition of the coffee kiosk.

Table 6: Future A.M. Peak Hour Intersection Operating Conditions (with Coffee Kiosk)

Intersection	Operating Standard	Existing + Project + Stage II			Meets Standards?
		Delay	LOS	V/C	
Signalized					
Boones Ferry Road/95 th Avenue	LOS D	19.0	B	0.54	Yes
Commerce Circle/95 th Avenue	LOS D	5.7	A	0.50	Yes
Unsignalized Two-Way Stop					
95 th Avenue/Holiday Inn-Chevron Gas	N/A ^a	19.2	A/C	0.29	N/A ^b

Signalized Intersections:

LOS = Level of Service of Intersection

V/C = Volume-to-Capacity Ratio of Intersection

Unsignalized Intersections:

LOS = Level of Service of Major Street/Minor Street

V/C = Volume-to-Capacity Ratio of Worst Movement

Bold Underlined values do not meet standards.

^a The City's LOS D standard does not apply to private driveways, however, LOS D operations are preferred.

Summary

There are no operating concerns at the study intersections or project driveway during the a.m. peak hour. This confirms that the p.m. peak hour is the worst case scenario for the project intersections. Therefore, no additional impacts have been identified, and our prior mitigations and recommendations as identified in the *Carl's Jr. Traffic Impact Study* are still consistent.⁷

Please let us know if you have any questions or comments.

⁷ *Carl's Jr. Traffic Impact Study*, DKS Associates, May 2012



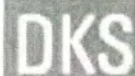
Appendix

Weekday AM Peak Hour Traffic Counts

Level of Service Descriptions

HCM Analysis – Existing

HCM Analysis – Existing with Project



Weekday AM Peak Hour Traffic Counts



1809 SW Tech Center Dr, Ste B150
Tigard, OR 97221
971.224.0003
www.qualitycounts.net

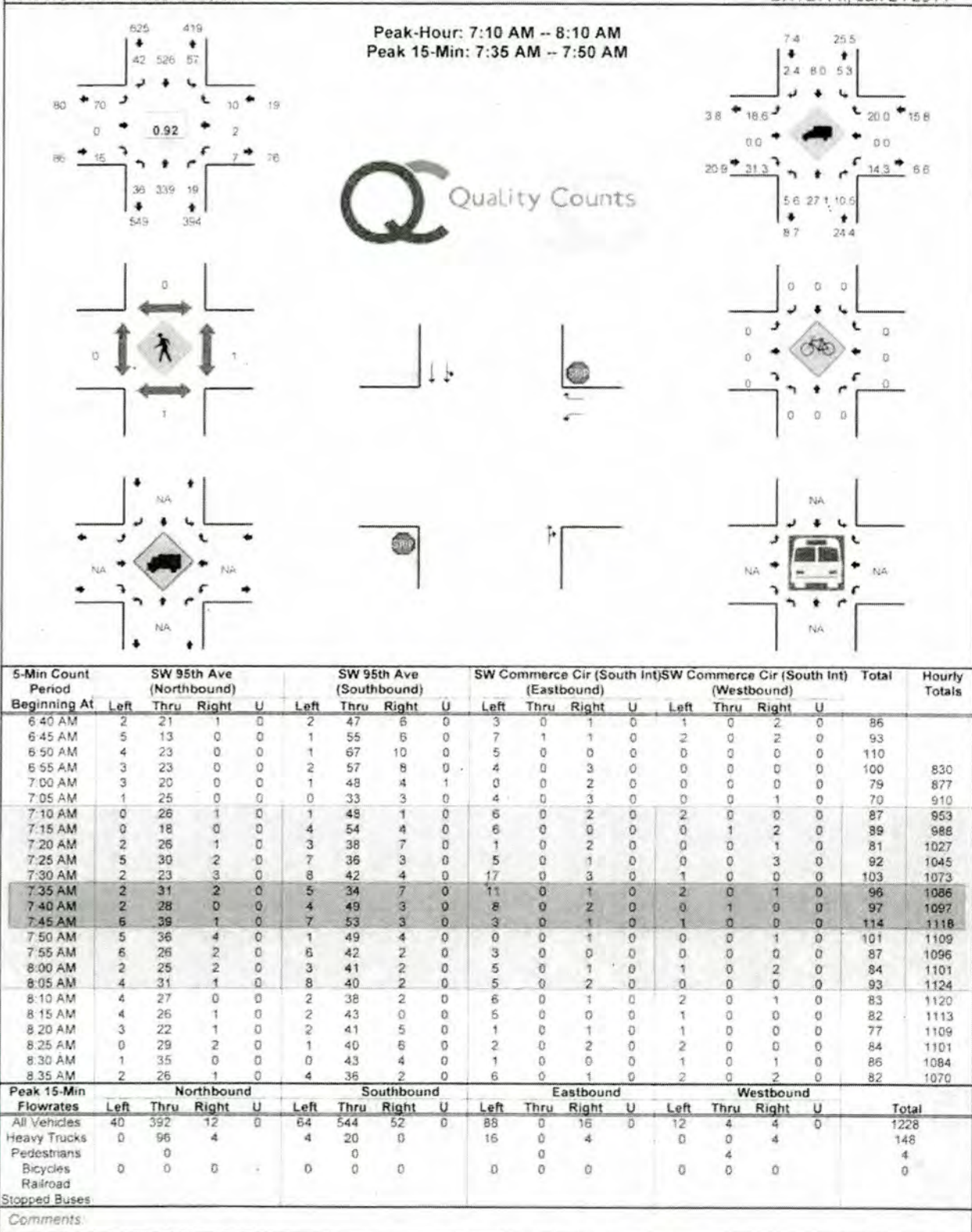
Site Code: 12313207
Location: SW Boones Ferry Rd & SW Commerce Cir/SW 95th Ave
Date: 1/24/2013

Peak Hour: 6:55AM-7:55AM
Peak 15-minutes: 7:30AM-7:45AM
Peak Hour Factor: 0.913

	SW Boones Ferry Rd (Southbound)					Business Park Drwy (Westbound)					SW Boones Ferry Rd (Northbound)					SW 95th Ave (Eastbound)					SW Commerce Cir (Eastbound)					Interval Totals	Hourly Totals	15-minute Totals
	U-Turns	Right to SW Commerce Cir	Right	Thru	Left	U-Turns	Right	Thru to SW Commerce Cir	Thru	Left	U-Turns	Right	Thru	Left	Left to SW Commerce Cir	U-Turns	Right	Thru	Left	Left to SW Commerce Cir	U-Turns	Right to SW 95th Ave	Right to SW Boones Ferry Rd	Thru to Business Park Drwy	Left to SW Boones Ferry Rd			
6:00 AM	0	0	2	8	0	0	0	0	1	0	0	1	21	18	6	0	6	0	2	0	0	0	0	0	0	67		
6:05 AM	0	2	4	12	0	0	0	0	0	0	0	0	19	23	3	0	13	0	2	0	0	0	0	0	0	78		
6:10 AM	0	0	5	8	0	0	0	0	0	1	0	0	22	22	11	0	12	0	5	0	0	1	0	0	0	90		
6:15 AM	0	0	5	14	0	0	0	0	0	0	0	0	15	43	4	0	17	0	0	0	0	0	0	0	0	103		
6:20 AM	0	2	5	23	0	0	0	0	0	0	0	0	31	38	13	0	11	0	4	0	0	0	0	0	0	127		
6:25 AM	0	3	6	19	0	0	0	0	0	0	0	1	38	42	9	0	23	0	2	0	0	0	0	0	0	143		
6:30 AM	0	2	3	13	0	0	0	0	0	0	0	0	44	60	6	0	23	0	1	0	0	0	0	0	0	153		
6:35 AM	0	0	5	26	0	0	0	1	0	0	0	1	52	55	8	0	17	0	1	0	0	0	0	0	0	164		
6:40 AM	0	3	2	43	0	0	0	0	0	0	0	4	56	55	12	0	18	0	6	0	0	1	0	0	0	202		
6:45 AM	0	1	8	33	0	0	0	0	0	0	0	0	52	56	13	0	21	0	7	0	0	1	0	0	0	194		
6:50 AM	0	2	7	31	0	0	0	0	0	0	0	2	40	77	17	0	28	0	4	0	0	0	0	0	0	208		
6:55 AM	0	4	9	38	0	0	0	0	0	0	0	1	50	69	19	0	30	0	0	0	0	0	0	0	0	222		
7:00 AM	0	0	9	40	0	0	0	0	0	0	0	1	31	42	13	0	14	0	5	0	0	0	0	0	0	155		
7:05 AM	0	4	2	29	0	0	0	0	0	0	0	0	52	37	7	0	25	2	5	0	0	2	0	0	0	165		
7:10 AM	0	0	8	44	0	0	0	0	0	0	0	4	40	47	8	0	27	0	6	0	0	1	0	0	0	183		
7:15 AM	0	1	9	48	0	0	0	0	0	0	0	1	54	48	11	0	28	0	2	0	0	1	0	0	0	203		
7:20 AM	0	3	10	27	0	0	0	0	0	0	0	1	41	45	9	0	25	0	0	0	0	0	0	0	0	161		
7:25 AM	0	3	7	43	0	0	0	0	0	0	0	6	54	52	5	0	36	1	4	0	0	3	0	0	0	214		
7:30 AM	0	1	14	47	0	0	0	0	0	0	0	3	48	47	11	0	29	1	11	0	0	2	0	0	0	214		
7:35 AM	0	3	6	51	0	0	0	0	0	0	0	1	46	45	8	0	32	2	10	0	0	0	0	0	0	202		
7:40 AM	0	2	11	52	0	0	0	0	0	0	0	8	59	48	8	0	38	0	8	0	0	3	0	0	0	221		
7:45 AM	0	3	10	42	0	0	0	0	0	0	0	2	43	46	10	0	40	0	4	0	0	2	0	0	0	205		
7:50 AM	0	7	9	45	0	0	0	0	0	0	0	3	44	46	11	0	40	1	5	0	0	0	0	0	0	209		
7:55 AM	0	3	7	52	0	0	0	0	0	0	0	2	34	52	12	0	30	1	8	0	0	0	0	0	0	179		
8:00 AM	0	2	6	41	1	0	0	0	0	0	0	1	34	48	12	0	25	0	8	0	0	3	0	0	0	179		
8:05 AM	0	6	6	34	0	0	0	0	0	0	0	5	37	39	10	0	30	0	4	0	0	0	0	0	0	173		
8:10 AM	0	2	10	38	0	0	0	0	0	0	0	3	34	27	8	0	29	2	4	0	0	2	0	0	0	159		
8:15 AM	0	0	8	36	0	0	0	0	0	0	0	2	32	32	8	0	24	1	6	0	0	2	0	0	0	151		
8:20 AM	0	3	10	43	0	0	0	0	0	0	0	3	32	45	3	0	27	0	1	0	0	2	0	0	0	166		
8:25 AM	0	1	4	29	0	0	0	0	0	0	0	7	25	54	9	0	43	0	3	0	0	2	0	0	0	177		
8:30 AM	0	1	3	35	0	0	0	0	0	0	0	4	24	48	7	0	33	0	6	0	0	0	0	0	0	161		
8:35 AM	0	1	10	34	0	0	0	0	0	0	0	2	24	26	8	0	26	0	5	0	0	4	0	0	0	140		
8:40 AM	0	1	7	29	0	0	0	0	0	0	0	7	36	29	8	0	32	0	6	0	0	0	0	0	0	157		
8:45 AM	0	2	8	29	0	0	0	0	0	0	0	5	32	28	7	0	20	0	4	0	0	4	0	0	0	136		
8:50 AM	0	0	7	38	0	0	0	0	0	0	0	2	28	29	7	0	26	1	5	0	0	1	0	0	0	144		
8:55 AM	0	2	8	40	0	0	0	0	0	0	0	4	19	38	5	0	33	1	3	0	0	1	0	0	0	154		
Totals	0	70	255	1192	1	0	0	1	2	1	0	87	1349	1558	322	0	929	13	157	0	0	38	0	0	0	0		

Type of peak hour being reported: System Peak

Method for determining peak hour: Total Entering Volume

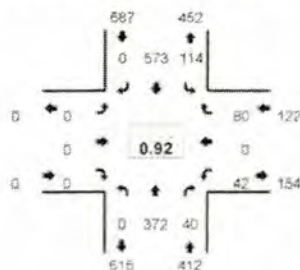
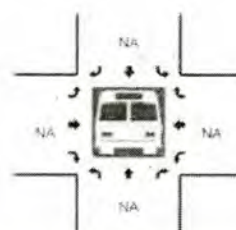
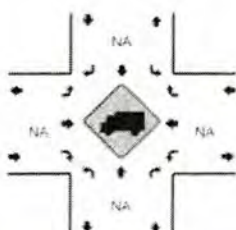
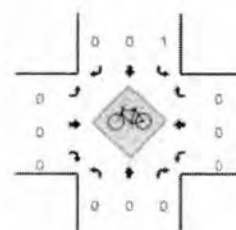
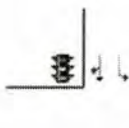
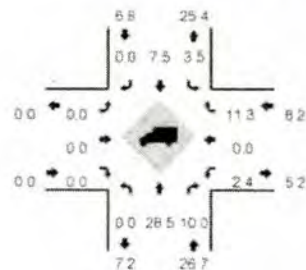
LOCATION: SW 95th Ave – SW Commerce Cir (South Int)
CITY/STATE: Wilsonville, ORQC JOB #: 12313211
DATE: Fri, Jan 24 2014

Report generated on 1/27/2014 7:11 AM

SOURCE: Quality Counts, LLC (<http://www.qualitycounts.net>) 1-877-580-2212

Type of peak hour being reported: System Peak

Method for determining peak hour: Total Entering Volume

LOCATION: SW 95th Ave -- Chevron/Holiday Inn Access
CITY/STATE: Wilsonville, ORQC JOB #: 12313209
DATE: Fri, Jan 24 2014Peak-Hour: 7:10 AM -- 8:10 AM
Peak 15-Min: 7:35 AM -- 7:50 AM

5-Min Count Period	SW 95th Ave (Northbound)				SW 95th Ave (Southbound)				Chevron/Holiday Inn Access (Eastbound)				Chevron/Holiday Inn Access (Westbound)				Total	Hourly Totals
Beginning At	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
6:40 AM	0	25	3	0	12	48	0	0	0	0	0	0	8	0	1	0	97	
6:45 AM	0	19	1	0	10	52	0	0	0	0	0	0	3	0	5	0	90	
6:50 AM	0	26	5	0	11	56	0	0	0	0	0	0	9	0	6	0	123	
6:55 AM	0	27	1	0	4	65	0	0	0	0	0	0	4	0	6	0	107	946
7:00 AM	0	15	1	0	11	52	0	0	0	0	0	0	3	0	2	0	84	994
7:05 AM	0	26	7	0	8	33	0	0	0	0	0	0	1	0	11	0	86	1033
7:10 AM	0	30	3	0	10	45	0	0	0	0	0	0	5	0	4	0	97	1075
7:15 AM	0	25	1	0	5	55	0	0	0	0	0	0	4	0	4	0	94	1097
7:20 AM	0	23	4	0	9	43	0	0	0	0	0	0	2	0	3	0	84	1124
7:25 AM	0	33	3	0	11	39	0	0	0	0	0	0	3	0	7	0	96	1138
7:30 AM	0	37	2	0	13	56	0	0	0	0	0	0	4	0	6	0	118	1167
7:35 AM	0	41	3	0	10	46	0	0	0	0	0	0	8	0	5	0	113	1189
7:40 AM	0	28	5	0	14	46	0	0	0	0	0	0	2	0	13	0	108	1200
7:45 AM	0	34	4	0	4	59	0	0	0	0	0	0	3	0	8	0	112	1222
7:50 AM	0	32	5	0	8	48	0	0	0	0	0	0	3	0	12	0	108	1207
7:55 AM	0	28	3	0	8	48	0	0	0	0	0	0	2	0	6	0	95	1195
8:00 AM	0	26	4	0	8	43	0	0	0	0	0	0	3	0	6	0	90	1201
8:05 AM	0	35	3	0	14	45	0	0	0	0	0	0	3	0	6	0	106	1221
8:10 AM	0	30	3	0	6	35	0	0	0	0	0	0	5	0	6	0	85	1209
8:15 AM	0	24	4	0	6	39	0	0	0	0	0	0	5	0	8	0	86	1201
8:20 AM	0	21	4	0	10	44	0	0	0	0	0	0	3	0	8	0	90	1207
8:25 AM	0	31	0	0	12	45	0	0	0	0	0	0	4	0	11	0	103	1214
8:30 AM	0	34	2	0	6	44	0	0	0	0	0	0	1	0	8	0	95	1191
8:35 AM	0	28	6	0	11	38	0	0	0	0	0	0	4	0	4	0	91	1169
Peak 15-Min Flowrates	Northbound				Southbound				Eastbound				Westbound				Total	
	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
All Vehicles	0	412	48	0	112	604	0	0	0	0	0	0	52	0	104	0	1332	
Heavy Trucks	0	104	4	0	0	24	0	0	0	0	0	0	0	0	4	0	136	
Pedestrians	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	
Bicycles	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Railroad																		
Stopped Buses																		

Comments:

Report generated on 1/27/2014 7:10 AM

SOURCE: Quality Counts, LLC (<http://www.qualitycounts.net>) 1-877-580-2212



7409 SW Tech Center Dr, Ste B150
Tigard, OR 97223
971-223-0003
www.qualitycounts.net

952 Lafayette St SE, Albany
Site Code: 12313203
Location: Hill St SE & Human Bean Coffee
Date: 1/24/2014
Two drive-thru and a walkup window

	Pedestrians Approaching Human Bean Coffee	Cars Approaching Human Bean Coffee	Interval Total	Hour Total (Veh)
6:00	0	5	5	
6:05	0	2	2	
6:10	0	4	4	
6:15	0	1	1	
6:20	0	0	0	
6:25	0	1	1	
6:30	0	0	0	
6:35	0	2	2	
6:40	0	3	3	
6:45	0	3	3	
6:50	0	0	0	
6:55	0	1	1	22
7:00	0	2	2	19
7:05	0	1	1	18
7:10	0	2	2	16
7:15	0	4	4	19
7:20	0	4	4	23
7:25	0	2	2	24
7:30	0	7	7	31
7:35	0	5	5	34
7:40	0	5	5	36
7:45	0	5	5	38
7:50	0	2	2	40
7:55	0	5	5	44
8:00	0	1	1	43
8:05	1	5	6	47
8:10	0	3	3	48
8:15	1	4	5	48
8:20	0	5	5	49
8:25	0	2	2	49
8:30	0	1	1	43
8:35	2	4	6	42
8:40	0	1	1	38
8:45	0	5	5	38
8:50	0	7	7	43
8:55	0	1	1	39
Total	4	105		

998 SE Oak St, Hillsboro
Site Code: 12313205
Location: SE 10th Ave & Human Bean Coffee
Date: 1/24/2014
1 drive-thru and a sitdown inside

	Pedestrians Approaching Human Bean Coffee	Cars Approaching Human Bean Coffee	Interval Total	Hour Total
6:00		0	0	
6:05		1	1	
6:10		1	1	
6:15	1	0	1	
6:20		0	0	
6:25		2	2	
6:30		2	2	
6:35	1	1	2	
6:40	1	2	3	
6:45		1	1	
6:50	1	0	1	
6:55		0	0	10
7:00	1	1	2	11
7:05		2	2	12
7:10		1	1	12
7:15		2	2	14
7:20	1	3	4	17
7:25		3	3	18
7:30		1	1	17
7:35		3	3	19
7:40	1	1	2	18
7:45		1	1	18
7:50	1	3	4	21
7:55	3	3	6	24
8:00	1	1	2	24
8:05	1	1	2	23
8:10	2	3	5	25
8:15	1	3	4	26
8:20		2	2	25
8:25		2	2	24
8:30		1	1	24
8:35		2	2	23
8:40	1	1	2	23
8:45		0	0	22
8:50		1	1	20
8:55	3	0	3	17
Total	20	51		

8355 SW Beaverton-Hillsdale Hwy, Beaverton
Site Code: 12313201
Location: SW Norse Ln & Human Bean Coffee
Date: 1/24/2014
Two drive-thru and a walkup window

	Pedestrians Approaching Human Bean Coffee	Cars Approaching Human Bean Coffee	Interval Total	Hour Total
6:00			0	
6:05			0	
6:10			0	
6:15			0	
6:20	1	7	8	
6:25		1	1	
6:30		4	4	
6:35		4	4	
6:40		5	5	
6:45		5	5	
6:50		2	2	
6:55		5	5	33
7:00		4	4	37
7:05		1	1	38
7:10		2	2	40
7:15		11	11	51
7:20	1	7	8	51
7:25		6	6	56
7:30		0	0	52
7:35		4	4	52
7:40		6	6	53
7:45		9	9	57
7:50		1	1	56
7:55		3	3	54
8:00		4	4	54
8:05		4	4	57
8:10		5	5	60
8:15		7	7	56
8:20		8	8	57
8:25		5	5	56
8:30		4	4	60
8:35		4	4	60
8:40		4	4	58
8:45		5	5	64
8:50		4	4	57
8:55		4	4	58
Total	2	145		



Level of Service Descriptions

TRAFFIC LEVELS OF SERVICE

Analysis of traffic volumes is useful in understanding the general nature of traffic in an area, but by itself indicates neither the ability of the street network to carry additional traffic nor the quality of service afforded by the street facilities. For this, the concept of *level of service* has been developed to subjectively describe traffic performance. Level of service can be measured at intersections and along key roadway segments.

Level of service categories are similar to report card ratings for traffic performance. Intersections are typically the controlling bottlenecks of traffic flow and the ability of a roadway system to carry traffic efficiently is generally diminished in their vicinities. Levels of Service A, B and C indicate conditions where traffic moves without significant delays over periods of peak travel demand. Level of service D and E are progressively worse peak hour operating conditions and F conditions represent where demand exceeds the capacity of an intersection. Most urban communities set level of service D as the minimum acceptable level of service for peak hour operation and plan for level of service C or better for all other times of the day. The *Highway Capacity Manual* provides level of service calculation methodology for both intersections and arterials.¹ The following two sections provide interpretations of the analysis approaches.

¹ 2000 *Highway Capacity Manual*, Transportation Research Board, Washington D.C., 2000, Chapters 16 and 17.

UNSIGNALIZED INTERSECTIONS (Two-Way Stop Controlled)

Unsignalized intersection level of service is reported for the major street and minor street (generally, left turn movements). The method assesses available and critical gaps in the traffic stream which make it possible for side street traffic to enter the main street flow. The *2000 Highway Capacity Manual* describes the detailed methodology. It is not unusual for an intersection to experience level of service E or F conditions for the minor street left turn movement. It should be understood that, often, a poor level of service is experienced by only a few vehicles and the intersection as a whole operates acceptably.

Unsignalized intersection levels of service are described in the following table.

Level of Service	Expected Delay	(Sec/Veh)
A	Little or no delay	0-10.0
B	Short traffic delay	>10.1-15.0
C	Average traffic delays	>15.1-25.0
D	Long traffic delays	>25.1-35.0
E	Very long traffic delays	>35.1-50.0
F	Extreme delays potentially affecting other traffic movements in the intersection	> 50

Source: 2000 *Highway Capacity Manual*, Transportation Research Board Washington, D.C.

SIGNALIZED INTERSECTIONS

For signalized intersections, level of service is evaluated based upon average vehicle delay experienced by vehicles entering an intersection. Control delay (or signal delay) includes initial deceleration delay, queue move-up time, stopped delay, and final acceleration delay. In previous versions of this chapter of the HCM (1994 and earlier), delay included only stopped delay. As delay increases, the level of service decreases. Calculations for signalized and unsignalized intersections are different due to the variation in traffic control. The *2000 Highway Capacity Manual* provides the basis for these calculations.

Level of Service	Delay (secs.)	Description
A	≤ 10.00	Free Flow/Insignificant Delays: No approach phase is fully utilized by traffic and no vehicle waits longer than one red indication. Most vehicles do not stop at all. Progression is extremely favorable and most vehicles arrive during the green phase.
B	10.1-20.0	Stable Operation/Minimal Delays: An occasional approach phase is fully utilized. Many drivers begin to feel somewhat restricted within platoons of vehicles. This level generally occurs with good progression, short cycle lengths, or both.
C	20.1-35.0	Stable Operation/Acceptable Delays: Major approach phases fully utilized. Most drivers feel somewhat restricted. Higher delays may result from fair progression, longer cycle lengths, or both. Individual cycle failures may begin to appear at this level, and the number of vehicles stopping is significant.
D	35.1-55.0	Approaching Unstable/Tolerable Delays: The influence of congestion becomes more noticeable. Drivers may have to wait through more than one red signal indication. Longer delays may result from some combination of unfavorable progression, long cycle lengths, or high v/c ratios. The proportion of vehicles not stopping declines, and individual cycle failures are noticeable.
E	55.1-80.0	Unstable Operation/Significant Delays: Volumes at or near capacity. Vehicles may wait through several signal cycles. Long queues form upstream from intersection. These high delay values generally indicate poor progression, long cycle lengths, and high v/c ratios. Individual cycle failures are a frequent occurrence.
F	≥ 80.0	Forced Flow/Excessive Delays: Represents jammed conditions. Queues may block upstream intersections. This level occurs when arrival flow rates exceed intersection capacity, and is considered to be unacceptable to most drivers. Poor progression, long cycle lengths, and v/c ratios approaching 1.0 may contribute to these high delay levels.

Source: *2000 Highway Capacity Manual*, Transportation Research Board, Washington D.C.



HCM Analysis – Existing

HCM Signalized Intersection Capacity Analysis 1: 95th Avenue & Boones Ferry Road

Carl's Jr./Human Bean Traffic Analysis
Existing AM Peak Hour












Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations		↩	↩↩	↩	↩		↩↩	↩↩		↩	↩↩	↩
Volume (vph)	65	8	379	0	0	0	688	562	30	0	504	135
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)		4.0	4.0				4.0	4.0			4.0	4.0
Lane Util. Factor		1.00	0.88				0.97	0.95			0.95	1.00
Frt		1.00	0.85				1.00	0.99			1.00	0.85
Flt Protected		0.96	1.00				0.95	1.00			1.00	1.00
Satd. Flow (prot)		1468	2274				3242	3389			3167	1553
Flt Permitted		0.75	1.00				0.95	1.00			1.00	1.00
Satd. Flow (perm)		1149	2274				3242	3389			3167	1553
Peak-hour factor, PHF	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91
Adj. Flow (vph)	71	9	416	0	0	0	756	618	33	0	554	148
RTOR Reduction (vph)	0	0	141	0	0	0	0	1	0	0	0	87
Lane Group Flow (vph)	0	80	275	0	0	0	756	650	0	0	554	61
Heavy Vehicles (%)	27%	0%	25%	0%	0%	0%	8%	6%	0%	0%	14%	4%
Turn Type	Perm		pm+ov	Perm			Prot			Prot		Perm
Protected Phases		8	1		4		1	6		5	2	
Permitted Phases	8		8	4								2
Actuated Green, G (s)		11.1	53.0				41.9	85.9			40.0	40.0
Effective Green, g (s)		11.1	53.0				41.9	85.9			40.0	40.0
Actuated g/C Ratio		0.11	0.50				0.40	0.82			0.38	0.38
Clearance Time (s)		4.0	4.0				4.0	4.0			4.0	4.0
Vehicle Extension (s)		3.0	3.0				3.0	3.0			3.0	3.0
Lane Grp Cap (vph)		121	1234				1294	2773			1206	592
v/s Ratio Prot			0.09				c0.23	0.19			c0.17	
v/s Ratio Perm		c0.07	0.03									0.04
v/c Ratio		0.66	0.22				0.58	0.23			0.46	0.10
Uniform Delay, d1		45.1	14.5				24.7	2.1			24.4	20.9
Progression Factor		1.00	1.00				1.00	1.00			1.00	1.00
Incremental Delay, d2		12.8	0.1				1.9	0.2			0.3	0.1
Delay (s)		57.9	14.6				26.7	2.3			24.7	21.0
Level of Service		E	B				C	A			C	C
Approach Delay (s)		21.6			0.0			15.4			23.9	
Approach LOS		C			A			B			C	

Intersection Summary

HCM Average Control Delay	18.9	HCM Level of Service	B
HCM Volume to Capacity ratio	0.54		
Actuated Cycle Length (s)	105.0	Sum of lost time (s)	12.0
Intersection Capacity Utilization	48.6%	ICU Level of Service	A
Analysis Period (min)	15		
c Critical Lane Group			










HCM Unsignalized Intersection Capacity Analysis
2: Chevron-Holiday Inn/Project Driveway & 95th Avenue

Carl's Jr./Human Bean Traffic Analysis
Existing AM Peak Hour

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						 
Volume (veh/h)	42	80	372	40	114	573
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.92	0.92	0.92	0.92	0.92	0.92
Hourly flow rate (vph)	46	87	404	43	124	623
Pedestrians			1			
Lane Width (ft)			12.0			
Walking Speed (ft/s)			4.0			
Percent Blockage			0			
Right turn flare (veh)						
Median type			None			None
Median storage (veh)						
Upstream signal (ft)			543			580
pX, platoon unblocked						
vC, conflicting volume	986	426			448	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	986	426			448	
tC, single (s)	6.8	7.1			4.2	
tC, 2 stage (s)						
tF (s)	3.5	3.4			2.2	
p0 queue free %	79	84			89	
cM capacity (veh/h)	217	552			1095	
Direction, Lane #	WB 1	WB 2	NB 1	SB 1	SB 2	
Volume Total	46	87	448	332	415	
Volume Left	46	0	0	124	0	
Volume Right	0	87	43	0	0	
cSH	217	552	1700	1095	1700	
Volume to Capacity	0.21	0.16	0.26	0.11	0.24	
Queue Length 95th (ft)	19	14	0	10	0	
Control Delay (s)	26.0	12.7	0.0	4.0	0.0	
Lane LOS	D	B		A		
Approach Delay (s)	17.3		0.0	1.8		
Approach LOS	C					
Intersection Summary						
Average Delay			2.7			
Intersection Capacity Utilization			54.5%	ICU Level of Service		A
Analysis Period (min)			15			

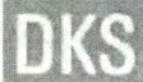
HCM Signalized Intersection Capacity Analysis 3: Commerce Circle & 95th Avenue

Carl's Jr./Human Bean Traffic Analysis
Existing AM Peak Hour

												
Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations												
Volume (vph)	70	0	16	7	2	10	36	332	19	57	516	42
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)	4.0	4.0		4.0	4.0		4.0	4.0		4.0	4.0	
Lane Util. Factor	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Frpb, ped/bikes	1.00	0.98		1.00	1.00		1.00	1.00		1.00	1.00	
Flpb, ped/bikes	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Frt	1.00	0.85		1.00	0.87		1.00	0.99		1.00	0.99	
Flt Protected	0.95	1.00		0.95	1.00		0.95	1.00		0.95	1.00	
Satd. Flow (prot)	1517	1205		1579	1419		1703	1493		1716	1747	
Flt Permitted	0.75	1.00		0.75	1.00		0.39	1.00		0.54	1.00	
Satd. Flow (perm)	1196	1205		1240	1419		703	1493		967	1747	
Peak-hour factor, PHF	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
Adj. Flow (vph)	76	0	17	8	2	11	39	361	21	62	561	46
RTOR Reduction (vph)	0	15	0	0	10	0	0	3	0	0	4	0
Lane Group Flow (vph)	76	2	0	8	3	0	39	379	0	62	603	0
Confl. Peds. (#/hr)			1	1					1	1		
Heavy Vehicles (%)	19%	0%	31%	14%	0%	20%	6%	27%	10%	5%	8%	2%
Turn Type	Perm			Perm			Perm			Perm		
Protected Phases		4			8			2			6	
Permitted Phases	4			8			2			6		
Actuated Green, G (s)	5.9	5.9		5.9	5.9		31.1	31.1		31.1	31.1	
Effective Green, g (s)	5.9	5.9		5.9	5.9		31.1	31.1		31.1	31.1	
Actuated g/C Ratio	0.13	0.13		0.13	0.13		0.69	0.69		0.69	0.69	
Clearance Time (s)	4.0	4.0		4.0	4.0		4.0	4.0		4.0	4.0	
Vehicle Extension (s)	3.0	3.0		3.0	3.0		3.0	3.0		3.0	3.0	
Lane Grp Cap (vph)	157	158		163	186		486	1032		668	1207	
v/s Ratio Prot		0.00			0.00			0.25			c0.35	
v/s Ratio Perm	c0.06			0.01			0.06			0.06		
v/c Ratio	0.48	0.01		0.05	0.02		0.08	0.37		0.09	0.50	
Uniform Delay, d1	18.1	17.0		17.1	17.0		2.3	2.9		2.3	3.3	
Progression Factor	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Incremental Delay, d2	2.3	0.0		0.1	0.0		0.3	1.0		0.3	1.5	
Delay (s)	20.5	17.1		17.2	17.1		2.6	3.9		2.6	4.8	
Level of Service	C	B		B	B		A	A		A	A	
Approach Delay (s)		19.9			17.1			3.8			4.6	
Approach LOS		B			B			A			A	

Intersection Summary


HCM Average Control Delay	5.7	HCM Level of Service	A
HCM Volume to Capacity ratio	0.50		
Actuated Cycle Length (s)	45.0	Sum of lost time (s)	8.0
Intersection Capacity Utilization	53.6%	ICU Level of Service	A
Analysis Period (min)	15		
c Critical Lane Group			



HCM Analysis – Existing with Project












HCM Signalized Intersection Capacity Analysis 1: 95th Avenue & Boones Ferry Road

Carl's Jr./Human Bean Traffic Analysis
Existing + Human Bean AM Peak Hour

												
Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations		↖	↗	↖	↗		↖	↗		↖	↗	↖
Volume (vph)	66	8	380	0	0	0	689	562	30	0	504	136
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)		4.0	4.0				4.0	4.0			4.0	4.0
Lane Util. Factor		1.00	0.88				0.97	0.95			0.95	1.00
Flt		1.00	0.85				1.00	0.99			1.00	0.85
Flt Protected		0.96	1.00				0.95	1.00			1.00	1.00
Satd. Flow (prot)		1467	2274				3242	3389			3167	1553
Flt Permitted		0.75	1.00				0.95	1.00			1.00	1.00
Satd. Flow (perm)		1147	2274				3242	3389			3167	1553
Peak-hour factor, PHF	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91	0.91
Adj. Flow (vph)	73	9	418	0	0	0	757	618	33	0	554	149
RTOR Reduction (vph)	0	0	141	0	0	0	0	1	0	0	0	87
Lane Group Flow (vph)	0	82	277	0	0	0	757	650	0	0	554	62
Heavy Vehicles (%)	27%	0%	25%	0%	0%	0%	8%	6%	0%	0%	14%	4%
Turn Type	Perm		pm+ov	Perm			Prot			Prot		Perm
Protected Phases		8	1		4		1	6		5	2	
Permitted Phases	8		8	4								2
Actuated Green, G (s)		11.2	53.0				41.8	85.8			40.0	40.0
Effective Green, g (s)		11.2	53.0				41.8	85.8			40.0	40.0
Actuated g/C Ratio		0.11	0.50				0.40	0.82			0.38	0.38
Clearance Time (s)		4.0	4.0				4.0	4.0			4.0	4.0
Vehicle Extension (s)		3.0	3.0				3.0	3.0			3.0	3.0
Lane Grp Cap (vph)		122	1234				1291	2769			1206	592
v/s Ratio Prot			0.09				c0.23	0.19			c0.17	
v/s Ratio Perm		c0.07	0.03									0.04
v/c Ratio		0.67	0.22				0.59	0.23			0.46	0.10
Uniform Delay, d1		45.1	14.5				24.8	2.2			24.4	21.0
Progression Factor		1.00	1.00				1.00	1.00			1.00	1.00
Incremental Delay, d2		13.6	0.1				2.0	0.2			0.3	0.1
Delay (s)		58.8	14.6				26.8	2.4			24.7	21.0
Level of Service		E	B				C	A			C	C
Approach Delay (s)		21.9			0.0			15.5			23.9	
Approach LOS		C			A			B			C	
Intersection Summary												
HCM Average Control Delay			19.0				HCM Level of Service				B	
HCM Volume to Capacity ratio			0.54									
Actuated Cycle Length (s)			105.0							12.0		
Intersection Capacity Utilization			48.6%							A		
Analysis Period (min)			15									
c Critical Lane Group												






















HCM Unsignalized Intersection Capacity Analysis
2: Chevron-Holiday Inn/Project Driveway & 95th Avenue

Carl's Jr./Human Bean Traffic Analysis
Existing + Human Bean AM Peak Hour

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						 
Volume (veh/h)	56	91	363	50	129	560
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.92	0.92	0.92	0.92	0.92	0.92
Hourly flow rate (vph)	61	99	395	54	140	609
Pedestrians			1			
Lane Width (ft)			12.0			
Walking Speed (ft/s)			4.0			
Percent Blockage			0			
Right turn flare (veh)						
Median type			None			None
Median storage (veh)						
Upstream signal (ft)			543			580
pX, platoon unblocked						
vC, conflicting volume	1008	422			449	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1008	422			449	
tC, single (s)	6.8	7.1			4.2	
tC, 2 stage (s)						
tF (s)	3.5	3.4			2.2	
p0 queue free %	71	82			87	
cM capacity (veh/h)	207	556			1094	
Direction, Lane #	WB 1	WB 2	NB 1	SB 1	SB 2	
Volume Total	61	99	449	343	406	
Volume Left	61	0	0	140	0	
Volume Right	0	99	54	0	0	
cSH	207	556	1700	1094	1700	
Volume to Capacity	0.29	0.18	0.26	0.13	0.24	
Queue Length 95th (ft)	29	16	0	11	0	
Control Delay (s)	29.6	12.9	0.0	4.3	0.0	
Lane LOS	D	B		A		
Approach Delay (s)	19.2		0.0	2.0		
Approach LOS	C					
Intersection Summary						
Average Delay			3.4			
Intersection Capacity Utilization			54.7%	ICU Level of Service		A
Analysis Period (min)			15			

HCM Signalized Intersection Capacity Analysis 3: Commerce Circle & 95th Avenue

Carl's Jr./Human Bean Traffic Analysis
Existing + Human Bean AM Peak Hour

												
Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations												
Volume (vph)	70	0	16	7	2	10	36	333	19	57	517	42
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)	4.0	4.0		4.0	4.0		4.0	4.0		4.0	4.0	
Lane Util. Factor	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Frpb, ped/bikes	1.00	0.98		1.00	1.00		1.00	1.00		1.00	1.00	
Flpb, ped/bikes	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Frt	1.00	0.85		1.00	0.87		1.00	0.99		1.00	0.99	
Flt Protected	0.95	1.00		0.95	1.00		0.95	1.00		0.95	1.00	
Satd. Flow (prot)	1517	1205		1579	1419		1703	1493		1716	1747	
Flt Permitted	0.75	1.00		0.75	1.00		0.39	1.00		0.53	1.00	
Satd. Flow (perm)	1196	1205		1240	1419		701	1493		966	1747	
Peak-hour factor, PHF	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
Adj. Flow (vph)	76	0	17	8	2	11	39	362	21	62	562	46
RTOR Reduction (vph)	0	15	0	0	10	0	0	3	0	0	4	0
Lane Group Flow (vph)	76	2	0	8	3	0	39	380	0	62	604	0
Confl. Peds. (#/hr)			1	1					1	1		
Heavy Vehicles (%)	19%	0%	31%	14%	0%	20%	6%	27%	10%	5%	8%	2%
Turn Type	Perm			Perm			Perm			Perm		
Protected Phases												
Permitted Phases	4			8			2			6		
Actuated Green, G (s)	5.9			5.9			31.1			31.1		
Effective Green, g (s)	5.9			5.9			31.1			31.1		
Actuated g/C Ratio	0.13			0.13			0.69			0.69		
Clearance Time (s)	4.0			4.0			4.0			4.0		
Vehicle Extension (s)	3.0			3.0			3.0			3.0		
Lane Grp Cap (vph)	157	158		163	186		484	1032		668	1207	
v/s Ratio Prot	0.00			0.00			0.25			0.35		
v/s Ratio Perm	0.06			0.01			0.06			0.06		
v/c Ratio	0.48			0.05			0.08			0.09		
Uniform Delay, d1	18.1			17.1			2.3			2.3		
Progression Factor	1.00			1.00			1.00			1.00		
Incremental Delay, d2	2.3			0.1			0.3			0.3		
Delay (s)	20.5			17.2			2.6			2.6		
Level of Service	C			B			A			A		
Approach Delay (s)	19.9			17.1			3.8			4.6		
Approach LOS	B			B			A			A		

Intersection Summary

HCM Average Control Delay	5.7	HCM Level of Service	A
HCM Volume to Capacity ratio	0.50		
Actuated Cycle Length (s)	45.0	Sum of lost time (s)	8.0
Intersection Capacity Utilization	53.6%	ICU Level of Service	A
Analysis Period (min)	15		
c Critical Lane Group			



February 26, 2013

Daniel Pauly
Associate Planner
City of Wilsonville
Wilsonville, Oregon
97070



City of Wilsonville
EXHIBIT C4 DB12-0074 et al

Re: Case File DB 12-0074 thru 12-0076, New Fast Food Restaurant and Retail Building

Dear Mr. Pauly,

Thank you for the opportunity to review the proposed site plan surrounding the above named development project. Tualatin Valley Fire & Rescue endorses this proposal predicated on the following criteria and conditions of approval:

- 1) **SURFACE AND LOAD CAPACITIES:** Fire apparatus access roads shall be of an all-weather surface that is easily distinguishable from the surrounding area and is capable of supporting not less than 12,500 pounds point load (wheel load) and 60,000 pounds live load (gross vehicle weight). You may need to provide documentation from a registered engineer that the design will be capable of supporting such loading. (OFC D102.1) *Applicable to the parking lot.*
- 2) **PAINTED CURBS:** Where required, fire apparatus access roadway curbs shall be painted red and marked "NO PARKING FIRE LANE" at approved intervals. Lettering shall have a stroke of not less than one inch wide by six inches high. Lettering shall be white on red background. (OFC 503.3) *Provide curb lane striping along the face of the curb at the landscape island housing the new fire hydrant.*
- 3) **COMMERCIAL BUILDINGS - REQUIRED FIRE FLOW:** The required fire flow for the building shall not exceed 3,000 gallons per minute (GPM) or the available GPM in the water delivery system at 20 psi, whichever is less as calculated using IFC, Appendix B. A worksheet for calculating the required fire flow is available from the Fire Marshal's Office. (OFC B105.3) *Please provide a current fire flow test of the nearest fire hydrant demonstrating available flow at 20 psi residual pressure as well as fire flow calculation worksheets. Please forward copies to both TVF&R as well as local building department. Fire flow calculation worksheets as well as instructions are available on our web site at www.tvfr.com.*
- 4) **FIRE HYDRANTS – COMMERCIAL BUILDINGS:** Where a portion of the building is more than 400 feet from a hydrant on a fire apparatus access road, as measured in an approved route around the exterior of the building, on-site fire hydrants and mains shall be provided. This distance may be increased to 600 feet for buildings equipped throughout with an approved automatic sprinkler system. (OFC 507.5.1) *The proposed fire hydrant is obstructed by passenger vehicle parking stalls. Please relocate the new fire hydrant from its proposed location to the landscape island to the south.*
- 5) **REFLECTIVE HYDRANT MARKERS:** Fire hydrant locations shall be identified by the installation of reflective markers. The markers shall be blue. They shall be located adjacent and to the side of the centerline of the access road way that the fire hydrant is located on. In case that there is no center line, then assume a centerline, and place the reflectors accordingly. (OFC 510.1)
- 6) **PHYSICAL PROTECTION:** Where fire hydrants are subject to impact by a motor vehicle, guard posts, bollards or other approved means of protection shall be provided. (OFC 507.5.6) *Please provide bollards at the new fire hydrant.*
- 7) **CLEAR SPACE AROUND FIRE HYDRANTS:** A 3 foot clear space shall be provided around the circumference of fire hydrants. (OFC 507.5.5)

- 8) **ACCESS AND FIRE FIGHTING WATER SUPPLY DURING CONSTRUCTION:** Approved fire apparatus access roadways and fire fighting water supplies shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. (OFC 1410.1 & 1412.1)
- 9) **KNOX BOX:** A Knox Box for building access is required for this building. Please contact the Fire Marshal's Office for an order form and instructions regarding installation and placement. (OFC 506.1)
Provide a Knox box at each new building.
- 10) **PREMISES IDENTIFICATION:** Buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet numbers. Numbers shall be a minimum of 4 inches high with a ½ inch stroke. (OFC 505.1) ***Please provide a physical address for each new building visible from the approaching roadway.***
- 11) **FIRE DEPARTMENT ACCESS TO EQUIPMENT:** Fire protection equipment shall be identified in an approved manner. Rooms containing controls for HVAC, fire sprinklers risers and valves or other fire detection, suppression or control features shall be identified with approved signs. (OFC 509.1)

If you have questions or need further clarification, please feel free to contact me at 503-259-1404.

Sincerely,

Drew S. DeBois

Drew DeBois
Deputy Fire Marshal II/CFI

Copy: D. Walters, COW, File



January 24, 2014

Daniel Pauly, AICP
City of Wilsonville
Planning Division
29799 SW Town Center Loop E
Wilsonville, OR 97070

Re: Wilsonville Devco Human Bean Coffee Kiosk

Dear Mr. Pauly,

I am the franchisee of the Carl's Jr. restaurant at 25300 SW 95th Ave. I wish to submit this letter to express my support for the Human Bean Coffee kiosk proposed by Josh Veenjer and Wilsonville Devco.

I have been part of the Carl's Jr. business, both as an employee and franchisee, for over thirty seven years. Our seventeen franchises are located throughout the Portland area. As a Wilsonville resident, I worked hard to bring a store to my hometown. This last year that goal was accomplished and we could not be more satisfied with the outcome.

It is my understanding that there has been opposition to a coffee kiosk near Carl's Junior because of perceived problems with the movement of vehicles on the site. I want to make it clear that although the layout of this site is not perfect, it is more than sufficient for our purposes. I have worked hard with Mr. Veenjer and Mr. LaPoint to ensure that site circulation would be adequate for a new business on this site. This work included a detailed analysis of our restaurant as part of the City's last master plan review as well as a comprehensive development agreement and cross easement, all of which address vehicle movement on this site. I believe that a coffee kiosk is consistent with what we planned for originally and that the amended master plan will be more than sufficient to support a coffee kiosk on our site without unreasonably burdening any of the nearby businesses or creating safety concerns.

While I respect Mr. LaPoint's opposition to the coffee kiosk, I do not share it, and encourage the City to approve Mr. Veenjer's proposal.

Sincerely,

Dan Gjurgevich

Boones Ferry Pointe

January 27, 2014

Re: Revised site plan, delivery truck circulation/parking and The Human Bean vehicular circulation pattern.

The Applicant has revised the site plans to improve the circulation by adding directional signs, directional striping, and signs at the shared driveway (located within the right-of-way). Additionally, the Applicant has included revised delivery truck circulation patterns and designated unloading areas and vehicular circulation patterns for The Human Bean. All of which is illustrated and further described as follows;

Directional signs: Two (2) directional signs have been added at the primary access of the Applicants property, directing consumers of both Carl's Jr. and The Human Bean through the main entrance in front of Carl's Jr. See Exhibits A and B.

Additional striping: New directional arrows and a hatched yellow line to define the main access drive in front of Carl's Jr. See Exhibit A.

Signs within the right-of-way: Four (4) signs have been added to depict and safely warn vehicles approaching from 95th Avenue of the "entrance" and "exit" of the shared driveway. Applicant is proposing an "entrance only" sign on each side of the ingress and an "exit only" on each side of the egress. See Exhibits A and C.

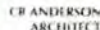
The Human Bean vehicular circulation: As defined by the directional signs, The Human Bean vehicular circulation will enter upon the premises from the shared driveway onto Applicant's property through the main entrance in front of Carl's Jr., continuing on into and through its drive-through and exiting the same, in front of Carl's Jr. This is illustrated on the circulation pattern attached hereto. See Exhibit D.

Delivery truck circulation and parking: The circulation will remain as previously agreed upon, however, Carl's Jr. delivery trucks designated area has been pushed back whereby its 100% within the applicants property and will not impact Chevron's fuel deliveries or its consumers ability to access the applicants site. If Chevron's tanker is present while Carl's Jr. is receiving a delivery, Carl's Jr. truck has the ability from this designated area to reverse and maneuver in front of Carl's Jr. and exit the property through its main entrance. The Human Bean's deliveries are made by vans and/or trucks that range from box vans to semi-truck trailers. The semi-truck trailer deliveries are currently made by Core Mark whom is said to be very accommodating to their existing sites as they are generally small and tight. With that said, they will make deliveries with a 32' truck/trailer. Their designated delivery truck circulation and area would be the same as Carl's Jr. Alternatively, we created another option closer to their building (depicted on site plan) in the event The Human Bean delivery coincided with Carl's Jr. and Chevrons. See Exhibit E.

[The remainder of this page left blank]



A1.0



© 2001 Blackwell Science Ltd
Journal of Internal Medicine 250: 154–161

Devco LLC



Boones Ferry Pointe
 300 West 40th St., Suite 200
 New York, NY 10018
 Tel: 212-691-1111

ARCHITECTURAL
SITE PLAN
430 SF Coffee Tenant

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

© 2000 Blackwell Science Ltd

중국의

2
 3
 4

NAME: _____
 DATE: _____
 PAGE: _____

Exhibit "B"

Proposed Directional Signs

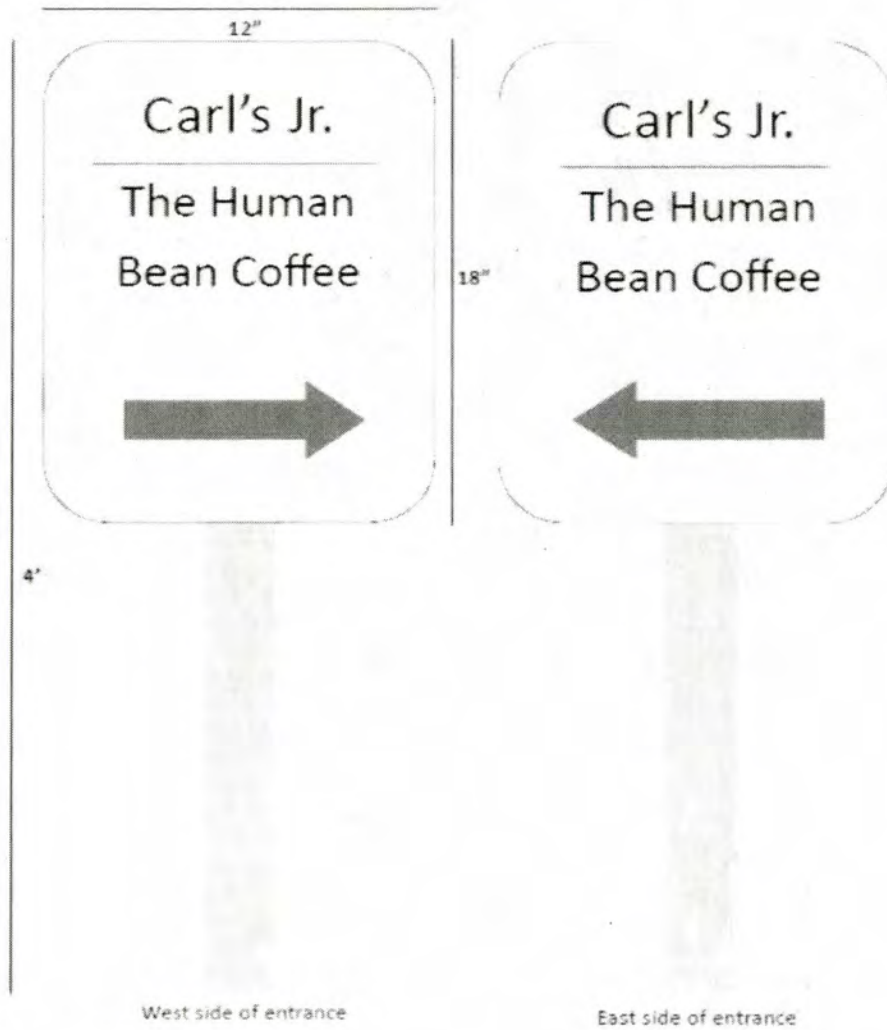



Exhibit "C"


Entrance Only/Exit Only signs within right-of-way

Signs to be located within the right of way on 95th
Height and dimensions of signs to be determined by
City of Wilsonville



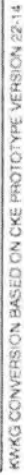
**Entrance
Only**

Located on each side of the entrance



**Exit
Only**

Located on each side of exit



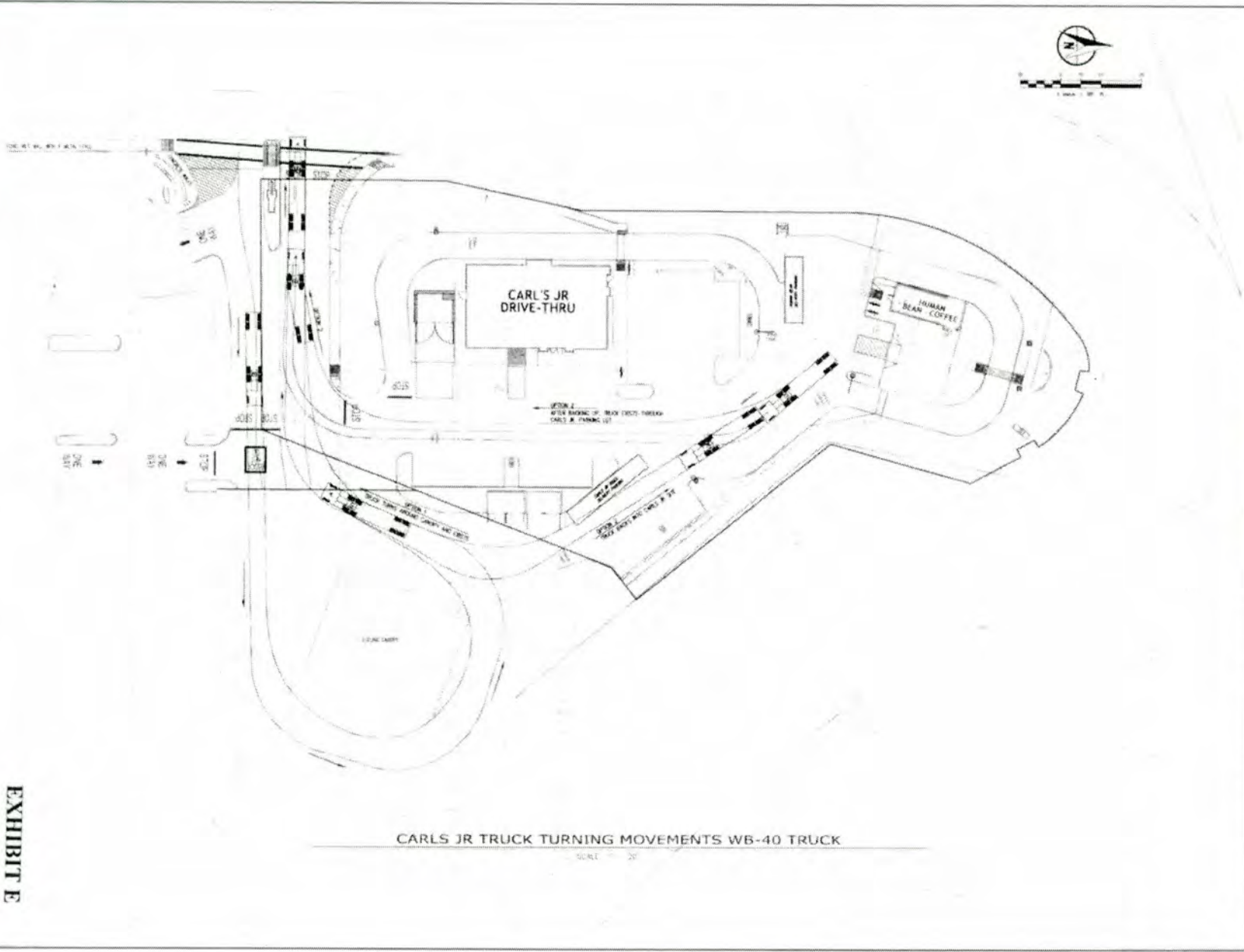
THE PAPER
 100% RECYCLED PAPER



Boones Ferry Pointe



© Copyright 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679,



KWK&G CONVERSION BASED ON CKE PROTOTYPE VERSION 22-14

PROPOSED TRUCK TURNING MOVEMENTS

Boonies Ferry Pointe
1000 N. 10TH AVE. SUITE 100
WILSONVILLE, OR 97158

KUTTRECH ENGINEERS
4343 SW 17TH AVE. SUITE 100
DAVIDSON, NC 28026
TEL: 704.333.1842

BEFORE THE DEVELOPMENT REVIEW BOARD OF THE
CITY OF WILSONVILLE

In the Matter of the Application for)	
a Stage II Final Plan Revision,)	
Site Design Review and Master Sign	)	Case Nos.
Plan Revision and Sign Waiver of:	)	DB13-0046 (Stage II Final Plan Revision)
	)	DB13-0047 (Site Plan Review)
WILSONVILLE DEVCO, LLC	)	DB13-0048 (Master Sign Plan Revision and
	)	Sign Waiver)
On property addressed as)	
25250 SW 95 th Avenue and identified as)	
TL 302, Section 2DB, Township 3 South,	)	OPEN RECORD
Range 1 West, Willamette Meridian,	)	SUBMITTAL OF
City of Wilsonville, Washington County,	)	LAPOINT BUSINESS GROUP
Oregon)	

COMES NOW, LaPoint Business Group, LLC, by and through its attorney, Wallace W. Lien, of Wallace W. Lien, P.C., and does hereby submit the following new argument and information in opposition to the above-referenced applications.

1. Jurisdictional Defect

My client has previously made the point that the subject application relies on their property for access and circulation, as well as for a loading zone in front of the trash enclosures, without its consent or approval, or signing onto the application. Where an entity's property is relied on as part of a development plan on adjacent property, that entity must be made an applicant, or at least in some way consent to the process. That has not happened in this case, and the jurisdictional defect continues. See the discussion that follows regarding the code provisions that require LaPoint's signature or consent to make this application valid.

During the course of the public hearing, one of the staff exhibits showed the circulation pattern for the new coffee store as being on my client's property. Further testimony was that coffee

store and Carl's Jr customers would have the option of using the Carl's Jr entrance, or to use my client's property to come around behind the trash enclosures to get in line for the drive through windows. It was represented to the DRB that the applicant had an easement, or some other access right which would allow its customers to traverse over and across the LaPoint property as shown on the map exhibit.

In addition, when my client pointed out that the Carl's Jr delivery trucks have tried to unlawfully park in the loading area immediately in front of the Carl's Jr store blocking the entire access route on the applicants' property, the DRB was told that the required loading zone for Carl's Jr, and for this new proposed coffee store is on my client's property immediately in front of the trash enclosures, which would make that loading area on LaPoint property. The DRB was again told that the applicant had an easement, or some other right to use this location on the LaPoint property for off loading and deliveries.

We have previously asked that evidence of such right to use LaPoint property by the applicant be produced, to no avail. LaPoint has taken the position from the beginning of this case, that no such easements or rights to use this portion of its property exist. Since my client's assertion to that affect has not been taken into account, I had a title report performed on the LaPoint property to show every easement and recorded instrument that affects the LaPoint property. The title report itself is attached hereto as Exhibit 1, and copies of the relevant title instruments are attached hereto as Exhibit 2.

Documents with relevance to this proceeding are Exception #5, providing joint access between LaPoint and the hotel to 95th and allowance for the sign. This easement does not include the applicant or any predecessor and does not touch or concern the applicants' property.

Exception #6 is a common access easement between the predecessor to applicant (South Sea)

and LaPoint (Exxon), and provides for a triangular shaped easement on a portion of the LaPoint property that terminates along the LaPoint northern boundary about where the trash enclosures are currently located. Exhibit F to this easement shows the easement area in an easy to view map form. This easement clearly specifies that there shall be NO PARKING allowed, and No OBSTRUCTIONS allowed in the easement area. There is no allowance for any loading or delivery zone, in fact the easement is quite to the contrary that no parking of any kind there is allowed. Therefore when the applicant complains that LaPoint personnel will not allow Carl's Jr trucks to park and load and unload in that location, such was perfectly appropriate and lawful given the restrictions in this easement.

This common easement was amended (#2013-097514) on October 24, 2013 between the applicant and LaPoint to shrink the triangular easement by 22.2', giving the applicant less of an easement on LaPoint property than it had before, and providing for a new cross reciprocal easement that covers only a 65' long section of the northern most common boundary to allow the curb that was there previously to be removed. This amendment did not change the NO PARKING, NO OBSTRUCTION provision of the original easement, and it did not provide for an easement for circulation of applicants' traffic over and across that portion of the LaPoint property from the edge of the revised easement to the common line where the easement agreed the curb should be removed. In other words there is a easement gap from the end of the revised easement area to the location of the new curb cut, that does not allow applicants' customers to circulate over all of the LaPoint property. Further, there is nothing that provides any sort of loading zone rights on the LaPoint property in front of the trash enclosures for use of Carl's Jr or the new coffee store.

Because there is no legal right for the applicant to use the LaPoint property for its circulation

pattern, and since there is no right for loading and unloading on the LaPoint property for either the Carl's Jr or the new coffee store, the application is jurisdictionally deficient. Property is being impacted without the owner signing on to the application, or otherwise being in agreement with the application. The City has no legal right to make a decision that would allow traffic circulation over and across the entirety of the LaPoint property, or which would approve a loading area on LaPoint property in front of the trash enclosures.

The application as currently under consideration must be denied. The only alternative would be to require a new amended application that provided for all internal circulation and loading areas for the Carl's Jr and the new coffee store to be located solely and exclusively on the applicant's property.

2. Violation of Code

This application violates numerous provisions of the Wilsonville Development Code (WDC) in relationship to ownership, circulation and loading.

WDC 4.035.04(3) requires this application to provide "proof" that the "property affected" by the application is in the "exclusive ownership of the applicant." Alternatively, the applicant may provide the consent from other property owners whose property is implicated in the development. This provision is a mandatory provision that must be complied with according to the Notice of Public Hearing in this matter. WDC 4.035.04(3) is violated here where the LaPoint property is proposed to be utilized for circulation and loading, without any legal right to do so, and without the consent of LaPoint. See above discussion regarding lack of jurisdiction.

WDC 4.035.04(6a) requires the applicant to show on its site plan proposal all "loading areas", the "direction of traffic flow into and out of ... loading areas", and the location of "each

loading berth and areas of turning and maneuvering vehicles.” The proposed site plan does not show any loading area at all, let alone comply with the details of this provision. WDC 4.035.04(6a) is violated by this application.

WDC 4.400.02(A) requires that site plans be designed in a “manner that insures proper functioning of the site.” The internal circulation of the site does not work within any concept of proper functioning. Between loading trucks blocking the Carl’s Jr site and the myriad of choke points, not to mention the lack of pedestrian circulation and the lack of an accessible loading area, the site does not function safely or efficiently at all. Previous testimony and video’s show the chaos of traffic on the site. Information submitted below further affirms the unsafe conditions that currently exist, even without adding a new drive through coffee store. WDC 4.400.02(A) is listed as a mandatory approval criteria for this application in the public hearing notice, and is violated here.

WDC 4.421.01(C) is also listed as an approval criteria. This code provision deals with internal circulation, and reads as follows:

*With respect to vehicular and pedestrian circulation, including **walkways, interior drives and parking, special attention** shall be given to location and number of **access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are safe and convenient** and, insofar as practicable, **do not detract from the design of proposed buildings and structures and the neighboring properties.** Emphasis Supplied.*

This provision is violated in that the applicant’s proposed internal circulation, the number and location of access points and the pedestrian walkways are not safe and convenient, and do detract from and create safety issues for the neighboring property. The prior testimony and video regarding the circulation chaos that currently exists, is further affirmed by recent traffic accidents on site that are discussed below. This provision is violated.

WDC 4.154 is an approval criteria that requires the creation of safe, direct and convenient

pedestrian access and circulation. This is an important criteria in this application as the proposed coffee store has a pedestrian walk up area, and outdoor seating. It is additionally important for employee's that must load and unload products for the existing Carl's Jr, and for the new coffee store, and for the carrying out of garbage. The trash containers, which we are told include the area immediately in front of them as the loading area, are located in the middle of the parking lot, with proposed traffic circulation moving directly through that area. There is no sidewalk leading to the trash enclosure/loading area, and nothing proposed for paint even on the asphalt. In, addition, there is no connectivity to the LaPoint property as the sidewalk ends at the property line (into a bark dust landscaped area) with no access point to any other pedestrian access. This provision is violated by this application.

WDC 4.155.03(A) is an approval criteria that requires this development to provide designated loading and delivery areas, that are designed with access and maneuvering areas adequate to serve the functional needs of the site. This provision further requires separate loading and delivery areas and circulation from customer and employee and pedestrian circulation patterns. To the greatest extent possible, this provision requires separation of pedestrian and vehicle traffic, and requires circulation patterns with regard to loading and delivery areas to be "clearly marked". This proposal not only does not mark the loading and delivery areas, either for the Carl's Jr or the new coffee store, there is no way for employees to access the loading and delivery area without crossing the access driveway in an area that is not clearly marked, and which is located immediately in a high traffic circulation pattern. WDC 4.155.03(A) is violated in this application.

WDC 4.430.02(G) requires trash areas to be accessible and not obstructed by pedestrian or vehicular traffic movement. The proposed circulation plan involved for the current Carl's Jr and the

proposed new coffee store proposes an internal circulation for traffic right in front of the trash enclosures. Such a circulation pattern does in fact prohibit the trash enclosures from being accessible. There is no pedestrian walk ways for employees to get to the trash enclosures, and employees will have to cross an access driveway to get to the enclosures. This creates a safety hazard not only for the employee that is taking out the garbage, but the traffic that has to account for pedestrians at a location that is not marked. Further, on collection day, when the garbage trucks appear to load the garbage, those trucks will completely block this area from any internal circulation. A car coming into the drive may not see the garbage truck until it is already committed to that access route, and will either have to stop (thus plugging up both that access drive, but also stopping cars that are leaving the gas station), or the car will attempt to back up and turn around which will be in the middle of traffic going in both ways. Again a tremendous safety hazard. WDC 4.430.02(G), which is a listed approval criteria is violated with the current design.

3. New Accident Information

Since the DRB hearing on January 13, 2014, there have been two accidents on the applicant's property between vehicles coming and going in the chaotic internal circulation pattern that currently exists. The first accident occurred just a few days after the DRB hearing. My client was unable to obtain detailed information or photographs of that accident. The second occurred on January 22, 2013. Attached hereto as Exhibit 3 are a series of photographs showing this accident. Note that the accident occurred between vehicles heading in opposite directions and in a pedestrian walkway. My client was told this accident was substantially similar to the one the week before. In addition to the photographs submitted herewith, my client will deliver another DVD (with sufficient copies for all DRB members to have to review) of the traffic circulation pattern on this site. This video shows

traffic during the 3pm afternoon hour, and the chaos that exists speaks for itself. This video should be considered to be Exhibit 4 hereto.

4. Request to Reopen the Record for Testimony

Please consider this Memorandum to be my client's request that the DRB reconsider its decision to not accept testimony at its February 10, 2014 meeting. As was pointed out in the previous hearing, Mr. LaPoint and his son were both gone on pre-planned vacations and were unable to attend and provide testimony. Both will be available on February 10th, and as the owners and operators of the adjacent property, they request the ability to tell their story directly to the DRB. In the event this request is denied, Mr. LaPoint has asked that I include his letter as an open record submittal. His letter is attached hereto as Exhibit 5.

5. Conclusion

The internal circulation of traffic, the lack of identified pedestrian walkways, and the problem with not having a safe loading and delivery area all create specific violations of the WDC. The site is currently unsafe, and will become much more so with the addition of new traffic for the coffee store. Until circulation and loading are worked out, this development can not comply with the WDC and must be denied.

ELECTRONICALLY DELIVERED this 27TH day of January, 2014.

Wallace W. Lien

Wallace W. Lien, OSB 79-3011
Attorney for LaPoint Business Group, LLC

ATTACHMENTS

1. Title Report
2. Exceptions Packet
3. Photographs of Accident
4. DVD of traffic patterns on January 22, 2013 (to be hand delivered by a LaPoint courier)
5. LaPoint Letter



First American

First American Title Company of Oregon

121 SW Morrison St, FL 3

Portland, OR 97204

Phn - (503)222-3651 (800)929-3651

Fax - (877)242-3513

MULTNOMAH COUNTY TITLE UNIT

FAX (877)242-3513

Title Officer: **Jenny White**

(503)222-3651

jwhite@firstam.com

LOT BOOK REPORT

Wallace W Lien Attorney at Law
1775 32nd PL NE STE A
Salem, OR 97303

Order No.: 7019-2199489

January 17, 2014

Attn: Wallace Lien
Phone No.: (503)585-0105 - Fax No.: (503)585-0106
Email: wallace.lien@lienlaw.com

Re:

Fee: \$500.00

We have searched our Tract Indices as to the following described property:

The land referred to in this report is described in Exhibit A attached hereto.

and as of January 13, 2014 at 8:00 a.m.

We find that the last deed of record runs to

LaPoint Business Group, LLC, an Oregon limited liability company

We find the following apparent encumbrances prior to the effective date hereof:

1. Restrictive Covenant to Waive Remonstrance, pertaining to street improvements including the terms and provisions thereof
Recorded: February 6, 1974 in Book 961, page 997
2. Restrictive Covenant to Waive Remonstrance, pertaining to street improvements including the terms and provisions thereof
Recorded: February 6, 1974 in Book 962, page 1
3. Abutter's rights of ingress and egress to or from Boones Ferry Road have been relinquished in the document recorded April 21, 1995 as Fee No. 95-027726 of Official Records.

4. Easement, including terms and provisions contained therein:
Recording Information: April 21, 1995 as Fee No. 95-027726
In Favor of: The State of Oregon, by and through its Department of Transportation
For: Slope, drainage, retaining wall, gas, water, electric and communication service lines, fixtures and facilities and utilities and incidental purposes
Affects: The Easterly portion of Parcel I
5. Reciprocal Easement Agreement, including terms and provisions thereof.
Recorded: January 16, 1997 as Fee No. 97005009
6. Common Ingress and Egress Easement, including terms and provisions thereof.
Recorded: April 30, 2002 as Fee No. 2002 051321

Modification and/or amendment by instrument:
Recording Information: November 12, 2013 as Fee No. 2013 097514
7. Easement, including terms and provisions contained therein:
Recording Information: March 7, 2003 as Fee No. 2003-034139
In Favor of: The City of Wilsonville
For: Pipeline and incidental purposes
Affects: The Easterly portion of Parcel I
8. Deed of Trust and the terms and conditions thereof.
Grantor/Trustor: LaPoint Business Group, LLC, an Oregon limited liability company
Grantee/Beneficiary: West Coast Bank
Trustee: West Coast Trust
Amount: \$1,393,337.46
Recorded: November 08, 2005
Recording Information: 2005 140373
9. Assignment of leases and/or rents and the terms and conditions thereof:
Assignor: Lapoint Business Group, LLC, an Oregon Limited Liability Company
Assignee: West Coast Bank
Recorded: November 08, 2005
Recording Information: 2005 140374
10. Financing Statement, indicating a Security Agreement
Debtor: Lapoint Business Group, LLC
Secured Party: West Coast Bank
Recorded: November 08, 2005
Recording Information: 2005 140375

A Notice of Continuation of said Financing Statement was recorded October 19, 2010 as Fee No. 2010 083153.

11. Line of Credit Trust Deed, including the terms and provisions thereof, given to secure an indebtedness of up to \$290,000.00.
Grantor: LaPoint Business Group, LLC, an Oregon limited liability company
Beneficiary: West Coast Bank
Trustee: West Coast Trust
Dated: November 04, 2005
Recorded: November 08, 2005
Recording Information: 2005 140376
 12. Assignment of leases and/or rents and the terms and conditions thereof:
Assignor: Lapoint Business Group, LLC, an Oregon Limited Liability Company
Assignee: West Coast Bank
Recorded: November 08, 2005
Recording Information: 2005 140377
 13. Financing Statement, indicating a Security Agreement
Debtor: Lapoint Business Group, LLC
Secured Party: West Coast Bank
Recorded: November 08, 2005
Recording Information: 2005 140378
- A Notice of Continuation of said Financing Statement was recorded October 19, 2010 as Fee No. 2010 083154.
14. Right of First Refusal Agreement and the terms and conditions thereof:
Between: Exxon Wilsonville, LLC, an Oregon limited liability company,
Lapoint Business Group, LLC
And: Chevron U.S.A., Inc., a Pennsylvania corporation
Recording Information: February 14, 2006 as Fee No. 2006-017686
 15. Development Agreement, including terms and provisions thereof.
Recorded: August 17, 2012 as Fee No. 2012 068101
 16. Easement Agreement and the terms and conditions thereof:
Between: Wilsonville Devco, LLC an Oregon Limited Liability Company
And: LaPoint Business Group, LLC, an Oregon Limited Liability Company
Recording Information: November 12, 2013 as Fee No. 2013 097513

We have also searched our General Index for Judgments and State and Federal Liens against the Grantee(s) named above and find:

1. Proceedings pending in the Circuit Court for Washington County, Oregon .
Suit No.: C138125CV
Filed: December 16, 2013
Plaintiff: Wilsonville Devco, LLC
Defendant: Lapoint Business Group, LLC
Being a suit for: Civil declaratory judgment

We find the following unpaid taxes and city liens:

1. Taxes for the year 2013-2014
Tax Amount \$ 13,253.34
Unpaid Balance: \$ 8,835.56, plus interest and penalties, if any
Code No.: 088.08
Map & Tax Lot No.: 3S12DB-00300
Property ID No.: R585147
2. Taxes for the year 2013-2014
Tax Amount \$ 6,527.73
Unpaid Balance: \$ 2,175.85, plus interest and penalties, if any.
Code No.: 088.08
Map & Tax Lot No.: 3S12DB-00300
Property ID No.: R2179930 (Affects Marchinery/Equipment)
3. City liens, if any, of the City of Wilsonville.

THIS IS NOT a title report since no examination has been made of the title to the above described property. Our search for apparent encumbrances was limited to our Tract Indices, and therefore above listings do not include additional matters which might have been disclosed by an examination of the record title. We assume no liability in connection with this Lot Book Service and will not be responsible for errors or omissions therein. The charge for this service will not include supplemental reports, rechecks or other services.

Exhibit "A"

Real property in the County of Washington, State of Oregon, described as follows:

PARCEL I:

A parcel of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 391.33 feet to the East line of Parcel I in Deed from John Q. Hammons, to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North 00°09'24" East, along said "ODOT" Deed, a distance of 359.27 feet; thence continuing along said "ODOT" Deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of 062°51'50", a chord bearing of North 31°35'19" East, a chord length of 133.67 feet to the intersection with the South line of SW Commerce Circle as dedicated in the plat of EDWARDS BUSINESS INDUSTRIAL PARK; thence non-tangent North 70°34'24" East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius 25.00 feet, arc length of 32.72 feet, central angle of 074°59'06", a chord bearing of South 71°56'03" East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of 000°41'10", a chord bearing of South 24°13'24" East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 595.65 feet, arc length of 85.44 feet, central angle of 008°13'06", a chord bearing of South 25°08'24" East, and a chord length of 85.36 feet to Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South 15°09'35" West, a distance of 83.41 feet, South 38°02'13" East, a distance of 200.44 feet, North 46°33'47" East, a distance of 48.10 feet, South 40°56'40" East, a distance of 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of 00°21'11", a chord bearing of South 38°36'45" East, and a chord length of 17.49 feet to a point 100.00 feet North of, when measured at right angle to, the South line of said Lot 7; thence continuing along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of 00°58'46", a chord bearing of South 37°56'47" East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of 030°31'07", a chord bearing of South 00°03'01" West, and a chord length of 61.56 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 347.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Prairie Corp., an Oregon corporation, by instrument recorded July 19, 2000 as Fee No. 2000-48398, more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

FURTHER EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet to the true point of beginning; thence North $89^{\circ}38'33''$ East parallel to said South line of Lot 7, 95.10 feet; thence South $20^{\circ}29'49''$ West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North $00^{\circ}09'24''$ East parallel to said East line, 6.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

NOTE: This Legal Description was created prior to January 01, 2008.

Recorded By
Engineer National
Title Insurance Company

9/16-349-68515-8

POWER OF ATTORNEY TITLE INS. CO. HAS RECORDED
THIS INSTRUMENT BY REQUEST AS AN ACCORDANCE
WITH THE REQUIREMENTS OF THE RECORDING ACT
AND HAS NOT CONDUCTED A TITLE SEARCH OR
EXAMINED THE INSTRUMENT TO DETERMINE IF IT
MEETS THE REQUIREMENTS OF THE RECORDING ACT
OR IF IT AFFECTS ANY REAL PROPERTY
THAT MAY BE DESCRIBED THEREIN.

14137
COVENANT

The undersigned owners of the real property in the City of Wilsonville, Oregon, described below, hereby consent to the formation of a local improvement district by the City of Wilsonville for the purpose of improving public streets upon which the described property abuts. In addition, the undersigned expressly waives all present and future opposition and remonstrance against the improvement of such abutting streets to city street standards, and agrees to pay appropriate assessments therefor, as the same may be undertaken pursuant to Oregon Revised Statutes, Chapter 223.

The undersigned owners agree that their successors and assigns shall be bound by this covenant. This covenant shall constitute a covenant running with the land and shall be binding upon any transferees from the present owners in the event of a sale or conveyance of the described premises or any part thereof at a future time.

The property affected by this covenant is described as follows:

A parcel of land in the South 1/2 of Section 2, T3S, R1W, W.M., Washington County, Oregon, described as follows:

Commencing at the South 1/4 corner of said Section 2, running thence northerly 20 feet, more or less, to the north line of Washington County Road No. 561 (S.W. Ridder Road), the TRUE POINT OF BEGINNING; thence westerly, along the northerly line of County Road 561 to the Southeast corner of that tract of land designated as "Parcel No. 2", conveyed to the United States of America, as recorded in Book 189 at page 49 of the Washington County Records; thence N 00° 22' 04" W, 658.48 feet to the northeast corner of the said United States of America tract; thence S 89° 39' 02" W, 555.00 feet to the northwest corner of said tract; thence northerly along the east line of the Bonneville Power Administration Easement, N 00° 21' 27" W, 1082.38 feet; thence N 89° 36' 39" E,

BOOK 961 PAGE 997

14137

1984.31 feet to a point on the west line of R.H. BALDOCK FREEWAY right of way (Interstate No. 5); thence southerly along the west line of said R.H. BALDOCK FREEWAY as follows:

S 26° 31' 04" W, 12.10 feet; thence along the arc of a curve to the left 117.87 feet, (Radius = 117.00 feet, delta = 57° 43' 14", and the long chord bears S 01° 50' 05" E, 112.95 feet); thence S 30° 34' 28" E, 212.92 feet; thence S 22° 52' 30" E, 224.20 feet; thence S 07° 50' 35" E, 97.75 feet; thence S 25° 55' 25" E, 436.00 feet; thence S 00° 03' 30" E, 73.40 feet; thence S 05° 00' 03" E, 351.21 feet, thence S 00° 05' 53" E, 114.24 feet, to a point on the north line of Washington County Road No. 558; thence leaving said R.H. BALDOCK FREEWAY and running southwesterly and westerly, along the northerly line of County Road No. 558 and 561 to the point of beginning. Containing 79.17 acres, more or less.

DATED this 4th day of February, 1974

Paul E. Doty
Paul E. Doty

Grace E. Doty
Grace E. Doty

STATE OF OREGON)
 WASHINGTON) ss.
County of Multnomah)

Personally appeared the above named Paul E. Doty, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me this 4 day of FEBRUARY, 1974

Shelley Erickson
NOTARY PUBLIC for OREGON
My Commission Expires: 12/1/76



BOOK 961 PAGE 998

14137

STATE OF OREGON)
WASHINGTON) ss.
County of Multnomah)

Personally appeared the above named Grace E. Doty, and
acknowledged the foregoing instrument to be her voluntary act
and deed.

Before me this 4TH day of FEBRUARY, 1974.

Willie E. Eversum
Notary Public for Oregon
My Commission Expires: 12/1/76

INDEXED

STATE OF OREGON
County of Washington

I, Roger Thomassen, Director of Records
and Elections and Ex-Officio Recorder of Con-
veyances for said county, do hereby certify
that the within instrument of writing was
received and recorded in book of records
No. _____
of said County.

Witness my hand and seal of office
ROGER THOMASSEN, Director of
Records & Elections
Deputy

BOOK 061 PAGE 099

14138

COVENANT

The undersigned owner of the real property in the City of Wilsonville, Oregon, described below, hereby consents to the formation of a local improvement district by the City of Wilsonville for the purpose of improving public streets upon which the described property abuts. In addition, the undersigned expressly waives all present and future opposition and remonstrance against the improvement of such abutting streets to city street standards, and agrees to pay appropriate assessments therefor, as the same may be undertaken pursuant to Oregon Revised Statutes, Chapter 223.

The undersigned owner agrees that its successors and assigns shall be bound by this covenant. This covenant shall constitute a covenant running with the land and shall be binding upon any transferee from the present owner in the event of a sale or conveyance of the described premises or any part thereof at a future time.

The property affected by this covenant is described as follows:

A parcel of land in the South 1/2 of Section 2, T3S, R1W, W.M., Washington County, Oregon, said parcel being a portion of that tract conveyed to Paul E. Doty and Grace E. Doty, husband and wife at page 679 of Washington County Deed book 397, described as follows:

Beginning at a 5/8 inch Iron Rod on the west right of way line of State Highway No. 217 (Boones Ferry Road) which bears S 89° 30' 16" W 2272.45 feet and S 00° 29' 44" E 83.73 feet from the east one-quarter corner of said section; thence along said Right of Way and the Westerly Right of Way of State

BOOK 962 PAGE 1

PIONEER NATIONAL TITLE INS. CO. HAS RECORDED THIS INSTRUMENT AS AN ACCOMMODATION ONLY AND HAS NOT EXAMINED IT FOR REGULARITY AND LIFE OF THE PROPERTY EFFECT UPON THE TITLE TO ANY REAL PROPERTY THAT MAY BE DERIVED THEREIN.

14138

Highway Entrance-Exit road to Interstate Highway
No. 5 as follows:

S. 13° 53' 04" E 5.82 feet; S 17° 09' 36" E 290.85
feet to Sta. "S" 122+00.04 P.T. 30 feet left; S
15° 13' 07" E 152.05 feet to Sta. "S" 120+50.04
P.C.C. 40 feet left; S 21° 55' 25" E 164.67 feet to
Sta. "S" 119+00.04 P.C.C. 60 feet left being a
point on a non-tangent curve; thence along said
curve to the left whose elements are, Radius 1014.93
feet, tangent 151.09 feet, delta 16° 56' 05", arc
length 298.89 feet, chord bearing S 45° 11' 09" E;
S 26° 31' 04" E 4.04 feet to a 5/8" Iron Rod; thence
leaving said Right of Way S 89° 36' 39" W 1987.99 feet;
thence N 00° 19' 52" W 800.0 feet; thence N 89° 36'
39" E 1593.77 feet to the point of beginning. Con-
taining 31.85 acres.

DATED this 1st day of February, 1974.

EDWARDS INDUSTRIES, INC.

By Allen Edwards, Jr.

By Harvey E. Gyle

STATE OF OREGON)
County of Washington) ss

Personally appeared Allen Edwards, Jr., who being
duly sworn did say that he is President of Edwards
Industries, Inc. and that said instrument was signed in behalf
of said corporation by authority of its board of directors, and
he acknowledged said instrument to be its voluntary act and deed.

Before me this 1st day of February, 1974.

Shelley Ewerson

NOTARY PUBLIC for OREGON

My Commission Expires 12/7/76

INDEXED,

Filed for record 2-6 1974 ²⁷ 3:30 P.M.
ROGER THOMSEN, Director of Records & Elections

By JTC Deputy

-2-

BOOK 962 PAGE 2

STATE OF OREGON
County of Washington

SS

I, Jerry R. Hanson, Director of Assessment and Taxation and Ex-Officio County Clerk for said county, do hereby certify that the within and foregoing return was received and recorded in book of records of said



Jerry R. Hanson, Director of
Assessment and Taxation, Ex-
Officio County Clerk

Doc : 95027726
Rect: 142219 38.00
04/21/1995 02:31:24PM

ODOT
File 6244-003
10B-6-6

DEED

JOHN Q. HAMMONS, Grantor, for the true and actual consideration of
\$ 520,090.00 does convey unto the STATE OF OREGON, by and through its DEPARTMENT
OF TRANSPORTATION, Grantee, fee title to the following described property:

PARCEL 1 - Fee

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK,
Washington County, Oregon and being a portion of that property described in
that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of
Washington County Book of Records; the said parcel being that portion of said
property included in a strip of land variable in width, lying on each side of
the center line of relocated 95th Avenue which center line is described as
follows:

Beginning at Engineer's center line Station "95th" 65+10, said station
being 1118.61 feet North and 2283.96 feet West of the Southeast corner of
Section 2, Township 3 South, Range 1 West, W.M.; thence North 1° 12' 17" East
67.83 feet; thence North 1° 48' 17" East 890.32 feet; thence on a 159.16 foot
radius curve right (the long chord of which bears North 37° 00' 16.5" East
183.48 feet) 195.56 feet; thence North 72° 12' 16" East 78.71 feet to
Engineer's center line Station "95th" 77+42.42.

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on Westerly Side of Center Line	Width on Easterly Side of Center Line
"95th"70+95		"95th"74+68.15	38	
"95th"74+68.15		"95th"75+25	50 in a straight line to 135	
"95th"75+25		"95th"76+00	135	
"95th"70+50		"95th"77+42.42		31

Bearings are based upon the Oregon Coordinate System of 1927, north
zone.

The parcel of land to which this description applies contains 33,400
square feet, more or less.

PARCEL 2 - Fee

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK,
Washington County, Oregon and being a portion of that property described in
that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of
Washington County Book of Records; the said parcel being that portion of said
property lying Easterly of the following described line:

5-9-95

Tax Stmt and
RETURN TO
OREGON DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY SECTION
417 TRANSPORTATION BLDG.
SALEM, OREGON 97310

Account No.: _____

Property Address: _____

Beginning at a point opposite and 27 feet Southwesterly of Engineer's Station "D1" 414+00 on the "D1" center line; thence Northwesterly parallel with said center line to a point opposite Engineer's Station "D1" 412+00; thence Northwesterly in a straight line to a point opposite 61 feet Southwesterly of Engineer's Station "SR2" 117+76.20 on the "SR2" center line; thence Northwesterly parallel with said last mentioned center line to a point opposite Engineer's Station "SR2" 118+62; thence Northwesterly in a straight line to a point opposite and 47 feet Southwesterly of Engineer's Station "SR2" 120+02.15 on last mentioned center line; thence Northwesterly parallel with said last mentioned center line to a point opposite Engineer's Station "SR2" 120+87.47.

The "D1" center line referred to herein is described as follows:

Beginning at Engineer's center line Station "D1" 410+84.37, said station being 1929.07 feet North and 1931.01 feet West of the Southeast corner of Section 2, Township 3 South, Range 1 West, W.M.; thence on a 2864.79 foot radius curve right (the long chord of which bears South 34° 43' 24.5" East 472.48 feet) 473.02 feet to Engineer's center line Station "D1" 415+57.39.

The "SR2" center line referred to herein is described as follows:

Beginning at Engineer's center line Station "SR2" 111+65+15, said station being 1618.82 feet North and 1401.22 feet West of the Southeast corner of Section 2, Township 3 South, Range 1 West, W.M.; thence on a spiral curve right (the long chord of which bears North 64° 34' 50" West 299.67 feet) 300 feet; thence on a 954.93 foot radius curve right (the long chord of which bears North 39° 54' 38" West 611.36 feet) 622.31 feet; thence on a spiral curve right (the long chord of which bears North 15° 14' 26" West 299.67 feet) 300 feet to Engineer's center line Station "SR2" 123+87.47.

Bearings are based upon the Oregon Coordinate System of 1927, north zone.

The parcel of land to which this description applies contains 4,500 square feet, more or less.

PARCEL 3 - Fee

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying between lines at right angles to the "SR2" center line at Engineer's Stations "SR2" 117+45 and "SR2" 119+80 and included in a strip of land variable in width, lying on the Southwesterly side of said center line which center line is described in Parcel 2.

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on Southwesterly Side of Center Line
"SR2"117+45		"SR2"119+25	110 in a straight line to 110
"SR2"119+25		"SR2"119+80	110 in a straight line to 48

ODOT
File 6244-003
108-6-6

EXCEPT therefrom Parcel 2.

Bearings are based upon the Oregon Coordinate System of 1927, north zone.

The parcel of land to which this description applies contains 10,700 square feet, more or less.

TOGETHER WITH all abutter's rights of access between Boones Ferry Road Northeasterly of Engineer's Station "95th" 76+45 and Grantor's remaining real property.

PARCEL 4 - Fee

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying Westerly of Parcel 1.

The parcel of land to which this description applies contains 19,490 square feet, more or less.

ALSO, all of Grantor's right, title and interest in and to that easement for parking and/or ingress and egress described in that document recorded as Document #79018829, Washington County Records. That affects abutting property that lies westerly of the property conveyed herein.

Grantor also grants to Grantee, its successors and assigns, a permanent easement to construct and maintain a retaining wall upon and across the hereinafter described Parcel 5, and permanent easements to construct and maintain slopes upon the hereinafter described Parcels 6 and 7, and permanent easements to relocate, construct and maintain water, gas, electric and communication service lines, fixtures and facilities, and appurtenances therefor, upon, over, through, and across the hereinafter described Parcels 5, 6, and 7, and permanent easements for the construction, installation and maintenance of a sign upon the hereinafter described Parcels 8 and 9, and a permanent easement for the construction, operation, and maintenance of drainage facilities over, under, and across the hereinafter described Parcel 10, said property described as follows:

PARCEL 5 - Permanent Easement for Retaining Wall, Water, Gas, Electric and Communication Service Lines, Fixtures and Facilities

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property included in a strip of land 43 feet in width, lying on the Westerly side of the center line of relocated 95th Avenue which center line is described in Parcel 1.

EXCEPT therefrom Parcel 1.

The parcel of land to which this description applies contains 1,700 square feet, more or less.

PARCEL 6 - Permanent Easement for Slopes, Water, Gas, Electric and Communication Service Lines, Fixtures and Facilities

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying Westerly of Parcels 2 and 3; Easterly of Parcel 1 and Northwesterly and Northeasterly of the following described line:

Beginning at point opposite and 40 feet Easterly of Engineer's Station "95th" 70+50 on the center line of relocated 95th Avenue; thence Northerly in a straight line to a point opposite and 58 feet Southeasterly of Engineer's Station "95th" 75+50 on said center line; thence Northeasterly in a straight line to a point opposite and 50 feet Southeasterly of Engineer's Station "95th" 76+00 on said center line; thence Southeasterly in a straight line to a point opposite and 80 feet Southwesterly of Engineer's Station "SR2" 120+25 on the "SR2" center line; thence Southeasterly parallel with said last mentioned center line to a point opposite Engineer's Station "SR2" 119+00 on said last mentioned center line which center line is described in Parcel 2.

The center line of relocated 95th Avenue referred to herein is described in Parcel 1.

The parcel of land to which this description applies contains 17,950 square feet, more or less.

PARCEL 7 - Permanent Easement for Slopes, Water, Gas, Electric and Communication Service Lines, Fixtures and Facilities

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying Southwesterly of Parcel 2; Southeasterly of Parcel 3 and included in a strip of land 60 feet in width, lying on the Southwesterly side of the "D1" center line which center line is described in Parcel 2.

The parcel of land to which this description applies contains 5,200 square feet, more or less.

PARCEL 8 - Permanent Easement for Sign

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying between lines at right angles to the center line of relocated 95th Avenue at Engineer's Stations "95th" 71+58 and "95th" 71+63 and included in a strip of land 36 feet in width, lying on the Easterly side of said center line which center line is described in Parcel 1.

ODOT
File 6244-003
152-C-2

EXCEPT therefrom Parcel 1.

The parcel of land to which this description applies contains 25 square feet, more or less.

PARCEL 9 - Permanent Easement for Sign

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property lying between lines at right angles to the center line of relocated 95th Avenue at Engineer's Stations "95th" 74+08 and "95th" 74+13 and included in a strip of land 36 feet in width, lying on the Easterly side of said center line which center line is described in Parcel 1.

EXCEPT therefrom Parcel 1.

The parcel of land to which this description applies contains 25 square feet, more or less.

PARCEL 10 - Permanent Easement for Drainage Facilities

A parcel of land lying in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, Washington County, Oregon and being a portion of that property described in that deed to John Q. Hammons, recorded as Microfilm Document No. 80-033104 of Washington County Book of Records; the said parcel being that portion of said property included in a strip of land 10 feet in width, 5 feet on the each side of the following described line:

Beginning at a point opposite and 31 feet Southeasterly of Engineer's Station "95th" 75+95 on the center line of relocated 95th Avenue; thence Southeasterly in a straight line to a point opposite and 200 feet Southeasterly of Engineer's Station "95th" 77+20 on said center line which center line is described in Parcel 1.

EXCEPT therefrom Parcels 1 and 3.

The parcel of land to which this description applies contains 1,425 square feet, more or less.

IT IS UNDERSTOOD that the easements herein granted do not convey any right, or interest in the above-described Parcels 5, 6, 7, 8, 9, 10, except for the purposes stated herein, nor prevent Grantor from the use of said property; provided, however, that such use shall not be permitted to interfere with the rights herein granted or endanger the lateral support of the highway, or to interfere in any way with the relocation, construction, and maintenance of said utilities, and their appurtenances, as granted hereinabove.

Also the rights of the owner of any relocated utilities shall be the same as previously existed in that portion of the utilities being relocated.

ODOT
File 6244-003
108-6-6

IT IS ALSO UNDERSTOOD that these easements shall be subject to the same conditions, terms and restrictions contained in the easements, licenses and/or permits granted to the owner of any facilities being relocated.

IT IS ALSO UNDERSTOOD that Grantor shall not place or erect any buildings or structures upon the easement areas without the written consent of Grantee.

IT IS FURTHER UNDERSTOOD that nothing herein contained is intended to create any obligation on the part of Grantee for the maintenance of said utilities.

Grantor agrees, the consideration recited herein is just compensation for the property, including any and all damages to Grantor's remaining property, if any, which may result from the acquisition or use of said property and the construction or improvement of the highway.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

It is understood and agreed that the delivery of this deed is hereby tendered and that terms and obligations hereof shall not become binding upon the State of Oregon Department of Transportation, unless and until accepted and approved by the recording of this document.

Dated this 11th day of APRIL, 1995.

John Q. Hammons

Missouri
STATE OF OREGON, County of CREDE

APRIL 11, 1995. Personally appeared the above named John Q. Hammons, who acknowledged the foregoing instrument to be his voluntary act. Before me:



Jan Robbins
Notary Public for Oregon MISSOURI
My Commission expires 10-26-96

JAN ROBBINS
Notary Public
Greene County
My Commission Expires Oct 25, 1996

3-9-95
Page 6 - Deed
ael/

STATE OF OREGON
County of Washington

55

I, Jerry R. Hanson, Director of Assessment and Taxation and Clatsop County Clerk for said County, do hereby certify that the within instrument was received and recorded in the records of said county.



After Recording, Return To:

Frank Porcelli, Jr.
10700 SW Beaverton Hillsdale Hwy
Suite #414
Beaverton, Oregon 97005

Doc: 97005009
Recd: 178937 88.00
01/16/1997 03:06:09pm

RECIPROCAL EASEMENT AGREEMENT

DATE: December 27, 1996

PARTIES: Delta Inn, Inc., an Oregon Corporation
15075 SW Koll Parkway, Suite J
Beaverton, Oregon 97006

Garry L. LaPoint and Katherine M. LaPoint
10618 Crosby Road, N.E.
Woodburn, Oregon 97071

RECITALS:

The parties to this agreement intend to create: (a) permanent, mutual, reciprocal easements and a mutual right-of-way for use by them as a roadway for public and private use; and (b) a permanent sign easement appurtenant to, and for the benefit of the property described as Exhibit A. Such easements shall be appurtenant to and shall benefit all of the property described in Exhibits "A", "B" and "C" (the "Benefited Properties").

The parties also have the right upon request to create permanent easements for utility purposes within the easement area.

The parties therefore agree as follows:

AGREEMENTS:

SECTION 1. Grant of Easements; Establishment of Right of Way.

1.1 The parties hereby grant and convey to each other permanent, mutual reciprocal rights-of-way, over, across, and along the real property described in Exhibits

1-RECIPROCAL EASEMENT AGREEMENT

1-12

TRANSACTION
TITLE INSURANCE 1559794/12 21896

"A-1" and "B-1" (the "Easement Area"), attached hereto and incorporated herein by this reference. Such easements shall form a continuous right-of-way as described in Exhibits "A-1" and "B-1". Delta Inn, Inc., an Oregon corporation hereby grants to Garry L. LaPoint and Katherine M. LaPoint such easement rights respecting the property described in Exhibit "A-1", which shall be appurtenant to and benefit the properties described in Exhibits "B" and "C". Garry L. LaPoint and Katherine L. LaPoint reciprocally grants to Delta Inn, Inc., an Oregon corporation, such easement rights respecting the property described in Exhibit "B-1", which shall be appurtenant to and benefit the property described in Exhibit "A".

1.2 Such easements and right-of-way may be used for vehicular and pedestrian ingress and egress purposes to and from the Benefitted Properties and for no other purposes whatsoever. Neither party shall have the right to park, load or unload any vehicle in the right-of-way, other than under emergency conditions. Use of the right-of-way shall be on a regular, continuous, non-exclusive, nonpriority basis, benefiting the parties, their successors, grantees, assigns, lessees, mortgagees, invitees, guests, customers, agents and employees. However, neither party's rights hereunder shall lapse in the event of that party's failure to use the easement and right-of-way on a continuous basis.

SECTION 2. Maintenance and Repair; Taxes and Insurance.

2.1 The cost of periodic maintenance and necessary repairs to the private roadway shall be borne exclusively by Delta Inn, Inc. as to the property described in attached Exhibit "A-1" and exclusively by Garry L. LaPoint and Katherine M. LaPoint as to the property described in attached Exhibit "B-1". Such maintenance and repairs shall be performed by the respective parties on a prompt, diligent and regular basis in accordance with the generally accepted street and road maintenance standards then existing under the laws of the City of Wilsonville and State of Oregon, including but not limited to prompt (i) patching or filling of damage to the pavement as needed, and/or (ii) resurfacing as needed.

2.2 Subject to paragraph 2.3 below, if a party fails to perform any such necessary maintenance and repairs as required, the other party, upon 15 days' prior written notice to the nonperforming party, may cause such work to be done with a right of reimbursement from the first party for all sums necessarily and properly expended to remedy such failure.

2.3 If the roadway becomes impassable or ingress or egress is impeded or curtailed because of a party's failure to maintain the roadway as required herein, the other party may demand by written notice that remedial work be performed immediately. If such work is not so performed the other party shall have the rights of self-help and reimbursement as provided in paragraph 2.2 above.

2-RECIPROCAL EASEMENT AGREEMENT

SECTION 3. Additional Easements

3.1 Garry L. LaPoint and Katherine M. LaPoint hereby grant to Delta Inn, Inc. a permanent easement for signage purposes ten feet (10') in width over the northern ten foot (10') strip of land along, and abutting the northern and northeastern boundary of the easement area described on Exhibit "B-1". This easement shall be appurtenant to and for the benefit of the property described in Exhibit "A". In addition to the foregoing, Delta Inn, Inc. shall also have an easement to run electrical lines over the signage easement area to serve the sign which may be constructed thereon.

Delta Inn, Inc. agrees that such right for signage shall be subject and subordinate to the rights of Garry and Katherine LaPoint to utilize the signage easement area for reasonable signage purposes benefiting their adjacent property. Garry and Katherine LaPoint agree to use good faith efforts in allowing Delta Inn, Inc. the right to construct, use and maintain signage on the signage easement area.

Delta Inn, Inc. (or its successors and assigns) shall, at its sole expense, construct and maintain any sign located on the sign easement area and any electrical lines serving such sign. Any sign constructed on the sign easement area shall at all times comply with all applicable, governmental laws, rules, regulations and ordinances.

3.2 Upon the request of either party, the other party shall grant to the requesting party (or its designee) such reasonable, additional permanent, non-exclusive, appurtenant easements under or within the Easement Area necessary for installing, repairing or maintaining water, gas, sewer, storm drainage, electrical or telephone lines and facilities servicing all or a portion of the property benefited by this agreement. In no event shall any such easement extend beyond the boundary of the Easement Area. The cost of all such installation, repair and maintenance shall be borne by the party requesting the grant of such easement (or its designee), unless the grantor of such easement shall also use such easement for similar purposes. If the grantor of the easements so uses the lines or facilities installed within such easement, the parties shall jointly share such costs.

3.3 No installation, repair or maintenance of any such utility line or facility shall curtail or unreasonably impede use of the private roadway for vehicular and pedestrian ingress and egress and shall be completed in a prompt and workmanlike manner.

SECTION 4. Condemnation; Dedication

4.1 In the event that the private roadway or any part thereof is taken by power of eminent domain, or is conveyed under threat of condemnation and such taking will render

3-RECIPROCAL EASEMENT AGREEMENT

3

001493

the private roadway unusable for normal, regular, two-way vehicular ingress and egress, this access easement shall terminate. If such taking does not render the private roadway so unusable, the obligations of a party whose portion of the roadway is taken shall be abated to the extent of such taking, but this agreement shall otherwise continue in full force and effect. To the extent any utility easements are created pursuant to Section 3, a party may elect to relocate such easements, at its sole expense within the Easement Area. Proceeds from any such condemnation shall belong exclusively to the fee title owner of the property so taken. In the event that the access easement created herein shall terminate due to condemnation, then the parties shall, in good faith, agree to negotiate for alternative access easements across each party's property, but only to the extent that other reasonable access to the other's property is not otherwise available.

4.2 If the parties are requested by an appropriate governmental jurisdiction to dedicate the private roadway for public use, or if one of the parties so requests such a dedication, each party shall promptly execute and deliver to such jurisdiction deeds conveying their respective portions of the roadway for such purposes.

SECTION 5. Breach of Obligations

In the event either party shall fail to perform its obligations under this agreement, the other party shall be entitled to require such performance by suit for specific performance or, where appropriate, through injunctive relief. Such remedies shall be in addition to any other remedies afforded under Oregon law and those rights of self-help and reimbursement specifically granted in paragraphs 2.2 and 2.3 of this agreement.

SECTION 6. Attorney Fees

In the event of any litigation arising under this agreement, the prevailing party shall recover from the losing party the prevailing party's reasonable attorney fees at trial or on appeal as adjudged by the trial or appellate court.

SECTION 7. Maintenance.

The parties shall maintain in good condition and repair, or cause to be maintained and kept in repair, the parking, driveways and other common areas situated on their respective properties. Such obligation shall, without limiting the generality thereof, include the following:

- A. Maintaining the surfaces at such grades and levels that they may be used and enjoyed as contiguous and homogeneous common areas and maintaining the surfaces in a level, smooth and evenly covered condition with the type of

4-RECIPROCAL EASEMENT AGREEMENT

surface material originally installed or of similar quality, use and durability; and

B. Removing all papers, debris, snow, ice, filth and refuse and thoroughly sweeping the areas to the extent reasonably necessary to keep these areas in a neat, clean and orderly condition; and

C. Placing, keeping in repair, and replacing any necessary appropriate striping markers and lines; and operating, keeping in repair and replacing, when necessary, artificial lighting facilities as shall be reasonably required.

SECTION 8. Compliance with Laws and Regulations - Indemnities.

Each of the parties shall, with respect to their respective properties, comply with all laws, rules, regulations and requirements of all public authorities, and shall indemnify, defend and hold each other harmless against all claims, demands, loss, damage, liabilities and expenses and all suits, actions and judgments (including, but not limited to, costs and attorney fees) arising out of, or in any way related to, its failure to maintain their respective properties in a safe condition. Each party shall give prompt and timely notice of any claim made or suit or action commenced against another party which in any way would result in indemnification under this Reciprocal Easement Agreement.

SECTION 9. Tax Payments.

Each party shall keep current the payment of all real estate taxes and assessments on its respective property, subject only to the right to defer payments in a manner provided by law and/or in connection with a bonafide contest of such taxes or assessments, so long as the rights of the other party shall not be jeopardized by such deferral.

SECTION 10. Effect of The Agreement

The easements granted hereunder shall run with the land as to all property burdened and benefited by such easements, including any division or partition of such property. The rights, easements, covenants, liabilities and obligations contained in this agreement shall bind, burden and benefit each party's successors and assigns, lessees, mortgagees (or beneficiaries in a deed of trust).

Delta Inn, Inc.

By: 

Its: President

5-RECIPROCAL EASEMENT AGREEMENT

5

Garry L. LaPoint

Katherine M. LaPoint

Chevron U.S.A., Inc., A Pennsylvania Corporation, hereby consents to the above grants of easements and agrees that its lien on the Property described on the attached B and C is and shall always be subject to and subordinate to the Reciprocal Easement Agreement granted herein.

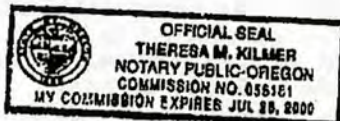
CHEVRON, U.S.A., INC.

By

Its: ASSISTANT SECRETARY

STATE OF OREGON)

County of Multnomah) ss.



The foregoing instrument was acknowledged before me this 27th day of December, 1996, by Sung Lee Kim, President of Delta Inn, Inc., an Oregon corporation, on behalf of the corporation.

Theresa M. Kilmer
NOTARY PUBLIC FOR OREGON
My Commission Expires: 7/28/00

STATE OF OREGON)

County of clackamas) ss.

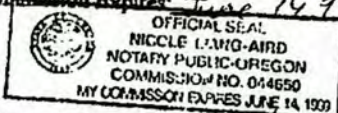
The foregoing instrument was acknowledged before me this 14th day of December, 1996, by Garry L. LaPoint.

Nicole L. Wang-Aird
NOTARY PUBLIC FOR OREGON

My Commission Expires: June 14 97

STATE OF OREGON)

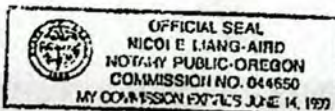
County of clackamas) ss.



The foregoing instrument was acknowledged before me this 27th day of December, 1996, by Katherine M. LaPoint.

Nicole L. Wang-Aird

6-RECIPROCAL BASEMENT AGREEMENT



NOTARY PUBLIC FOR CALIFORNIA
My Commission Expires: 11-28-97

STATE OF CALIFORNIA)
County of SAN FRANCISCO) ss.

The foregoing instrument was acknowledged before me this 23rd day of December, 1996, by F.G. SOLER ASSISTANT SECRETARY of Chevron, U.S.A., Inc.



T. L. Kurpiski
NOTARY PUBLIC FOR
My Commission Expires: 11-28-97

Grantor's/Grantee's Name
and Address:

Delta Inn, Inc.
Sung Lee Kim, President
15075 SW Koll Parkway, Suite J
Beaverton, Oregon 97006

Grantee's/Grantor's Name
and Address:

Garry L. and Katherine M. LaPoint
10618 Crosby Road, N.E.
Woodburn, Oregon 97071

7-RECIPROCAL EASEMENT AGREEMENT

7

DESCRIPTION:

Exhibit 'A' to Reciprocal Easement

3RD AMENDED LEGAL DESCRIPTION:

A portion of Lot 8, EDWARDS BUSINESS PARK NO. 2, a duly recorded subdivision in Washington County, Oregon located in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, said portion of Lot 8 being more particularly described as follows:

Beginning at a 2 inch iron pipe at the Initial Point of said EDWARDS BUSINESS PARK NO. 2, said Initial Point being on the Westerly line of SW Frontage Road, also known as Lower Boones Ferry Road, thence following the boundary of said Lot 8, along the arc of a 117.00 foot radius non-tangent curve left through a central angle of $15^{\circ}30'26''$, an arc distance of 31.67 feet (the chord of which bears South $22^{\circ}58'48''$ East, a distance of 31.67 feet) to a 5/8 inch iron rod (Plat Record: central angle, $15^{\circ}30'50''$; radius 117.00 feet; arc length 31.68 feet; chord; South $22^{\circ}58'17''$ East, a distance of 31.68 feet); thence South $30^{\circ}34'43''$ East a distance of 213.04 feet to a 5/8 inch iron rod (Plat Record; South $30^{\circ}34'28''$ East a distance of 212.92 feet); thence South $00^{\circ}05'07''$ East a distance of 130.27 feet to a 5/8 inch iron rod (Plat Record South $00^{\circ}07'50''$ East a distance of 130.27 feet); thence South $30^{\circ}08'16''$ East a distance of 138.08 feet to a 5/8 inch iron rod (Plat Record South $30^{\circ}03'30''$ East a distance of 136.04 feet); thence South $59^{\circ}37'27''$ West a distance of 13.17 feet to a 5/8 inch iron rod (Plat Record South $59^{\circ}58'30''$ West a distance of 13.10 feet); thence Southwesterly along the arc of a 243.00 foot radius curve right through a central angle of $29^{\circ}42'03''$ an arc distance of 126.97 feet to a 5/8 inch iron rod, (the chord of which bears South $74^{\circ}47'32''$ West a distance of 124.66 feet) (Plat Record: central angle $29^{\circ}42'03''$; radius 243.00 feet; arc length 126.97 feet; chord, South $74^{\circ}47'32''$ West, 124.66 feet); thence South $89^{\circ}38'33''$ West (Plat Record: South $89^{\circ}38'33''$ West) a distance of 410.16 feet (Survey Number 26, 398 Record, 410.17 feet) to a 5/8 inch iron rod at the intersection of the Southerly boundary of said Lot 8 and the Easterly right of way line of 95th Avenue; thence North $44^{\circ}12'00''$ West a distance of 50.04 feet to 5/8 inch iron rod 36.00 feet opposite and easterly of Engineer's Centerline Station 66+45.00, when measured at right angles to the center line of 95th Avenue; thence North $00^{\circ}08'50''$ East a distance of 405.00 feet to a 5/8 inch rod 36.00 feet opposite and Easterly of Engineer's Centerline Station 70+60.00 when measured at right angle to the center line of 95th Avenue; thence North $89^{\circ}41'10''$ West a distance of 5.00 feet to a 5/8 inch iron rod 31.00 feet opposite and Easterly of said Engineer's Centerline Station 70+60.00, thence North $00^{\circ}08'50''$ East a distance of 58.91 feet to a 5/8 inch iron rod marking the intersection of the Easterly right of way line of 95th Avenue and the Northerly boundary of said Lot 8; thence leaving the Easterly right of way line of 95th Avenue and following the Northerly line of said Lot 8 North $89^{\circ}37'29''$ East (Plat Record bearing North $89^{\circ}38'33''$ East) a distance of 391.26 feet to the 2 inch iron pipe marking the Initial Point of said EDWARDS BUSINESS PARK NO. 2 and the point of beginning of this described tract of land.

December 23, 1996

2

W155979H

EXHIBIT "A-1"

**Easement Description
95th Avenue Access
(Over Lot 8, Edwards Business Park No. 2)**

A tract of land located in Lot 8, EDWARDS BUSINESS INDUSTRIAL PARK No. 2 as recorded in Book 43, Page 11, Washington County, Oregon Plat Records, being situated in the Southeast one-quarter (SE 1/4) of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, Washington County, Oregon; said tract of land is more particularly described as follows:

Beginning at a 2 inch iron pipe marking the Initial Point of said EDWARDS BUSINESS INDUSTRIAL PARK; thence South 89 degrees 37' 29" West (Plat Record Bearing South 89 degrees 38' 33" West) along the Northerly boundary of said Lot 8, 391.26 feet to a point marking the intersection of the Northerly line of said Lot 8 and the Easterly line of 95th Avenue as acquired by the State of Oregon and the TRUE POINT OF BEGINNING of this described tract of land; thence South 00 degrees 08' 50" West along said Easterly right-of-way line 17.00 feet; thence South 89 degrees 51' 10" East leaving said Easterly right-of-way line, 51.00 feet; thence North 55 degrees 53' 45" East, 31.45 feet to a point on Northerly line of said Lot 8; thence South 89 degrees 37' 29" West along the Northerly line of said Lot 8, 77.00 feet to the TRUE POINT OF BEGINNING, containing 1106 square feet.

EXHIBIT "B"

**TL 300 Legal Description
Remainder of Lot 7, EXCEPT the South 100'
EDWARDS BUSINESS INDUSTRIAL PARK**

A parcel of land located in Lot 7 "EDWARDS BUSINESS INDUSTRIAL PARK" in the South one-half of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the South line of said lot, a distance of 391.33 feet to the East line of that deed for road purposes from John Q. Hammons to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East, along said "ODOT" Deed, a distance of 100.00 feet to a point 100.00 feet North of, when measured at right angles to, the South line of said Lot 7, and the true point of beginning; thence continuing North $00^{\circ}09'24''$ East, along said "ODOT" Deed, a distance of 269.27 feet; thence continuing along said "ODOT" deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of $062^{\circ}51'50''$, a chord bearing of North $31^{\circ}35'19''$ East, and a chord length of 133.67 feet to the intersection with the South line of S.W. Commerce Circle as dedicated in the Plat of "EDWARDS BUSINESS INDUSTRIAL PARK"; thence non-tangent North $70^{\circ}34'24''$ East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius of 25.00 feet, arc length of 32.72 feet, central angle of $074^{\circ}59'06''$, a chord bearing of South $71^{\circ}56'03''$ East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of $000^{\circ}41'10''$, a chord bearing of South $24^{\circ}13'24''$ East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 666.00 feet, arc length of 85.44 feet, central angle of $008^{\circ}13'06''$, a chord bearing of South $25^{\circ}08'24''$ East, and a chord length of 85.36 feet to Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South $15^{\circ}09'35''$ West, a distance of 93.41 feet, South $38^{\circ}02'13''$ East, a distance of 200.44 feet, North $46^{\circ}33'47''$ East, a distance of 48.10 feet, South $40^{\circ}58'40''$ East, a distance 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of $00^{\circ}21'11''$, a chord bearing of South $38^{\circ}36'45''$ East, and a chord length of 17.49 feet, to a point 100.00 feet North of, when measured at right angles to, the South line of said Lot 7; thence South $89^{\circ}38'33''$ West, parallel with said South line 381.28 feet to the true point of beginning. The above described parcel contains 69,894 square feet or 1.605 acres.

December 27, 1996

W155979H

EXHIBIT "B-1"

**Easement Description
95th Avenue Access
(Over Lot 7, Edwards Business Park)**

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK as recorded in Book 38, Page 14, Washington County, Oregon Plat Records, being situated in the Southeast one-quarter (SE 1/4) of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, Washington County, Oregon; said tract of land is more particularly described as follows:

Beginning at a 2 inch iron pipe marking the Initial Point of said EDWARDS BUSINESS INDUSTRIAL PARK; thence South 89°37'29" West (Plat Record Bearing South 89°38'33" West) along the Southerly boundary of said Lot 7, a distance of 391.26 feet to a point marking the intersection of the Southerly line of said Lot 7 and the Easterly line of 95th Avenue as acquired by the State of Oregon and the true point of beginning of this described tract of land; thence North 00°08'50" East along said Easterly line, 20.00 feet; thence South 89°51'10" East leaving said Easterly right-of-way, 51.00 feet; thence South 53°16'00" East, 32.38 feet to a point of the Southerly line of said Lot 7; thence South 89°37'29" West along the Southerly line of said Lot 7, a distance of 77.00 feet to the true point of beginning.

December 23, 1996

11 3

W155979H

001501

EXHIBIT "C"

TL 400 Legal Description
South 100' of Remainder of Lot 7
EDWARDS BUSINESS INDUSTRIAL PARK

A parcel of land located in Lot 7 "EDWARDS BUSINESS INDUSTRIAL PARK" in the South one-half of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the County of Washington and State of Oregon being further described as follows:

Beginning at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the South line of said lot, a distance of 391.33 feet to the East line of that deed for road purposes from John O. Hammons to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East, along said "ODOT" Deed, a distance of 100.00 feet to a point 100.00 feet North of, when measured at right angles to, the South line of said Lot 7; thence North $89^{\circ}38'33''$ East parallel with the South line of said Lot 7, a distance of 361.28 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of $00^{\circ}58'48''$, a chord bearing of South $37^{\circ}58'47''$ East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.98 feet, arc length of 62.30 feet, central angle of $030^{\circ}31'07''$, a chord bearing of South $00^{\circ}03'01''$ West, and a chord length of 61.56 feet to the true point of beginning. The above described parcel contains 38,383 square feet or 0.881 acres.

December 27, 1996

W155979H

12

001502

40
6
11
AFTER RECORDING RETURN TO:

BRICE INVESTMENT REALTY
9450 SW COMMERCE CIRCLE #111
WILSONVILLE, OR 97070

Washington County, Oregon 2002-051321
04/30/2002 03:00:20 PM
D-E Cnt#1 Rtn#7 D HOFFMAN
\$40.00 \$8.00 \$11.00 - Total=\$57.00



00083872200200513210080083

I, Jerry Hansen, Director of Assessment and Taxation
and Ex-Officio County Clerk for Washington County,
do hereby certify that the within instrument of writing
was received and recorded in the book of records of
said county.

Jerry R. Hansen, Director of Assessment and Taxation,
Ex-Officio County Clerk



COMMON INGRESS & EGRESS EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that Exxon of Wilsonville, L.L.C., an Oregon Limited Liability Company, hereinafter referred to as "The Party of the First Part", and South Sea, L.L.C., an Oregon Limited Liability Company, hereinafter referred to as "The Party of the Second Part", both parties as grantors, their heirs, successors and assigns, do hereby grant a non-exclusive reciprocal easement for the purpose of pedestrian and vehicular ingress and egress, upon, over and across the following described tracts of land, more particularly described in Exhibits "A" and "B" and shown on Exhibits "C" and "D", said easement being more particularly described in Exhibit "E" and shown on Exhibit "F", attached hereto and thereby made a part thereof, to wit:

SEE ATTACHED EXHIBITS

And as said parcels of real estate adjoin each other; and said grantors', in consideration of the mutual promises of the parties each to the other contained herein and the mutual benefits to each flowing therefrom, do covenant and agree with other that they shall grant each other mutual ingress and egress rights to each other's land as herein without restriction, except as noted.

The location of the subject Mutual Perpetual Reciprocal Ingress and Egress Easement is as shown on the attached diagram, Exhibit F:

This reciprocal easement is subject to the following conditions:

1. Ingress to this easement shall be without restriction to either party hereto.
2. All owners shall keep the easement free and clear for vehicular and pedestrian access at all times. No parking will be allowed within the easement, nor shall any item or thing be allowed that would obstruct or impede emergency vehicle access.
3. The cost of construction and future roadway repairs, shall be apportioned equally among the affected owners, based on parcel area. Said improvements shall be jointly agreed upon prior to construction. In the event of any owner of the above described properties damages said roadway access, by excessive use or by construction or improvement of the real property to which the easement applies, it shall be the obligation of said owner to repair the same, within 5 calendar days of the damage, unless otherwise agreed by all parties concerned.

The obligations and benefits of this agreement run with the land and are binding upon the owners herein above noted and shall apply to the parties' heirs, successors and assigns. Damages as may arise from misuse by parties to this agreement shall be recoverable in a court of law under due process.

It is understood and agreed upon that this agreement, as written, covers all agreements and stipulations between the parties and that no statements or representations, oral or written, have been made modifying, adding to or changing the terms of this agreement.

Recorded By Titor Title
Courtesy Only. Not Examined



IN WITNESS WHEREOF, the parties above have caused this instrument to be duly executed.

Dated this 7th day of August, 2000

South Sea, L.L.C., an Oregon Limited Liability Company

By George F. Brice III
(George F. Brice III,)

Exxon of Wilsonville, L.L.C., an Oregon Limited Liability Company

By Garry L. LaPoint
(Garry L. LaPoint)

By Katherine M. LaPoint
(Katherine M. LaPoint)

[illegible]

On this 7th day of August, 2000, before me, a notary public in and for said County and State, personally appeared Garry L. LaPoint, Katherine M. LaPoint and George F. Brice III, known to me to be the persons whose names subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.



NOTARY PUBLIC OF OREGON

My Commission Expires: 4/1/03

Upon recording, please return this easement to:

Garry L. LaPoint
LaPoint Business Group
10618 Crosby Road NE
Woodburn, OR 97071



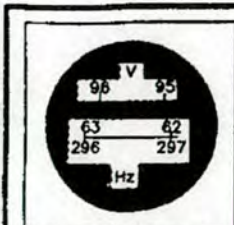
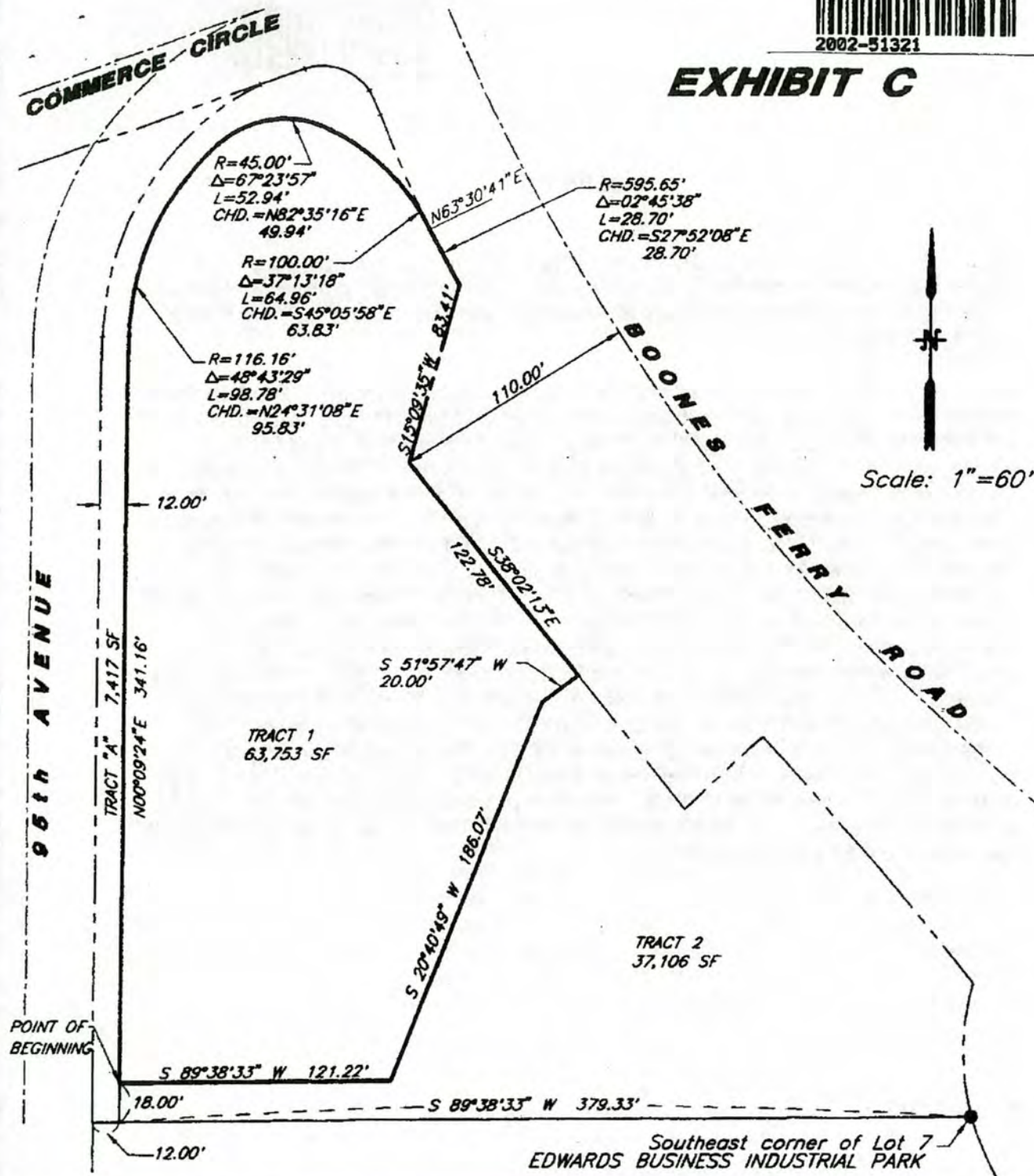
"EXHIBIT A"

TRACT 1: A tract of land located in Lot 7, "Edwards Business Industrial Park" in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7 "Edwards Business Industrial Park" recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet to the TRUE POINT OF BEGINNING; thence continuing North $00^{\circ}09'24''$ East along said easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of $48^{\circ}43'29''$, an arc length of 98.78 feet, the chord of which bears North $24^{\circ}31'08''$ East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of $67^{\circ}23'57''$; an arc length of 52.94 feet, the chord of which bears North $82^{\circ}35'16''$ East, 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of $37^{\circ}13'18''$, an arc length of 64.96 feet, the chord of which bears South $45^{\circ}05'58''$ East, 63.83 feet to a point on the westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North $63^{\circ}30'41''$ East, through a central angle of $02^{\circ}45'38''$, an arc length of 28.70 feet, the chord of which bears South $27^{\circ}52'08''$ East, 28.70 feet; thence non-tangent South $15^{\circ}09'35''$ West, 83.41 feet; thence South $38^{\circ}02'13''$ East, 122.78 feet; thence leaving said westerly line, South $51^{\circ}57'47''$ West, 20.00 feet; thence South $20^{\circ}40'49''$ West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South $89^{\circ}38'33''$ West, 121.22 feet to the TRUE POINT OF BEGINNING, containing 63,753 square feet or 1.46 acres, more or less.



2002-51321

EXHIBIT C

DE HAAS
&
ssociates, Inc.

Consulting Engineers & Surveyors

Suite 300 - AGC Center
9450 S.W. Commerce Circle
Wilsonville, Oregon 97070

PHONE: (503) 682-2450
FAX: 682-4018

Tract 1

DATE

June 7, 2000

FILE No.

97.940.902



2002-51321

"EXHIBIT B"

TRACT 2: A tract of land located in Lot 7, "Edwards Business Industrial Park" in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the City of Wilsonville in the County of Washington and State of Oregon, being further described as follows:

Beginning at the Southeast corner of said Lot 7 "Edwards Business Industrial Park" recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon, the TRUE POINT OF BEGINNING; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East parallel to said East line of Parcel 1, 18.00 feet; thence North $89^{\circ}38'33''$ East parallel to said South line, 121.22 feet; thence North $20^{\circ}40'49''$ East, 186.07 feet; thence North $51^{\circ}57'47''$ East, 20.00 feet to the westerly line of Boones Ferry Road as described in said Hammons to "ODOT" deed; thence along said westerly line South $38^{\circ}02'13''$ East, 77.66 feet; thence North $46^{\circ}33'47''$ East, 48.10 feet; thence South $40^{\circ}56'40''$ East, 81.06 feet; thence along the arc of a 2,837.79 foot radius non-tangent curve to the right, said curve having a radial bearing of South $51^{\circ}12'39''$ West, a central angle of $01^{\circ}19'57''$, an arc length of 66.00 feet, the chord of which bears South $38^{\circ}07'22''$ East, 66.00 feet; thence along the arc of a 116.96 foot radius non-tangent curve to the left, said curve having a radial bearing of South $74^{\circ}41'25''$ East, through a central angle of $30^{\circ}31'07''$, an arc length of 62.30 feet, the chord of which bears South $00^{\circ}03'01''$ West, 61.56 feet more or less to the TRUE POINT OF BEGINNING, containing an area of 37,106 square feet, or 0.85 acres, more or less.



2002-51321

EXHIBIT D



Scale: 1"=60'

COMMERCE CIRCLE

BOONES FERRY ROAD

95th AVENUE

TRACT "A" 7,417 SF

TRACT 1
63,753 SF

N51°57'47"E
20.00'

S38°02'13"E
77.66'

N46°33'47"E
48.10'

S40°56'40"E
81.06'

RADIAL
55°12'39"W

RADIAL
57°41'25"E

TRACT 2
37,106 SF

N 20°40'49" E 186.07'

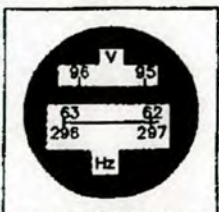
R=2837.79'
Δ=01°19'57"
L=66.00'
CHD.=S38°07'22"E
66.00'

R=116.96'
Δ=30°31'07"
L=62.30'
CHD.=S00°03'01"W
61.56'

N89°38'33"E 121.22'
N00°09'24"E 18.00'

S89°38'33"W 379.33'

POINT OF BEGINNING
Southeast corner of Lot 7
EDWARDS BUSINESS INDUSTRIAL PARK



DE HAAS
&
ssociates, Inc.

Consulting Engineers & Surveyors

Suite 300 - AGC Center
9450 S.W. Commerce Circle
Wilsonville, Oregon 97070

PHONE: (503) 682-2450
FAX: 682-4018

Tract 2

DATE

June 7, 2000

FILE No.

97.940.902



EXHIBIT E

COMMON INGRESS & EGRESS EASEMENT

A common Ingress and Egress Easement between Tract 1 and Tract 2 located in Lot 7, "Edwards Business Industrial Park" in the South one-half of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the County of Washington and State of Oregon, being further described as follows:

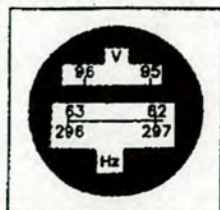
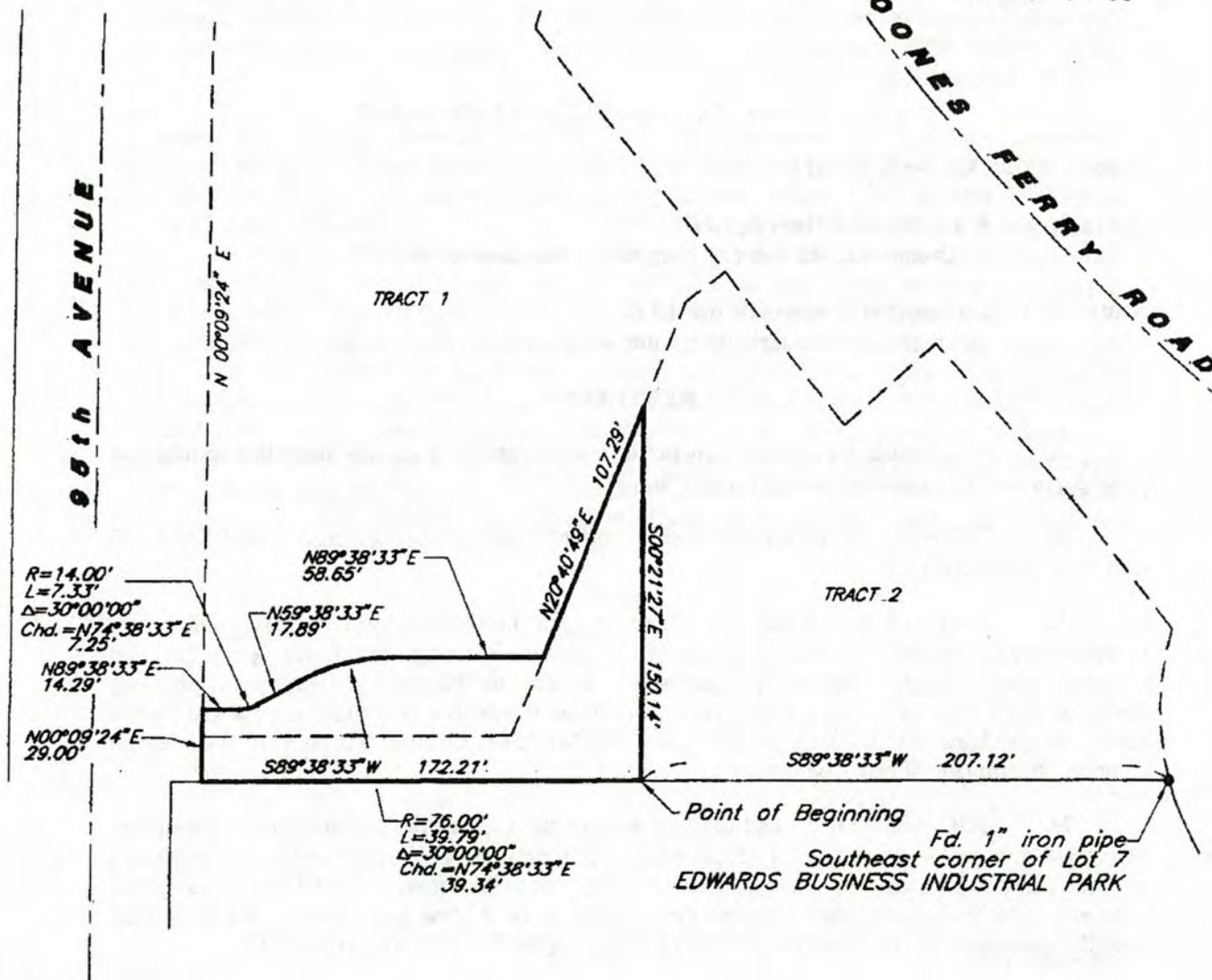
Commencing at the Southeast corner of Lot 7 of "Edwards Business Industrial Park"; thence South $89^{\circ}38'33''$ West, along the South line of said lot a distance of 207.12 feet to the POINT OF BEGINNING; thence continuing along said South line South $89^{\circ}38'33''$ West, 172.21 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation in document Number 95027726, recorded April 21, 1995; thence North $00^{\circ}09'24''$ East, parallel to said East line 29.00 feet; thence North $89^{\circ}38'33''$ East, 14.29 feet; thence along the arc of a curve to the left, said curve having a radius of 14.00 feet, through a central angle of $30^{\circ}00'00''$ (the chord of which bears North $74^{\circ}38'33''$ East, 7.25 feet), a distance of 7.33 feet; thence North $59^{\circ}38'33''$ East, 17.89 feet; thence along the arc of a curve to the right, having a radius of 76.00 feet; through a central angle of $30^{\circ}00'00''$, (the chord of which bears North $74^{\circ}38'33''$ East, 39.34 feet), a distance of 39.79 feet; thence North $89^{\circ}38'33''$ East, 58.65 feet; thence North $20^{\circ}40'49''$ East, 107.29 feet; thence South $00^{\circ}21'27''$ East, 150.14 feet, more or less, to the POINT OF BEGINNING.



2002-51321

EXHIBIT F

Scale: 1"=60'



DE HAAS
&
ssociates, Inc.

Consulting Engineers & Surveyors

Suite 300 - AGC Center
9450 S.W. Commerce Circle
Wilsonville, Oregon 97070

PHONE: (503) 682-2450
FAX: 682-4018

**COMMON INGRESS &
EGRESS EASEMENT**

DATE

June 7, 2000

FILE No.

97.940.902

55
31

**Recorded At The Request Of
And When Recorded Mail To:**

George J. Gregores
Holland & Knight LLP
111 SW Fifth Ave, Suite 2300
Portland, OR 97204

Washington County, Oregon
11/12/2013 11:41:50 AM
D-E Cnt=1 Str=12 S PFETIFER
\$55.00 \$5.00 \$11.00 \$15.00 - Total = \$86.00



01894749201300975140110117

I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.

Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk



AMENDMENT TO EASEMENT AGREEMENT

Date: October 24, 2013

Among: **WILSONVILLE DEVCO, LLC**
an Oregon limited liability company ("Wilsonville Devco")

And: **LAPOINT BUSINESS GROUP, LLC**
an Oregon limited liability company ("LaPoint")

RECITALS

A. Wilsonville Devco is the owner of the real property legally described in attached Exhibit A (the "Wilsonville Devco Property").

B. LaPoint is the owner of the real property legally described in attached Exhibit B (the "LaPoint Property").

C. Exxon of Wilsonville, L.L.C., an Oregon limited liability company, predecessor in interest to La Point as a previous owner of the LaPoint Property, and South Sea, L.L.C., an Oregon limited liability company, predecessor in interest to Wilsonville Devco as a previous owner of the Wilsonville Devco Property, executed and recorded a Common Ingress and Egress Easement on April 30, 2002 at Recorder No. 2002-051321, Official Records of Washington County, Oregon (the "Prior Agreement").

D. Wilsonville Devco and LaPoint wish to amend the Prior Agreement in accordance with the terms of this Agreement, including vacating a portion of Wilsonville Devco's easement over the LaPoint Property, which area to be vacated is described in attached Exhibit C (the "Old Easement Area"), in exchange for the parties granting to each other a reciprocal cross-easement over the easement area described in attached Exhibit D (the "New Easement Area").

AGREEMENT

For valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Wilsonville Devco and LaPoint agree as follows:

1. **Vacation of Old Easement Area.** The Old Easement Area described in attached Exhibit C is hereby vacated and deleted from the Prior Agreement.

2. **Grant of Reciprocal Cross-Easement.** The parties hereby grant and convey to each other a permanent, mutual, reciprocal easement on, over, across and along the New Easement Area described on attached Exhibit D. A description of the New Easement Area and its relation to the Wilsonville Devco Property and the LaPoint Property is illustrated on attached Exhibit E. The New Easement Area is to be used principally for curb cuts between the Wilsonville Devco Property and the LaPoint Property, vehicular ingress and egress in connection therewith, and LaPoint's access to its trash enclosure on the Wilsonville Devco Property.

3. **Maintenance and Repairs.** Any maintenance and necessary repair of the pavement located on the New Easement Area, as determined necessary by Wilsonville Devco in its sole and absolute discretion, shall be paid for by Wilsonville Devco.

4. **Term.** The New Easement Area contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the Official Records of Washington County, Oregon, and shall remain in full force and effect thereafter, unless amended or terminated in accordance with Section 5 hereinafter.

5. **Modification.** This Agreement may only be modified, amended, revised or terminated by written instrument signed by Wilsonville Devco and LaPoint, or their respective successor(s) as the case may be.

6. **Indemnification.** Each party hereto agrees to defend, indemnify, and hold harmless the other party from and against any and all losses, claims, demands, or other liabilities whatsoever arising out of said party's own use of the roadway, or use by said party's successors, assigns, lessees, invitees, guests, tenants, customers, agents and employees.

7. **Attorney Fees.** In the event of any litigation arising under this Agreement, the prevailing party shall recover from the other reasonable attorney fees as determined by the trial or appellate court, as the case may be.

8. **Dispute Resolution.** Any controversy, dispute or question arising out of this Agreement shall be submitted to arbitration before a single arbitrator in Washington County, Oregon. Each party shall bear its own costs in any such proceeding. The decision of the arbitrator shall be final and binding upon the parties and may be enforced in any court of competent jurisdiction. To the fullest extent permitted by law, the parties irrevocably submit to the jurisdiction of such forum, and waive any objections they may have to either the jurisdiction or venue of such forum. Nothing contained herein shall in any way deprive either party of their right to obtain injunction or other equitable relief.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of Oregon.

10. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and

acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document, which will be recorded in the Official Records of Washington County, Oregon.

11. Binding Effect. The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

[Signature Page Follows]

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

WILSONVILLE DEVCO, LLC,
an Oregon limited liability company

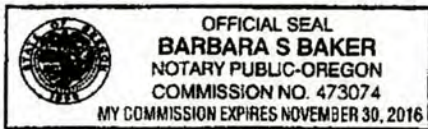
By: [Signature]
Name: Josh Veentjer
Title: Managing Member

LAPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss
County of Clackamas)

This instrument was acknowledged before me on October 24, 2013 by
Joshua Veentjer as Managing Member of Wilsonville Devco, LLC.



Barbara S. Baker
Notary Public - State of Oregon

STATE OF OREGON)
) ss
County of)

This instrument was acknowledged before me on _____, 2013 by
_____ as _____ of LaPoint Business Group, LLC.

Notary Public - State of Oregon

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

WILSONVILLE DEVCO, LLC,
an Oregon limited liability company

By: _____
Name: _____
Title: _____

LAPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: [Signature]
Name: Garry L. LaPoint
Title: Member

STATE OF OREGON)
) ss
County of)

This instrument was acknowledged before me on _____, 2013 by
_____ as _____ of Wilsonville Devco, LLC.

Notary Public - State of Oregon

STATE OF OREGON)
) ss
County of)

This instrument was acknowledged before me on October 18, 2013 by
Garry LaPoint as member of LaPoint Business Group, LLC.



[Signature]
Notary Public - State of Oregon

Exhibit A

**Legal Description of
Wilsonville Devco Property**

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.83 feet to a point on the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

Exhibit B

**Legal Description of
LaPoint Property**

TRACT 2: A tract of land located in Lot 7, "Edwards Business Industrial Park" in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the City of Wilsonville in the County of Washington and State of Oregon, being further described as follows:

Beginning at the Southeast corner of said Lot 7 "Edwards Business Industrial Park" recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon, the TRUE POINT OF BEGINNING; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East parallel to said East line of Parcel 1, 18.00 feet; thence North $89^{\circ}38'33''$ East parallel to said South line, 121.22 feet; thence North $20^{\circ}40'49''$ East, 186.07 feet; thence North $51^{\circ}57'47''$ East, 20.00 feet to the westerly line of Boones Ferry Road as described in said Hammons to "ODOT" deed; thence along said westerly line South $38^{\circ}02'13''$ East, 77.66 feet; thence North $46^{\circ}33'47''$ East, 48.10 feet; thence South $40^{\circ}56'40''$ East, 81.06 feet; thence along the arc of a 2,837.79 foot radius non-tangent curve to the right, said curve having a radial bearing of South $51^{\circ}12'39''$ West, a central angle of $01^{\circ}19'57''$, an arc length of 66.00 feet, the chord of which bears South $38^{\circ}07'22''$ East, 66.00 feet; thence along the arc of a 116.96 foot radius non-tangent curve to the left, said curve having a radial bearing of South $74^{\circ}41'25''$ East, through a central angle of $30^{\circ}31'07''$, an arc length of 62.30 feet, the chord of which bears South $00^{\circ}03'01''$ West, 61.56 feet more or less to the TRUE POINT OF BEGINNING, containing an area of 37,106 square feet, or 0.85 acres, more or less.

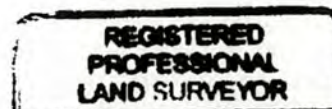
Exhibit C
Old Easement Area

September 24, 2013
NWS Project No. 787
Vacated Easement

A tract of land being a portion of that Common Ingress & Egress Easement described in Document No. 2002-051321, Deed Records of Washington County, Oregon, said tract of land being located in the southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Lot 7, Edwards Business Industrial Park, thence along the south line of said Lot 7, South $89^{\circ}38'33''$ West a distance of 207.12 feet to the southeast corner of said Common Ingress & Egress Easement and the Point of Beginning; thence along the most easterly line of said easement, North $00^{\circ}21'27''$ West a distance of 150.29 feet to the most northerly corner thereof, said point being on the easterly boundary of that property conveyed to Wilsonville Devco, LLC by deed recorded May 24, 2012 as Document No. 2012-042053, Deed Records of Washington County, Oregon; thence along the easterly boundary of said Wilsonville Devco, LLC property, South $20^{\circ}40'49''$ West a distance of 59.48 feet to a point; thence departing said easterly boundary, South $00^{\circ}09'24''$ West a distance of 94.77 feet to a point on the south line of said Lot 7; thence along the south line of said Lot 7, North $89^{\circ}38'33''$ East a distance of 22.20 feet to the Point of Beginning.

Said described tract of land contains 2,657 square feet, more or less.



RECEIVED 12/31/2013

Exhibit C (continued)

EXHIBIT MAP - VACATED EASEMENT

LOCATED IN THE SE 1/4 OF SECTION 2, T. 3 S., R. 1 W.,
W.M., CITY OF WILSONVILLE, WASHINGTON COUNTY, OREGON
SEPTEMBER 24, 2013

REGISTERED
PROFESSIONAL
LAND SURVEYOR

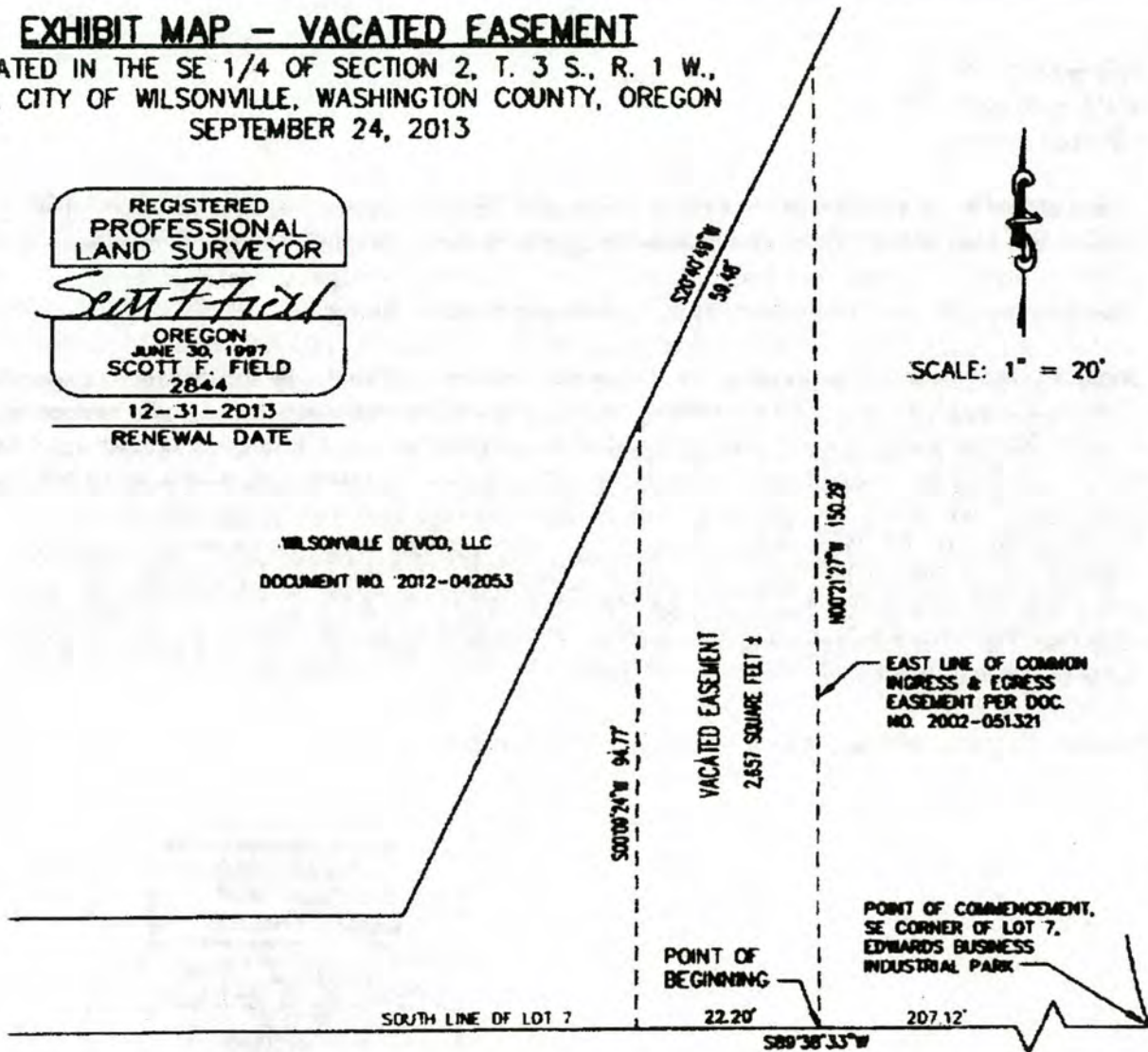
Scott F. Field

OREGON
JUNE 30, 1997
SCOTT F. FIELD
2844

12-31-2013
RENEWAL DATE

WILSONVILLE DEVCO, LLC
DOCUMENT NO. 2012-042053

SCALE: 1" = 20'



JOB NAME:	WILSONVILLE CARL'S JR.
JOB NUMBER:	787
DRAWING NUMBER:	787 EASE
DRAWN BY:	SFF
CHECKED BY:	CHS

**NORTHWEST
SURVEYING, Inc.**

1815 NW 169TH PLACE
SUITE 2090
BEAVERTON, OR 97008
PHONE: (503) 848-2127
FAX: (503) 848-2179

Exhibit D
New Easement Area

September 23, 2013
NWS Project No. 787
Cross Access Line

A line located in the southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Lot 7, Edwards Business Industrial Park, thence along the south line of said Lot 7, South 89°38'33" West a distance of 379.33 feet to a point 12.00 feet east of the east line of Parcel I as described in deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, recorded April 21, 1995 as Document No. 95-027726, Deed Records of Washington County, Oregon; thence parallel with said east line, North 00°09'24" East a distance of 18.00 feet to a 5/8 inch iron rod located at the southwest corner of that property conveyed to Wilsonville Devco, LLC by deed recorded May 24, 2012 as Document No. 2012-042053, Deed Records of Washington County, Oregon; thence along the south line of said Wilsonville Devco, LLC property, North 89°38'33" East a distance of 121.17 feet to the most southerly southeast corner thereof; thence along the easterly boundary of said Wilsonville Devco, LLC property, North 20°40'49" East a distance of 112.99 feet to the Point of Beginning; thence continuing along said easterly boundary, North 20°40'49" East a distance of 60.55 feet to the Point of Terminus.



RECEIVED 12/31/2013

EXHIBIT MAP - CROSS ACCESS LINE

LOCATED IN THE SE 1/4 OF SECTION 2, T. 3 S., R. 1 W., W.M.,
CITY OF WILSONVILLE, WASHINGTON COUNTY, OREGON
SEPTEMBER 23, 2013

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Scott F. Field

OREGON
JUNE 30, 1987
SCOTT F. FIELD
2844

12-31-2013
RENEWAL DATE

SW 95TH AVENUE

CROSS-ACCESS LINE

POINT OF
TERMINUS

SCALE: 1" = 20'

WILSONVILLE DEVCO, LLC
DOCUMENT NO. 2012-042053

POINT OF
BEGINNING

POINT OF COMMENCEMENT,
SE CORNER OF LOT 7,
EDWARDS BUSINESS
INDUSTRIAL PARK

N89°38'33"E 121.17'

379.33'

SOUTH LINE OF LOT 7

S89°38'33"W 391.33'

EAST LINE OF PARCEL 1
DOC. NO. 95-027726

JOB NAME: WILSONVILLE CARL'S JR.

JOB NUMBER: 787

DRAWING NUMBER: 787 EASE

DRAWN BY: SFF

CHECKED BY: CHS

NORTHWEST
SURVEYING, Inc.

1815 NW 189TH PLACE
SUITE 2090
BEAVERTON, OR 97008
PHONE: (503) 848-2127
FAX: (503) 848-2179

Illustration of New Easement Area
Exhibit E

25-6
11
Pacific NW Title
02214342-W
T.O.

PIPELINE EASEMENT
Grantor - Limited Liability Company

After recording, return to:
CITY RECORDER
CITY OF WILSONVILLE
30000 SW TOWN CENTER LOOP, E.
WILSONVILLE OR 97070

Washington County, Oregon 2003-034139
03/07/2003 02:53:11 PM
D-E Cnt=1 Stn=7 K GRUNEWALD
\$25.00 \$6.00 \$11.00 - Total = \$42.00



00279475200300341380050056

I, Jerry Hanson, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Jerry Hanson
Jerry R. Hanson, Director of Assessment and Taxation,
Ex-Officio County Clerk



KNOW ALL MEN BY THESE PRESENTS, that EXXON OF WILSONVILLE, LLC., AN
OREGON LIMITED LIABILITY COMPANY
hereinafter referred to as "Grantor", for the consideration hereinafter stated, does forever grant unto the CITY OF WILSONVILLE, a municipal corporation, hereinafter referred to as "Grantee", a permanent right-of-way and easement over and along the full width and length of the premises described as follows, to-wit:

1. Legal description is set forth in EXHIBIT "A" attached hereto, and incorporated by reference herein.
2. A map of the above legal description is set forth in EXHIBIT "B" and incorporated by reference herein.

together with a temporary working easement as follows: _____

The temporary working easement shall be effective only for and during the time of the initial construction and laying of the pipeline hereinafter described.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 0. *However, the actual consideration consists of or includes other property or value given or promised which is (the whole/part of the) consideration (indicate which)*. (If not applicable, the sentence between the symbols * should be deleted. See ORS 93.030.)

In the event the permanent right-of-way and easement shall no longer serve a public purpose, it shall revert back to the Grantor, its successors and/or assigns; and

TO HAVE AND TO HOLD the above described permanent right-of-way and easement unto said Grantee in accordance with the conditions and covenants as follows:

1. The permanent right-of-way and easement shall include the right, privilege, and authority, to the said City of Wilsonville, to excavate for, and to construct, build, install, lay, patrol, operate, maintain, repair, replace and remove an underground sanitary sewer, storm drain, or water pipeline or pipelines, with all appurtenances incident thereto or necessary therewith, including aboveground valve boxes, fire hydrants or manholes, for the purpose of carrying and conveying sewage wastes, surplus waters, or potable water as the case may be, and for similar uses in, under, and across the said premises, and to cut and remove from said right-of-way any trees and other obstructions which may endanger the safety or interfere with the use of said pipelines, appurtenances attached to or connected therewith; and the right of ingress and egress to and over said above described premises at any and all times for doing anything necessary, useful, or convenient for the enjoyment of the easement hereby granted. No building shall be constructed over the pipeline easement right-of-way.



2003-34139

2. Grantee will indemnify and hold harmless the Grantor, its successors and/or assigns from claims for injury to person or property as a result of the negligence of the Grantee, its agents or employees in the construction, operation, or maintenance of said pipeline.

3. The City of Wilsonville, upon the initial installation, and upon each and every occasion that the same be repaired, replaced, renewed, added to, or removed, shall restore the premises of the Grantor, and any improvements disturbed by the City, to as good condition as they were prior to any such installation work, including, but not limited to, the restoration of any topsoil, lawn and nursery stock of like kind and quality subject to reasonable substitution as may be necessitated by obstruction or interference with the use granted herein.

4. Grantor may, at its option and expense, relocate said right-of-way, easement and associated public appurtenances and utilities, provided such relocation is accepted by the City as complying with applicable codes and standards, land use laws and regulations.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

IN WITNESS WHEREOF, the undersigned grantor has executed this easement, this 12 day of

September, 2002

GRANTOR:

Exxon of Wilsonville, LLC
(Name of Limited Liability Company)

By:

(Agent)

(Agent)

STATE OF OREGON

County of Clackamas

} ss

On this 12 day of September, 2002, before me, a notary public in and for said County and State, personally appeared Garry L. LaPoint and Katherine M. LaPoint known to me to be the person whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

Diane M. Pankonin

NOTARY PUBLIC FOR OREGON

My Commission Expires: 11/29/03





STATE OF OREGON

County of _____

) ss

On this _____ day of _____, 200__, before me, a notary public in and for said County and State, personally appeared _____ known to me to be the person whose name _____ subscribed to the within instrument and acknowledged that _____ executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

NOTARY PUBLIC FOR OREGON

My Commission Expires: _____

APPROVED AS TO FORM

this 27 day of March, 2003.

Michael E. Kohlhoff
Michael E. Kohlhoff, City Attorney
City of Wilsonville, Oregon

APPROVED AS TO LEGAL DESCRIPTION

this 27th day of February, 2003.

Michael A. Stone
Michael A. Stone, P.E., City Engineer
City of Wilsonville, Oregon

ACCEPTED on behalf of the City of Wilsonville, OR,
this 28th day of February, 2003.

Arlene Loble
Arlene Loble, City Manager

ATTESTED TO:

Sandra C. King
Sandra C. King, CMC, City Recorder
Date: 2/28/03

STATE OF OREGON

County of Clackamas

) ss

On this 28th day of February, 2003, before me personally appeared Arlene Loble, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that she executed the same.

Starla J. Schur
NOTARY PUBLIC FOR OREGON

My Commission Expires: June 16, 2003



2003-34139

EXHIBIT A
TRACT 2

WATERLINE EASEMENT

A 15.00 foot wide Public Waterline Easement located in Lot 7 of "EDWARDS BUSINESS INDUSTRIAL PARK" within the South one-half of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon the centerline of which being particularly described as follows:

Commencing at the Southeast corner of Lot 7, "EDWARDS BUSINESS INDUSTRIAL PARK", City of Wilsonville, Washington County, Oregon; thence along the westerly line of Boones Ferry Road as described in the deed from John Q. Hammons to the State of Oregon by and through its Department of Transportation recorded April 21, 1995 as Document Number 95027726; along the arc of a 116.96 foot radius non-tangent curve to the right, said curve having a radial bearing of North 74°47'51" East, central angle of 30°31'07", arc length of 62.30 feet, the chord of which bears North 00°03'13" East, 61.55 feet; thence along the arc of a 2837.79 foot non-tangent curve to the left, said curve having a radial bearing of South 52°32'36" West, a central angle of 01°19'57", an arc length of 66.00 feet, (the chord of which bears North 38°07'22" West, 66.00 feet); thence continuing on a non-tangent line along said westerly line North 40°56'40" West, 81.06 feet; thence South 46°33'47" West, 48.10 feet; thence North 38°02'13" West, 13.49 feet; thence leaving said westerly line South 51°57'47" West, 7.50 feet to the TRUE POINT OF BEGINNING of said centerline; thence North 38°02'13" West parallel to said westerly line of Boones Ferry Road, 64.17 feet; and the terminus of said centerline, said terminus being on the northerly line of Tract 2 of a property line adjustment survey as shown on Survey Number 28,198, Washington County Survey Records, the sidelines of said easement being lengthened or shortened to terminate at said northerly boundary of said Tract 2, the easement area encompassing 963 square feet, more or less.

940WEASE.820

Expires 12/31/03

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Malcolm N. Clark

OREGON
JULY 12, 1983
MALCOLM N. CLARK
601

EXHIBIT B



Exp. 12/31/03

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Malcolm N. Clark

OREGON
JULY 12, 1963
MALCOLM N. CLARK
601

COMMERCE CIRCLE

WESTERLY LINE
BOONES FERRY ROAD
ODOT DEED
DOC NO 95027726

RADIUS= 100.00'
Δ= 37°13'18"
ARC= 64.96'
CHORD= 63.83'
CHORD BRG= S 45°05'58"E

RADIUS= 45.00'
Δ= 67°23'57"
ARC= 52.94'
CHORD= 49.94'
CHORD BRG= N 82°35'16"E

RADIUS= 116.16'
Δ= 48°43'29"
ARC= 98.78'
CHORD= 95.83'
CHORD BRG= N 24°31'08"E

RADIAL N 63°30'41"E

RADIUS= 595.65'
Δ= 02°45'38"
ARC= 28.70'
CHORD= 28.70'
CHORD BRG= N 27°52'08"W

BOONES FERRY ROAD

95th AVENUE

TRACT "A", SN 28,198

TRACT 1
SN 28,198

S 51°57'47"W
20.00'

S 20°40'49"W 186.08'

TRUE POINT OF
BEGINNING
TRACT 2 EASEMENT

TRACT 2
SN 28,198

TRACT 2
15' PUBLIC
WATERLINE EASEMENT

RADIUS= 2837.79'
Δ= 01°19'57"
ARC= 66.00'
CHORD= 66.00'
CHORD BRG= N 38°07'22"W

WESTERLY LINE
BOONES FERRY ROAD
ODOT DEED
DOC NO 95027726

S 89°38'33"W 121.22'

S 89°38'33"W 371.83'

RADIUS= 116.96'
Δ= 30°31'07"
ARC= 62.30'
CHORD= 61.55'
CHORD BRG= N 00°03'13"E

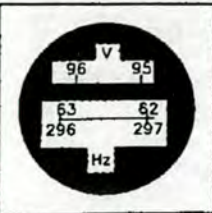
RADIAL
S 52°32'36"W

RADIAL
N 74°47'51"E

SOUTHEAST CORNER LOT 7
EDWARDS BUSINESS INDUSTRIAL PARK

FD 1" IRON PIPE

Scale: 1"=60'



DE HAAS
&
ssociates, Inc.

Consulting Engineers & Surveyors

Suite 300 - AGC Center
9450 S.W. Commerce Circle
Wilsonville, Oregon 97070

PHONE: (503) 682-2450
FAX: 682-4018

Waterline Easement

DATE

October 9, 2000

FILE No.

97.940.902



01738562201200681010210219

I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.
Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk



Eph
After recording, return to:
City Recorder
City of Wilsonville
29799 SW Town Center Loop E.
Wilsonville OR 97070

DEVELOPMENT AGREEMENT

This Development Agreement is entered into by and between the City of Wilsonville ("City"), Wilsonville Devco LLC, an Oregon limited liability company ("Developer"), and two neighboring impacted businesses, LaPoint Business Group, LLC, an Oregon limited liability company, operating a Chevron gasoline station and a convenience store ("LaPoint"), and WHI Hotel, LLC, an Oregon limited liability company operating as a Holiday Inn hotel ("Holiday Inn"). The effective date of this Development Agreement is July 3, 2012 ("Effective Date"). All of the foregoing parties are referred to collectively as the "Parties" and in the singular as a "Party." "Shared Driveway Parties" are all of the Parties listed above, excluding the City.

RECITALS

- A. Developer proposes to construct a Carl's Jr. fast food restaurant and other yet to be determined retail ("Development") on its property located adjacent to the Holiday Inn and LaPoint businesses ("Developer Property"). The locations of the LaPoint property, Holiday Inn property, and Developer Property are legally described and depicted on the map attached hereto as Exhibit A, and are collectively referred to as the "Neighboring Properties."
- B. The proposed Development is located adjacent to 95th Avenue in Wilsonville, Oregon and would be accessed via 95th Avenue. The Neighboring Properties, including the Developer Property, share a common driveway ("Shared Driveway") that allows for access to 95th Avenue.
- C. The City intends to make certain improvements to 95th Avenue this summer ("Roadway Improvements"), whether or not this Development Agreement is entered into. Based on a traffic study recently conducted for the City by DKS Associates in conjunction with the proposed Development, dated May 2012, DKS, Developer, and the City have discussed a driveway configuration requiring certain enhancements and modifications be made to the proposed Roadway Improvements in order to better serve the proposed Development ("Enhanced Roadway Improvements"). The proposed Enhanced Roadway Improvements will cost the City approximately Forty Thousand Dollars to Sixty Thousand Dollars (\$40,000-\$60,000) more than the current scope of work for the Roadway Improvements.

- D. The City is willing to make the Enhanced Roadway Improvements in consideration for Developer making certain on-site improvements to the Neighboring Properties in order to help relieve congestion on the Shared Driveway and to make the traffic flow more smoothly to and from 95th Avenue ("Developer Improvements"). In consideration of the City making the Enhanced Roadway Improvements, Developer has agreed to make the Developer Improvements, more particularly described in **Section III** below.
- E. Holiday Inn and LaPoint support the Enhanced Roadway Improvements and Developer Improvements and agree to fully cooperate with the City and Developer in the construction of the Enhanced Roadway Improvements and Developer Improvements.
- F. Developer will be solely responsible for all costs associated with the Developer Improvements.

AGREEMENT

In consideration of the foregoing Recitals, and incorporating all of the above Recitals by reference in this Development Agreement as if fully set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all of the above-named Parties agree as follows:

I. NEW DEVELOPMENT

Developer intends to construct a retail development on Developer's Property, which may contain a Carl's Jr. fast food restaurant and other retail stores. Nothing in this Development Agreement ensures that Developer's proposed development will be approved by the City. Developer will be required to go through all application and permitting processes required by the City for commercial development and to pay all fees required by the City to be paid for such commercial development in order to obtain approval to move forward with Developer's proposed Development ("Development Approval"). Nothing contained herein is a guarantee that Development Approval will be granted by the City.

II. CITY'S ENHANCED ROADWAY IMPROVEMENTS (City Obligations)

In consideration for Developer making the Developer Improvements, described in **Section III**, the City agrees to make the Enhanced Roadway Improvements generally depicted on **Exhibit B** and generally described as follows:

- Install a concrete sidewalk along the length of the Shared Driveway adjacent to 95th Avenue in the right-of-way.
- Bring storm manhole in right-of-way to grade.
- Install curb along northeast return of the Shared Driveway and 95th Avenue.
- Install concrete commercial Shared Driveway for access to 95th Avenue that lies within right-of-way north of the existing driveway back of curb;

- Transition existing sidewalk north of and adjacent to access drive to meet grades of new concrete driveway.
- Paint and maintain an approximately 50 foot "DO NOT BLOCK DRIVEWAY" signage on 95th Avenue at the inbound and outbound lanes, using eight inch or larger lettering.
- Allow one (1) inbound and two (2) outbound lanes of traffic into the Shared Driveway area at 95th Avenue within the right-of-way. (First 20 feet is one-way inbound and then converts to two lanes within the Shared Driveway.)
- Provide required legal notice to the Parties with respect to any changes being made to their access to 95th Avenue and an opportunity for the Parties to provide comments, understanding the Oregon Department of Transportation has the final authority with respect to any roadway modifications.
- City to stripe egress within the right-of-way.

III. DEVELOPER IMPROVEMENTS (Developer Obligations)

In consideration of the City's installation of the above-described Enhanced Roadway Improvements, Developer agrees to make the Developer Improvements generally depicted on **Exhibit B** and generally described as follows:

- Remove and install curb, gutter, and storm facilities, as necessary, to close the existing Holiday Inn egress to the Shared Driveway and create a new egress. The new egress shall include a driveway that is 16.6 feet wide and Developer shall place "Do Not Block" signage across twelve feet of space in front of the driveway so that cars in the stacking lane do not block Holiday Inn's egress driveway, as depicted on **Exhibit B**.
- Widen the existing Holiday Inn ingress from the Shared Driveway by approximately 5 feet by removing and installing the curb surrounding the Holiday Inn sign and replacing with crushed rock base and asphalt drive.
- Remove a parking stall island and existing tree on Holiday Inn property and replace with asphalt parking with section matching existing parking lot section.
- Add a parking stall island on Holiday Inn property.
- Narrow parking stall island on Holiday Inn property by removing and installing curb and asphalt.
- Remove the median island in the Shared Driveway and install asphalt.
- Install an entry landscape island and a pedestrian refuge island in the middle of the relocated portion of the Shared Driveway.
- Widen the Shared Driveway to four (4) lanes.
- Stripe the Shared Driveway to four (4) lanes, excepting the Shared Driveway entrance (right-of-way), which will be striped to three (3) lanes to discourage travel.
- Remove curb along LaPoint's western property line and install asphalt, as depicted on **Exhibit B**.
- Install stop bars and signs at Developer Property egress to the Shared Driveway and at Holiday Inn egress to the Shared Driveway, as depicted on **Exhibit B**.
- Provide construction easement to the City in order to allow the City to install NE curb return of Shared Driveway, to 95th, and for sidewalk transition and driveway construction.

- Adjust manholes and area inlets in the Shared Driveway to grade.
- All construction within the Shared Driveway or on Holiday Inn property shall be of the same standard as existing construction.
- Relocate Chevron sign and security cameras to either the Landscape Entry Island, centered North/South but as close to the right-of-way as LaPoint wishes to place the signage, as long as it does not overhang the right-of-way, including the sidewalk or, in the alternative, to be located on the southwest corner of Developer's Property next to or within the detention pond location to be agreed upon between Developer and LaPoint and as close to the right-of-way as LaPoint wishes to place the signage, as long as it does not overhang the right-of-way, including the sidewalk. If sign is relocated to Developer's Property, Developer shall provide LaPoint with a sign, access and maintenance easement. LaPoint will seek approval from Chevron to enter into a shared signage agreement with Developer for Developer's proposed fast food sign.
- If a shared signage agreement is entered into between Developer and LaPoint/Chevron, each party will be responsible for the maintenance of their own signage and will share in the maintenance cost or replacement of the pole equally, if any.
- Agreements between LaPoint and Developer, to be agreed upon in terms of markings and placement in order to dedicate the right-hand ingress lane for use as a stacking area for LaPoint gasoline station customers. LaPoint reserves the right to install reflective buttons or flexisticks to further identify the stacking area if gasoline station traffic later warrants, at LaPoint's sole cost and expense.
- Provide Holiday Inn a non-exclusive easement for egress over Developer's property located within the Shared Driveway.
- Preparation of **Exhibit B**, to this Development Agreement, as approved by all Parties and as attached hereto.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.
- Provide an easement for and allow LaPoint to construct a trash enclosure and recycling area on Developer's property, adjacent to the proposed trash enclosure on Developer's eastern property line. LaPoint's trash enclosure must be constructed with like kind materials, craftsmanship and resemble the same aesthetic look as Developer's trash enclosure.
- Developer and LaPoint have agreed to amend the existing easement agreement by vacating a portion of Developer's easement over LaPoint's property in exchange for LaPoint granting Developer a reciprocal cross-easement on Developer's eastern property line and LaPoint's western property line for curb cuts between the properties and LaPoint's access to trash enclosure on Developer's Property, as illustrated on **Exhibit C** attached hereto. The amended easement agreement will be part of a separate agreement between Developer and LaPoint.
- Developer will include LaPoint's trash enclosure as part of Developer's plans for the purpose of DRB review and permit approval. The cost of the trash enclosure permit and construction will be at LaPoint's sole cost and expense.

The foregoing Developer Improvements shall be made at Developer's sole expense and are agreed to be a reasonable and agreed upon exchange for the Enhanced Roadway Improvements that the City has agreed to make in order to improve traffic flow to and from the Neighboring

Properties onto 95th Avenue. The foregoing Developer Improvements must be completed, inspected by the City, and deemed complete by the City before the City will issue any temporary occupancy permits to Developer, assuming Development Approval. In addition, regardless of whether Development Approval by the City is granted or denied, Developer will be legally obligated to make the Developer Improvements set forth herein, unless the City agrees otherwise, in its sole discretion to release Developer from any or all of the foregoing obligations, because the City will be constructing the Enhanced Roadway Improvements in consideration of and in reliance upon this Development Agreement, including Developer's agreement to make the Developer Improvements in exchange for the Enhanced Roadway Improvements. Developer's obligations hereunder will therefore run with the land and this Agreement will be recorded against all of the Neighboring Properties.

IV. LAPOINT AGREEMENT (LaPoint Obligations)

In consideration for the City's installation of the above-described Enhanced Roadway Improvements and Developer's construction of the Developer Improvements, both as generally described herein and generally depicted on **Exhibit B**, LaPoint agrees to allow the following with respect to its property, as also generally depicted on **Exhibit B**:

- Allow the current Chevron sign and light pole with security cameras to be relocated as described in Section III above.
- Cooperate with Developer in making all of the required improvements to the Shared Driveway, at Developer's cost, as provided for in Section III and as depicted on **Exhibit B**.
- Allow the Holiday Inn egress driveway portion of its easement to be relocated to the location on LaPoint property, as described above and as depicted on **Exhibit B**.
- Allow pavement signage to be installed by Developer across a twelve-foot area directly in front of the new egress driveway reading DO NOT BLOCK.
- Provide construction easement to allow construction of private ingress and egress improvements, as depicted on **Exhibit B**.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.
- Pay all of the costs associated with the installation and maintenance of any reflective buttons or flexisticks to identify the stacking area.

Except for installation and maintenance of reflective buttons or flexisticks, which shall be LaPoint's responsibility, all of the foregoing work described in this Section IV will be done by Developer, at Developer's cost. LaPoint and Developer will work cooperatively with respect to timing of the foregoing removals and installations.

V. HOLIDAY INN AGREEMENT (Holiday Inn Obligations)

In consideration for the City's installation of the above-described Enhanced Roadway Improvements and Developer's construction of the Developer Improvements, both as generally described herein and generally depicted on **Exhibit B**, Holiday Inn agrees to allow the following with respect to its property, as also generally depicted on **Exhibit B**:

- Allow its current egress driveway to the Shared Driveway to be vacated and permanently closed and replaced by Developer, at Developer's cost and expense, with a new egress. The new egress shall include a driveway that is 16.6 feet wide, as depicted on **Exhibit B**.
- Relinquish three (3) parking spaces to accommodate the Developer Improvements, including relocation of Holiday Inn's easement to egress.
- Allow its existing ingress to be widened by approximately 5 feet in order to better accommodate trucks access.
- Restripe its parking stalls, as needed, at Holiday Inn's expense.
- Provide construction easement to allow construction of private ingress and egress improvements, as depicted on **Exhibit B**.
- Share one third of the cost of annual maintenance of all striping and signage painted within the boundary of the Shared Driveway.

Except for stall restriping (which shall be Holiday Inn's responsibility), all of the foregoing work described in this Section V will be done by Developer, at Developer's cost and expense. Holiday Inn and Developer will work cooperatively with respect to timing of the foregoing improvements.

VI. Obligations of All Shared Driveway Parties

All Shared Driveway Parties will use good faith reasonable efforts not to unreasonably interfere with or impede Shared Driveway usage. Developer and Holiday Inn agree that the right ingress lane will be used primarily by LaPoint as a stacking lane for gasoline station customers. The left ingress lane shall be used primarily by customers of Developer's Property and LaPoint's C-Store customers, vendors, diesel pumps and fuel deliveries. Holiday Inn recognizes and agrees that the egress driveway across the LaPoint property may occasionally be temporarily blocked by fuel trucks, RV's, delivery trucks, or large trucks with trailers from time-to-time entering the site, however, such blockage will be short term as the vehicles maneuver into place as the egress driveway crosses over the stacking lane. An area twelve feet (12 ft) in width will be clearly marked with DO NOT BLOCK letters painted on the pavement. LaPoint will use reasonable good faith efforts to monitor public compliance with this signage and require customers to move out of the DO NOT BLOCK area but Holiday Inn recognizes and agrees that at times a customer may fail to abide by the signage and LaPoint shall not have liability for such blockage. Holiday Inn customers will not be allowed to cut into the stacking lane and if such customers wish to get gasoline, they will be required to circle around to the end of the stacking lane. Developer and LaPoint may make minor revisions to striping, signage and traffic flow within the Shared Driveway area as they agree as long as such minor revisions do not impact traffic coming to or from 95th Avenue, do not impede the Holiday Inn ingress or egress, are not in violation of Development Review Board conditions of approval, and are in compliance with City permit

requirements. Redirection of traffic that could create a negative impact on traffic flow to and from 95th Avenue must be approved, in writing by the City, in accordance with City permitting requirements. The Parties agree that except as modified hereby, all ingress, egress and common area easements and other agreements between some or all of the Parties with respect to or relating to use of the Shared Driveway and Neighboring Properties shall remain in place (collectively "Shared Driveway/Neighboring Property Agreements"). Wherever those Shared Driveway/Neighboring Property Agreements directly conflict with the provisions of this Development Agreement, this Development Agreement will control.

VI. MISCELLANEOUS PROVISIONS

Section 6.1 – Further Assurances

Each Party shall execute and deliver any and all additional drawings, specifications, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, in good faith to carry out the intent of the Parties hereto. Developer understands and agrees that no occupancy permit will be granted for the Development until the Developer Improvements have been completed and approved by the City as meeting the requirements set forth herein.

Section 6.2 – Modification or Amendment

No amendment, change, or modification of this Development Agreement shall be valid unless in writing and signed by the Parties hereto.

Section 6.3 – Relationship

Nothing herein shall be construed to create an agency relationship or a partnership or joint venture between the Parties.

Section 6.4 – Maintenance

Nothing contained herein is intended to address anything concerning maintenance of the Shared Driveway. Maintenance is an issue to be negotiated between the owners of the Neighboring Properties who use the Shared Driveway.

Section 6.5 – Burden and Benefit

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

Section 6.6 – No Continuing Waiver

The waiver of any Party of any breach of this Development Agreement shall not operate or be construed to be a waiver of any subsequent breach.

Section 6.7 – Applicable Law

This Development Agreement shall be governed by and construed under the laws of the State of Oregon. Jurisdiction is in Clackamas County, Oregon.

Section 6.8 – Legal Fees

If any Party commences legal proceedings, including arbitration, mediation, or bankruptcy, for any relief against any other Party arising out of or related to this Development Agreement, or the breach thereof, the losing Party shall pay the prevailing Party's legal costs and expenses, including, but not limited to, arbitration costs, reasonable attorneys' fees, and expert witness fees, as determined by the court or the arbitrator at the trial level or on any appeal.

Section 6.9 – Time of Essence

Time is expressly declared to be of the essence of this Development Agreement.

Section 6.10 – Notices

All notices, demands, consents, approvals, and other communications which are required or desired to be given by any Party to each other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States Mail at its address set forth below, or at such other address as such Party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three (3) days after mailing by United States Mail, or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City: City of Wilsonville
 Attn: City Engineer
 29799 SW Town Center Loop East
 Wilsonville OR 97070

To Developer: Wilsonville Devco, LLC
 Attn: Josh Veentjer, Managing Member
 4188 SW Greenleaf Drive
 Portland OR 97221

To LaPoint: LaPoint Business Group, LLC
 Attn: Garry L. LaPoint, Registered Agent
 850 Lawson Ave
 Woodburn OR 97071

To Holiday Inn: Holiday Inn, Portland South Hotel & Convention Ctr.
 Attn: General Manager
 25425 SW 95th Ave
 Wilsonville OR 97070

Section 6.11 – Rights Cumulative

All rights, remedies, powers, and privileges conferred under this Development Agreement on the Parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

Section 6.12 – Counterparts

This Development Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Section 6.13 – No Third-Party Beneficiaries and No Assignment

None of the duties and obligations of any Party under this Development Agreement shall in any way or in any manner be deemed to create any rights in any person or entity other than the Parties hereto or their respective heirs, successors and assigns.

Section 6.14 – Obligations Run with Land

This Development Agreement shall run with the land and be binding upon any successors and assigns of any of the Parties hereto.

Section 6.15 – Dispute Resolution

6.15.1 Mediation. All disputes arising out of this Development Agreement shall first be submitted to mediation. Any Party desiring mediation shall provide the other Parties with a written notice (the "Request to Mediate"), which shall set forth the nature of the dispute. The Parties shall in good faith cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the Parties, in the Parties' sole discretion, within twenty (20) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon in writing by the Parties, any Party may make demand for arbitration pursuant to the following paragraph.

6.15.2 Arbitration or Litigation. Any dispute arising under this Development Agreement which is not resolved through mediation, may be submitted by any Party to arbitration, to be conducted in Wilsonville, Oregon before a single arbitrator selected by mutual agreement of the Parties. The arbitrator shall have substantial experience in commercial real estate and construction disputes. If the

Parties are unable to mutually select an arbitrator within twenty (20) days, then any Party may file an action in Clackamas County Circuit Court in lieu of arbitration and there will be no obligation to arbitrate. If arbitrated, judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter.

Section 6.16 – Representations and Warranties

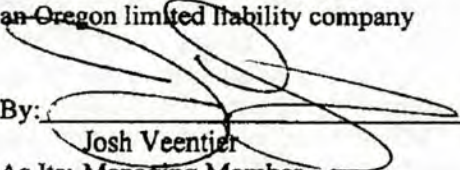
Each of the Parties hereto represents and warrants that he/she is the authorized representative of the owners of each respective Neighboring Property and hereby warrants full authority to enter into this Agreement and bind all persons with ownership interest in the respective properties. The Parties signing below also hereby warrant that entry into this Development Agreement and the enforcement of its terms will not violate any loan covenants or other agreements pertaining to any of the land or improvements impacted hereby.

Section 6.17 – Legal Review

All of the Parties to this Development Agreement hereby affirm that they have been represented in the negotiation hereof by their own independent legal counsel who have reviewed this Development Agreement and advised their respective client concerning the same. Therefore it shall be interpreted accordingly and shall not be construed against the drafter. Any revisions that the Shared Driveway Parties wish to make to their respective easements not otherwise covered by this Development Agreement will be negotiated between them and the City will not be a party thereto.

IN WITNESS WHEREOF, the Parties have hereunto set their hands as of the day and year first written above.

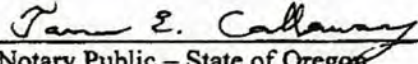
WILSONVILLE DEVCO, LLC
an Oregon limited liability company

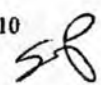
By: 
Josh Veentjer
As Its: Managing Member

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on August 3, 2012,
by Josh Veentjer, as Managing Member of
Wilsonville Devco, LLC.




Notary Public – State of Oregon

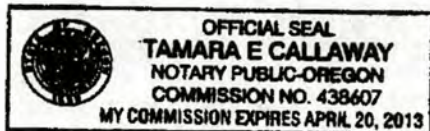


LAPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: [Signature]
Garry L. LaPoint
As Its: Active Member

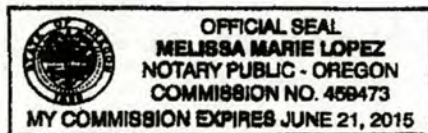
STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on August 3, 2012,
by Garry L. LaPoint, as Active Member of
LaPoint Business Group, LLC.



Tamara E. Callaway
Notary Public - State of Oregon

WHI HOTEL, LLC,
an Oregon limited liability company



By: [Signature]
Sungmin Park
As Its: Owner

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on 07/27/12, 2012,
by Sung-min Park, as Owner of
WHI Hotel, LLC.

Melissa Marie Lopez FKA Melissa Lopez
Notary Public - State of Oregon

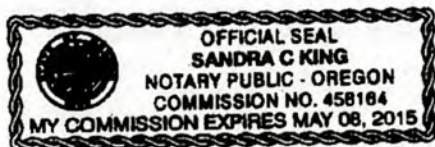
CITY OF WILSONVILLE,
an Oregon municipal corporation

By: *Bryan Cosgrove*
Bryan Cosgrove
As Its: City Manager

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on August 6, 2012,
by Bryan Cosgrove, as the City Manager of the City of Wilsonville.

Sandra C King
Notary Public – State of Oregon



carl's jr'development agr

BOONES FERRY ROAD (OR141)

WILSONVILLE
DEVCO,
L.L.C.

LAPPOINT
BUSINESS
GROUP L.L.C.

95th AVENUE

WILSONVILLE HOLIDAY
PARTNERS, LLC

EXHIBIT A

SK

EXHIBIT "A"

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.83 feet to a point on the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

EXHIBIT "A"

PARCEL I:

A parcel of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 391.33 feet to the East line of Parcel I in Deed from John Q. Hammons, to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North 00°09'24" East, along said "ODOT" Deed, a distance of 359.27 feet; thence continuing along said "ODOT" Deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of 062°51'50", a chord bearing of North 31°35'19" East, a chord length of 133.67 feet to the intersection with the South line of SW Commerce Circle as dedicated in the plat of EDWARDS BUSINESS INDUSTRIAL PARK; thence non-tangent North 70°34'24" East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius 25.00 feet, arc length of 32.72 feet, central angle of 074°59'06", a chord bearing of South 71°56'03" East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of 000°41'10", a chord bearing of South 24°13'24" East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 595.65 feet, arc length of 85.44 feet, central angle of 008°13'06", a chord bearing of South 25°08'24" East, and a chord length of 85.38 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South 15°09'35" West, a distance of 83.41 feet, South 38°02'13" East, a distance of 200.44 feet, North 46°33'47" East, a distance of 48.10 feet, South 40°58'40" East, a distance of 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of 00°21'11", a chord bearing of South 38°36'45" East, and a chord length of 17.49 feet to a point 100.00 feet North of, when measured at right angle to, the South line of said Lot 7; thence continuing along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of 00°58'46", a chord bearing of South 37°56'47" East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of 030°31'07", a chord bearing South 00°03'01" West, and a chord length of 61.56 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel I in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to and 12.00 feet Easterly of said "ODOT" line, a distance of 347.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of

EXHIBIT "A"

(Continued)

61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Prairie Corp., an Oregon corporation, by instrument recorded July 19, 2000 as Fee No. 2000-48398, more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 28.13 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof conveyed to State of Oregon, by and through its Department of Transportation, in Deed recorded April 21, 1995, as Fee No. 95027726.

FURTHER EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet; thence South 20°29'49" West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North 00°09'24" East parallel to said East line, 6.00 feet to the true point of beginning.

EXHIBIT "A"
(Continued)

EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

EXHIBIT "A"

PARCEL I:

A portion of Lot 8, EDWARDS BUSINESS INDUSTRIAL PARK NO. 2, a duly recorded subdivision in Washington County, Oregon located in the Southeast one quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, said portion of Lot 8 being more particularly described as follows:

Beginning at a 2 inch iron pipe at the initial point of said Edwards Business Industrial Park No. 2, said initial point being on the Westerly line of S.W. Frontage Road, also known as Lower Boones Ferry Road; thence following the boundary of said Lot 8, along the arc of a 117.00 foot radius non-tangent curve left through a central angle of 15°30'25", an arc distance of 31.67 feet (the chord of which bears South 22°58'48" East, a distance of 31.57 feet) to a 5/8 inch iron rod (Plat record: central angle, 15°30'50"; radius 117 feet; arc length 31.68 feet; chord, South 22°58'17" East, a distance of 31.58 feet); thence South 30°34'43" East a distance of 213.04 feet to a 5/8 inch iron rod (Plat record: South 30°34'28" East a distance of 212.92 feet); thence South 00°05'07" East a distance of 130.27 feet to a 5/8 inch iron rod (Plat record: South 00°07'50" East a distance of 130.27 feet); thence South 30°06'16" east a distance of 136.08 feet to a 5/8 inch iron rod (Plat record: South 30°03'30" East a distance of 136.04 feet); thence South 59°37'27" West a distance of 13.17 feet to a 5/8 inch iron rod (Plat record: South 59°56'30" West a distance of 13.10 feet); thence Southwesterly along the arc of a 243.00 foot radius curve right through a central angle of 29°42'03" an arc distance of 125.97 feet to a 5/8 inch iron rod (the chord of which bears South 74°47'32" West a distance of 124.56 feet) (Plat record: central angle 29°42'03"; radius 243.00 feet; arc length 125.97 feet; chord, South 74°47'32" West, 124.56 feet); thence South 89°38'33" West (Plat record: South 89°38'33" West) a distance of 410.16 feet (Survey Number 26,398 Record: 410.17 feet) to a 5/8 inch iron rod at the intersection of the Southerly boundary of said Lot 8 and the Easterly right of way line of 95th Avenue; thence North 44°12'00" West a distance of 50.04 feet to a 5/8 inch iron rod 36.00 feet opposite and Easterly of Engineer's Centerline Station 66+45.00, when measured at right angles to the centerline of 95th Avenue; thence North 00°08'50" East a distance of 405.00 feet to a 5/8 inch iron rod 36.00 feet opposite and Easterly of Engineer's Centerline Station 70+50.00 when measured at right angle to the centerline of 95th Avenue; thence North 89°51'10" West a distance of 5.00 feet to a 5/8 inch iron rod 31.00 feet opposite and Easterly of said Engineer's Centerline Station 70+50.00; thence North 00°08'50" East a distance of 58.91 feet to a 5/8 inch iron rod marking the intersection of the Easterly right of way line of 95th Avenue and the Northerly boundary of said Lot 8; thence leaving the Easterly right of way line of 95th Avenue and following the Northerly line of said Lot 8 North 89°37'29" East (Plat record: bearing North 89°38'33" East) a distance of 391.26 feet to the 2 inch iron pipe marking the initial point of said Edwards Business Industrial Park No. 2 and the point of beginning of this described tract of land.

PARCEL II:

Easement rights as set forth in Reciprocal Easement Agreement dated December 27, 1996 and recorded January 6, 1997 as Records's Fee No. 97-005009, described as follows:

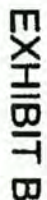
A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK as recorded in Book 38, Page 14, Washington County, Oregon Plat Records, being situated in the Southeast one quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, Washington County, Oregon, said tract of land being more particularly described as follows:

Beginning at a 2 inch iron pipe marking the initial point of said Edwards Business Industrial Park; thence South 89°37'29" West (Plat record: Bearing South 89°38'33" West) along the Southerly boundary of said Lot 7, a distance of 391.26 feet to a point marking the intersection of the Southerly line of said Lot 7 and the Easterly line

EXHIBIT "A"

(Continued)

of 95th Avenue as acquired by the State of Oregon and the true point of beginning of this described tract of land; thence North 00°08'50" East along said Easterly line, 20.00 feet; thence South 89°51'10" East leaving said Easterly right of way, 51.00 feet; thence South 53°16'00" East, 32.38 feet to a point on the Southerly line of said Lot 7; thence South 89°37'29" West along the Southerly line of said Lot 7, a distance of 77.00 feet to the true point of beginning.



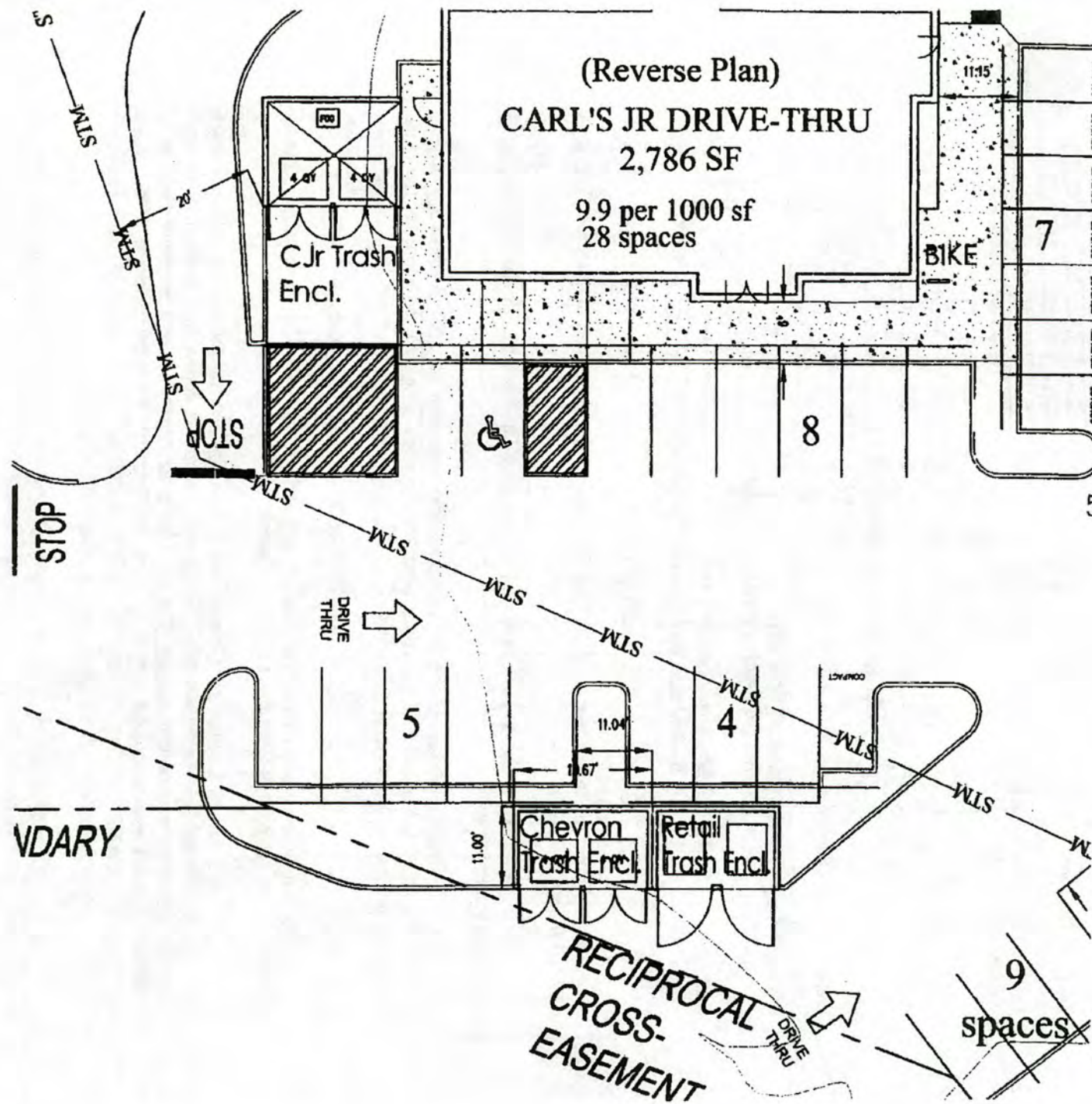


EXHIBIT C

AS

40
31

**Recorded At The Request Of
And When Recorded Mail To:**

George J. Gregores
Holland & Knight LLP
111 SW Fifth Ave, Suite 2300
Portland, OR 97204

Washington County, Oregon
11/12/2013 11:41:50 AM
D-E Cnt=1 Stn=12 S PFEIFER
\$40.00 \$5.00 \$11.00 \$15.00 - Total = \$71.00



01894748201300975130080081

I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.
Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk



EASEMENT AGREEMENT

Date: October 24, 2013

Among: **WILSONVILLE DEVCO, LLC**
an Oregon limited liability company ("Grantor")

And: **LAPoint BUSINESS GROUP, LLC**
an Oregon limited liability company ("Grantee")

RECITALS

A. Grantor is the owner of the real property legally described in attached Exhibit A (the "Grantor Property").

B. Grantee is the owner of the real property legally described in attached Exhibit B (the "Grantee Property").

C. Grantor wishes to grant a non-exclusive easement for and to allow Grantee to construct a trash enclosure and recycling area on Grantor's Property, adjacent to the trash enclosure on Grantor's eastern property line.

AGREEMENT

For valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Grantor and Grantee agree as follows:

1. Grant of Easement. Grantor conveys to Grantee, for the benefit of the Grantee Property, a nonexclusive easement (the "Easement") over and across that portion of Grantor Property described in attached Exhibit C (the "Easement Area") for and to allow Grantee to construct a trash enclosure and recycling area on Grantor's Property adjacent to the trash enclosure on Grantor's eastern property line and to access said trash enclosure from Grantee's Property, which Easement Area is illustrated on attached Exhibit D.

2. Construction of Grantee's Trash Enclosure. Grantee's trash enclosure must be constructed with like materials, craftsmanship and resemble the same aesthetic look as Grantor's trash enclosure. The cost of the construction of Grantee's trash enclosure shall be borne by Grantee.

3. **Maintenance and Repairs.** Any maintenance and necessary repair of the pavement and trash enclosure located on the Easement Area, as determined necessary by Grantor in its sole and absolute discretion, shall be paid for by Grantee.

4. **Term.** The Easement contained in this Agreement shall be effective commencing on the date of recordation of this Easement Agreement in the Official Records of Washington County, Oregon, and shall remain in full force and effect thereafter, unless amended or terminated in accordance with Section 5 hereinafter.

5. **Modification.** This Agreement may only be modified, amended, revised or terminated by written instrument signed by Grantor and Grantee, or their respective successor(s) as the case may be.

6. **Indemnification.** Grantee shall indemnify and hold Grantor harmless from any claims, demands, losses and expenses, including attorney fees, arising from Grantee's use of the Easement Area. Grantee further assumes the risk of its use of the Easement Area, and Grantor shall not be liable to Grantee for injury or harm arising from the physical condition of the Easement Area, provided that such condition is reasonably detectable by Grantee.

7. **Attorney Fees.** In the event of any litigation arising under this Agreement, the prevailing party shall recover from the other reasonable attorney fees as determined by the trial or appellate court, as the case may be.

8. **Dispute Resolution.** Any controversy, dispute or question arising out of this Agreement shall be submitted to arbitration before a single arbitrator in Washington County, Oregon. Each party shall bear its own costs in any such proceeding. The decision of the arbitrator shall be final and binding upon the parties and may be enforced in any court of competent jurisdiction. To the fullest extent permitted by law, the parties irrevocably submit to the jurisdiction of such forum, and waive any objections they may have to either the jurisdiction or venue of such forum. Nothing contained herein shall in any way deprive either party of their right to obtain injunction or other equitable relief.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of Oregon.

10. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document, which will be recorded in the Official Records of Washington County, Oregon.

11. **Binding Effect.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

[Signature Page Follows]

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

GRANTOR:

WILSONVILLE DEVCO, LLC,
an Oregon limited liability company

By: _____

Name: Josh Veentjer

Title: managing member

GRANTEE:

LAPOINT BUSINESS GROUP, LLC,
an Oregon limited liability company

By: _____

Name: _____

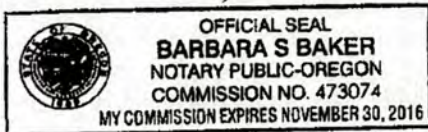
Title: _____

STATE OF OREGON)

) ss

County of Clackamas)

This instrument was acknowledged before me on October 24, 2013 by
Joshua Veentjer as Managing member of Wilsonville Devco, LLC.



Barbara S. Baker
Notary Public - State of Oregon

STATE OF OREGON)

) ss

County of)

This instrument was acknowledged before me on _____, 2013 by
_____ as _____ of LaPoint Business Group, LLC.

Notary Public - State of Oregon

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

GRANTOR:

WILSONVILLE DEVCO, LLC,
an Oregon limited liability company

By: _____

Name: _____

Title: _____

GRANTEE:

LAPoint BUSINESS GROUP, LLC,
an Oregon limited liability company

By: [Signature]

Name: Garry L. LaPoint

Title: Member

STATE OF OREGON)

) ss

County of)

This instrument was acknowledged before me on _____, 2013 by
_____ as _____ of Wilsonville Devco, LLC.

Notary Public - State of Oregon

STATE OF OREGON)

) ss

County of)

This instrument was acknowledged before me on October 18, 2013 by
Garry LaPoint as Member of LaPoint Business Group, LLC.

[Signature]
Notary Public - State of Oregon



Exhibit A

Grantor Property

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.83 feet to a point on the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

Exhibit B

Grantee Property

TRACT 2: A tract of land located in Lot 7, "Edwards Business Industrial Park" in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, in the City of Wilsonville in the County of Washington and State of Oregon, being further described as follows:

Beginning at the Southeast corner of said Lot 7 "Edwards Business Industrial Park" recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon, the TRUE POINT OF BEGINNING; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line of Parcel 1, 18.00 feet; thence North 89°38'33" East parallel to said South line, 121.22 feet; thence North 20°40'49" East, 186.07 feet; thence North 51°57'47" East, 20.00 feet to the westerly line of Boones Ferry Road as described in said Hammons to "ODOT" deed; thence along said westerly line South 38°02'13" East, 77.66 feet; thence North 46°33'47" East, 48.10 feet; thence South 40°56'40" East, 81.06 feet; thence along the arc of a 2,837.79 foot radius non-tangent curve to the right, said curve having a radial bearing of South 51°12'39" West, a central angle of 01°19'57", an arc length of 66.00 feet, the chord of which bears South 38°07'22" East, 66.00 feet; thence along the arc of a 116.96 foot radius non-tangent curve to the left, said curve having a radial bearing of South 74°41'25" East, through a central angle of 30°31'07", an arc length of 62.30 feet, the chord of which bears South 00°03'01" West, 61.56 feet more or less to the TRUE POINT OF BEGINNING, containing an area of 37,106 square feet, or 0.85 acres, more or less.

Exhibit C

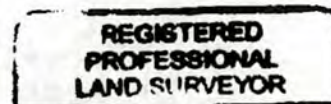
Easement Area

September 23, 2013
NWS Project No. 787
Trash Enclosure Easement

A tract of land located in the southeast one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:

Commencing at the southeast corner of Lot 7, Edwards Business Industrial Park, thence along the south line of said Lot 7, South 89°38'33" West a distance of 379.33 feet to a point 12.00 feet east of the east line of Parcel 1 as described in deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, recorded April 21, 1995 as Document No. 95-027726, Deed Records of Washington County, Oregon; thence parallel with said east line, North 00°09'24" East a distance of 18.00 feet to a 5/8 inch iron rod located at the southwest corner of that property conveyed to Wilsonville Devco, LLC by deed recorded May 24, 2012 as Document No. 2012-042053, Deed Records of Washington County, Oregon; thence along the south line of said Wilsonville Devco, LLC property, North 89°38'33" East a distance of 121.17 feet to the most southerly southeast corner thereof; thence along the easterly boundary of said Wilsonville Devco, LLC property, North 20°40'49" East a distance of 119.17 feet to the Point of Beginning; thence continuing along said easterly boundary, North 20°40'49" East a distance of 21.00 feet; thence departing said easterly boundary, North 89°50'37" West a distance of 20.52 feet to a point; thence South 00°09'23" West a distance of 19.67 feet to a point; thence South 89°50'37" East a distance of 13.17 feet to the Point of Beginning.

Said described tract of land contains 331 square feet, more or less.



Scott F. Field
OREGON
JUNE 30, 1987
SCOTT F. FIELD
2044

RENEW 12/31/2013

EXHIBIT MAP - TRASH ENCLOSURE EASEMENT

LOCATED IN THE SE 1/4 OF SECTION 2, T. 3 S., R. 1 W., W.M.,
CITY OF WILSONVILLE, WASHINGTON COUNTY, OREGON
SEPTEMBER 23, 2013

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Scott F. Fitch

OREGON
JUNE 30, 1997
SCOTT F. FIELD
2844

12-31-2013
RENEWAL DATE

WILSONVILLE DEVCO, LLC

DOCUMENT NO. 2012-04205J

TRASH ENCLOSURE EASEMENT
331 SQUARE FEET ±

SCALE: 1" = 20'

POINT OF
BEGINNING

POINT OF COMMENCEMENT,
SE CORNER OF LOT 7,
EDWARDS BUSINESS
INDUSTRIAL PARK

SW 95TH AVENUE

18 00'

342600'E

12.00°

379.33

SOUTH LINE OF LOT 7

589°30'33"W 39° 33'

- EAST LINE OF PARCEL L
DOC. NO. 95-027728

JOB NAME: WILSONVILLE CARL'S JR.

JOB NUMBER: 787

DRAWING NUMBER: 787 EASE

DRAWN BY: ST

CHECKED BY: CHS

NORTHWEST
SURVEYING, Inc.

1815 NW 189TH PLACE
SUITE 2090
BEAVERTON, OR 97008
PHONE: (503) 848-2127
FAX: (503) 848-2179

Illustration

Exhibit D













LaPoint Business Group, LLC
dba, Chevron North Wilsonville
Coca Cola Fountain Mart
25410 SW 95th Avenue
Wilsonville, Oregon 97071

DEVCO Property Development

DRB Meeting February 10, 2014

I am the property owner and operator of the Chevron and Coca Cola Fountain Mart adjacent to the DEVCO development.

I ask the members of the DRB Board two questions:

1. Can Devco develop and operate their developments within their property?
2. Does the development meet the required WDC's and/or intent of the WDC's?

I have operated my development for 15 years within the boundaries of my property. The original development has led to several compromises of my property and business. Phase I has caused an unforeseen traffic chaos. Parking and delivery areas for my vendors and customers have been compromised. The Devco development has been un-affected by these new problems because Devco development relies on my property to conduct their business. My property is being used to make their development(s) functional beyond the intent of our original agreement(s).

It's clear phase II of Devco's development has drastically changed what I originally agreed to. The traffic problems and/or chaos will exacerbate on my site ONLY. This proposed development will also create several new problems. The pedestrian and bicycle traffic will cut through my pump islands and across my fuel delivery area. The new proposed development will create additional head on traffic and several new choke points on both sites.(See Attached)

1. I want to operate my business(s) on my site and will not use any Devco property to do so.
2. I want Devco to operate their business(s) on their site without the use of my property.

Thank You,

Garry LaPoint

Devco Original Site Plan agreed on by LaPoint Business Group LLC

Wilsonville CKE Retail Center
 Schema 004
 May 2, 2012
 Scale: 1"=30'

LEEKA Architecture and Planning
 10000 SW 10th Ave, Suite 100, Portland, OR 97205
 503.281.1111

[illegible]

Pauly, Daniel

From: gl@eoni.com
Sent: Friday, January 31, 2014 11:35 AM
To: Pauly, Daniel
Cc: Jason LaPoint; Wallace Lien
Subject: Site plan solution
Attachments: DRB Response to Steve Pfeiffer 1a (2).pdf; new easement solutions 1.doc

Good Morning Dan,

Please see attached cooperation by LaPoint Business Group LLC to resolve Devco's site plan issues as I promised you earlier this month I would do.

Garry LaPoint



City of Wilsonville
EXHIBIT D7 DB13-0046 et seq

LaPoint Business Group, LLC
25410 SW 95th Avenue
Wilsonville, Oregon 97071

January 29, 2014

To City of Wilsonville Planning Department and DRB Board Members

The LaPoint Business Group LLC and its members appreciate the solutions and new information presented in Exhibit B6 to address our concerns with the proposed Coffee Kiosk. Devco's new internal traffic circulation (Exhibit D) resolved our current traffic concerns with our property. Thank you to the City of Wilsonville for kindly requesting a detailed A.M. traffic study from DKS. DKS study(s) confirms the internal traffic circulation in the Devco Developments and Exhibit D will work in harmony.

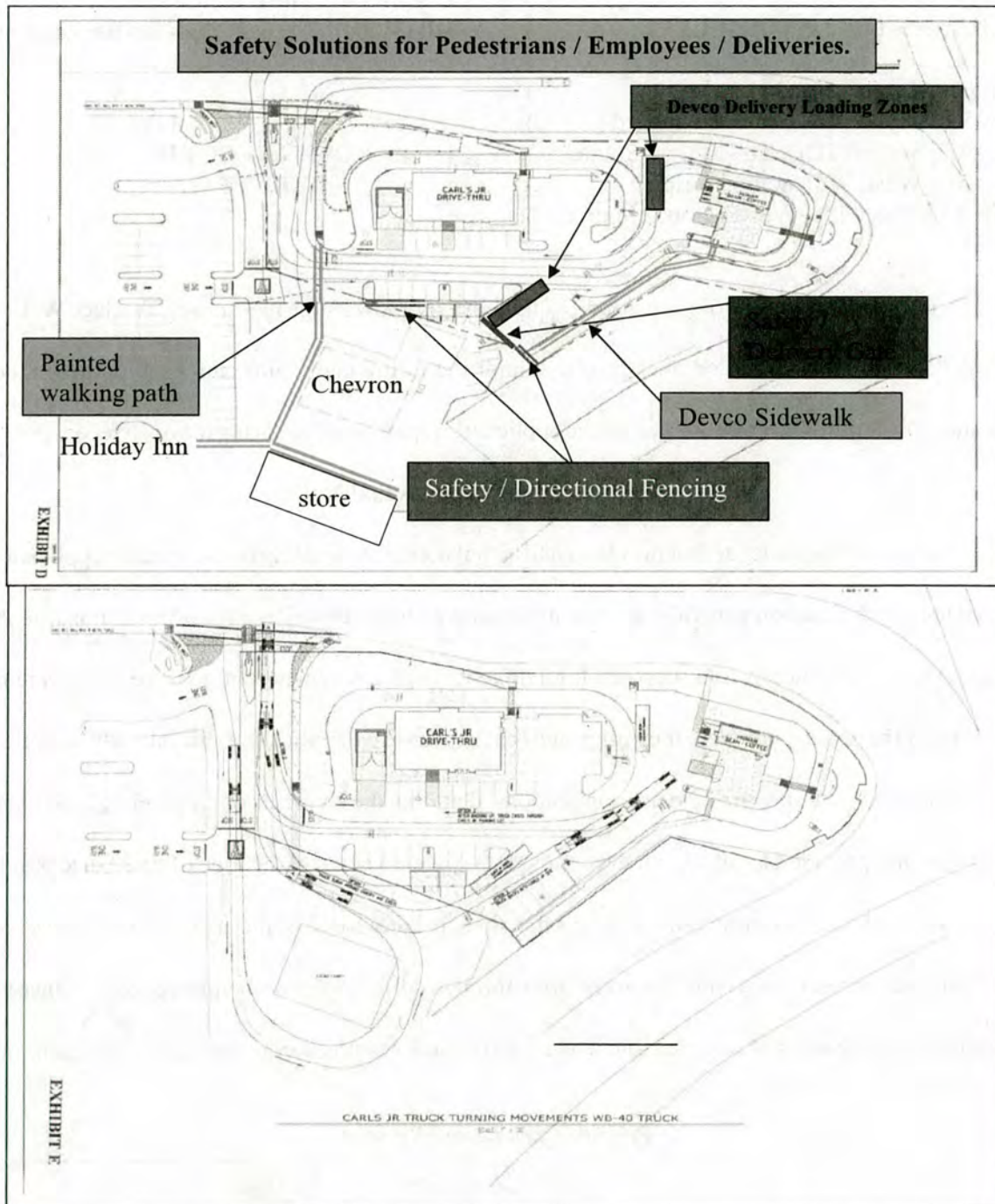
LaPoint Business Group LLC and Devco will write a new easement with a passage for a semi delivery truck to access Carl's Jr. and Human Bean Loading Zones (Exhibit E). LaPoint Business Group LLC agrees to the current solutions with one more simple improvement of a safety/delivery gate. The improvement of a safety/delivery gate, across the north curb-cut, will not change Devco's internal traffic circulation as proposed to the DRB Board in (Exhibit D) or change the loading zone in (Exhibit E). The safety/delivery gate will assure compliance with Devco's proposed internal traffic circulation (Exhibit D), but will remain closed except during deliveries. This simple improvement on a new easement agreement will enhance the solutions provided in (Exhibit B6). In addition, the improvement of a small fence from the north ODOT fence to the new safety/delivery gate would resolve the safety issues raised with crossing pedestrian and bicycle traffic going to the Human Bean walk-up window and outside seating area from Holiday Inn and our site. The small fence would encourage the use of the painted side walk that is the only approved pedestrian walk-way between Holiday Inn, Chevron, and Devco Developments.

Thank you for keeping the record open for 14 days to give Devco the necessary time to resolve our mutual concerns that ensure onsite efficiency and customer safety. We appreciate everyone's time and effort in this matter and we anticipate the citizens of Wilsonville will safely enjoy their new Coffee Kiosk.

Sincerely,

Garry LaPoint
LaPoint Business Group LLC

LaPoint Business Group, LLC
25410 SW 95th Avenue
Wilsonville, Oregon 97071



BEFORE THE DEVELOPMENT REVIEW BOARD OF THE
CITY OF WILSONVILLE

In the Matter of the Application for)	
a Stage II Final Plan Revision,)	
Site Design Review and Master Sign	)	Case Nos.
Plan Revision and Sign Waiver of:	)	DB13-0046 (Stage II Final Plan Revision)
	)	DB13-0047 (Site Plan Review)
WILSONVILLE DEVCO, LLC	)	DB13-0048 (Master Sign Plan Revision and
	)	Sign Waiver)
On property addressed as)	
25250 SW 95 th Avenue and identified as)	
TL 302, Section 2DB, Township 3 South,	)	OPEN RECORD
Range 1 West, Willamette Meridian,	)	REBUTTAL
City of Wilsonville, Washington County,)	
Oregon)	

COMES NOW, LaPoint Business Group, LLC, by and through its attorney, Wallace W. Lien, of Wallace W. Lien, P.C., and does hereby submit the following rebuttal information to that new argument and information submitted by the applicant's representative during the open record period.

1. LaPoint Did Not Have Actual Notice

The applicant alleges that my client had actual notice of the filing of the specific applications noted above. It relies on general conversations and emails for that allegation. While it is true that my client was told there was a proposal for a drive through convenient coffee store, they were not told any of the details, nor were they informed that any land use applications had already been filed. The existence of the specific land use applications, detailing the elements of the proposal and its site plan were not provided to my client, even though they were known at the time of those discussions. To have actual notice of something requires that there is knowledge of the applications themselves, not just some general discussion that some drive through coffee store was being proposed. Since this application had been in the works, and was actually filed months before the notice of hearing was



issued, why didn't the applicant share this information with my client? It would appear that the failure to divulge the actual status of these applications was a deliberate attempt to limit the amount of time my client had to respond to the planning details.

2. There is No Easement for Complete Circulation through LaPoint Property

Applicant's representative cites to the Easement Amendment and states that document provides a full right to circulation. However, as was pointed out in our earlier submittal, this easement is for a linear portion of the common boundary, which does not fill the easement gap to allow applicant's traffic to circulate over and across the entirety of the LaPoint property. All one needs to do is read the legal description (which is Exhibit D to the Easement Amendment), and look at the map (which is Exhibit E to the Easement Amendment) to see that the so called cross reciprocal easement is nothing more than a 60 foot linear portion of the common boundary. There is no easement for applicant traffic over and across the LaPoint property to the east of that line. It is not described in the legal, and it certainly is not shown on the map.

3. Morning Peak Hour Traffic

My client appreciates that the applicant has now recognized what everyone previously agreed to, that is that for a drive through coffee convenient store the traffic is heaviest in the morning hours. The new analysis however continues to be flawed in ignoring the on-site circulation problems created by what it dismissed as pass by trips. While the cars may be passing by the property entrance on 95th Street on route to another location when they decide to stop by for a cup of coffee, but once they turn off the highway, they are no longer passing by, but become a part of the internal circulation. Not accounting for those is head in the sand logic. My client has tendered several video's showing the chaos of internal traffic circulation that exists now. Putting in another drive through, and adding

significant new traffic, without correcting the existing problem is an invitation to continued further accidents on this site.

4. Case is About Bad Traffic Circulation Not Competition

Despite the comments of one of the DRB members at the public hearing, and the echo of that in the applicant's representative submittal, this case is not about competition. It is about traffic. Pure and simply, the applicant has over-built its site. While on paper it might have appeared to be workable in theory when approved, however, now that the Carl's Jr is in full operation, it is clear the internal circulation pattern creates nothing but chaos. At times when deliveries are being made the situation is untenable. Applicant calls the situation adequate and safe. How can that be when there have been two accidents on its property in less than two weeks due to poor circulation.

It must be remembered that the Chevron station is planned in such a way that it does not need the property of any other owner to conduct its business. Traffic comes in on the Chevron easement, enters the Chevron site and circulates in a counter clockwise movement (always on the Chevron property) and exits on the Chevron easement. Yet, applicant does not have sufficient room on its site to provide for on-site circulation, let alone providing a loading zone, and has to encroach on the Chevron property. Now that encroachment is proposed to be exacerbated with a new drive through, that not only needs the Chevron property for circulation to get coffee customers into the drive through lane, but it also needs the Chevron property for loading and deliveries.

My client is not opposed to the Human Bean because of competition, but because it brings with it the need to unlawfully use its property in such a way as to clog the driveway and otherwise inhibit his own customers. If anything, this case is about protecting the safety of the Chevron customers who will be subject to all the additional traffic.

5. New Site Plan

The applicant's January 27, 2014 submittal contains new site plan drawings relating to internal circulation. Exhibit D shows an internal circulation pattern that contains both Carl's Jr and Human Bean traffic on the applicant's property without any encroachment onto the Chevron site. My client applauds this modification, and provided it can be enforced, is in full agreement with this modification.¹ One additional sign should be added that notes that no access is allowed through the Chevron property. This could be added to the new proposed signs, or on an additional sign. In addition, perhaps it could be painted on the pavement. To fully ensure such on-site circulation, my client proposes a gate be placed across the driveway from the corner of the trash enclosures to a point at the edge of the curbed landscaping. This gate would ensure total on site circulation by customers of the Carl's Jr and the Human Bean.

Exhibit E to this site plan modification shows a new loading/delivery route. The aforementioned gate could be made such that delivery trucks could open and close it in order to make its deliveries, however this plan involves a significant portion of the Chevron property that would be used by the applicant generated vehicles. While it appears the applicant has some dispute with regard to its easement rights to circulate around the east side of the trash enclosures, there is no question the applicant does not have an easement for the use of remainder of the Chevron property as is depicted on this map, or the right to stop and load and unload merchandise.

As my client has repeatedly stated, it is not in agreement with any use of its property by the applicant as proposed in the original site plan, or as shown for deliveries on this Exhibit E. Further,

¹My client's letter together with his modification of Exhibit D, showing the location of the gate that would ensure public compliance with the new site plan was submitted directly under separate cover.

the applicant has shown no right for parking or loading or unloading or deliveries of any sort on the Chevron property. This application can not be approved without a designated loading/delivery area being established on the applicant's property. Nothing in Exhibit E changes that.

6. Conclusion

The new modified site plan is an improvement, and with the safety gate installed, it would provide effective enforcement of the plan. However, until the applicant can adequately address how loading and deliveries will take place using only its own property, the application is flawed and should be denied.

ELECTRONICALLY DELIVERED this 31st day of January, 2014.

Wallace W. Lien

Wallace W. Lien, OSB 79-3011
Attorney for LaPoint Business Group, LLC



1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

PHONE: 503.727.2000

FAX: 503.727.2222

www.perkinscoie.com

Steven L. Pfeiffer

PHONE: (503) 727-2261

FAX: (503) 346-2261

EMAIL: SPfeiffer@perkinscoie.com

February 3, 2014



City of Wilsonville

EXHIBIT B7 DB13-0046 et seq

VIA E-MAIL

Daniel Pauly, AICP
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070-6499

**Re: The Human Bean, Wilsonville Devco LLC; Second Open Record Period
DB 13-0046, DB 13-0047, DB 13-0048**

Dear Mr. Pauly:

As you know, this office represents the Applicant, Wilsonville Devco, LLC ("Applicant"), in the above-referenced applications related to its proposal to construct a coffee kiosk at the corner of Boones Ferry Road and 95th Avenue (the "Site"). This letter rebuts the additional comments made by Garry LaPoint, dated January 29, 2014, and by his attorney, Wallace Lien, dated January 27 and January 31, 2014 (together, the "Opponent"), submitted during the open record periods. As discussed in more detail below, the development proposal complies with all applicable approval criteria; therefore, the DRB should approve these applications.

This letter is timely submitted within the second open record period. Please add this letter and its attachments to the official record of the DRB proceeding.

1. Resolution of Traffic Concerns.

At the outset, we would like to note we are pleased that The Human Bean Automobile Turning Movement Plan and the DKS AM Peak Traffic Study has resolved Mr. LaPoint's traffic concerns and has confirmed for Mr. LaPoint that internal traffic circulation on the Site will work in harmony. See LaPoint letter, dated January 29, 2014, referencing Exhibit D and Exhibit 6 to Applicant's January 27, 2014 submittal. While we appreciate Mr. LaPoint's suggestion to install a safety/delivery gate and fence across the property line between the LaPoint property and the Applicant's property, which shall remain closed except during deliveries, as discussed in more detail below, such gate cannot be imposed as part of this land use review.

LEGAL29196604.4

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

Perkins Coie LLP

First, as detailed more fully in the section below discussing the cross-easement, the location of the proposed gate is the exact location of an existing cross-easement for vehicular ingress and egress benefiting both the LaPoint property and the Applicant's property. The proposed gate would directly contradict such cross-easement, and would constitute a breach of the private contract.

Secondly, even if the Applicant agreed to the proposed gate, a third party (Carl's Jr.) enjoys the benefit of the cross-easement and built its development in reliance on the cross-easement. The proposed gate could not be installed without interfering with the rights of Carl's Jr., whose development was previously approved by the City, and whose development is not a part of the current applications. In short, the cross-easement over which the safety/delivery gate is proposed is a private contract that cannot be amended through this land use process and that cannot be modified by the DRB. Therefore, the DRB cannot condition approval of the proposed development on the installation of the proposed gate.

However, in lieu of the proposed gate and fence, the Applicant proposes some additional improvements to address Mr. LaPoint's safety concerns. These improvements are described and illustrated in the attached **Exhibit A**. Specifically, the Applicant proposes 1) two additional directional signs directing customers of the coffee kiosk to exit using the drive aisle in front of Carl's Jr. to the shared driveway; 2) the addition of new sidewalk to the LaPoint property connecting the Applicant's proposed sidewalk on its northern property line; and 3) a painted crosswalk from the end of the sidewalk to Chevron's storefront. The Applicant believes that these proposed improvements will enhance pedestrian and bicycle safety on the Site and on the LaPoint property.

For the reasons stated above, the DRB can find that the Opponent's traffic concerns are resolved. While requiring the proposed safety/delivery gate and fence would be improper and unnecessary, the DRB can find that the Applicant's proposed additional improvements further enhance Site safety. Given Mr. LaPoint's January 29, 2014 letter stating that his traffic concerns were resolved, and that he anticipates "the citizens of Wilsonville will safely enjoy their new Coffee Kiosk," it is unclear how relevant Mr. Lien's January 27 and January 31, 2014 letters are to this proceeding. Nevertheless, we address Mr. Lien's comments in full below.

2. Adequate Legal Notice.

The Opponent continues to argue that Mr. LaPoint did not receive adequate legal notice of the these Applications, in the face of clear facts to the contrary. Not only did Mr. LaPoint admit to receiving notice from the City on December 23, 2013, the City's notarized record of mailing demonstrates that Mr. LaPoint was on the list of individuals notified by that mailing. The record of mailing is attached as **Exhibit B**. There is no dispute that the notice was mailed on

December 23, twenty-one (21) days before the January 13 hearing. Therefore, there is clear evidence that Mr. LaPoint was mailed the notice within the statutory twenty (20) day time limit established by 197.763(3)(f)(A).

For these reasons, the DRB can find that the Opponent received adequate legal notice of the proposed development and that the City committed no procedural error in its mailing of notice.

3. There is No "Jurisdictional Defect" Caused by an Easement Gap.

The Opponent continues to assert that the City, by and through the DRB, does not have the "jurisdiction" to review the proposed development because the Opponent contends the Applicant relies on the LaPoint property for traffic circulation, to which Mr. LaPoint has not agreed nor consented. To the contrary, and as discussed in more detail below, the Applicant and Mr. LaPoint enjoy a cross-easement that provides unrestricted access for vehicular ingress and egress over the entirety of each other's property. Therefore, the Applicant possesses all of the necessary property rights to serve the proposed development, and the Opponent is not a "necessary party" to the applications and need not have been a signatory to these applications.

As an initial matter, it is important to point out that vehicular traffic to and from the proposed coffee kiosk can occur entirely within the Applicant's Site, without ever crossing onto the LaPoint property. This vehicular traffic turning movement is demonstrated on Exhibit D to the Applicant's January 27, 2014 letter, which Mr. LaPoint cited to as resolving his traffic concerns. Moreover, it is important to note that most of the deliveries to the coffee kiosk will utilize vans or light trucks, given its modest stocking demands, which can be adequately accommodated entirely within the Applicant's Site. The delivery route is shown on the attached **Exhibit C**.

While larger delivery trucks may be used on occasion, such as when deliveries with other destinations are combined, the Opponent's main concern appears to be the traffic movement of passenger vehicles. This is made apparent by Mr. LaPoint's January 29, 2014 letter, in which he proposes a safety/delivery gate, which he suggests remain closed except for to allow deliveries. Mr. LaPoint's proposal results in the conclusion that he is not opposed to the use of his property for deliveries, but rather, he is opposed to allowing passenger vehicles to cross from the Applicant's property onto his property. Mr. LaPoint's position is curious, given that any passenger vehicles traveling from the coffee kiosk to the LaPoint property would most likely become gas/convenience store customers. Nevertheless, Mr. LaPoint has no basis for restricting ingress and egress of passenger vehicles or delivery trucks over and across the existing cross-easement.

Access and circulation rights for both the Applicant's and LaPoint's properties are defined by a Development Agreement established in 2012 ("Development Agreement"). *See* Exhibit 5 to Applicant's January 27, 2014 submittal). The Development Agreement contemplated the existing access rights and that both a Carl's Jr. and a then-unnamed retail-type development would be established on the Site. In conjunction with this agreement, a shared reciprocal access easement and an amendment to easement agreement, which created the cross-easement (Wa. Co. Doc. 2002-051321, 2013-097514), provides access to the Site. *See* Exhibit 4 to Applicant's January 27, 2014 submittal. The cross-easement was specifically designed to allow "vehicular ingress and egress" between the Applicant's and LaPoint's properties, and as correctly described by Mr. Lien, consists of a 60.55 foot line along the joint property line, over which vehicles have the unrestricted right to cross. This means that a vehicle on the LaPoint property may enter the Applicant's property over the cross-easement and has the right to go anywhere on the Applicant's property. Conversely, a vehicle on the Applicant's property may enter the LaPoint property over the cross-easement and has the right to go anywhere on the LaPoint property. The point of the cross-easement was to increase the customer base of each retail establishment by allowing gas customers to enter the Applicant's property to buy fast food and coffee, and to allow Carl's Jr. and coffee kiosk customers to enter the LaPoint property to buy gas and convenience store sundries.

Opponent contends that the cross-easement does not provide a full right to circulation over and across the entirety of the LaPoint property. However, Opponent's reading of the cross-easement renders it completely meaningless, which is contrary to established law. If the cross-easement does not allow circulation over the entirety of each other's property, what does it allow? Surely, the parties entered into a cross-easement to allow some movement over each other's property. Since there is no express restriction or limitation of movement on either property, the only reasonable interpretation is that the full range of circulation movement on each property was intended by the parties.

The DRB can find, therefore, that the Applicant possesses the property rights and access necessary to serve the proposed development.

4. Site Circulation Pattern is Adequate.

The Opponent argues that the existing site circulation pattern is insufficient to serve the Chevron station, Carl's Jr., and the proposed coffee kiosk. We note that most of the Opponent's assertions concern the relationship between the Chevron station and the Carl's Jr., and emphasize that those circulation conflicts, if any, are not at issue in these Applications. Indeed, the majority of the Opponent's comments, including the videos showing vehicles circulating on the Site, are directed towards the Carl's Jr., and more specifically, the loading requirements for the Carl's Jr. These are simply not at issue here. The circulation pattern between the Carl's Jr. and the

Daniel Pauly, AICP
City of Wilsonville
February 3, 2014
Page 5

Chevron station has been established by agreement and approved by the City; any private disagreements about how the respective businesses operate do not concern these Applications and are not proper for the City to consider when reviewing them. Where circulation standards apply to this Application, the Applicant has demonstrated compliance with all applicable criteria. Therefore, the DRB may find that the site circulation that serves the coffee kiosk is adequate.

We note initially that the vehicle circulation plans for both the Applicant's and the Opponent's properties have been reviewed on multiple occasions. In July of 2012, the Applicant, Holiday Inn, the City, and Opponent entered into the Development Agreement, which established rights and responsibilities of each party respecting site access and circulation. The Development Agreement contemplated both a Carl's Jr. and a yet-to-be named retail use on the Applicant's property. It also called for the system of easements that are in place today and clearly evidences the party's mutual understanding of how vehicle circulation would work on the Site. This understanding was further developed as part of the previous Stage II Planned Development and Site Plan reviews (DB 12-0074, 0075, and 0076) that were approved early last year. Note that the Opponent was a co-applicant for that application. While we do not concede that the Opponent's signature on the previous applications was required, it is instructive insofar as the Opponent, not more than one year ago, was entirely at ease with the circulation system that would serve the Carl's Jr. and then-unnamed "future retail."

Insofar as the Opponent has made some mention of the loading requirements for the Human Bean, it is important to note that the loading demands of a coffee kiosk are minor. In general, the coffee kiosk can be adequately stocked by vans or light trucks, which turning movements can be accommodated completely within the Applicant's Site. A separate loading berth is not necessary for such vans or light trucks, which can park in existing parking stalls for loading and unloading. As such, the modest loading demand of the kiosk does not adversely impact the proposed vehicle circulation pattern. This point is consistent with Staff's finding on page 23 of the Staff Report.

As to the alleged reports of accidents onsite, the Opponent has failed to demonstrate that they were caused by the existing site design. In any event, these reports are intended to argue against an existing site circulation pattern to which the Opponent has given express consent, as discussed above.

Where the Opponent does attempt to address the circulation criteria that apply to these Applications, we have provided the following responses:

a) WDC 4.035(.04).3 - Site Development Permit Application.

“Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all individuals or partners in ownership of the affected property.”

The Opponent asserts that the Applicant does not own and/or have rights to enough property to serve the proposed development without the Opponent's signature on the Applications. Opponent is mistaken. As discussed at length above, the Applicant has shown (1) that all vehicle circulation necessary for the coffee kiosk occurs on the Applicant's property and easement, and (2) has provided sufficient documentation of that ownership and easement. As discussed above, the easement is a property right of the Applicant, to which the Opponent consented to in 2002 and later in 2013. (Wa. Co. Doc. 2002-051321, 2013-097514.) Staff found accordingly that “the applicant has provided all of the applicable general submission requirements contained in this subsection.” Staff Report at 14.

For all of these reasons, the DRB may find that this criterion has been met.

b) WDC 4.035(.04).6.a – Site Development Permit Application.

“Streets, private drives, driveways, sidewalks, pedestrian ways, off-street parking, loading areas, garbage and recycling storage areas, power lines and railroad tracks, and shall indicate the direction of traffic flow into and out of off-street parking and loading areas, the location of each parking space and each loading berth and areas of turning and maneuvering vehicles.”

The Opponent argues that the site plans submitted by the Applicant do not show sufficient loading areas or otherwise comply with this criterion. We reiterate Staff's finding that all applicable submittal requirements have been met. The site plans submitted with the Application, as well as those submitted during these open record periods, adequately demonstrate planned turning movements. They include a detailed plan of drive aisle striping and vehicle stacking, directional arrows and traffic flow, pedestrian walkways and crossings, parking spaces, traffic signs, trash enclosures, and all other aspects of the proposed development. As mentioned above, the modest stocking demands of the coffee kiosk can be met by delivery van or light truck, which can park in a parking stall for loading and unloading. See Exhibit C. Additionally, the Applicant submitted Exhibit E to its January 27, 2014 submittal, which shows the location of the coffee kiosk delivery parking/loading berth in the rare instance a larger truck is necessary.

Therefore, the DRB can find that this criterion is met.

c) WDC 4.400.02(A) – Purpose and Objectives of Site Design Review.

“Assure that Site Development Plans are designed in a manner that insures proper functioning of the site and maintains a high quality visual environment.”

The Opponent argues that the existing site circulation is not consistent with this objective. First, note that this is an aspirational purpose statement for the Site Design Review section and is intended to guide the DRB in its review of proposed site designs. It is not a clear and objective criterion, does not require a specific showing by the Applicant, nor does it define what is meant by “proper functioning of the site.” It is therefore not directly applicable to the proposed development.

Even so, Staff did address this criterion on page 32 of the Staff Report and found that the Application was consistent with the purpose and objectives of Site Design Review. The specifics of the site circulation plan are discussed below.

This purpose statement is implemented by WDC 4.154(.01), which does contain criteria for site circulation. The Applicant provided responses to this criterion in the revised Application, dated December 9, 2013. Staff found this response acceptable. This, coupled with the Development Agreement, the submitted site plans, and Applicant’s responses, clearly demonstrate orderly and safe site circulation. The DRB can therefore find that the proposed development is consistent with this purpose statement.

d) WDC 4.421(.01).C. – Criteria and Application of Design Standards.

“Drives, Parking and Circulation. With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location and number of access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the design of proposed buildings and structures and the neighboring properties.”

The Opponent asserts that the "circulation chaos that currently exists" demonstrates that this objective was not met. While we do not agree that "circulation chaos" is occurring on the Site, we point out that the existing Site circulation has been reviewed by the Opponent, and consented to the Development Agreement and the 2013 Stage II Planned Development and Site Plan. Again, such assertions address site *operation*, not design, and are not applicable to these Applications.

Also, like the code section discussed above, this provision is not a discrete criterion; rather it describes an aspirational design objective upon which the DRB should review the proposed development. It is therefore not directly applicable to the proposed development.

Nonetheless, the Applicant provided evidence of safe and convenient circulation on the Site and Staff determined that evidence to be sufficient for the purpose of this particular design objective. The enclosed site plan demonstrates a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings. Specifically, they show the following:

- Two separate pedestrian connections to the sidewalk, both the North and East, each with its own striped drive aisle crossing;
- Circulation and stacking patterns for vehicles visiting the coffee kiosk, with safe stacking for at least seven (7) vehicles;
- Directional arrows separating traffic flow;
- Eight (8) adjacent parking spaces;
- Paved walkways connect the parking spaces to the coffee kiosk, with striped drive aisle crossings;
- A patio area near the coffee kiosk to provide pedestrians with a safe space to drink their coffee other than the parking lot; and
- A paved connection to the Opponent's property to allow, if desired, those who are fueling their cars to walk to the coffee kiosk.

In summary, the Applicant has provided substantial evidence that access and circulation serving the coffee kiosk will be adequate as proposed, and the DRB can find that the proposed development is consistent with this design objective on that basis.

e) WDC 4.154 – On-Site Pedestrian Access and Circulation.

"These criteria require a continuous pathway system that is safe, direct, and convenient, as well as vehicle/pathway separation, crosswalks, and appropriate markings."

The Opponent argues generally that these criteria are not met. Staff addressed such criteria on pages 21 and 22 of the Staff Report. The Applicant has provided evidence of safe and convenient circulation on the Site, and Staff determined that evidence to be sufficient. As

discussed in detail above, site plans show a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings necessary to connect the proposed coffee kiosk with its associated parking, and Site access. The DRB can therefore find that this criterion is met.

The Opponent also suggests that this criterion should be expanded to include requirements of a path to the shared trash enclosures and, oddly, a path across the LaPoint property. The Applicant has proposed, and Staff has found, that the existing pedestrian system can adequately and safely allow Human Bean employees and customers to move about the Site. Staff noted, "this includes two connections to the 95th Avenue sidewalk, which connects to Carl's Jr. and Holiday Inn as well as a pathway connection to the east to provide access to parking, trash enclosures, and the Chevron property." Staff Report at 20-21. An employee would be required to cross approximately 20 feet of drive aisle that is lit with two pole lights to access the trash enclosure. Vehicle speeds within these drive aisles are minimal; in any event, nearly all retail parking lots function with pedestrians continually walking across them. The Applicant believes, and Staff concurs, that this design is safe. The path connecting the Chevron station to the coffee kiosk necessarily ends at the property line because the LaPoint property is not subject to this proposal. Nevertheless, the Applicant has proposed additional improvements to enhance pedestrian and bicycle safety, as described in Section 1, above.

f) WDC 4.155(.03).A – On-Site Pedestrian Access and Circulation.

"Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

- 1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked; and*
- 2. To the greatest extent possible, separate vehicle and pedestrian traffic."*

The Opponent argues that sufficient loading areas for the Carl's Jr. and the coffee kiosk are not shown on the site plans. As to the Carl's Jr., we re-iterate that it is not the subject of these Applications and, although Staff determined that loading for that business is adequate, it need not be demonstrated on this Application. With regard to the coffee kiosk, the delivery van or light delivery truck can load and unload in a parking stall. As a worst case scenario, Exhibit E to Applicant's January 27, 2014 submittal shows the delivery parking/loading for The Human Bean in the rare instance a larger delivery truck is necessary. The DRB can therefore find that this criterion is met.

g) WDC 4.430(.02)(G) – Design of Trash and Recycling Enclosures.

"The storage area shall be accessible for collection vehicles and located so that the storage area will not obstruct pedestrian or vehicle traffic movement on the site or on public streets adjacent to the site."

The Opponent generally asserts that the existing and proposed circulation prevents the existing trash enclosures from being safely accessed. The Applicant has provided ample evidence that, if needed, Human Bean employees have a relatively direct and safe access to the existing trash enclosures. However, this criterion addresses the design of new trash enclosure areas. Staff rightly concluded that it was satisfied insofar as no new trash enclosures are proposed. Staff Report at 33. We believe that Staff's finding provides an adequate basis for the DRB to find that this criterion is met, but also further suggest that it does not apply to the proposed development because no new trash enclosures are proposed.

Opponent's arguments to the contrary are not well taken because Opponent consented to the location of the shared trash enclosure in the Development Agreement and the 2013 Stage II Planned Development and Site Plan. Any suggestion that these criteria are applicable and not met by these Applications amounts to a collateral attack on previously-approved development plans.

5. Hearing May be Re-Opened on a Limited Basis.

The Opponent requests that the DRB allow additional testimony at its February 10, 2014 hearing. While the Applicant does not oppose the Opponent having an opportunity to speak directly to the DRB, such testimony, if allowed, should be subject to limitations as to time and substance. The Applicant does not oppose allowing the Opponent a maximum of ten (10) minutes to orally summarize his position to the DRB, so long as the Applicant is given the same opportunity. However, any new evidence or new argument not previously submitted to the DRB shall be prohibited.

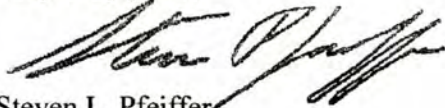
6. Conclusion.

For the reasons discussed above, at the DRB hearing, and in the Applicant's Application submittals, the proposed development meets all applicable approval criteria, and the City

Daniel Pauly, AICP
City of Wilsonville
February 3, 2014
Page 11

observed proper procedures in processing the Applications. Therefore, the DRB should reject the Opponent's arguments and approve the Applications.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven L. Pfeiffer", written over a horizontal line.

Steven L. Pfeiffer

SLP:crl

Enclosures

cc: Ben Altman, SFA Design Group (via email) (with encls.)
Craig Anderson, CB Anderson Architects (via email) (with encls.)
Wallace Lien, Esq.(via email) (with encls.)
Client (via email) (with encls.)
George J. Gregores, Esq. (via email) (with encls.)

Boones Ferry Pointe and Chevron

February 3, 2014

Re: Revised site plan to include new directional signs and extend pedestrian pathway.

The Applicant respects LaPoint's concerns for pedestrian and bicycle safety therefore is proposing a revised site plan to improve the pedestrian and bicycle access by having two (2) safe pathways to and from Chevron. Applicant believes a fence would promote pedestrians to travel through the center of the respective sites where vehicles travel. The new pedestrian pathway would serve as a more direct route from the Commerce Circle intersection and would be safer than the currently approved pathway and provide Chevron employees with safe passage to its trash enclosure. Applicant further respects the recommendations of Mr. Wallace Lien and is proposing new directional signs within the interior of Applicants site to direct Applicants vehicles to exit in front of Carl's Jr. Applicant believes these simple additions can safely and effectively address pedestrian and bicycle safety and vehicle circulation concerns. All of which is illustrated and further described as follows;

Directional signs: Two (2) directional signs are proposed within the interior of Applicants property, directing consumers of both Carl's Jr. and The Human Bean to exit through the primary exit in front of Carl's Jr. See Exhibit A and Exhibit B.

Extended Pedestrian Pathway: New sidewalk added on Chevron's property connecting to Applicants proposed sidewalk on its northern property line. Hatched marks could be painted from the end of the sidewalk to Chevron's storefront. This pathway would be the safest option for pedestrians and bicycles to access Chevron. This would also provide Chevron's employees with a safe passage to its newly constructed trash enclosure on Applicants property. See Exhibit A.

Revised Site Plan

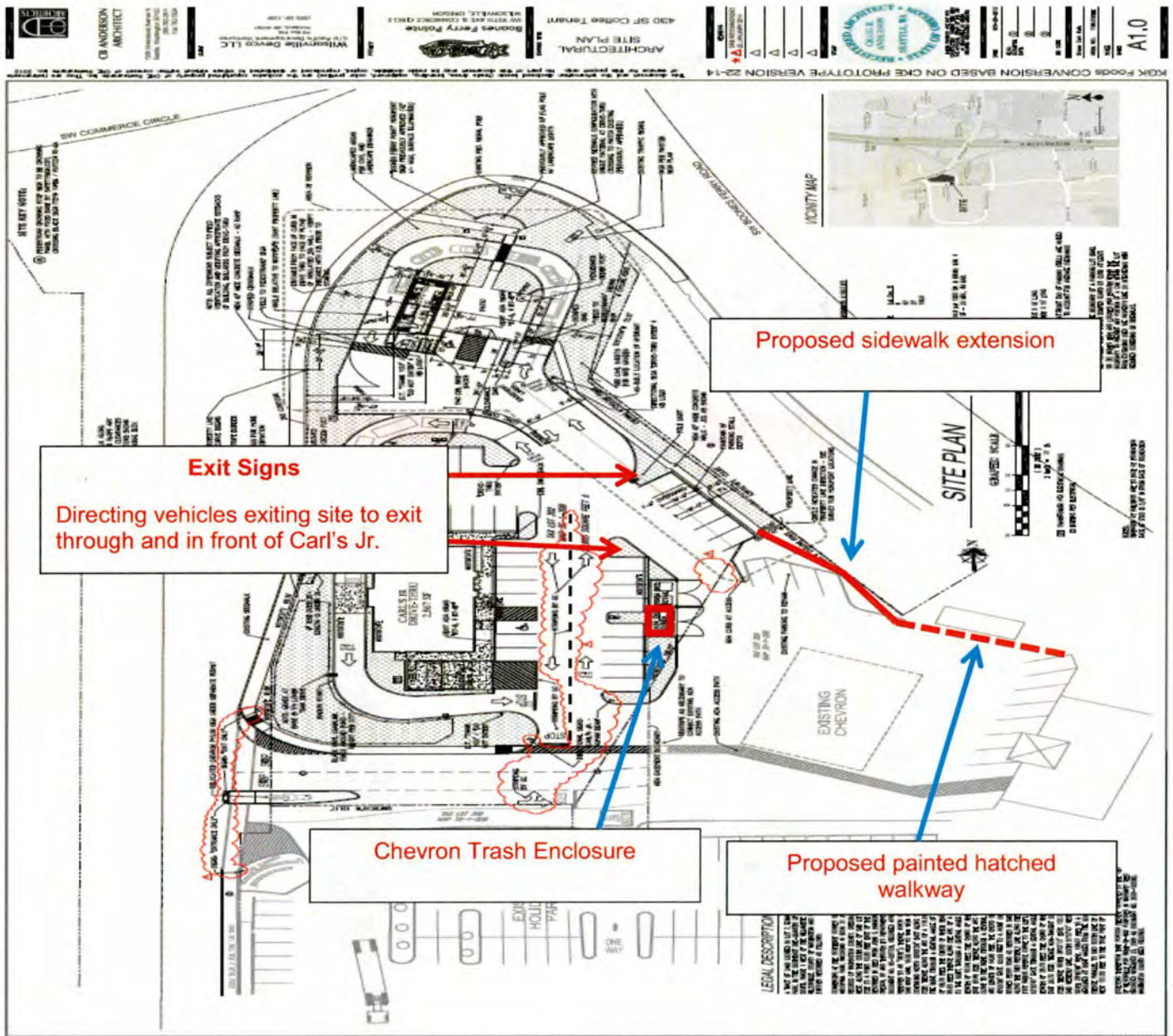
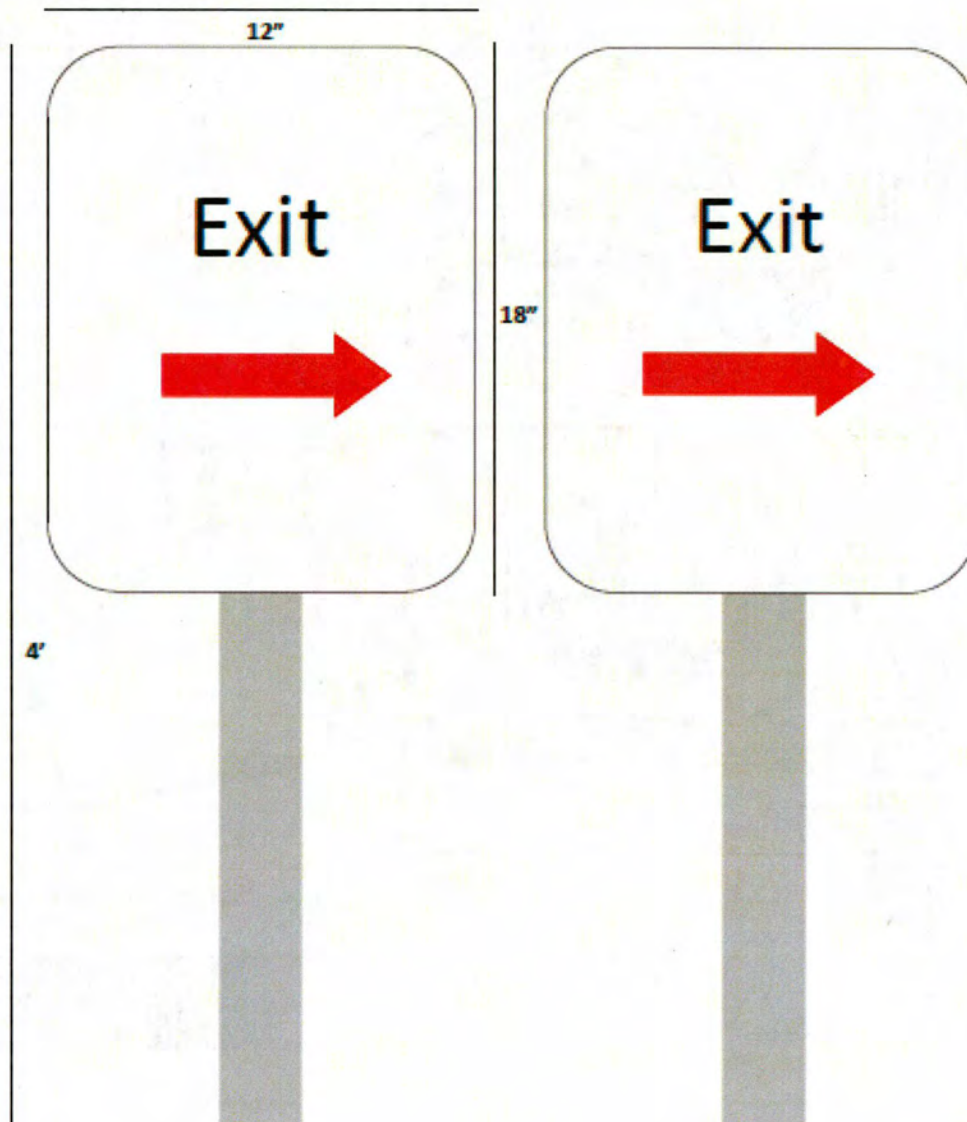


Exhibit "B"

Proposed Directional Signs



**AFFIDAVIT OF MAILING AND POSTING NOTICE OF
PUBLIC HEARING IN THE CITY OF WILSONVILLE**

STATE OF OREGON)

**COUNTIES OF CLACKAMAS)
AND WASHINGTON)**

CITY OF WILSONVILLE)

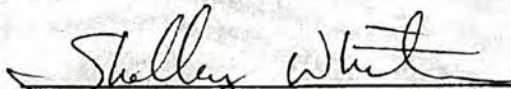
I, Shelley L. White, do hereby certify that I am Administrative Assistant for the City of Wilsonville, Counties of Clackamas and Washington, State of Oregon, that the attached copy of Notice of Public Hearing is a true copy of the original notice; that on December 23, 2013, I did cause to be mailed copies of such notice of said public hearing in the exact form hereto attached to the following property owners:

See Attached List

Also notice was posted at the following locations:

- City Hall, 29799 SW Town Center Loop, East, Wilsonville OR 97070
- Wilsonville Community Center, 7965 SW Wilsonville Road, Wilsonville, OR 97070
- Library, 8200 SW Wilsonville Road, Wilsonville OR 97070
- City of Wilsonville Web Site

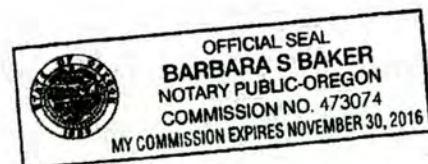
Witness my hand this 23rd day of December 2013


Shelley White, Administrative Assistant

Acknowledged before me this 23rd day of December 2013



NOTARY PUBLIC STATE OF OREGON



**EXPLANATION OF PUBLIC HEARING NOTICE
AND OPPORTUNITY TO COMMENT ON PROPOSED DEVELOPMENT
Boones Ferry Pointe: The Human Bean Drive-up Coffee Kiosk**

This notice informs you of your opportunity to comment on the development of a new 450 square foot drive-thru coffee kiosk at the corner of 95th Avenue and Boones Ferry Road in North Wilsonville and associated improvements, including landscaping and signs.

Comments are encouraged to address specific components of the development such as architecture, site design, signs, traffic, parking, etc. A list of criteria in the City code applicable to review of the development can be found in the attached Notice of Public Hearing.

You can provide comments by submitting them in writing, or by testifying in person at the Public Hearing

Frequently Asked Question about Providing Written Comments:

To whom should I address my written comments?

Please address comments to "Development Review Board Members"

How do I submit written comments?

Email is best. Comments can be emailed to the Planning Staff Member reviewing the application. Daniel Pauly, at pauly@ci.wilsonville.or.us. They can also be mailed to :Planning Division, Attn: Daniel Pauly, 29799 SW Town Center Loop East, Wilsonville, OR 97070 or delivered in person 8:00 to 5:00 on days City Hall is opened (typically Mon-Fri) at the address above.

When should written comments be submitted?

- For comments to be considered in preparing the staff report and to be sent to the DRB for their review prior to the Public Hearing they must be received by City Staff no later than 4 p.m. on January 3, 2014.
- For staff to prepare copies of the comments for the hearing they must be received no later than 2 p.m. the day of the hearing.
- You can bring your own copies to the Public Hearing to present when you testify if you do not meet the deadlines above.

Where and When to come to attend or testify at the Public Hearing

WHERE (Public Hearing): City Hall Council Chambers, 29799 SW Town Center Loop East, Wilsonville, OR 97070

WHEN: January 13, 2014 at 6:30 pm.

City Case Files for Application:

DB13-0046 Stage II Final Plan Revision

DB13-0047 Site Design Review

DB13-0048 Master Sign Plan Revision and Sign Waiver

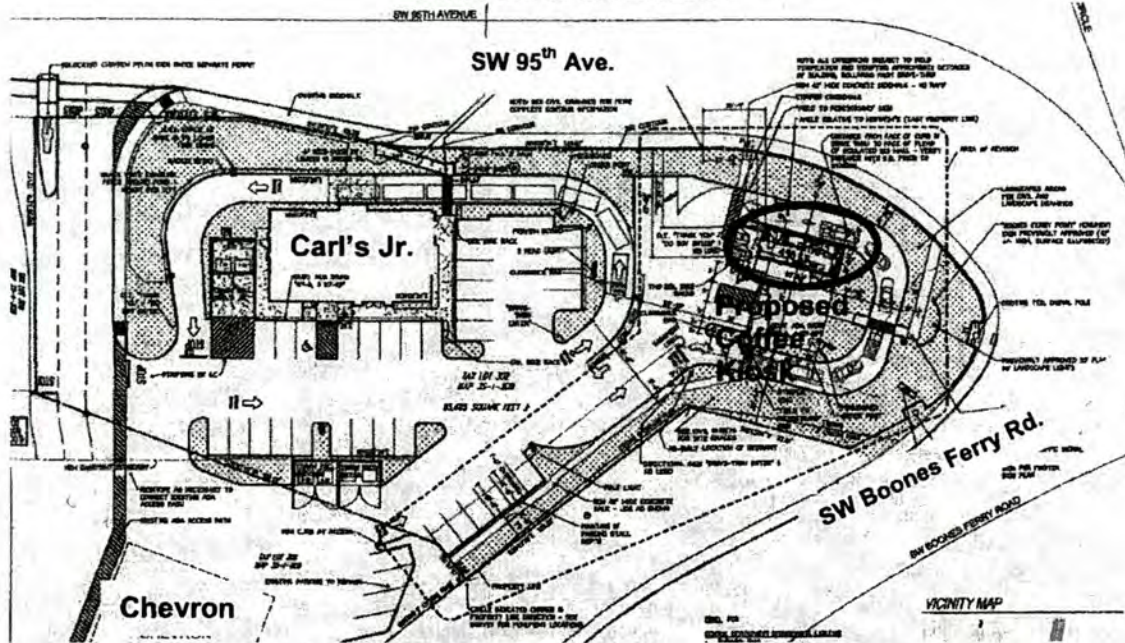
PUBLIC HEARING NOTICE

FOR HEARING JANUARY 13, 2014

Wilsonville Development Review Board Panel 'A'

Notice Date: December 23, 2013

PROPOSED SITE PLAN



PROPOSED BUILDING DESIGN



**PUBLIC NOTICE
CITY OF WILSONVILLE**

DEVELOPMENT REVIEW BOARD PANEL A

NOTICE IS HEREBY GIVEN that a PUBLIC HEARING will be held by the **Development Review Board (DRB)** of the City of Wilsonville on **Monday, January 13, 2014 at 6:30 P.M.** at City Hall, at 29799 SW Town Center Loop E, Wilsonville, Oregon, or to such other place to which the Development Review Board may adjourn.

CASE FILES TO BE CONSIDERED: DB13-0046 Stage II Final Plan Revision
DB13-0047 Site Design Review
DB13-0048 Master Sign Plan Revision and Sign Waiver

OWNER/APPLICANT: Josh Veentjer, Wilsonville Devco LLC

**APPLICANT'S
REPRESENTATIVES:** Ben Altman, SFA Design Group
Craig Anderson, CB Anderson Architects

LOCATION: Southeast corner of the 95th Avenue/ Boones Ferry Road intersection near Elligsen Road/I-5 Interchange Described as Tax Lot 0302, Section 2DB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, as depicted on the map below.

CONTACT: Daniel Pauly AICP, Associate Planner, at (503) 682-4960.

REQUEST: Boones Ferry Pointe: New 450 square foot drive-thru coffee shop to replace an approved but un-built multi-tenant commercial building at the corner of 95th Avenue and Boones Ferry Road in North Wilsonville.

APPLICABLE CRITERIA

Planning and Land Development Ordinance: Section 4.008, Section 4.009, Section 4.010, Section 4.011, Section 4.014, Section 4.031, Subsection 4.035 (.04), Subsection 4.035 (.05), Section 4.110, Section 4.116, Section 4.118, Section 4.131, Section 4.140, Section 4.154, Section 4.155, Sections 4.156.01 through 4.156.11, Section 4.167, Section 4.171, Section 4.175, Section 4.176, Section 4.177, Section 4.179, Sections 4.199.20 through 4.199.60, Sections 4.300 through 4.320, Sections 4.400 through 4.450 as applicable..

Copies of the approval criteria are available from the Wilsonville Planning Division, located at 29799 SW Town Center Loop East. All testimony and evidence shall be directed to the applicable criteria or the person providing testimony shall state which other criteria they believe applies to this application. A complete copy of the relevant file information, including the staff

PUBLIC HEARING NOTICE
Wilsonville Development Review Board Panel 'A'

FOR HEARING JANUARY 13, 2014
Notice Date: December 23, 2013

report and recommendations, will be available for inspection seven days prior to the hearing. Copies may be provided at the cost of twenty-five cents per page. Copies will also be available for review at the Wilsonville Public Library.

Any interested party may testify at the public hearing or submit written testimony at or prior to the hearing. **Written comments must be received at City Hall by January 3, 2014, to be included in the staff report.** Mail written statements to City Planning Division, 29799 SW Town Center Loop East, Wilsonville OR 97070 or email to Associate Planner: Daniel Pauly pauly@ci.wilsonville.or.us. The procedures that govern the hearing will be stated at the meeting and are found in Chapter 2.560 of the Wilsonville Code and ORS 197.763.

Please be advised that any issue that is intended to provide a basis for appeal must be raised before the close of the Development Review Board hearing, in person or by letter, with sufficient specificity to afford the Development Review Board and the parties an opportunity to respond to the issue. Failure to raise an issue with sufficient specificity will preclude any appeal on that issue. Parties with standing may appeal the decision of the Development Review Board to the City Council.

Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting. The City will also endeavor to provide qualified sign language interpreters and/or qualified bilingual interpreters, without cost, if requested at least 48 hours prior to the meeting. To obtain such services, please call Shelley White, Planning Administrative Assistant at (503) 682-4960.

Inquiries pertaining to these hearings may be made to Daniel Pauly, AICP, Associate Planner at (503) 682-4960.



AGC CENTER LLC
9450 SW COMMERCE CIRCLE #200
WILSONVILLE, OR 97070-8859

KOPAI2 LLC
10200 SW COMMERCE CIRCLE
WILSONVILLE, OR 97070-8601

LAPPOINT BUSINESS GROUP LLC
10618 CROSBY RD
WOODBURN, OR 97071-9778

OREGON STATE OF
3930 FAIRVIEW INDUSTRIAL DR SE
SALEM, OR 97302-1166

RIVERWOOD BUSINESS CENTER LLC
1501 SW TAYLOR ST STE #100
PORTLAND, OR 97205-1941

RIVERWOOD INDUSTRIAL CAMPUS
NO ADDRESS

SW 95 LLC &
25425 SW 95TH AVE
WILSONVILLE, OR 97070-7201

WILSONVILLE DEVCO LLC
4188 SW GREENLEAF DR
PORTLAND, OR 97221-3225

WPC WILSONVILLE LLC
307 LEWERS ST #600
HONOLULU, HI 96815-2364

DAN GJURGEVICH
KGK FOODS, INC.
P.O. BOX 1012
WILSONVILLE, OR 97070

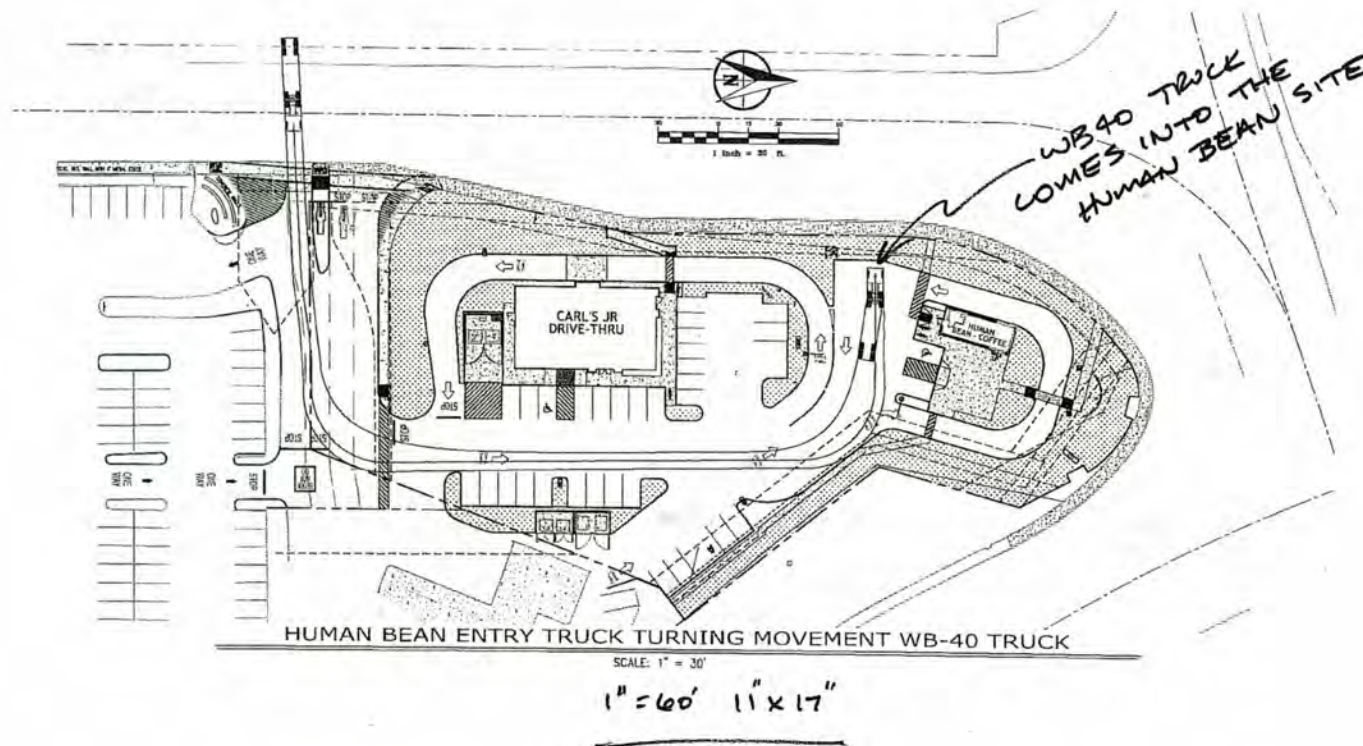
BEN ALTMAN
SFA DESIGN GROUP
9020 SW WASHINGTON SQ. DR. STE 505
PORTLAND, OR 97223

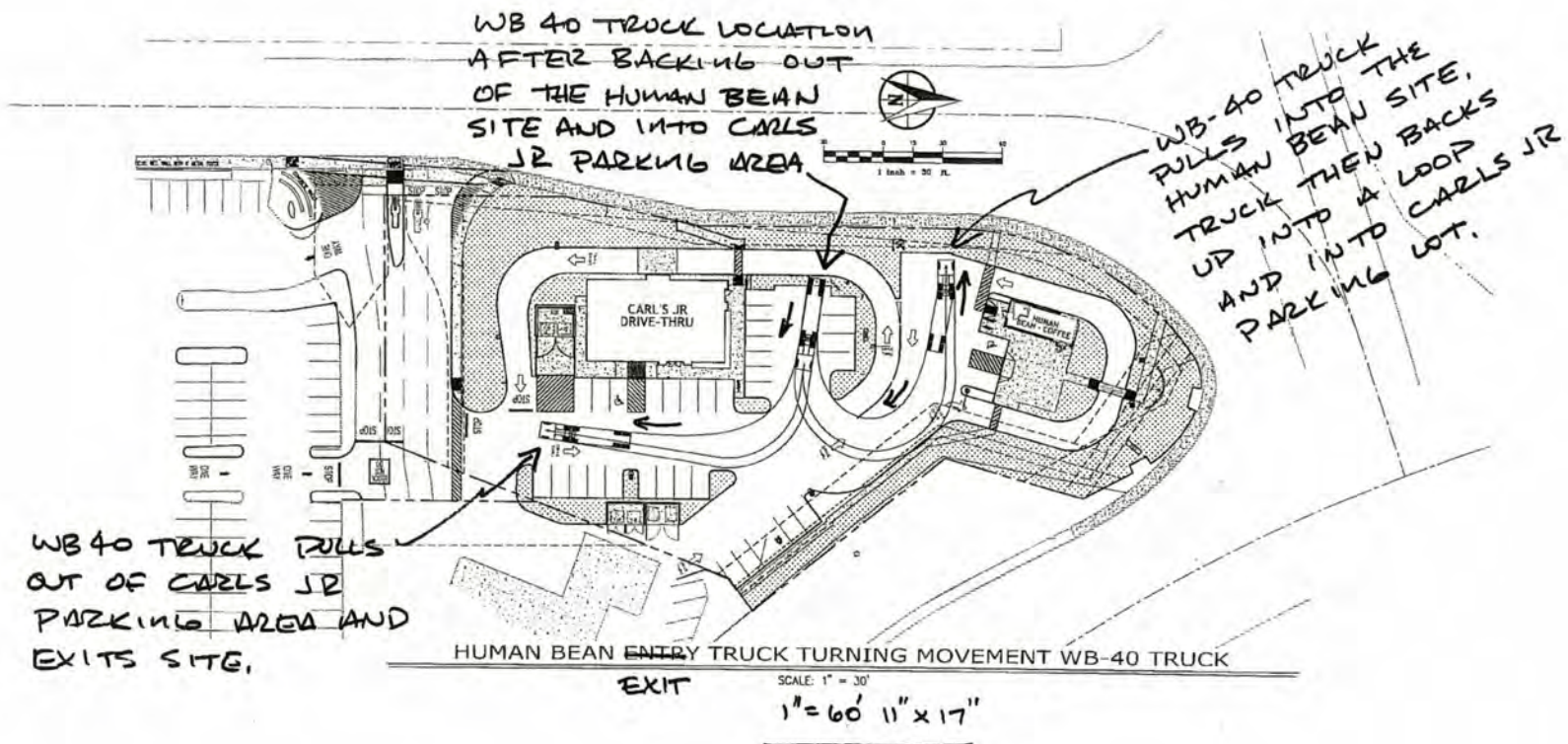
JOSH VEENTJER
WILSONVILLE DEVCO LLC
P.O. BOX 6437
LA QUINTA, CA 92248

CRAIG ANDERSON
CB ANDERSON ARCHITECTS
7209 GREENWOOD AVE. N.
SEATTLE, WA 98103

JOSH VEENTJER
WILSONVILLE DEVCO LLC
P.O. BOX 916
PORTLAND, OR 97207

JOSH VEENTJER
WILSONVILLE DEVCO LLC
50550 MANDARINA
LA QUINTA, CA 92253







PLANNING DIVISION MEMORANDUM

February 10, 2014

To: Development Review Board Panel A

From: Daniel Pauly AICP, Associate Planner

Re: The Human Bean Update and Recommend Staff Report Changes for DB13-0046 et. seq.

A number of materials have been submitted during the open record period and in response and rebuttal to those submittals. This memo covers two topics in these materials, the additional a.m. peak traffic study and internal site circulation, including delivery traffic. This memo will be Exhibit A4.

An a.m. peak traffic study has been completed by DKS and included in Exhibit B6, applicants open record submittal. The report concludes "there are no operating concerns at the study intersections or project driveway during the a.m. peak hour."

Internal site circulation and parking for larger vehicles including delivery trucks remains a discussion point. As far as vehicle circulation, the applicant has proposed additional striping and site directional signage to aid circulation. Exhibit E of Exhibit B6 shows delivery truck circulation using LaPoint's property for ingress circulation, but parking on the Wilsonville Devco property to avoid conflicts with fuel delivery. However, there remains disagreement among the property owners whether the current easements and agreement allow such circulation. The easement disagreement will need to be resolved privately by the parties. In Exhibit B8 Wilsonville Devco shows a workable Human Bean delivery truck circulation in the case that it is determined they are unable to use LaPoint's property. The scope of the current review is limited to the Human Bean and Carl's Jr deliveries and site circulation are out of that scope.

Staff recommends the DRB amend the staff report findings related to circulation as follows. Changes are in **bold italic underline text**:

Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas

A31. **Review Criteria**: "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet DD5 "Proposed Truck Turning Movements" of Exhibit B2 of DB12-0074 through 0076 demonstrates sufficient access and maneuvering areas for delivery trucks, both for the Chevron fuel and Carl's Jr. and the coffee kiosk. Staff notes fuel off-loading, and restaurant **and** other commercial delivery parking are in the same area

of the site separating these operations from the general employee and customer parking and pedestrian areas. The access and maneuvering areas for passenger vehicle parking areas appears sufficient providing adequate space for two-way travel. As shown in Exhibits B6 and B7 additional pavement markings and signs are being added to aid in vehicle circulation. The applicant states in their compliance narrative in their notebook, Exhibit B1, that "care has been given to the extent practicable to separate vehicle and pedestrian traffic." Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic. Staff notes disagreement exists between LaPoint and Wilsonville Devco concerning the extent of the easement that would allow deliveries trucks to access the Wilsonville Devco site via LaPoint's property as shown on Exhibit E of Exhibit B6. Exhibit B8 shows an alternative for larger trucks delivering to the Human Bean in the case that private resolution of the easement disagreement does not allow the trucks to maneuver on LaPoint's property. Exhibit B8 shows adequate truck access and circulation to the Human Bean portion of the site. For a development of the proposed size Wilsonville Development Code does not require a separate loading/delivery area, and therefore as is typical of fast food and coffee kiosk type uses in general, the deliveries by necessity happen in the customer/employee parking and circulation areas.

Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation

- A34. **Review Criteria:** "Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses as well as the existing Chevron and Holiday Inn share a common driveway off 95th Avenue and their access and parking areas are interconnected. Joint use of many the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations, and direct vehicle and pedestrian paths between destinations with limited choke points. To the extent practicable parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron a direct pedestrian path is provided to the coffee kiosk. Multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site. As shown in Exhibits B6 and B7 additional signs and pavement markings have been added to further aid in directing circulation thus aiding efficiency.

Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards

- B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the applicant's notebook, Exhibit B1. Staff notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met. *Among the design standards is a requirement that special attention be paid to general circulation and parking areas that are safe and convenient. As shown by the number of added signs and markings, as well as specific drawings for different truck circulation scenarios (see Exhibits B6, B7, and B8), the applicant has demonstrate special attention has been given to site circulation and safe and convenient parking areas.*

Exhibit A1
STAFF REPORT
WILSONVILLE PLANNING DIVISION

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

DEVELOPMENT REVIEW BOARD PANEL 'A'
QUASI-JUDICIAL PUBLIC HEARING
STAFF REPORT

HEARING DATE	January 13, 2014
DATE OF REPORT:	January 6, 2014

APPLICATION NOS.: DB13-0046 Stage II Final Plan Revision
DB13-0047 Site Design Review
DB13-0048 Master Sign Plan Revision and Sign Waiver

REQUEST/SUMMARY: The Development Review Board is being asked to review a revised Stage II Final Plan, Site Design Review, and revised Master Sign Plan for the development of a new 450 square foot drive-thru coffee shop to replace an approved but un-built 3,150 square foot multi-tenant commercial building at the corner of 95th Avenue and Boones Ferry Road in North Wilsonville.

LOCATION: The proposed coffee shop location is on the southeast corner of the 95th Avenue/Boones Ferry Road intersection near Elligsen Road/I-5 Interchange. The property is specifically known as Tax Lot 0302, Section 2DB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon.

OWNER/APPLICANT: Josh Veentjer
Wilsonville Devco LLC

APPLICANT'S REPS.: Ben Altman
SFA Design Group

Craig Anderson
CB Anderson Architects

COMPREHENSIVE PLAN MAP DESIGNATION: Commercial

ZONE MAP CLASSIFICATION: PDC (Planned Development Commercial)

STAFF REVIEWERS: Daniel Pauly AICP, Associate Planner
Steve Adams PE, Development Engineering Manager
Don Walters, Building Plans Examiner

STAFF RECOMMENDATION: Approve with conditions the requested revised Stage II Final Plan, Site Design Review request, and revised Master Sign Plan.

APPLICABLE REVIEW CRITERIA

Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Section 4.031	Authority of the Development Review Board
Subsection 4.035 (.04)	Site Development Permit Application
Subsection 4.035 (.05)	Complete Submittal Requirement
Section 4.110	Zones
Section 4.116	Standards Applying to Commercial Development in All Zones
Section 4.118	Standards Applying to Planned Development Zones
Section 4.131	Planned Development Commercial Zone (PDC)
Section 4.140	Planned Development Regulations
Section 4.154	On-site Pedestrian Access and Circulation
Section 4.155	Parking, Loading, and Bicycle Parking
Sections 4.156.01 through 4.156.11	Sign Regulations
Section 4.167	Access, Ingress, and Egress
Section 4.171	Protection of Natural Features and Other Resources
Section 4.175	Public Safety and Crime Prevention
Section 4.176	Landscaping, Screening, and Buffering
Section 4.177	Street Improvement Standards
Section 4.179	Mixed Solid Waste and Recyclables Storage
Sections 4.199.20 through 4.199.60	Outdoor Lighting
Sections 4.300 through 4.320	Underground Utilities
Sections 4.400 through 4.450 as applicable	Site Design Review

Vicinity Map



BACKGROUND/SUMMARY:

Approved Stage I Master Plan/Site History

The subject property is part of the Edwards Business Center Industrial Master Plan.¹ This master plan envisioned a variety of industrial and commercial uses. The Master Plan designated the subject site as commercial, but did not specify the type of commercial use. Previously the City received an application for an office building on the site, which was never built. In March 2013 the Development Review Board approved an application to construct a fast-food restaurant and a multi-tenant commercial building consistent with the designation of the property in the Master Plan. The restaurant building has been built, but the property owner determined they were unable to find appropriate tenants and finance the commercial building. The applicant is now requesting to replace the multi-tenant commercial building portion of the development with a drive-thru coffee kiosk which remains consistent with the Stage I Master Plan commercial designation.

Stage II Final Plan (DB13-0046)

The Stage II Final Plan looks at the function and overall aesthetics of the proposed development, including traffic, parking, and circulation.

The proposed revised master plan includes a 450 square foot drive-thru coffee kiosk, and associated site improvements including parking, circulation, and landscaping. The coffee kiosk development replaces a multi-tenant commercial building approved by the DRB in March 2013

at the same time the adjacent Carl's Jr. restaurant was approved. The development site sits just north of the recently completed Carl's Jr. restaurant at the southeast corner of SW 95th Avenue and SW Boones Ferry Road. The kiosk building has a flat roof with a parapet to screen view of mechanical equipment. The north end of the building has a tower featuring the sign bands. A drive through lane wraps around the east, north, and west side of the kiosk and the adjoining patio and parking area. Parking is to the south and southeast.

Vehicle access to the coffee kiosk is via an existing shared driveway with Holiday Inn, Chevron, and Carl's Jr.

The Modified Stage II Final Plan for Boones Ferry Point, which will include Carl's Jr. and the proposed coffee kiosk, proposes approximately 15569 square feet of landscaping, 37 parking spaces (35 required), maneuvering and circulations areas, and mixed solid waste and recyclables storage. The total gross area of the site covered by the Stage II Master Plan is 55,605 square feet or 1.28 acres.

Site Design Review (DB13-0047)

Architectural Design

In the application for the original Boones Ferry Point (DB12-0074 et. seq.) the applicant explained how the design goal was to identify with the general environment of commercial development at Argyle Square and along Wilsonville Road while also adding a unique personality to the development and proper identity to the planned tenants. Smaller scale wood-frame structures using traditional exterior materials intended to reinforced their location in Wilsonville's small town setting. The approved buildings featured brick, horizontal lap siding, and board and batten materials. The proposed coffee kiosk follows this same architectural theme previously proposed and approved. The building features brick around the base, with a mix of lap siding and horizontal siding on the main body of the building. The tower design has similar shape as the Carl's Jr. building towers, but uses different material and colors. The Carl's Jr. building and the proposed coffee kiosk incorporate similar architectural elements, but have enough differences to be unique and complementary.

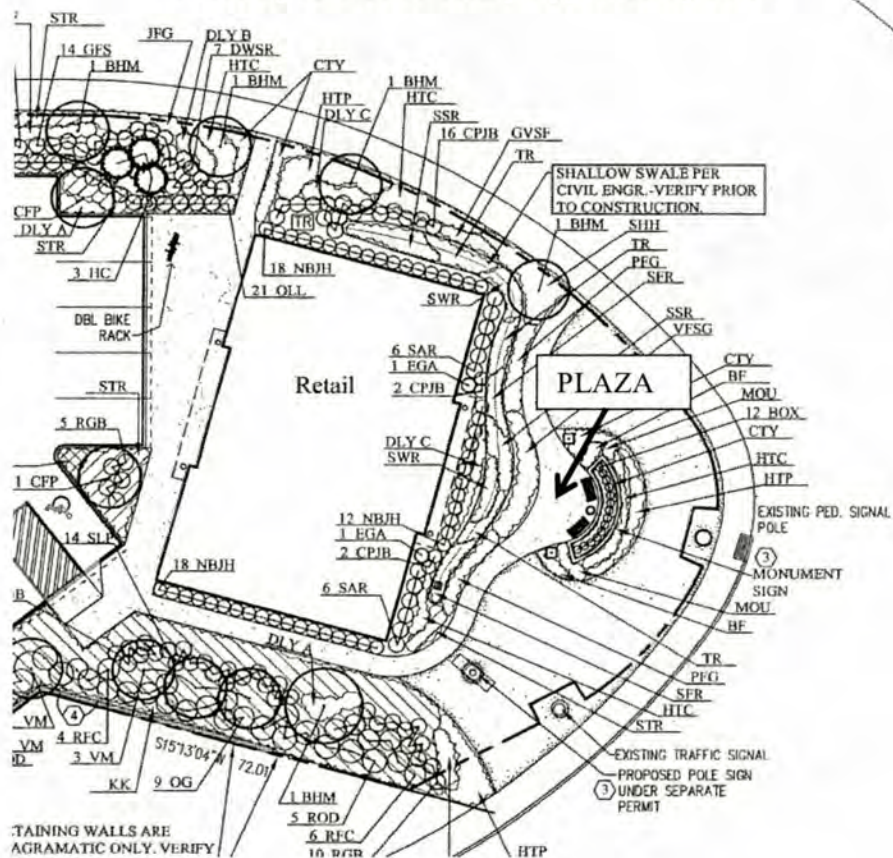
Proposed Drive-thru Coffee Kiosk Rendering



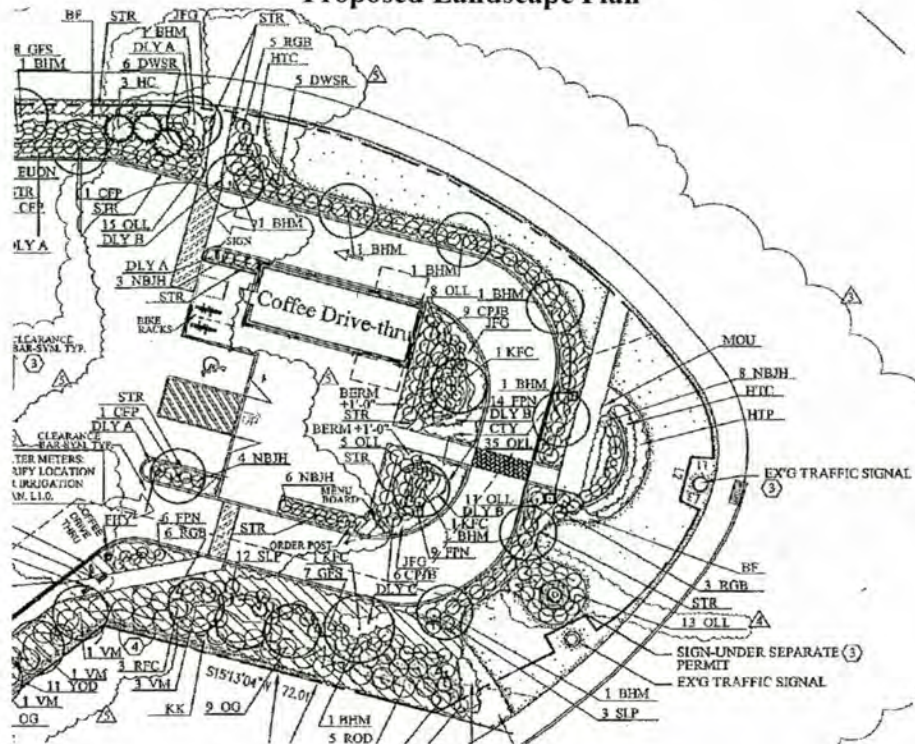
Landscape and Hardscape Design

In the design of Boones Ferry Pointe previously approved by the DRB a planter and plaza are featured at the north of the site to acknowledge the gateway at a prominent intersection on the northern edge of the City. The remainder of the landscaping is typical of parking lots and commercial areas in Wilsonville. In the proposed revised plan the planter and gateway sign with flag remain, but the plaza has been replaced with a patio area adjacent to the coffee kiosk. The remainder of the area around the coffee kiosk accommodates the drive-thru lane and otherwise remains typical of parking lots and commercial areas in Wilsonville.

Landscape Plan Previously Approved by DRB



Proposed Landscape Plan



Master Sign Plan and Sign Area Waiver (DB13-0048)

Building Signs

All three facades of the coffee kiosk where signs are proposed are eligible for building signs, with the allowed area based on the length of the different facades. The building signs will be wall mounted internally illuminated logo cabinets, like Carl's Jr., or individual internally illuminated channel letters. The signs will be appropriately placed on the buildings either centered in architectural features or centered above doors or windows. The sign design and placement is similar to other commercial retail developments in Wilsonville including Argyle Square and Old Town Square. Due to the narrow length of the north façade of the building, the applicant is requesting a waiver to allow a sign of the same size as the east and west facades, providing consistency on each of the three facades of the northern portion of the building, which are very similar architecturally.

Proposed Building Signs



DISCUSSION TOPICS:

Bicycle Parking

While the required number of bicycle parking spaces is provided, a couple requirements for bicycle parking are not met. The requirements not met include the spacing between bike parking and the kiosk building and the distance of the bike parking from the pedestrian service window. Condition of Approval PDA 2 requires the bicycle parking to be relocated within the plaza area or otherwise modified to meet these requirements.

Existing Hardscape and Landscape Improvements

Most of the hardscape and landscape for the proposed development has already been installed. This was done by the developer at their own risk. While, staff recommends approval, with modifications, of the hardscape and landscape as installed, the Development Review Board has full authority to require changes to the hardscape and landscape as if none had yet been installed.

Tables and Other Furnishings for Patio Area

The applicant has not provided information on tables or other furnishings for the patio area adjacent to the coffee kiosk. While none are currently proposed, it is understood furnishings will be placed in this area. Condition of Approval PDB 9 ensures the design of these furnishings will be durable and match or complement to the neighboring building thus helping to meet the site design review standards.

Restrictive Covenant Legal Dispute

As described in Exhibit D1 a legal dispute is ongoing regarding whether a restrictive covenant on the property prevents the operation of the proposed coffee kiosk. This is a private matter to be resolved between the parties. Staff does not see a reason to delay City approval with conditions of the proposed development. See letter regarding this matter from Barbara Jacobson, Assistant City Attorney, Exhibit C3.

CONCLUSION AND CONDITIONS OF APPROVAL:

Staff has reviewed the applicant's analysis of compliance with the applicable criteria. The Staff report adopts the applicant's responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, staff recommends that the Development Review Board approve the proposed application (DB13-0046, DB13-0047, DB13-0048) with the following conditions:

REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION

Planning Division Conditions:

- PDA 1.** The approved final plan schedule shall control the issuance of all building permits and shall restrict the nature, location and design of all uses. Minor changes to the approved final development plan may be approved by the Planning Director through administrative review pursuant to Section 4.030 if such changes are consistent with the purposes and general character of the plan. All other modifications shall be processed in the same manner as the original application and shall be subject to the same procedural requirements.
- PDA 2.** The applicant shall modify or relocate the bicycle parking spaces to meet the following standards identified in Subsection 4.155 (.04) B. while continuing to meet all other applicable standards:
- An aisle at least 5 feet wide shall be maintained behind all required bicycle parking to allow room for bicycle maneuvering.
 - Each space be located within 30 feet of the pedestrian service window.

REQUEST B: DB13-0047 SITE DESIGN REVIEW

Planning Division Conditions:

- PDB 1.** Construction, site development, and landscaping shall be carried out in substantial accord with the Development Review Board approved plans, drawings, sketches, and other documents. Minor revisions may be approved by the Planning Director through administrative review pursuant to Section 4.030. See Findings B3.
- PDB 2.** All landscaping required and approved by the Board shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping as determined by the Planning Director is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City will be returned to the applicant. See Finding B9.

PDB 3.	The approved landscape plan is binding upon the applicant/owner. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, pursuant to the applicable sections of Wilsonville's Development Code. See Finding B10.
PDB 4.	All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved by the Board, unless altered as allowed by Wilsonville's Development Code. See Findings B11 and B12.
PDB 5.	<p>The following requirements for planting of shrubs and ground cover shall be met:</p> <ul style="list-style-type: none"> • Non-horticultural plastic sheeting or other impermeable surface shall not be placed under landscaping mulch. • Native topsoil shall be preserved and reused to the extent feasible. • Surface mulch or bark dust shall be fully raked into soil of appropriate depth, sufficient to control erosion, and shall be confined to areas around plantings. • All shrubs shall be well branched and typical of their type as described in current AAN Standards and shall be equal to or better than 2-gallon containers and 10" to 12" spread. • Shrubs shall reach their designed size for screening within three (3) years of planting. • Ground cover shall be equal to or better than the following depending on the type of plant materials used: gallon containers spaced at 4 feet on center minimum, 4" pot spaced 2 feet on center minimum, 2-1/4" pots spaced at 18 inch on center minimum. • No bare root planting shall be permitted. • Ground cover shall be sufficient to cover at least 80% of the bare soil in required landscape areas within three (3) years of planting. • Appropriate plant materials shall be installed beneath the canopies of trees and large shrubs to avoid the appearance of bare ground in those locations. • Compost-amended topsoil shall be integrated in all areas to be landscaped, including lawns. <p>See Finding B22.</p>
PDB 6.	Plant materials shall be installed to current industry standards and be properly staked to ensure survival. Plants that die shall be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City. See Finding B27.
PDB 7.	Outdoor lighting associated with the coffee kiosk use shall be dimmed at 10:00 p.m. by an automatic system. See Finding B38.
PDB 8.	All non-exempt luminaires shall be limited to down lighting. Non-exempt luminaires, except luminaire DD, shall be mounted and aimed consistent with their fully shielded classification. See Finding B35 and B37.
PDB 9.	Furnishings for the patio area shall be of durable materials that can withstand multiple years of outdoor exposure and remain in a like-new condition. Furnishings for the patio area shall be colors matching or complementary to the coffee kiosk building. Furnishings are not approved to have any signage. Final design and

placement of furnishings shall be approved by the Planning Division through the Class I Administrative Review process.

REQUEST C DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER

PDC 1.	Non-exempt signs shall be issued a Class I Sign Permit through the Planning Division prior to installation to ensure compliance with the approved Master Sign Plan.
PDC 2.	This action only changes the components of the Master Sign Plan explicitly noted. All other aspects of the Master Sign Plan and Conditions of Approval of Case File DB12-0076 remain in effect.
PDC 3.	The illuminated directional signs at internal circulation drive intersections shall be limited to six (6) square feet. See Finding C24.

CONDITIONS OF APPROVAL FROM THE ENGINEERING AND BUILDING DIVISIONS FOR ALL REQUESTS

The following Conditions of Approval are provided by the Engineering and Building Divisions of the City's Community Development Department which have authority over development approval. A number of these Conditions of Approval are not related to land use regulations under the authority of the Development Review Board or Planning Director. Only those Conditions of Approval related to criteria in Chapter 4 of Wilsonville Code and the Comprehensive Plan, including but not limited to those related to traffic level of service, site vision clearance, and concurrency, are subject to the Land Use review and appeal process defined in Wilsonville Code and Oregon Revised Statutes and Administrative Rules. Other Conditions of Approval are based on City Code chapters other than Chapter 4, state law, federal law, or other agency rules and regulations. Questions or requests about the applicability, appeal, exemption or non-compliance related to these other Conditions of Approval should be directed to the City Division with authority over the relevant portion of the development approval.

Engineering Division Conditions:	
Specific Comments:	
PF 1.	Engineering Public Facilities Conditions of Approval (PF conditions) for DB12-0074 and DB12-0075 remain in effect for this project accept as further modified below.
PF 2.	At the request of Staff, DKS Associates completed a Trip Generation memo dated September 5, 2013 revising a previously completed Carl's Jr. Traffic Impact Study that was completed in May 2012. The proposed use is expected to generate 13 fewer new primary trips than the previously approved use. The project is hereby limited to no more than the following impacts. <div style="display: flex; justify-content: space-between; width: 100%;"> Estimated New PM Peak Hour Trips 117 </div>
PF 3.	Stormwater detention and storm water quality for this site will be handled via the stormwater facility constructed with the Boones Ferry Pointe project.
PF 4.	The project shall connect to the existing Storm lateral constructed with the Boones Ferry Pointe project.
PF 5.	The project shall connect to the existing Sanitary Sewer stub constructed with the

	Boones Ferry Pointe project.
PF 6.	The project shall connect to the existing Water service constructed with the Boones Ferry Pointe. project.

<u>Building Division Conditions:</u>	
BD 1.	ACCESSIBLE. At least one of the walk-up service windows shall be accessible.

MASTER EXHIBIT LIST:

The following exhibits are hereby entered into the public record by the Development Review Board as confirmation of its consideration of the application as submitted. This is the exhibit list that includes exhibits for Planning Case Files DB13-0046, DB13-0047, DB13-0048.

- A1.** Staff report and findings (this document)
- A2.** Staff's public hearing presentation slides (not available until public hearing)
- B1.** Applicant's Notebook:
 - 1. Notice of Complete Application Dated December 9, 2013
 - 2. Response to Letter of Incomplete Application Dated December 4, 2013
 - 3. Notice of Incomplete Application Dated November 20, 2013
 - 4. Application Form Signed by Josh Ventjeer, Managing Member of Wilsonville Devco LLC
 - 5. Compliance Report
 - 6. DKS Traffic Memo
 - 7. Site Plans Approved by DRB in Case Files DB12-0074 through DB12-0076
 - 8. Signage (Proposed)
 - 9. Lighting Detail & Photometrics (Proposed)
 - 10. Revised Site & Architectural Plans (Proposed)
- B2.** Plan Sets and Architectural Drawings:
 - Color Architectural Renderings (Proposed)
 - C105 Previous Approved Grading Plan (DB12-0074 through DB12-0076)
 - A1.0 Architectural Site Plan (Proposed)
 - DD101 Composite Utility Plan (Proposed)
 - DD102 Grading Plan (Proposed)
 - L2.0 Landscape Planting Plan (Proposed)
 - L1.0 Landscape Irrigation Plan (Proposed)
 - A-1 Coffee Kiosk Floor Plan and Upper Wall Framing Plan from Pacific Mobile
 - A-3 Coffee Kiosk Wall Elevations from Pacific Mobile
 - E-1 Coffee Kiosk Electrical Plan from Pacific Mobile
 - SE1.0 Photometric Site Plan (Proposed)
 - Sign Drawings
- B3.** Materials Boards for Coffee Kiosk (available at public hearing)
- C1.** Engineering Division Comments and Conditions
- C2.** Building Division Comments and Conditions
- C3.** January 3, 2014 Letter from Barbara Jacobson, Assistant City Attorney, to Alec Laidlaw RE: The Human Bean Coffee Store Legal Dispute
- D1.** Written Testimony Received January 3, 2014 on behalf of Garry Lapoint

Development Review Board Panel 'A' Staff Report January 6, 2014
Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk
DB13-0046, DB13-0047, DB13-0048

Exhibit A1

Page 11 of 50

January 3, 2014 email from Terra Burns, Laidlaw and Laidlaw Paralegal, to Daniel Pauly, Associate Planner
 January 3, 2014 Letter from Alec Laidlaw to Daniel Pauly, Associate Planner
 Copy of Washington County Circuit Court Case No. C138125CV Defendants' ORCP 21 Motions
 Copy of Washington County Circuit Court Case No. C138125CV Declaration of Garry L. Lapoint in Support of Defendants' ORCP 21 Motions
 Copy of Washington County Circuit Court Case No. C138125CV Defendants' Counsel's Certificate of Compliance (UTCR 5.010)

FINDINGS OF FACT:

1. The statutory 120-day time limit applies to this application. The application was received on November 12, 2013. On November 20, 2013, staff conducted a completeness review within the statutorily allowed 30-day review period, and, on December 4, 2013, the Applicant submitted new materials. Additional materials were submitted on December 7, 2013. On December 9, 2013 the application was deemed complete. The City must render a final decision for the request, including any appeals, by April 8, 2014.

2. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	PDI	95 th /Boones Ferry Intersection/ Riverwood Industrial Campus
East:	PDC	Chevron/Boones Ferry Rd.
South:	PDC	Holiday Inn
West:	PDC	95 th Avenue/AGC Center

3. Prior land use actions include:

Edwards Business Center Industrial Park Plat-Stage I
 97DB28 Stage II, Site Design Review, LaPoint Center
 DB06-0041, DB06-0043, DB06-0057, DB06-0042 Stage II Final Plan, Site Design Review, Waiver to Building Height, Master Sign Plan for Brice Office Building (Expired)
 DB12-0074 through DB12-0076 Stage II Final Plan, Site Design Review, and Master Sign Plan for fast food restaurant and multi-tenant commercial building.
 DB13-0027 Site Design Review for accent lighting on fast food restaurant.

4. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

CONCLUSIONARY FINDINGS:

NOTE: Pursuant to Section 4.014 the burden of proving that the necessary findings of fact can be made for approval of any land use or development application rests with the applicant in the case.

GENERAL INFORMATION

Section 4.008 Application Procedures-In General

Review Criteria: This section lists general application procedures applicable to a number of types of land use applications and also lists unique features of Wilsonville's development review process.

Finding: These criteria are met.

Explanation of Finding: The application is being processed in accordance with the applicable general procedures of this Section.

Section 4.009 and Subsection 4.140 (.03) Who May Initiate Application and Ownership

Review Criterion: "Except for a Specific Area Plan (SAP), applications involving specific sites may be filed only by the owner of the subject property, by a unit of government that is in the process of acquiring the property, or by an agent who has been authorized by the owner, in writing, to apply." "The tract or tracts of land included in a proposed Planned Development must be in one (1) ownership or control or the subject of a joint application by the owners of all the property included."

Finding: This criterion is satisfied.

Explanation of Finding: The application has been submitted on behalf of the property owner, Wilsonville Devco LLC. The application form is signed by Josh Veentjer, Managing Member.

Subsection 4.010 (.02) Pre-Application Conference

Review Criteria: This section lists the pre-application process

Finding: These criteria are satisfied.

Explanation of Finding: A pre-application conference was held on August 22, 2013 in accordance with this subsection.

Subsection 4.011 (.02) B. Lien Payment before Application Approval

Review Criterion: "City Council Resolution No. 796 precludes the approval of any development application without the prior payment of all applicable City liens for the subject property. Applicants shall be encouraged to contact the City Finance Department to verify that there are no outstanding liens. If the Planning Director is advised of outstanding liens while an application is under consideration, the Director shall advise the applicant that payments must be made current or the existence of liens will necessitate denial of the application."

Finding: This criterion is satisfied.

Explanation of Finding: No applicable liens exist for the subject property. The application can thus move forward.

Subsection 4.035 (.04) A. General Site Development Permit Submission Requirements

Review Criteria: “An application for a Site Development Permit shall consist of the materials specified as follows, plus any other materials required by this Code.” Listed 1. through 6. j.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided all of the applicable general submission requirements contained in this subsection.

Section 4.110 Zoning-Generally

Review Criteria: “The use of any building or premises or the construction of any development shall be in conformity with the regulations set forth in this Code for each Zoning District in which it is located, except as provided in Sections 4.189 through 4.192.” “The General Regulations listed in Sections 4.150 through 4.199 shall apply to all zones unless the text indicates otherwise.”

Finding: These criteria are satisfied.

Explanation of Finding: This proposed development is in conformity with the applicable zoning district and general development regulations listed in Sections 4.150 through 4.199 have been applied in accordance with this Section.

REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION

Planned Development Regulations

Subsection 4.140 (.01) Purpose of Planned Development Regulations

- A1. **Review Criterion:** The proposed Stage II Final Plan shall be consistent with the Planned Development Regulations purpose statement.

Finding: This criterion is satisfied.

Explanation of Finding: Based on the information provided by the applicant in their narrative, staff is of the professional opinion that the purpose of the planned development regulations is met by the proposed Stage II Final Plan.

Subsections 4.140 (.02) and (.05) Planned Development Lot Size and Permit Process

- A2. **Review Criteria:** “Planned Development may be established on lots which are suitable for and of a size to be planned and developed in a manner consistent with the purposes and objectives of Section 4.140.” “Any site designated for development in the Comprehensive Plan may be developed as a Planned Development, provided that it is zoned ‘PD.’ All sites which are greater than two (2) acres in size, and designated in the Comprehensive Plan for commercial, residential, or industrial use shall be developed as Planned Developments, unless approved for other uses permitted by the Development Code.”

“All parcels of land exceeding two (2) acres in size that are to be used for residential, commercial or industrial development, shall, prior to the issuance of any building permit:

1. Be zoned for planned development;
2. Obtain a planned development permit; and
3. Obtain Development Review Board, or, on appeal, City Council approval.”

Finding: These criteria are satisfied.

Explanation of Finding: The development site is less than two (2) acres. However, it is previously been zoned for Planned Development. The property is designated for commercial development in the Comprehensive Plan, and is zoned Planned Development Commercial. The property is of sufficient size and will be developed as a planned development in accordance with this subsection.

Subsection 4.140 (.04) Professional Design Team Required for Planned Developments

- A3. **Review Criteria:** “The applicant for all proposed Planned Developments shall certify that the professional services of the appropriate professionals have been utilized in the planning process for development. One of the professional consultants chosen by the applicant shall be designated to be responsible for conferring with the planning staff with respect to the concept and Explanation of the plan.”

Finding: These criteria are satisfied.

Explanation of Finding: The applicant’s compliance narrative lists the appropriate professionals involved in the planning and permitting process. Ben Altman of SFA Design Group has been designated the coordinator for the planning portion of the project.

Stage II Final Plan Submission Requirements and Process

Subsection 4.140 (.09) A. Timing of Submission

- A4. **Review Criterion:** "Unless an extension has been granted by the Development Review Board, within two (2) years after the approval or modified approval of a preliminary development plan (Stage I), the applicant shall file with the City Planning Department a final plan for the entire development or when submission in stages has been authorized pursuant to Section 4.035 for the first unit of the development"

Finding: This criterion is satisfied.

Explanation of Finding: A previous Stage I approval identified the subject property as a future commercial stage. A Stage II Final Plan was approved consistent with the previous Stage I Master Plan in March 2013. This application requests revision of the Stage II Final plan.

Subsection 4.140 (.09) C. Conformance with Stage I and Additional Submission Requirements

- A5. **Review Criteria:** "The final plan shall conform in all major respects with the approved preliminary development plan, and shall include all information included in the preliminary plan plus the following:" listed 1. through 6.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant states, and staff concurs, that the Stage II plans substantially conforms to the Stage I Master plan. The applicant has provided the required drawings and other documents showing all the additional information required by this subsection.

Subsection 4.140 (.09) D. Stage II Final Plan Detail

- A6. **Review Criterion:** "The final plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development or phase of development."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has provided sufficiently detailed information to indicate fully the ultimate operation and appearance of the development, including a detailed site plan, landscape plans, floor plans, elevation drawings, and material information.

Subsection 4.140 (.09) E. Submission of Legal Documents

- A7. **Review Criterion:** "Copies of legal documents required by the Development Review Board for dedication or reservation of public facilities, or for the creation of a non-profit homeowner's association, shall also be submitted."

Finding: This criterion is satisfied.

Explanation of Finding: No additional legal documentation is required for dedication or reservation of public facilities.

Subsection 4.140 (.09) J. Planned Development Permit Requirements

- A8. **Review Criteria:** "A planned development permit may be granted by the Development Review Board only if it is found that the development conforms to all the following criteria, as well as to the Planned Development Regulations in Section 4.140:" listed J. 1. through 3. Includes traffic level of service requirements.

Finding: These criteria are satisfied.

Explanation of Finding: Proposed is a coffee kiosk in an area designated for commercial in the Comprehensive Plan. The proposed use is at a corner and clustered with commercial uses similarly serving the travelling public, thus being part of a commercial center rather than strip commercial development. As demonstrated in the DKS Traffic Memo in the applicant's notebook, Exhibit B1, specifically page 2 of 3 of the memo, the required traffic level of service is being maintained. All utilities and services are available to serve the development.

Commercial Development in Any Zone

Subsection 4.116 (.01) Commercial Development to be in Centers and Complexes

- A9. **Review Criterion:** "Commercial developments shall be planned in the form of centers or complexes as provided in the City's Comprehensive Plan. As noted in the Comprehensive Plan, Wilsonville's focus on centers or complexes is intended to limit strip commercial development."

Finding: This criterion is satisfied.

Explanation of Finding: The approved Boones Ferry Pointe commercial development is in the form of a center clustered at an intersection with other commercial development.

Subsection 4.116 (.05) All Commercial Activity to be Completely Enclosed

- A10. **Review Criteria:** "All businesses, service or processing, shall be conducted wholly within a completely enclosed building; except for:" Listed A. through G.

Finding: These criteria are satisfied.

Explanation of Finding: All commercial activity other than exempt activities will be within in the proposed buildings. The only exceptions from the list given noted by the applicant are off-street parking for customers and employees, and outdoor seating. Staff notes there is the possibility as well for temporary outside sales.

Subsection 4.116 (.07) Uses Limited to those Meeting Industrial Performance Standards

- A11. **Review Criteria:** "Uses shall be limited to those which will meet the performance standards specified in Section 4.135(.05), with the exception of 4.135(.05)(M.)(3.)."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development facilitates commercial uses meeting these performance standards. It is understood that all uses will need to continue to meet these standards over time.

Subsection 4.116 (.08) Vision Clearance Standards for Corner Lots

- A12. **Review Criteria:** "Corner lots shall conform to the vision clearance standards set forth in Section 4.177."

Finding: These criteria are satisfied.

Explanation of Finding: Vision clearance has been reviewed by the City's Engineering Division and the City's Public Works standards for vision clearance are met.

Subsection 4.116 (.10) Commercial Development Generally

- A13. **Review Criteria:** This subsection lists a number of requirements for commercial development such as setback, lot size, lot coverage, and street frontage requirements.

Finding: These criteria are satisfied.

Explanation of Finding: All the applicable standards listed in this subsection are met.

Subsection 4.116 (.14) B. Prohibited Uses

- A14. **Review Criteria:** "Any use that violates the performance standards of Section 4.135(.05), other than 4.135(.05)(M).(3.) is prohibited within commercial developments."

Finding: These criteria are satisfied.

Explanation of Finding: No uses prohibited by this subsection are proposed.

Standards Applying in All Planned Development Zones

Subsection 4.118 (.01) Additional Height Guidelines

- A15. **Review Criterion:** "In cases that are subject to review by the Development Review Board, the Board may further regulate heights as follows:

A. Restrict or regulate the height or building design consistent with adequate provision of fire protection and fire-fighting apparatus height limitations.

B. To provide buffering of low density developments by requiring the placement of three or more story buildings away from the property lines abutting a low density zone.

C. To regulate building height or design to protect scenic vistas of Mt. Hood or the Willamette River."

Finding: This criterion is satisfied.

Explanation of Finding: Staff does not recommend the Development Review Board require a height less than the applicant proposes as the proposed height provides for fire protection access, does not abut a low density zone, and does not impact scenic views of Mt. Hood or the Willamette River.

Subsection 4.118 (.03) Waivers

- A16. **Review Criteria:** "Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may" waive a number of standards as listed in A. through E.

Finding: These criteria are satisfied.

Explanation of Finding: No planned development waivers have been requested by the applicant or are necessary to approve the application as proposed.

Subsection 4.118 (.03) E. Other Requirements or Restrictions

A17. **Review Criteria:** “Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may adopt other requirements or restrictions, inclusive of, but not limited to, the following:” Listed 1. through 12.

Finding: These criteria are satisfied.

Explanation of Finding: No additional requirements or restrictions are recommended pursuant to this subsection.

Subsection 4.118 (.04) Effect of Determination of Compliance and Conditions of Approval on Development Cost

A18. **Review Criteria:** “The Planning Director and Development Review Board shall, in making their determination of compliance in attaching conditions, consider the effects of this action on availability and cost. The provisions of this section shall not be used in such a manner that additional conditions, either singularly or cumulatively, have the effect of unnecessarily increasing the cost of development. However, consideration of these factors shall not prevent the Board from imposing conditions of approval necessary to meet the minimum requirements of the Comprehensive Plan and Code.”

Finding: These criteria are satisfied.

Explanation of Finding: It is staff's professional opinion that the determination of compliance or attached conditions do not unnecessarily increase the cost of development, and no evidence has been submitted to the contrary.

Subsection 4.118 (.05) Requirements to Set Aside Tracts for Certain Purposes

A19. **Review Criteria:** “The Planning Director, Development Review Board, or on appeal, the City Council, may as a condition of approval for any development for which an application is submitted, require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated for the following uses:” Recreational Facilities, Open Space Area, Easements.”

Finding: These criteria are satisfied.

Explanation of Finding: No additional tracts are being required for the purposes given.

Subsection 4.118 (.09) Habitat Friendly Development Practices

A20. **Review Criteria:** “To the extent practicable, development and construction activities of any lot shall consider the use of habitat-friendly development practices, which include:

A. Minimizing grading, removal of native vegetation, disturbance and removal of native soils, and impervious area;

B. Minimizing adverse hydrological impacts on water resources, such as using the practices described in Part (a) of Table NR-2 in Section 4.139.03, unless their use is prohibited by an applicable and required state or federal permit, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;

C. Minimizing impacts on wildlife corridors and fish passage, such as by using the practices described in Part (b) of Table NR-2 in Section 4.139.03; and

D. Using the practices described in Part (c) of Table NR-2 in Section 4.139.03."

Finding: These criteria are satisfied.

Explanation of Finding: As stated by the applicant and adopted by DRB for the previous Stage II approval, "The site has previously been rough graded and there is no significant native vegetation. The site does not contain any SROZ and no fish or wildlife habitats are associated with this property. The site has been designed consistent with the Habitat-Friendly practices. The storm system design provides for on-site water quality and volume control which protects the downstream wetland area south of the AGC building." The proposal does not significantly alter compliance as previously found.

Planned Development Commercial Zone

Subsection 4.131 (.01) A. 1. Uses Typically Permitted

A21. **Review Criteria:** This subsection lists the uses that are typically permitted in the PDC Zone.

Finding: These criteria are satisfied.

Explanation of Finding: The proposal replaces an approved but un-built multi-tenant commercial building with drive-thru coffee kiosk which is an allowed service establishment use.

Subsection 4.131 (.02) Prohibited Uses

A22. **Review Criteria:** This subsection lists the prohibited uses in the PDC Zone.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has not proposed any prohibited uses for the site.

Subsection 4.131 (.03) 1. Block and Access Standards: Connectivity for Different Modes

A23. **Review Criteria:** "The Development Review Board shall determine appropriate conditions of approval to assure that adequate connectivity results for pedestrians, bicyclists, and motor vehicle drivers. Consideration shall be given to the use of public transit as a means of meeting access needs."

Finding: These criteria are satisfied.

Explanation of Finding: No new blocks are proposed, and the proposed development proposes to use the existing shared private driveway on 95th Avenue partially on the subject property. A development agreement has been agreed upon between the owner of the subject property, neighboring properties, and the City ensuring appropriate access from the shared driveway.

On-site Pedestrian Access and Circulation

Subsection 4.154 (.01) B. 1. Continuous Pathway System

A24. **Review Criterion:** "A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has provided a network a network of pathways from the proposed location of the coffee kiosk to support a continuous pathway system

throughout the site. This includes two connections to the 95th Avenue sidewalk which then connects to Carl's Jr. and Holiday Inn as well as a pathway connection to the east to provide access to parking, trash enclosures, and the Chevron property. See sheet A1.0 in Exhibit B2.

Subsection 4.154 (.01) B. 2. Safe, Direct, and Convenient Pathways

A25. **Review Criteria:** "Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:

- a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.
- b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.
- c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.
- d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)(B.)(3.)(d.)."

Finding: These criteria are satisfied.

Explanation of Finding:

- All proposed pathways are of smooth and consistent concrete and no hazards are evident on the site plan.
- All proposed pathways are reasonably direct. The path from Carl's Jr. to the 95th Avenue sidewalk then across to the coffee kiosk is reasonably direct. The path from the intersection of 95th Avenue/Boones Ferry is reasonably direct. A direct path is provided from the parking stalls and trash enclosure serving the coffee kiosk.
- Where required, pathways meet ADA requirements or will be required to by the building code.
- The parking lot is not larger than 3 acres in size.

Subsection 4.154 (.01) B. 3. Vehicle/Pathway Separation

A26. **Review Criterion:** "Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards."

Finding: This criterion is satisfied.

Explanation of Finding: All pathways affected by this review are separated consistent with this subsection. Staff notes pathways marked during previous phases of development do not meet this standard.

Subsection 4.154 (.01) B. 4. Crosswalks

A27. **Review Criteria:** "Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light-color concrete inlay between asphalt, or similar contrast)."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has proposed crosswalks meeting this standard.

Subsection 4.154 (.01) B. 5. Pathway Width and Surface

A28. **Review Criteria:** "Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five (5) feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA."

Finding: These criteria are satisfied.

Explanation of Finding: Primary pathways are the required width. The pathway from the parking area/trash enclosure near Chevron is not a primary pathway and is allowed to be less than five (5) feet in width.

Subsection 4.154 (.01) B. 6. Signs for Pathways

A29. **Review Criteria:** "All pathways shall be clearly marked with appropriate standard signs."

Finding: These criteria are satisfied.

Explanation of Finding: No pathways requiring signs are proposed.

Parking and Loading

Subsection 4.155 (.02) General Parking Provisions

A30. **Review Criteria:** This subsection lists a number of general provisions for parking.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the provisions in this subsection applicable to State II Final Plan review. Among the information provided are parking calculations on sheet A1.0. of Exhibit B2. Staff specifically points out the following:

- In relation to provision B. all parking areas are accessible and usable for parking
- In relation to provisions D. the provided parking meets the sum of the minimum parking for the fast food restaurant and the coffee kiosk.
- In relation to provision J. a note on sheet A1.0 of Exhibit B2 states this requirement will be met.
- In relation to provision K. the parking area is paved and provided with adequate drainage. See Sheets A1.0 and DD102 in Exhibit B2.
- In relation to provision L. the parking lot lighting is fully shielded as to not shine into adjoining structures or the eyes of passerby's.
- In relation to provision N. 6 compact parking spaces are proposed, which is less than forty (40) percent of the proposed parking spaces. They are shown appropriately marked on Sheet A1.0 of Exhibit B2.

Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas

A31. **Review Criteria:** "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet DD5 "Proposed Truck Turning Movements" of Exhibit B2 of DB12-0074 through 0076 demonstrates sufficient access and maneuvering areas for delivery trucks, both for the Chevron fuel and Carl's Jr. and the coffee kiosk. Staff notes fuel off-loading, and restaurant other commercial delivery parking are in the same area of the site separating these operations from the general employee and customer parking and pedestrian areas. The access and maneuvering areas for passenger vehicle parking areas appears sufficient providing adequate space for two-way travel. The applicant states in their compliance narrative in their notebook, Exhibit B1, that "care has been given to the extent practicable to separate vehicle and pedestrian traffic." Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic.

Subsection 4.155 (.03) B. 1.-3. Parking Area Landscaping

A32. **Review Criteria:** "Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:" Listed 1. through 3.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the planting plans (applicant's sheet L1.0), the required amount of landscaping and trees are provided.

Subsection 4.155 (.03) C. Parking and Loading Areas-Safe and Convenient Access

A33. **Review Criterion:** "Be designed for safe and convenient access that meets ADA and ODOT standards. All parking areas which contain ten (10) or more parking spaces, shall for every fifty (50) standard spaces., provide one ADA-accessible parking space that is constructed to building code standards, Wilsonville Code 9.000."

Finding: This criterion is satisfied.

Explanation of Finding: The required ADA space for the coffee kiosk is provided.

Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation

A34. **Review Criteria:** "Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses as well as the existing Chevron and Holiday Inn share a common driveway off 95th Avenue and their access and parking areas are interconnected.

Joint use of many the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations, and direct vehicle and pedestrian paths between destinations with limited choke points. To the extent practicable parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron a direct pedestrian path is provided to the coffee kiosk. Multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site.

Subsection 4.155 (.03) G. Parking Minimum and Maximum

A35. **Review Criteria:** "Tables 5, below, shall be used to determine the minimum and maximum parking standards for various land uses. The minimum number of required parking spaces shown on Tables 5 shall be determined by rounding to the nearest whole parking space."

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the table below, the proposed parking is consistent with Table 5: Parking Standards. Staff notes the parking count differs from the submitted drawings and narrative, Exhibits B1 and B2, and this finding corrects the inaccurate counts provided in those documents.

Use	Floor Area	Min	Max	Min	Max	Provided
Fast food (with drive-thru)	2,867	9.9 per 1,000 SF	14.9 per 1000 SF	29	43	
Coffee Kiosk	450	9.9 per 1,000 SF	14.9 per 1000 SF	4	7	
Standard Spaces						29
Compact Spaces (40% Max)				--	18	6
Total Non-ADA Spaces				33	50	35
ADA Spaces				2	--	2
Total Parking Spaces						37

Subsection 4.155 (.04) A. Bicycle Parking-General Provisions

A36. **Review Criteria:** This subsection lists general provisions for bicycle parking, listed 1. through 4., including required number of spaces.

Finding: These criteria are satisfied.

Explanation of Finding: A minimum of four (4) spaces are required for the drive-thru coffee kiosk, and four (4) are provided.

Subsection 4.155 (.04) B. Bicycle Parking-Standards

A37. **Review Criteria:** This subsection lists standards for required bicycle parking, listed 1. through 5., including size, access aisle size, spacing between racks, anchoring of lockers and racks, and location standards.

Finding: These criteria are satisfied.

Explanation of Finding: As shown on sheet A1.0 of Exhibit B2 each of the 4 required parking stalls exceeds the minimum dimensions of 2 feet by 6 feet. There is sufficient space to use the bicycle racks without obstructions. Bicycle racks will be securely fastened. Five (5) feet of spacing is not provided between the bicycle racks and the kiosk. The bicycle racks are further than 30 feet from the primary entrance, which in this case staff understands to be the service window open to pedestrians. Condition of Approval PDA 2 will ensure bicycle parking is placed to meet all requirements of this subsection including the spacing from the building and distance from the service window.

Subsection 4.155 (.05) Minimum Off-street Loading Requirements

A38. **Review Criteria:** This subsection defines the requirements for loading berths including when loading berths are required and size requirements.

Finding: These criteria are not applicable.

Explanation of Finding: No loading berths are required for commercial uses of the proposed floor area.

Subsection 4.155 (.06) Carpool and Vanpool Parking Requirements

A39. **Review Criteria:** This subsection defines the requirements for carpool and vanpool parking.

Finding: These criteria are not applicable.

Explanation of Finding: No carpool or vanpool parking is required for commercial parking lots of the proposed size.

Section 4.167 Access, Ingress, and Egress

A40. **Review Criterion:** "Each access onto streets or private drives shall be at defined points as approved by the City and shall be consistent with the public's health, safety and general welfare. Such defined points of access shall be approved at the time of issuance of a building permit if not previously determined in the development permit."

Finding: This criterion is satisfied.

Explanation of Finding: The access points for the development site are existing and approved by the City. No change in access is proposed.

Natural Features

Section 4.171 Protection of Natural Features and Other Resources

A41. **Review Criteria:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.

Finding: These criteria are satisfied.

Explanation of Finding: None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

Public Safety and Crime Prevention

Subsection 4.175 (.01) Design to Deter Crime and Ensure Public Safety

A42. **Review Criterion:** "All developments shall be designed to deter crime and insure public safety."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant asserts, and staff concurs, that attention has been given to site design to deter crime and allow natural surveillance. Staff has no evidence that the proposed development would otherwise negatively impact public safety.

Subsection 4.175 (.02) Addressing and Directional Signing

A43. **Review Criteria:** "Addressing and directional signing shall be designed to assure identification of all buildings and structures by emergency response personnel, as well as the general public."

Finding: These criteria are satisfied.

Explanation of Finding: The design of the site provides for appropriate addressing and directional signage to assure easy identification.

Subsection 4.175 (.03) Surveillance and Police Access

A44. **Review Criterion:** "Areas vulnerable to crime shall be designed to allow surveillance. Parking and loading areas shall be designed for access by police in the course of routine patrol duties."

Finding: This criterion is satisfied.

Explanation of Finding: The parking and loading areas are easily assessable to law enforcement.

Subsection 4.175 (.04) Lighting to Discourage Crime

A45. **Review Criterion:** "Exterior lighting shall be designed and oriented to discourage crime."

Finding: This criterion is satisfied.

Explanation of Finding: While exterior lighting has been minimized it was previously found to discourage crime and continues to do so.

Landscaping Standards

Subsection 4.176 (.01) Purpose of Landscape, Screening, and Buffering

A46. **Review Criteria:** "This Section consists of landscaping and screening standards and regulations for use throughout the City. The regulations address materials, placement, layout, and timing of installation. The City recognizes the ecological and economic value of landscaping and requires the use of landscaping and other screening or buffering to:" Listed A. through K.

Finding: These criteria are satisfied.

Explanation of Finding: In complying with the various landscape standards in Section 4.176 the applicant has demonstrated the proposed Stage II Final Plan is in compliance with the landscape purpose statement.

Subsection 4.176 (.02) B. Landscaping Standards and Code Compliance

- A47. **Review Criteria:** “All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length”

Finding: These criteria are satisfied.

Explanation of Finding: No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent

- A48. **Review Criteria:** “The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees.”

Finding: These criteria are satisfied.

Explanation of Finding: The applicant’s submitted landscape plans (applicant’s sheets L 1.0 and L2.0) show a variety of plant materials and placement consistent with the general landscape standard, specifically along the frontage with SW 95th Avenue and SW Boones Ferry Road.

Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials

- A49. **Review Criteria:** “Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

- a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.
- b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet.”

Finding: These criteria are satisfied.

Explanation of Finding: The planting plan (applicant’s sheet L2.0) shows landscaping meeting the functional requirements of this subsection.

Subsection 4.176 (.02) E. 1. High Screen Landscape Standard-Intent

- A50. **Review Criterion:** “The High Screen Landscaping Standard is a landscape treatment that relies primarily on screening to separate uses or developments. It is intended to be applied in situations where visual separation is required.”

Finding: This criterion is satisfied.

Explanation of Finding: No development related to the coffee kiosk requires the high screen standards be applied, especially as menu boards are oriented as to not be visible off site. If menu boards are relocated so the face of the sign faces Boones Ferry Road or 95th Avenue, then additional review will be needed to provide landscaping that provides appropriate screening such as the planting screening the Carl's Jr. menu board.

Subsection 4.176 (.03) Landscape Area and Locations

- A51. **Review Criteria:** "Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable."

Finding: These criteria are satisfied.

Explanation of Finding: According to the applicant twenty-eight percent (28%) of the site is proposed to be in landscaping. The landscaping is in a variety of areas throughout the site, including the street frontage areas. Landscaping is placed along the streets to soften the look of off-street parking areas. As shown on the applicant's sheet L 2.0 a variety of landscape materials are being used.

Subsection 4.176 (.04) Buffering and Screening

- A52. **Review Criteria:** "Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.

C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.

D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.

E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.

F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval."

Finding: These criteria are satisfied.

Explanation of Finding: The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.

Subsection 4.176 (.09) Landscape Plans

- A53. **Review Criteria:** "Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated."

Finding: These criteria are satisfied.

Explanation of Finding: Applicant's sheets L1.0 and L2. in Exhibit B2 provide the required information.

Subsection 4.176 (.12) Mitigation Standards

A54. **Review Criterion:** "A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants."

Finding: This criterion is satisfied.

Explanation of Finding: No existing native plants are being removed requiring a mitigation plan pursuant to this subsection.

Other Standards

Section 4.177 Street Improvement Standards

A55. **Review Criteria:** This section establishes improvement standards for public streets, along with private access drives and travel lanes.

Finding: These criteria are satisfied.

Explanation of Finding:

- Access is provided to the proposed development clear of any obstructions.
- The travel lanes are proposed to be asphalt and have been constructed to City standards.
- All access lanes are a minimum of 12 feet.
- The development will comply with requirements of the Fire District.
- No construction is proposed in the public right-of-way

Section 4.179 Mixed Solid Waste and Recyclables Storage

A56. **Review Criteria:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

Finding: These criteria are satisfied.

Explanation of Finding: No changes to the mixed solid waste facilities are proposed. The proposed coffee kiosk replaces a larger multi-tenant commercial building. The mixed-solid waste enclosure designed and built for the multi-tenant building is adequately sized for the smaller coffee kiosk.

Sections 4.199.20 Outdoor Lighting

A57. **Review Criteria:** This section states that the outdoor lighting ordinance is applicable to "Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas" and "Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas." In addition the exempt luminaires and lighting systems are listed.

Finding: These criteria are satisfied.

Explanation of Finding: All the outdoor lighting for the new development on the site is being required to comply with the outdoor lighting ordinance. A photometric site plan has been provided, sheet SE1.0 (Exhibit B2), showing the functional effect of the proposed

lighting on the site. Detailed requirements for site lighting are being reviewed as a component of Request B, Site Design Review, of this application. See Findings B32 through B39.

Sections 4.300-4.320 and Subsection 4.118 (.02) Underground Installation of Utilities

A58. **Review Criteria:** These sections list requirements regarding the underground installation of utilities.

Finding: These criteria are satisfied.

Explanation of Finding: There are no existing overhead facilities that require undergrounding as part of this development. All new utilities associated with the development are proposed to be installed underground.

REQUEST B: DB13-0047 SITE DESIGN REVIEW

Site Design Review

Subsection 4.400 (.01) and Subsection 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.

- B1. **Review Criteria:** "The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards." "Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant provides a response to this subsection on pages 18-20 of the compliance narrative in their notebook, Exhibit B1. Staff summarizes the compliance with this subsection as follows:

Excessive Uniformity: The design of the coffee kiosk is different from the Carl's Jr. building, yet complementary, and has an architectural character unique from other surrounding development preventing uniformity. The coffee kiosk uses the same brick around the base as used on the Carl's Jr. building. lap siding and board and baton siding are used similarly as with the Carl's Jr. building, only painted different colors.

Inappropriate or Poor Design of the Exterior Appearance of Structures: The coffee kiosk is professionally designed with a unique historic "small-town" theme indicative of other commercial development in Wilsonville including Old Town Square (Fred Meyer development). The result is a professional design appropriate for Wilsonville.

Inappropriate or Poor Design of Signs: Signs are typical of the type of development proposed and meet applicable City standards. See Request C, Master Sign Plan.

Lack of Proper Attention to Site Development: The appropriate professional services have been used to design the site incorporating unique features of the site including site size and shape and available access, demonstrating appropriate attention being given to site development.

Lack of Proper Attention to Landscaping: Landscaping is provided exceeding the area requirements, has been professionally designed by a landscape architect, and includes a variety of plant materials, all demonstrating appropriate attention being given to landscaping.

Subsection 4.400 (.02) and Subsection 4.421 (.03) Purposes of Objectives of Site Design Review

- B2. **Review Criteria:** "The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards." "The City Council declares that the purposes and objectives of site development requirements and the site design review procedure are to:" Listed A through J.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant provides a response to design on pages 18-20 of the compliance narrative in their notebook, Exhibit B1, demonstrating compliance with the listed purposes and objectives. In short, the proposal provides a high quality design appropriate for the site and its location in Wilsonville.

Section 4.420 Development in Accordance with Plans

- B3. **Review Criteria:** The section states that development is required in accord with plans approved by the Development Review Board.

Finding: These criteria will be satisfied by Condition of Approval PDB 1.

Explanation of Finding: A condition of approval has been included to ensure construction, site development, and landscaping are carried out in substantial accord with the Development Review Board approved plans, drawings, sketches, and other documents. No building permits will be granted prior to development review board approval.

Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards

- B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the applicant's notebook, Exhibit B1. Staff notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met.

Subsection 4.421 (.05) Site Design Review-Conditions of Approval

- B5. **Review Criterion:** "The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code."

Finding: This criterion is satisfied.

Explanation of Finding: No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

Subsection 4.421 (.06) Color or Materials Requirements

- B6. **Review Criterion:** "The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City."

Finding: This criterion is satisfied.

Explanation of Finding: All material and color information has been provided by the applicant.

Section 4.430 Design of Trash and Recycling Enclosures

- B7. **Review Criteria:** "The following locations, design and access standards for mixed solid waste and recycling storage areas shall be applicable to the requirements of Section 4.179 of the Wilsonville City Code." Listed (.02) A. through (.04) C.

Finding: These criteria are satisfied.

Explanation of Finding: No design to the trash and recycling enclosures are proposed as part of this application.

Section 4.440 Site Design Review-Submittal Requirements

- B8. **Review Criteria:** This section lists additional submittal requirements for Site Design Review in addition to those listed in Section 4.035.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted the required additional materials, as applicable.

Subsection 4.450 (.01) Landscape Installation or Bonding

- B9. **Review Criterion:** "All landscaping required by this section and approved by the Board shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping as determined by the Planning Director is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City shall be returned to the applicant."

Finding: This criterion will be satisfied by Condition of Approval PDB 2.

Explanation of Finding: The condition of approval will assure installation or appropriate security at the time occupancy is requested.

Subsection 4.450 (.02) Approved Landscape Plan Binding

- B10. **Review Criterion:** "Action by the City approving a proposed landscape plan shall be binding upon the applicant. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, as specified in this Code."

Finding: This criterion will be satisfied by Condition of Approval PDB 3.

Explanation of Finding: The condition of approval shall provide ongoing assurance this criterion is met.

Subsection 4.450 (.03) Landscape Maintenance and Watering

- B11. **Review Criterion:** "All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved by the Board, unless altered with Board approval."

Finding: This criterion will be satisfied by Condition of Approval PDB 4.

Explanation of Finding: The condition of approval will ensure landscaping is continually maintained in accordance with this subsection.

Subsection 4.450 (.04) Addition and Modifications of Landscaping

- B12. **Review Criterion:** "If a property owner wishes to add landscaping for an existing development, in an effort to beautify the property, the Landscape Standards set forth in Section 4.176 shall not apply and no Plan approval or permit shall be required. If the owner wishes to modify or remove landscaping that has been accepted or approved through the City's development review process, that removal or modification must first be approved through the procedures of Section 4.010."

Finding: This criterion will be satisfied by Condition of Approval PDB 4.

Explanation of Finding: The condition of approval shall provide ongoing assurance that this criterion is met by preventing modification or removal without the appropriate City review.

On-site Pedestrian Access and Circulation

Subsection 4.154 (.01) B. Standards for On-site Pedestrian Access and Circulation

- B13. **Review Criteria:** This subsection lists standards for on-site pedestrian access and circulation, listed 1. through 6.

Finding: These criteria are satisfied.

Explanation of Finding: The design of the on-site pedestrian access and circulation described and illustrated in the applicant's submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review and the proposed revised Stage II Final Plan for the site. See Findings A24 through A29 under Request A.

Parking

Subsection 4.155 (.02) Provision and Maintenance of Off-Street Parking

- B14. **Review Criteria:** This subsection lists general provisions for parking, A. through O.

Finding: These criteria are satisfied.

Explanation of Finding: The design of the parking described and illustrated in the applicant's submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review and the proposed revised Stage II Final Plan for the site. See Finding A30 under Request A.

Subsection 4.155 (.03) B. 1.-3. Landscaping of Parking Areas

- B15. **Review Criteria:** "Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:" Listed 1. through 3.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the planting plans, sheet L2.0 of Exhibit B2, landscape screening is provided between the proposed parking and the public right-of-way. Trees are provided for the proposed parking spaces as required by this subsection. Tree planting areas generally meet the minimum size requirements. However, the planting area with a tree between a parking stall and the entry to the coffee drive-thru queuing area is less than 8 feet wide. Staff has examined other site design option to make this a wider planting area, but site constraints prevent making it wider. It is desirable to have a tree and other plantings at this location and the planter is as wide a practicable balancing competing design requirements and site restraints.

Section 4.171 Protection of Natural Features and Other Resources

- B16. **Review Criterion:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.

Finding: This criterion is satisfied.

Explanation of Finding: None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

Landscaping

Subsection 4.176 (.02) B. Landscape Standards and Compliance with Code

- B17. **Review Criterion:** “All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length”

Finding: This criterion is satisfied.

Explanation of Finding: No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent

- B18. **Review Criteria:** “The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees.”

Finding: These criteria are satisfied.

Explanation of Finding: The applicant’s sheet L2.0 of Exhibit B2 shows a variety of plant materials and placement consistent with the general landscape standard.

Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials

- B19. **Review Criteria:** “Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General

Development Review Board Panel ‘A’ Staff Report January 6, 2014

Exhibit A1

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

DB13-0046, DB13-0047, DB13-0048

Page 35 of 50

Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

- a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.
- b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet."

Finding: These criteria are satisfied.

Explanation of Finding: The planting plan, sheet L2.0 of Exhibit B2, shows landscaping meeting the requirements of this subsection.

Subsection 4.176 (.03) Landscape Area and Locations

- B20. **Review Criteria:** "Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable."

Finding: These criteria are satisfied.

Explanation of Finding: Consistent with the proposed revised Stage II Final Plan for the site, the proposed design of the site provides for more than the required amount of landscaping and landscaping in at least three separate and distinct areas, including the area along SW 95th Avenue and SW Boones Ferry Road. See Finding A51 of Request A. The planting plans, sheet L2.0 of Exhibit B2, show landscape placed in areas that will define, soften, and screen the appearance of buildings and off-street parking areas.

Subsection 4.176 (.04) Buffering and Screening

- B21. **Review Criteria:** "Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.

C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.

D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.

E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.

F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval."

Finding: These criteria are satisfied.

Explanation of Finding: The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.

Subsection 4.176 (.06) A. Plant Materials-Shrubs and Groundcover

B22. **Review Criteria:** This subsection establishes plant material and planting requirements for shrubs and ground cover.

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 5.

Explanation of Finding: The condition of approval requires that the detailed requirements of this subsection are met.

Subsection 4.176 (.06) B. Plant Materials-Trees

B23. **Review Criteria:** This subsection establishes plant material requirements for trees.

Finding: These criteria are satisfied.

Explanation of Finding: The plants material requirements for trees will be met as follows:

- The applicant's planting plan, sheet L2.0 of Exhibit B2, shows all trees as B&B (Balled and Burlapped)
- Landscaping is being required to meet ANSI standards.
- The applicant's planting plan lists tree sizes required by code.

Subsection 4.176 (.06) D. Plant Materials-Street Trees

B24. **Review Criteria:** This subsection establishes plant material requirements for street trees.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in their planting plan, sheet L2.0 of Exhibit B2, the applicant proposes Bowhall Maple street trees (*Acer rubrum* "Bowhall"). The proposed trees are a cultivar of *Acer rubrum*, which is listed as a satisfactory street tree in this subsection. The trees are proposed to be planted at 3" caliper, the required size for arterial streets.

Subsection 4.176 (.06) E. Types of Plant Species

B25. **Review Criteria:** This subsection discusses use of existing landscaping or native vegetation, selection of plant materials, and prohibited plant materials.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information showing the proposed landscape design meets the standards of this subsection. See sheet L2.0 of Exhibit B2.

Subsection 4.176 (.06) G. Exceeding Plant Material Standards

B26. **Review Criterion:** "Landscape materials that exceed the minimum standards of this Section are encouraged, provided that height and vision clearance requirements are met."

Finding: This criterion is satisfied.

Explanation of Finding: The selected landscape materials do not violate any height or visions clearance requirements.

Subsection 4.176 (.07) Installation and Maintenance of Landscaping

B27. **Review Criteria:** This subsection establishes installation and maintenance standards for landscaping.

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 6.

Explanation of Finding: The installation and maintenance standards are or will be met as follows:

- Plant materials are required to be installed to current industry standards and be properly staked to ensure survival
- Plants that die are required to be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City.
- Sheet L1.0 of Exhibit B2 shows a permanent built-in irrigation system with an automatic controller satisfying the related standards of this subsection.

Subsection 4.176 (.09) Landscape Plans

B28. **Review Criterion:** "Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated."

Finding: This criterion is satisfied.

Explanation of Finding: Sheets L1.0 and L2.0, of Exhibit B2 provide the required information.

Subsection 4.176 (.10) Completion of Landscaping

B29. **Review Criterion:** "The installation of plant materials may be deferred for a period of time specified by the Board or Planning Director acting on an application, in order to avoid hot summer or cold winter periods, or in response to water shortages. In these cases, a temporary permit shall be issued, following the same procedures specified in subsection (.07)(C)(3), above, regarding temporary irrigation systems. No final Certificate of Occupancy shall be granted until an adequate bond or other security is posted for the completion of the landscaping, and the City is given written authorization to enter the property and install the required landscaping, in the event that the required landscaping has not been installed. The form of such written authorization shall be submitted to the City Attorney for review."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has not requested to defer installation of plant materials.

Subsection 4.176 (.12) Mitigation and Restoration Plantings

B30. **Review Criterion:** "A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants."

Finding: This criterion is satisfied.

Explanation of Finding: Consistent with the proposed revised Stage II Final Plan, the proposed landscape design involves no removal of existing native plants requiring a mitigation plan pursuant to this subsection.

Other Standards

Section 4.179 Mixed Solid Waste and Recyclables Storage

B31. **Review Criterion:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

Finding: This criterion is satisfied.

Explanation of Finding: The design of the mixed-solid waste and recycling enclosures is not proposed to be changed by this application.

Outdoor Lighting

Section 4.199.20 Applicability of Outdoor Lighting Standards

B32. **Review Criterion:** This section states that the outdoor lighting ordinance is applicable to "Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas" and "Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas." In addition the exempt luminaires and lighting systems are listed.

Finding: This criterion is satisfied.

Explanation of Finding: Non-exempt new outdoor lighting proposed for the development site is being required to comply with the outdoor lighting ordinance.

Section 4.199.30 Outdoor Lighting Zones

B33. **Review Criterion:** "The designated Lighting Zone as indicated on the Lighting Overlay Zone Map for a commercial, industrial, multi-family or public facility parcel or project shall determine the limitations for lighting systems and fixtures as specified in this Ordinance."

Finding: This criterion is satisfied.

Explanation of Finding: The development site is within LZ 2 and the proposed outdoor lighting systems are being reviewed under the standards of this lighting zone.

Subsection 4.199.40 (.01) A. Alternative Methods of Outdoor Lighting Compliance

B34. **Review Criterion:** "All outdoor lighting shall comply with either the Prescriptive Option or the Performance Option below."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has submitted information to comply with the performance option.

Subsection 4.199.40 (.01) C. Performance Option for Outdoor Lighting Compliance

"If the lighting is to comply with the Performance Option, the proposed lighting design shall be submitted by the applicant for approval by the City meeting all of the following:" Listed 1. through 3.

Subsection 4.199.40 (.01) C. 1. Weighted Average of Direct Uplight Lumens Standard

B35. **Review Criteria:** "The weighted average percentage of direct uplight lumens shall be less than the allowed amount per Table 9."

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 8.

Explanation of Finding: As shown in the revised sheet SE1.0 provided with the applicant's notebook, Exhibit B1, the only luminaires that are not fully shielded are the landscape bollards. The luminaires are such that the weighted average percentage of direct uplight lumens will be less than five percent (5%). A condition of approval limits all wall mounted fixtures to down lighting.

Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines

B36. **Review Criteria:** "The maximum light level at any property line shall be less than the values in Table 9, as evidenced by a complete photometric analysis including horizontal illuminance of the site and vertical illuminance on the plane facing the site up to the mounting height of the luminaire mounted highest above grade."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet SE1.0 shows the horizontal foot candles comply with Table 9. The applicant states on page 18 of their compliance narrative, the vertical foot candles remain substantially the same as previously approved as compliant with Table 9.

Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines

B37. **Review Criteria:** "Luminaires shall not be mounted so as to permit aiming or use in any way other than the manner maintaining the shielding classification required herein:"

Finding: These criteria are satisfied.

Explanation of Finding: The mountings will be in a downward position. Condition of Approval PDB 8 helps ensure this

Subsection 4.199.40 (.01) D. Outdoor Lighting Curfew

B38. **Review Criterion:** "All prescriptive or performance based exterior lighting systems shall be controlled by automatic device(s) or system(s) that:" Listed 1. through 3.

Finding: This criterion is satisfied or will be satisfied by Condition of Approval PDB 7.

Explanation of Finding: As previously approved, Carl's Jr. is exempt from lighting curfew as a 24/7 operation. However, the coffee kiosk is not. A condition of approval requires lighting associated with this building and supporting parking shall be dimmed at 10:00 p.m. pursuant to Table 10.

Subsection 4.199.50 Submittal Requirements

B39. **Review Criteria:** "Applicants shall submit the following information as part of DRB review or administrative review of new commercial, industrial, multi-family or public facility projects:" Listed A. through F. "In addition to the above submittal requirements, Applicants using the Prescriptive Method shall submit the following information as part of the permit set plan review:

A. A site lighting plan (items 1 A - F, above) which indicates for each luminaire the 3 mounting height line to demonstrate compliance with the setback requirements. For luminaires

mounted within 3 mounting heights of the property line the compliance exception or special shielding requirements shall be clearly indicated.”

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted sufficient information to review the application.

REQUEST C: DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER

Subsection 4.031 (.01) M. and Subsection 4.156.02 (.07) and (.07) C. Review Process

- C1. **Review Criteria:** These subsections establish that Master Sign Plans are reviewed by the Development Review Board and that modifications to Master Sign Plans other than minor and major adjustments are reviewed the same as a new Master Sign Plan.

Finding: These criteria are satisfied.

Explanation of Finding: Due to the request for a waiver the request does not qualify as a minor or major adjustment and is therefore being reviewed the same as a new Master Sign Plan.

Subsection 4.156.02 (.07) A. Master Sign Plan Submission Requirements

- C2. **Review Criteria:** This subsection identifies submission requirements for Master Sign Plans

Finding: These criteria are satisfied.

Explanation of Finding: As indicated in the table below the applicant has either satisfied the submission requirements, or has been granted a waiver under Subsection 4.156.02 (.10).

Requirement	Submitted	Waiver Granted		Condition of Approval	Not Applicable	Additional findings/notes
		Info Already Available to City	Info Not Necessary for Review			
Completed Application Form	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sign Drawings or Descriptions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Documentation of Building/Tenant Space Lengths	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Drawings of Sign Placement of Building Facades	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Project Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Subsection 4.156.02 (.05) E. Class II Sign Permit Review Criteria: Generally and Site Design Review

- C3. **Review Criteria:** "Class II Sign Permits shall satisfy the sign regulations for the applicable zoning district and the Site Design Review Criteria in Sections 4.400 through 4.421," Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: As indicated in Findings C25 through C31 these criteria are met.

Subsection 4.156.02 (.05) E. 1. Class II Sign Permit Review Criteria: Compatibility with Zone

- C4. **Review Criteria:** "The proposed signage is compatible with developments or uses permitted in the zone in terms of design, materials used, color schemes, proportionality, and location, so that it does not interfere with or detract from the visual appearance of surrounding development;" Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: The proposed signage is typical of and compatible with development within the PDC zones. This includes a design and colors reflecting corporate identity, illuminated channel letters and logo on a raceway, freestanding cabinet signs, and individual non-illuminated letters on an architectural wall. The placement of signs on buildings is in recognizable sign bands, and proportional to the building facades. No evidence exists nor has testimony been received that the subject signs would detract from the visual appearance of the surrounding development.

Subsection 4.156.02 (.05) E. 2. Class II Sign Permit Review Criteria: Nuisance and Impact on Surrounding Properties

- C5. **Review Criteria:** "The proposed signage will not create a nuisance or result in a significant reduction in the value or usefulness of surrounding development;" Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: There is no evidence and no testimony has been received that the subject signs would create a nuisance or negatively impact the value of surrounding properties.

Subsection 4.156.02 (.05) E. 3. Class II Sign Permit Review Criteria: Items for Special Attention

- C6. **Review Criteria:** "Special attention is paid to the interface between signs and other site elements including building architecture and landscaping, including trees." Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: The building signs are within an architectural feature identifiable as a sign band with a buffer within the sign band around the sign, which demonstrates consideration of the interface between the signs and building architecture. No sign-tree conflicts have been noted.

Subsection 4.156.02 (.06) B. Class III Sign Permit Review Criteria

- C7. **Review Criteria:** "The review criteria for Class II Sign Permits plus waiver or variance criteria when applicable." Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: A waiver is being requested and responses to the waiver criteria have been provided.

Subsection 4.156.02 (.07) B.1. Master Sign Plan Review Criteria: Consistent and Compatible Design

- C8. **Review Criteria:** "The Master Sign Plan provides for consistent and compatible design of signs throughout the development."

Finding: These criteria are satisfied.

Explanation of Finding: The channel letter/logo design is similar to what was previously approved for the multi-tenant commercial building. The coffee kiosk signs are consistent with the design of the signs approved and installed on the Carl's Jr. building. No additional freestanding signs are proposed. Directional signs are similar in character to the Carl's Jr. directional signs and are typical of drive-thru establishments.

Subsection 4.156.02 (.07) B.2. Master Sign Plan Review Criteria: Future Needs

- C9. **Review Criteria:** "The Master Sign Plan considers future needs, including potential different configuration of tenant spaces and different sign designs, if allowed."

Finding: These criteria are satisfied.

Explanation of Finding: Staff recommends increasing the sign allowance to 25.4 square feet on each façade to allow flexibility of sign design over time within a rectangle that the proposed sign fits within.

Subsection 4.156.02 (.08) A. Sign Waiver

Subsection 4.156.02 (.08) A. Waivers in General

- C10. **Review Criteria:** "The DRB may grant waivers for sign area, sign height from ground (no waiver shall be granted to allow signs to exceed thirty-five (35) feet in height), number of signs, or use of electronic changeable copy signs in order to better implement the purpose and objectives of the sign regulations as determined by making findings that all of the following criteria are met:" Listed 1.-4. See Findings C12 through C15 below.

Finding: These criteria are satisfied.

Explanation of Finding: A waiver is being requested for sign area consistent with this subsection.

Subsection 4.156.02 (.08) A. 1. Waivers Criteria: Improved Design

- C11. **Review Criteria:** "The waiver will result in improved sign design, in regards to both aesthetics and functionality."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed coffee kiosk is a particularly long narrow building at only 12' 10" wide with a length of 35' 4". According to the table showing the sign area allowed in Subsection 4.156.08 (.02) B. 1. the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The waiver allows signs of equal size to be placed on three facades that are of a consistent size and design creating a consistent look for portions of the buildings that are otherwise architecturally similar. The applicant in their narrative requests 15.83 square feet of signage for each of three facades. Staff notes the applicant's method of measurement does not follow the measurement method prescribed in Section 4.156.03. Staff additionally notes greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Staff recommends a waiver be approved for the allowed sign area to be increased to 25.4 square feet on the 12.83 long facade.

Subsection 4.156.02 (.08) A. 2. Waivers Criteria: More Compatible and Complementary

- C12. **Review Criteria:** "The waiver will result in improved sign design, in regards to both aesthetics and functionality."

Finding: These criteria are satisfied.

Explanation of Finding: The waiver will provide for more consistent signs around the building and neighboring buildings providing for compatible and complementary design.

Subsection 4.156.02 (.08) A.3. Waivers Criteria: Impact on Public Safety

- C13. **Review Criteria:** "The waiver will result in a sign or signs that improve, or at least do not negatively impact, public safety, especially traffic safety."

Finding: These criteria are satisfied.

Explanation of Finding: If anything, the added readability of the sign facing the intersection will aid drivers in making decisions on maneuvers earlier. No negative impacts on safety have been noted.

Subsection 4.156.02 (.08) A.4. Waivers Criteria: Content Neutrality

- C14. **Review Criteria:** "Sign content is not being considered when determining whether or not to grant a waiver."

Finding: These criteria are satisfied.

Explanation of Finding: Sign content is not being considered in granting the waiver. Similar consideration on building shape would occur regardless of the tenant or message.

Section 4.156.03 Sign Measurement

Subsection 4.156.03 (.01) B. Measurement of Individual Element Signs

- C15. **Review Criteria:** "The area for signs constructed of individual elements (letters, figures, etc.) attached to a building wall or similar surface or structure shall be the summed area of up to three squares, rectangles, circles, or triangles drawn around all sign elements."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed signs have not been measured consistent with this subsection. However, as recommended by Staff the proposed Master Sign Plan revision allows for the proposed signs measured according to this subsection.

Subsection 4.156.03 (.03) A.-B. Measurement of Sign Height and Length

- C16. **Review Criteria:** "Height of a sign is the vertical distance between the lowest and highest points of the sign."

Length of a sign is the horizontal distance between the furthest left and right points of the sign."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed signs have been measured consistent with this subsection.

Subsection 4.156.08 (.01) L. Design of Sign Based on Initial Tenant Configuration and Size

- C17. **Review Criteria:** "When a sign is designed based on the number of planned tenant spaces it shall remain a legal, conforming sign regardless of the change in the number of tenants or configuration of tenant spaces."

Finding: These criteria are satisfied.

Explanation of Finding: The master sign plan is proposed based on the number of planned tenants, and it is understood the sign plan will be valid regardless on the number of future tenants.

Subsection 4.156.08 (.02) Building Signs in the PDC, PDI, and PF Zones

Subsection 4.156.08 (.02) A. Sign Eligible Facades

- C18. **Review Criteria:** "Building signs are allowed on a facade of a tenant space or single tenant building when one or more of the following criteria are met:

1. The facade has one or more entrances open to the general public;
2. The facade faces a lot line with frontage on a street or private drive with a cross section similar to a public street, and no other buildings on the same lot obstruct the view of the building facade from the street or private drive; or
3. The facade is adjacent to the primary parking area for the building or tenant."

Finding: These criteria are satisfied.

Explanation of Finding: All facades of the proposed coffee kiosk are sign eligible. The north, east, and west face lot lines with frontages of public streets. The south facade faces the primary parking area.

Subsection 4.156.08 (.02) B. Building Sign Area Allowed

- C19. **Review Criteria:** This subsection includes a table identifying the sign area allowed for facades based on the linear length of the façade. Exception are listed 2. through 5.

Finding: These criteria are satisfied.

Explanation of Finding: There are no changes to the previously approved sign allowance for the Carl's Jr. building. The following are the allowances for the proposed coffee kiosk.

Coffee Kiosk				
Façade	Linear Length	Sign Area Allowed	Proposed Max	Staff Recommendation
North	12.83 feet	12.83 sf	15.86 sf	25.4 sf
East	34.33 feet	34.33 sf	15.86 sf	25.4 sf
South	12.83 feet	12.83 sf	0 sf	0 sf
West	34.33 feet	34.33 sf	15.86 sf	25.4 sf

The proposed coffee kiosk in a particularly long narrow building at only 12' 10" wide with a length of 35' 4". According to the table showing the sign area allowed in Subsection 4.156.08 (.02) B. 1. the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The applicant in their narrative requests 15.83 square feet of signage for each of three facades, which includes a waiver to increase the sign area on the north facade. Staff notes the applicant's method of measurement does not follow the measurement method prescribed in Section 4.156.03. Staff additionally notes greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Staff recommends the DRB approve 25.4 square feet on the east, west, and north facades. See also Finding C11 regarding waiver request.

Subsection 4.156.08 (.02) B. 6. Calculating Linear Length to Determine Sign Area Allowed.

- C20. **Review Criteria:** "For facades of a single tenant building the length the facade measured at the building line, except as noted in a. and b. below. For multi-tenant buildings the width of the façade of the tenant space shall be measured from the centerline of the party walls or the outer extent of the exterior wall at the building line, as applicable, except as noted in a. and b. below. Applicants shall provide the dimensions needed to calculate the length. Each tenant space or single occupant building shall not be considered to have more than five (5) total facades."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has supplied the required measurements used to determine linear lengths according to this subsection.

Subsection 4.156.08 (.02) C. Building Sign Length Allowed

- C21. **Review Criterion:** "The length of individual tenant signs shall not exceed seventy-five (75) percent of the length of the facade of the tenant space."

Finding: This criterion is satisfied.

Explanation of Finding: None of the proposed sign bands exceed seventy-five (75) percent of the length of the façade.

Subsection 4.156.08 (.02) D. Building Sign Height Allowed

- C22. **Review Criteria:** “The height of building signs shall be within a definable sign band, fascia, or architectural feature and allow a definable space between the sign and the top and bottom of the sign band, fascia, or architectural feature.”

Finding: These criteria are satisfied.

Explanation of Finding: All of the proposed sign bands are within a definable architectural feature and have a definable space between the sign and the top and bottom of the architectural feature.

Subsection 4.156.08 (.02) E. Building Sign Types Allowed

- C23. **Review Criterion:** “Types of signs permitted on buildings include wall flat, fascia, projecting, blade, marquee and awning signs. Roof-top signs are prohibited.”

Finding: This criterion is satisfied.

Explanation of Finding: All the proposed buildings signs are wall flat, which is an allowable type.

Subsection 4.156.08 (.03) A. Additional Signs: Directional Signs

- C24. **Review Criteria:** “Notwithstanding the signs allowed based on the site in (.01) and (.02) above, the following signs may be permitted, subject to standards and conditions in this Code:” “In addition to exempt directional signs allowed under Subsection 4.156.05 (.02) C. freestanding or ground mounted directional signs six (6) square feet or less in area and four (4) feet or less in height:

1. The signs shall be designed to match or complement the architectural design of buildings on the site;
2. The signs shall only be placed at the intersection of internal circulation drives; and
3. No more than one (1) sign shall be placed per intersection corner with no more than two (2) signs per intersection.”

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDC 3.

Explanation of Finding: Two (2) illuminated double faced directional signs are proposed as part of the Master Sign Plan. The signs are shown in the applicant’s sign section of their notebook, Exhibit B1. Exhibit B1 shows the signs slightly larger than 6 square feet. A condition of approval requires they be limited to six (6) square feet. The signs are shown at 4’ tall. The signs match the design of other signs on the property and complement the architecture of the building similarly. The signs are placed at the intersection of internal circulation drives, and only one sign is placed per intersection.

Site Design Review

Subsections 4.400 (.01) and 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.

- C25. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the

desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor."

Finding: These criteria are satisfied.

Explanation of Finding:

Excessive Uniformity: The sign plan allows for a variety of sign shapes, fonts, and colors chosen by different tenants so as to avoid excessive uniformity.

Inappropriate or Poor Design of Signs: Signs are typical of the type of development proposed found to be appropriate throughout the City. As issuance of the Class I Sign Permits consistent with the Master Sign Plan the City will ensure quality design of signs.

Lack of Proper Attention to Site Development: The appropriate professional services have been used to design the site incorporating unique features of the site including site size and shape, and available access, demonstrating appropriate attention being given to site development and sign placement.

Lack of Proper Attention to Landscaping: Landscaping around the monument sign and freestanding sign is consistent with other landscaping on the property and is of an acceptable quality and design.

Subsections 4.400 (.02) and 4.421 (.03) Purposes of Objectives of Site Design Review

- C26. **Review Criteria:** "The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards." "The City Council declares that the purposes and objectives of site development requirements and the site design review procedure are to:" Listed A through J. including D. which reads "Conserve the City's natural beauty and visual character and charm by assuring that structures, signs and other improvements are properly related to their sites, and to surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to exterior appearances of structures, signs and other improvements;"

Finding: These criteria are satisfied.

Explanation of Finding: It is staff's professional opinion that the signs comply with the purposes and objectives of site design review, especially objective D. which specifically mentions signs. The proposed signs are of a scale and design appropriately related to the subject site and the appropriate amount of attention has been given to visual appearance.

Subsection 4.421 (.01) Site Design Review-Design Standards

- C27. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Only F. is applicable to this application, which reads, "Advertising Features. In addition to the requirements of the City's sign regulations, the following criteria should be included: the size, location, design, color, texture, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties."

Finding: These criteria are satisfied.

Explanation of Finding: There is no indication that the size, location, design, color, texture, lighting or material of the proposed signs would detract from the design of the building and the surrounding properties.

Subsection 4.421 (.02) Applicability of Design Standards to Signs

- C28. **Review Criteria:** "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

Finding: These criteria are satisfied.

Explanation of Finding: Design standards have been applied to exterior signs, as applicable, see Finding C27 above.

Subsection 4.421 (.05) Site Design Review-Conditions of Approval

- C29. **Review Criterion:** "The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code."

Finding: This criterion is satisfied.

Explanation of Finding: No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

Subsection 4.421 (.06) Color or Materials Requirements

- C30. **Review Criterion:** "The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City."

Finding: This criterion is satisfied.

Explanation of Finding: Staff does not recommend any additional requirements for materials or colors for the proposed signs.

Section 4.440 Site Design Review-Procedures

- C31. **Review Criteria:** "A prospective applicant for a building or other permit who is subject to site design review shall submit to the Planning Department, in addition to the requirements of Section 4.035, the following:" Listed A through F.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted a sign plan as required by this section.

**EXHIBIT C1
PLANNING DIVISION
STAFF REPORT**

BOONES FERRY POINTE – HUMAN BEAN COFFEE KIOSK

**DEVELOPMENT REVIEW BOARD PANEL ‘___’,
QUASI JUDICIAL HEARING**

Public Hearing Date:

Date of Report:

Application Numbers:

Request A: DB13-0046

Request B: DB13-0047

Request C: DB13-0048

Property

Owners/Applicants:

PD = Planning Division conditions

BD – Building Division Conditions

PF = Engineering Conditions.

NR = Natural Resources Conditions

TR = SMART/Transit Conditions

FD = Tualatin Valley Fire and Rescue Conditions



City of Wilsonville

EXHIBIT C1 DB13-0046 et seq

Specific Comments:

- PF 1.** Engineering Public Facilities Conditions of Approval (PF conditions) for DB12-0074 and DB12-0075 remain in effect for this project accept as further modified below.
- PF 2.** At the request of Staff, DKS Associates completed a Trip Generation memo dated September 5, 2013 revising a previously completed Carl's Jr. Traffic Impact Study that was completed in May 2012. The proposed use is expected to generate 13 fewer new primary trips than the previously approved use. The project is hereby limited to no more than the following impacts.

Estimated New PM Peak Hour Trips

117

- PF 3.** Stormwater detention and storm water quality for this site will be handled via the stormwater facility constructed with the Boones Ferry Pointe project.
- PF 4.** The project shall connect to the existing Storm lateral constructed with the Boones Ferry Pointe project.
- PF 5.** The project shall connect to the existing Sanitary Sewer stub constructed with the Boones Ferry Pointe project.
- PF 6.** The project shall connect to the existing Water service constructed with the Boones Ferry Pointe. project.

Development Review Template

DATE: 12/12/13
TO: DAN PAULY AICP, ASSOCIATE PLANNER
FROM: DON WALTERS
SUBJECT: DEVELOPMENT REVIEW # DB13-46, -47, -48

WORK DESCRIPTION: NEW HUMAN BEAN DRIVE/WALK-UP COFFEE KIOSK

Building Division Conditions:

BD 1. ACCESSIBLE. At least one of the walk-up service windows shall be accessible.



City of Wilsonville
EXHIBIT C2 DB13-0046 et seq



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

January 3, 2014

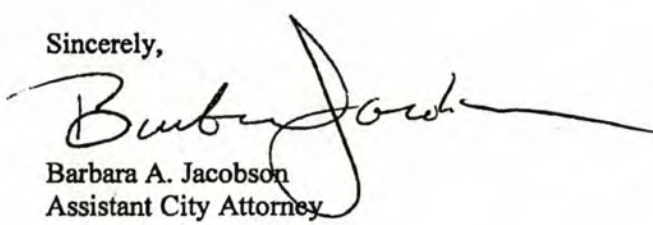
Alec J. Laidlaw
Laidlaw & Laidlaw
21590 Willamette Dr
West Linn OR 97068

Re: The Human Bean Coffee Store

Dear Mr. Laidlaw:

The City is in receipt of your letter dated January 3, 2014. Although we appreciate knowing that the dispute exists, it has no bearing on the application made by the property owner to the Wilsonville Development Review Board, which will be considered as scheduled. I trust that if you and your client believe that approval of the application, if granted, will violate a contractual agreement and cause your client harm, you will seek the proper legal recourse with the Washington County Circuit Court before which this matter is being heard, as and when needed to protect your client's interests.

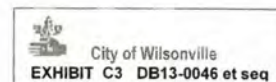
Sincerely,



Barbara A. Jacobson
Assistant City Attorney

baj:tec

cc: Wallace W. Lien
Daniel Pauly



"Serving The Community With Pride"

Pauly, Daniel

From: Terra Burns <Terra@laidlawandlaidlaw.com>
Sent: Friday, January 03, 2014 1:55 PM
To: Pauly, Daniel
Cc: Alec Laidlaw; wallace.lien@lienlaw.com; garrylapoint@gmail.com; gl@eoni.com
Subject: Development Review Board Public Hearing- The Human Bean
Attachments: Ltr to DRB re Devco public hearing submittal 2014.01.03.pdf; ORCP 21 Motions 2013.12.27.pdf; Dec of Garry LaPoint in Support 2013.12.30.pdf; UTCR 5.010 CERT OF COMPLAINCE 2013.12.27.pdf

Hello Mr. Pauly—

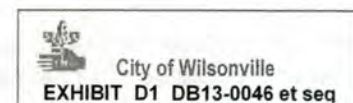
Attached please find the letter and referenced pleadings regarding the Public Hearing set for January 13, 2014 regarding The Human Bean.

Thank you,
Terra Jane Burns
Paralegal

Laidlaw & Laidlaw, PC
21590 Willamette Drive
West Linn, Oregon 97068
Tel. 503.305.6894
Fax. 888.287.4840
www.laidlawandlaidlaw.com
Terra@laidlawandlaidlaw.com

Terra Burns is not an attorney and not licensed to practice law. She does not intend to give legal advice to anyone, and no information in this email should be construed as such.

CONFIDENTIALITY STATEMENT: This electronic message contains information that may be confidential or privileged. The information contained herein is intended solely for the use of the people named above. If you are not the intended recipient of this message, you are hereby advised that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please notify me immediately by telephone at (503) 305-6894 or by e-mail reply, and delete this message.





January 3, 2014

BY EMAIL (paul@ci.wilsonville.or.us) AND U.S. MAIL

Daniel Pauly
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070

Re: *The Human Bean Coffee Store*

Our Client: LaPoint Business Group, LLC; Garry LaPoint
Case No.: Washington County Circuit Court – C138125CV

Dear Mr. Pauly:

This firm, along with the law firm of Wallace W. Lien, P.C., represents LaPoint Business Group, LLC. LaPoint Business Group, LLC, is the owner of the adjoining parcel of property, and of the Chevron Fuel Station/Fountain Mart Convenience Store situated thereon.

As you may be aware, there is an action currently pending in Washington County Circuit Court (Case No. C138125CV), between LaPoint Business Group, LLC, and Wilsonville Devco, LLC, ("owner/applicant"). Enclosed herein for your and the Panel's review is a copy of a Motion that was filed yesterday against owner/applicant's complaint. Please note that a full and complete copy of owner/applicant's complaint, filed on December 16, 2013, is marked and attached as Exhibit A to our clients' Motion.

There is a dispute between the parties as to the breadth and scope of a restrictive covenant affecting owner/applicant's property. It is LaPoint Business Group, LLC's, position that the restrictive covenant prohibits the construction of the Human Bean Coffee Store. Owner/applicant believes otherwise.

The case pending in Washington County is less than one month old. LaPoint Business Group, LLC, anticipates that this matter will not be resolved without amendment to the pleadings, significant discovery, and perhaps even a trial on the merits. As such, it is LaPoint Business Group, LLC's, position that any consideration of the change proposed by owner/applicant is premature. LaPoint Business Group, LLC, respectfully requests that this matter be setover for further consideration for at least 90 days.

Mr. Lien and/or I plan on appearing at the hearing set for Monday, January 13, 2014. In the meantime, please direct all inquiries regarding this matter to me, at 503.305.6894, or Mr. Lien,

at: Wallace W. Lien PC, 1775 32nd Place NE, Ste. A, Salem, OR 97301; Phone: 503.585.0105;
Fax: 503.585.0106; Email: wallace.lien@lienlaw.com. Thank you.

Sincerely,

LIDLAW & LIDLAW, PC



ALEC J. LAIDLAW

Enclosures: Defendant's ORCP 21 Motions (w/ exhibits)

Cc: Wallace W. Lien

LaPoint Business Group, LLC

Garry LaPoint

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON
6

7 WILSONVILLE DEVCO, LLC, and NW
8 COFFEE GROUP, LLC,

9 Plaintiffs,

10 v.

11 LAPOINT BUSINESS GROUP, LLC and
12 GARRY LAPOINT,

13 Defendant
14

) Case No. C138125CV
)
)

) **DEFENDANTS' ORCP 21 MOTIONS**
)
)

) **Oral Argument Requested**
)
)
)

15 Defendants LaPoint Business Group, LLC, and Garry LaPoint (collectively
16 "Defendants") move the Court for an Order dismissing Plaintiffs Wilsonville Devco, LLC and
17 NW Coffee Group, LLC's (collectively "Plaintiffs") Complaint in that it fails to state ultimate
18 facts sufficient to constitute a claim against Garry LaPoint, pursuant to ORCP 21A(8).
19 Alternatively, and without waiving the above motion, LaPoint Business Group, LLC, moves the
20 court for an Order striking Plaintiffs' Complaint, pursuant to ORCP 21E.

21 Official court reporting services are not requested. The estimated time for hearing is 30
22 minutes.

23 Defendants' motions are supported by the attached Memorandum, the Exhibits,
24 Defendant's counsel's UTCR 5.010 Certificate of Compliance, and the records and file herein.
25 The portions of the Complaint to be stricken is shown in parentheses, as required by UTCR
26 5.020, is marked as Exhibit A, is attached hereto, and incorporated herein.

Page 1 – DEFENDANTS' ORCP 21 MOTIONS

LIDLAW & LIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840
58 of 92

1
2 Dated: December 30, 2013

3
4 **LIDLAW & LIDLAW, PC**

5 Alec J. Laidlaw, OSB #053154

6 Jason Janzen, OSB #063790

7 Attorneys for Defendants

8 alec@laidlawandlaidlaw.com

1 **MEMORANDUM**

2 **Legal Argument**

3 1. Plaintiffs' Complaint Should Be Dismissed As To Defendant Garry LaPoint Because It
4 Fails To State Ultimate Facts Sufficient To Constitute A Claim For Relief.

5 ORCP 21 A(8) provides for a motion to dismiss for "failure to state ultimate facts
6 sufficient to constitute a claim." To survive a motion for failure to state facts constituting a
7 claim for relief, a complaint must include some allegation of material fact regarding each and
8 every material element of the claim. *Suess Builders v. City of Beaverton*, 294 Or 254, 656 P2d
9 306 (1982).

10 The debts, obligations and liabilities of a limited liability company, whether arising in
11 contract, tort or otherwise, are solely the debts, obligations and liabilities of the limited liability
12 company. ORS 63.165(1). A member or a manager of an LLC is not personally liable for any
13 debt, obligation, or liability of the LLC merely by reason of being a member, a manager, or both.
14 *Id.*

15 Defendant LaPoint Business Group, LLC ("LaPoint Business Group") is a Limited
16 Liability Company, duly organized under the laws of the state of Oregon. A copy of the
17 Business Entity Data, from the Oregon Secretary of State's website, is marked as Exhibit B,
18 attached hereto, and incorporated herein. LaPoint Business Group is the sole owner of the
19 property benefitted by the Restrictive Covenant at issue in this matter. A copy of the deed to the
20 benefitted property is marked as Exhibit C, attached hereto, and incorporated herein.

21 At all times relevant, Defendant Garry LaPoint ("LaPoint") was a member of, and
22 registered agent for, LaPoint Business Group. He holds no interest in the befitted property in his
23 *personal capacity*. On these issues there is no factual dispute¹.

24
25
26 ¹ See *Complaint for Declaratory Relief*, page 1, line 26 ("Garry LaPoint is a member of and the registered agent for LaPoint, LLC"); page 2, line 22 ("[t]he Restrictive Covenant benefits a neighboring parcel owned by LaPoint, LLC").

1 The Complaint contains no ultimate facts which could be construed as sufficiently stating
2 a claim against Defendant LaPoint, in his personal capacity. The Court should therefore dismiss
3 any claim(s) against Defendant LaPoint personally.

4
5 2. Paragraphs 16 Through 21 of The Complaint Are Frivolous And Should Be Stricken.

6 In pertinent part, ORCP 21E provides that the Court may order stricken any frivolous or
7 irrelevant pleading. A frivolous plea, while true in its allegations, is completely insufficient in
8 substance. *Andrysek v. Andrysek*, 280 Or 61 (1977). A frivolous plea has been characterized as
9 not raising any issue in the proceeding. *Kashmir Corp. v. Nelson*, 37 Or App 887 (1978).

10 There is no dispute that a controversy exists between Plaintiffs and Defendant LaPoint
11 Business Group as to the scope and construction of the Restrictive Covenant. Paragraphs 1
12 through 15, and 23 through 27 allege as much.

13 Paragraphs 16 through 22 do not raise any issues in this matter. They are repetitive to
14 Plaintiffs' sole claim for relief: that a dispute exists, between owners of adjoining parcels of real
15 property, as to the breadth and scope of a Restrictive Covenant, which benefits one parcel, and
16 burdens the other.

17 Paragraphs 16 through 22 add nothing to the Complaint, save for volume of text. They
18 should therefore be stricken.

19 **Conclusion**

20 Defendant LaPoint's only connection to this matter is his status as a member and
21 registered agent of LaPoint Business Group. Plaintiffs' Complaint states no ultimate facts
22 sufficient to constitute a claim against Defendant LaPoint. Plaintiffs' claim against Defendant
23 LaPoint therefore fails as a matter of law.

24 //

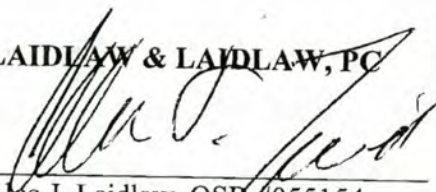
25 //

26 //

1 Alternatively, and without waiving the foregoing motion to dismiss, the Court should
2 strike paragraphs 16 through 21 of the Complaint in that they are frivolous and raise no issues in
3 this case.

4
5 Dated: December 30, 2013

LAIDLAW & LAIDLAW, PC


Alec J. Laidlaw, OSB #055154

Jason Janzen, OSB #063790

Attorneys for Defendants

alec@laidlawandlaidlaw.com

COPY

COPY
2007 DEC 15 10:09

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

WILSONVILLE DEVCO, LLC, and NW
COFFEE GROUP, LLC,

Plaintiffs,

v.

LAPOINT BUSINESS GROUP, LLC; and
GARRY LAPOINT,

Defendants.

Case No. ~~213010154~~ C/381250

COMPLAINT FOR DECLARATORY
RELIEF (ORS 28.010 ET SEQ.)

CASE NOT SUBJECT TO MANDATORY
ARBITRATION

Plaintiffs Wilsonville Devco, LLC ("Wilsonville Devco") and NW Coffee Group, LLC
("NW Coffee"), allege as follows:

Parties

1.

Plaintiff Wilsonville Devco is a limited liability company incorporated in the state of
Oregon.

2.

Plaintiff NW Coffee is a limited liability company incorporated in the state of Oregon.

3.

Defendant LaPoint Business Group, LLC ("LaPoint, LLC") is a limited liability company
incorporated in the state of Oregon.

4.

Defendant Garry LaPoint is an individual residing, upon information and belief, in the
state of Oregon. Garry LaPoint is a member of and the registered agent for LaPoint, LLC.

Page 1 - COMPLAINT FOR DECLARATORY RELIEF

HOLLAND & KNIGHT LLP
111 S.W. Fifth Avenue
2300 U.S. Bancorp Tower
Portland, Oregon 97204
Telephone: 503.243.2300

#26839050 v1

COPY

EXHIBIT

A

PAGE

1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Facts

5.

Wilsonville Devco owns a parcel of land in the City of Wilsonville, County of Washington, and state of Oregon (the "Property"). The Property's legal description is fully set forth in Exhibit A, which is incorporated here by reference.

6.

The Property is subject to a restrictive covenant recorded in the Washington County property records on March 10, 2005 under recording number 2005-025345 (the "Restrictive Covenant"). The Restrictive Covenant provides that the Property

... shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

The Restrictive Covenant is fully set forth in Exhibit B, which is incorporated here by reference.

7.

The Restrictive Covenant was executed on or about March 8, 2005 by South Sea, LLC. The Restrictive Covenant states that it is binding upon South Sea, LLC, its successors and assigns forever.

8.

On or about May 24, 2012, Wilsonville Devco purchased the Property from South Sea, LLC. Wilsonville Devco is the current owner of the Property.

9.

The Restrictive Covenant benefits a neighboring parcel owned by LaPoint, LLC. LaPoint, LLC and Garry LaPoint operate a Chevron gasoline station and Fountain Mart convenience store on the benefitted parcel.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

10.

Wilsonville Devco and NW Coffee have begun the process of constructing The Human Bean coffee restaurant on the Property. The Human Bean coffee restaurant is a drive-through coffee shop that primarily sells different kinds of coffee drinks, as well as tea, frozen drinks, and bottled water.

11.

Wilsonville Devco has fully negotiated the terms of a build to suit lease agreement with NW Coffee. The build to suit lease agreement contemplates that Wilsonville Devco will construct and NW Coffee will operate The Human Bean coffee restaurant upon a portion of the Property.

12.

NW Coffee has fully negotiated a franchise agreement under which NW Coffee will operate The Human Bean coffee restaurant on the Property.

13.

Wilsonville Devco has completed and submitted its project submittal for construction of The Human Bean coffee restaurant on the Property to the City of Wilsonville. The submittal is complete and is scheduled for public hearing on January 13, 2014.

14.

Wilsonville Devco has expended approximately \$80,000 to date in site work improvements in preparation for construction of The Human Bean coffee restaurant on the Property. The project is expected to be complete and the restaurant open in April 2014.

15.

LaPoint, LLC and Garry LaPoint have asserted that the development and operation of The Human Bean coffee restaurant on the Property is prohibited by the Restrictive Covenant.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

16.

(On or about November 19, 2013, Garry LaPoint's counsel sent a letter to Josh Veentjer, who is Wilsonville Devco's managing member, asserting that the development and operation of The Human Bean coffee restaurant violates the Restrictive Covenant (the "November 19, 2013 Letter"). The November 19, 2013 Letter is fully set forth in Exhibit C, which is incorporated here by reference.)

17.

(The November 19, 2013 Letter asserted that the Restrictive Covenant prohibits the Property from being used to sell any products normally sold in a convenience store, including coffee.)

18.

(The November 19, 2013 Letter demanded that Wilsonville Devco "immediately CEASE and DESIST all activities relative to the siting and construction of The Human Bean facility on [the Property]."

19.

(On or about November 27, 2013, Wilsonville Devco's counsel sent a letter to Garry LaPoint's counsel explaining that under Oregon law, the Restrictive Covenant's language does not bar development and operation of The Human Bean coffee restaurant on the Property. Wilsonville Devco's counsel's November 27, 2013 letter is fully set forth in Exhibit D, which is incorporated here by reference.)

20.

(On or about December 10, 2013, Wilsonville Devco's counsel sent an email to Garry LaPoint's counsel again explaining that the Restrictive Covenant does not bar development and operation of The Human Bean coffee restaurant on the Property. Wilsonville Devco's counsel's December 10, 2013 email is fully set forth in Exhibit E, which is incorporated here by reference.)

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

21.

(On or about December 10, 2013, Garry LaPoint's counsel sent an email responding to Wilsonville Devco's counsel and stating his client's intention to enforce the Restrictive Covenant in court. Garry LaPoint's counsel's December 10, 2013 email is fully set forth in Exhibit F, which is incorporated here by reference.)

Claim for Declaratory Relief

22.

Plaintiffs incorporate by reference and reallege paragraphs 1-21 above.

23.

Wilsonville Devco and NW Coffee claim that the Restrictive Covenant does not prevent development and operation of The Human Bean coffee restaurant on the Property.

24.

LaPoint, LLC and Garry LaPoint claim that the Restrictive Covenant prevents development and operation of The Human Bean coffee restaurant on the Property.

25.

Development of The Human Bean coffee restaurant on the Property is underway. The agreements necessary to develop and operate The Human Bean coffee restaurant on the Property have been fully negotiated. The necessary approval process with the City of Wilsonville is also near completion. Preliminary site work improvements are also ongoing.

26.

The dispute between Plaintiffs and Defendants regarding the effect of the Restrictive Covenant upon development and operation of The Human Bean coffee restaurant on the Property is an actual and substantial controversy between parties with adverse interests, and arises from present facts. The dispute is accordingly appropriate for judicial disposition and resolution by binding decree.

///

The Court is specifically authorized under Oregon law to declare the parties' rights, status, and other legal relations under the Restrictive Covenant. ORS 28.020 provides, in part:

Any person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under any such . . . contract . . . and obtain a declaration of rights status or other legal relations thereunder.

WHEREFORE, Plaintiffs Wilsonville Devco and NW Coffee request the following relief:

1. Judgment declaring that the Restrictive Covenant does not prohibit the development or operation of The Human Bean coffee restaurant on the Property;
2. Plaintiffs' costs and disbursements incurred in this action; and
3. Any other relief that the Court deems just and proper.

DATED this 14 day of December, 2013.

HOLLAND & KNIGHT LLP

By: 

Louis A. Santiago, OSB # 783610
E-mail: louis.santiago@hklaw.com
Garrett S. Garfield, OSB # 093634
E-mail: garrett.garfield@hklaw.com
111 SW Fifth Avenue
2300 U.S. Bancorp Tower
Portland, Oregon 97204
Telephone: 503.243.2300
Fax: 503.241.8014

Attorneys for Plaintiffs Wilsonville Devco, LLC and NW Coffee Group, LLC

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'10", an arc length of 64.96 feet, the chord of which bears South 45°05'50" East, 63.83 feet to a point on the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

#25841631 v1

EXHIBIT A
Page 1 of 1

EXHIBIT A
PAGE 1

Washington County, Oregon 2005-025345
03/10/2003 03:41:18 PM
D-R/B Qtr=1 Item=4 A DUYCK
\$25.00 \$6.00 \$11.00 - Total = \$42.00



00730070700500253450040040

I, Jerry Blanton, Director of Assessments and Taxation
and Washington County Clerk for Washington County,
Oregon, do hereby certify that the within instrument of
writing was received and recorded in the book of
records of said county.



Jerry Blanton, Director of Assessments and Taxation
Washington County Clerk

AFTER RECORDING MAIL TO:

Name Garry M. LaPoint
Address 10618 Crosby Road NE
City/State Woodburn, OR 97071

Document Title(s) (for transactions contained therein):
1. Restrictive Covenant

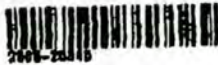
20
37
1-5

FAYCO NC NCS-M677-OR

Title Data, Inc. CH FOR10583 WN 2005025345.001

EXHIBIT B
Page 1 of 4

EXHIBIT A
PAGE 8



RESTRICTIVE COVENANT

FOR GOOD AND VALUABLE CONSIDERATION, the undersigned, hereby creates and imposes upon the real property described in Exhibit A attached hereto and by this reference made a part hereof, to be binding upon itself, its successors and assigns forever, the following restriction on use of the property:

The property described in Exhibit A attached hereto and by this reference, incorporated herein, shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

IN WITNESS WHEREOF, the undersigned, being the owner of the real property described above, has executed this restrictive covenant on the 8th day of March, 2005.

SOUTH SEA, LLC, an Oregon Limited Liability Company

BY George F. Brice III
George F. Brice III, Member

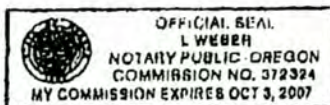
BY Zauzaama Brice
Zauzaama Brice, Member

STATE OF OREGON)

County of Multnomah)

..

Before me, a notary public in and for the State of Oregon, personally appeared George F. Brice, III and Zauzaama Brice and acknowledged the foregoing to be their voluntary act and deed.



[Signature]
Notary Public for Oregon
My commission expires: 10/3/07



EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 341.16 feet; thence along the arc of a curve to the right, said curve having a radius of 118.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to Exxon Wilsonville, LLC, an Oregon limited liability company, by instrument recorded June 19, 2000 as Fee No. 2000-46397 and being more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:



Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet; thence South 20°29'49" West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North 00°09'24" East parallel to said East line, 6.00 feet to the true point of beginning.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Doones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

WALLACE W. LIEN
A PROFESSIONAL CORPORATION



Wallace W. Lien

Attorney at Law

Contact by e-mail at
wallace.lien@lienlaw.com

November 19, 2013

Mr. Josh Veentjer
President
Pacific Development Ventures
P. O. Box 6437
La Quinta, CA 92248

By Certified Mail No. 7012 1010 0000 0856 6155
Return Receipt Requested
Copy by Regular Mail

Re: Wilsonville Proposed Human Bean Coffee Shop

Dear Mr. Veentjer:

Please be advised that I represent Garry LaPoint, and his Chevron station and Fountain Mart. Mr. LaPoint has been advised that it is your intention to construct a Human Bean Coffee Shop with drive through, which would serve all kinds of coffee drinks, fountain drinks, bottled water, frozen drinks, fruit and baked goods among other convenience food products.

You should be advised that when Mr. LaPoint sold your property to George Brice (South Sea LLC) a Restrictive Covenant was imposed on the property you now own that strictly prohibits your property from being used for the sale of any products that would normally occur in a convenience store business. All of the products that are proposed to be sold at this Human Bean location are products that are currently for sale in Mr. LaPoint's Fountain Mart.

This Restrictive Covenant was recorded as Document No. 2005-025345, on March 12, 2005, and it binds successors to Brice/South Sea, such as yourself. Documents related to the creation of the Restrictive Covenant clearly show the intent was to prohibit anything that competes with my client's Fountain Mart. My client believes strongly that your proposed Human Bean facility will be in direct competition with his Fountain Mart, and therefore is prohibited by the Restrictive Covenant.

You should immediately CEASE and DESIST all activities relative to the siting and construction of the Human Bean facility on the property subject to the above-referenced Restrictive Covenant. This must include the immediate withdrawal of any permit applications with the City of Wilsonville.

This is a serious matter for my client, as a large portion of the revenue for the Fountain Mart comes from the sale of products your proposed Human Bean would be offering. In the event you do not CEASE and DESIST, and provide evidence to my office by the close of business on November 29, 2013 that you have done so, I will assume that you intend to violate the Restrictive Covenant, and I will file a Complaint in Clackamas County Circuit Court to obtain an injunction to enforce the prohibitions in the covenant.

1,75 32nd Place NE, Suite A • Salem, Oregon 97301-8774

(503) 585-0105 office • (503) 585-0106 fax

Web site at <http://www.lienlaw.com>

EXHIBIT C
Page 1 of 2

EXHIBIT
PAGE

A

12

Mr. Josh Veentjer

November 19, 2013

Page 2

If you are represented by legal counsel, please refer this letter to your attorney and have that attorney contact me with any questions.

Otherwise, I will expect to hear from you by November 29, 2013, that you have taken all steps necessary to come into compliance with the Restrictive Covenant.

Yours truly,

WALLACE W. LIEN, P.C.

/s/ Wallace W. Lien

By: Wallace W. Lien

cc: Garry LaPoint
Daniel Pauly, City of Wilsonville ✓
Josh Veentjer (Copy by Regular Mail)

EXHIBIT C
Page 2 of 2

Holland & Knight

111 S.W. Fifth Avenue, 2300th S. Bancorp Tower Portland, OR 97204 (503) 243-2000 (F) 503.241-4014
Holland & Knight LLP | www.hkllaw.com

November 27, 2013

GEORGE J. GREGORES
503.243.5879
george.gregores@hkllaw.com

Wallace.lien@lienlaw.com

Wallace W. Lien
Attorney at Law
1773 32nd Place SE, Suite A
Salem, Oregon 97301-8774

Re: Our Client: Wilsonville Devco, LLC

Dear Mr. Lien:

This firm represents Wilsonville Devco, LLC, the owner of the real property and improvements located adjacent to Mr. LaPoint's Chevron gas station and Fountain Mart in Wilsonville, Oregon. I am in receipt of your November 19, 2013 letter directed to Josh Veentjer of Pacific Development Ventures in which you reference the Restrictive Covenant recorded as Document No. 2005-025345 against the Wilsonville Devco property. You contend in your letter to Mr. Veentjer that operation of a Human Bean Coffee restaurant on the Wilsonville Devco property is prohibited by the Restrictive Covenant. We believe that you have engaged in a tortured analysis to reach this conclusion, and in connection therewith, seek to expand the scope of the restriction well beyond the clear text of the provision.

You state in the second paragraph of your November 19 letter that the Restrictive Covenant strictly prohibits the Wilsonville Devco property "from being used for the sale of any products that would normally occur in a convenience store business." The Restrictive Covenant prohibits "the operation of a convenience store business" only, not the sale of products that are sold in a convenience store as you suggest. The only way to construe the Restrictive Covenant as you contend would require reading into the provision language that simply does not exist in the recorded document, something a court will not do. There is no ambiguity in the text of the covenant, the language is clear. In the case of a restrictive covenant, the appropriate maxim of construction provides that the covenant is to be construed strictly against the restriction. Unless the use complained of is plainly within the provisions of the covenant, it will not be restrained. Yogman v. Parrot, 325 Or 358 (1997). In analyzing contractual language, a court is "to ascertain and declare what is, in terms or in substance, contained therein, not to omit what has been inserted."

The dictionary definition of "convenience store" is a small retail store that stocks a range of everyday items such as groceries, toiletries, alcoholic and soft drinks, tobacco products,

EXHIBIT D
Page 1 of 2

November 27, 2013
Page 2

newspapers and sometimes gasoline. The fact that a few of the products sold in your client's convenience store will also be sold in the Human Bean Coffee restaurant doesn't fall within the prohibition of the Restrictive Covenant. The operation of a Human Bean Coffee restaurant is not the "operation of a convenience store business."

Our client intends to proceed with the leasing of the property to the operator of the Human Bean Coffee restaurant and respectfully rejects your request that it cease and desist all activities in that regard. With respect to your threat of litigation, please be advised that we have been instructed to vigorously defend any claims that you bring on behalf of your client under the Restrictive Covenant. In that regard, given the clear and unambiguous language of the Restrictive Covenant and the law applicable to it, we would view the filing of any claim as spurious and will respond appropriately.

If you have any questions or wish to discuss this matter further, please advise.

Very truly yours,

HOLLAND & KNIGHT LLP

George J. Oregores

#26639028 v1

EXHIBIT D
Page 2 of 2

EXHIBIT A
PAGE 15

Gregores, George J (POR - X55879)

To: wallace.lan@llenlaw.com
Cc: josh@pdvoo.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lan: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulla & Arlas Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

George Gregores, Esq. (Mother & Daughter)

Partner

20000 E. Portland, Oregon 97134-1111 (503) 255-1111

www.gregores.com

gregores.com

gregores.com

EXHIBIT E
Page 1 of 1

EXHIBIT
PAGE

A
16

Gregores, George J (POR - X55879)

From: Wallace Lien [WLiien@lienlaw.com]
Sent: Tuesday, December 10, 2013 2:30 PM
To: Gregores, George J (POR - X55879)
Cc: Wallace Lien
Subject: RE: Our Client: Wilsonville Devco, LLC

It is our intention to enforce the covenant in court. Are you authorized to accept service?

Wallace W. Lien
Wallace W. Lien, P.C.
1775 32nd Place NE, Suite A
Salem, OR 97301-8774
phone: 503-585-0105 ext. 311
fax: 503-585-0108
<http://www.lienlaw.com>

CONFIDENTIALITY NOTICE:

If you have received this communication in error, please notify me immediately. This message is intended only for the use of the person or firm to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is prohibited.

From: George.Gregores@hklaw.com [mailto:George.Gregores@hklaw.com]
Sent: Tuesday, December 10, 2013 2:25 PM
To: Wallace Lien
Cc: josh@pdvco.com; louis.santiago@hklaw.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lien: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulla & Arias Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

EXHIBIT F
Page 1 of 1

Gregores, George J (POR - X55879)

From: Wallace Lien (WLIen@lienlaw.com)
Sent: Tuesday, December 10, 2013 2:30 PM
To: Gregores, George J (POR - X55879)
Cc: Wallace Lien
Subject: RE: Our Client: Wilsonville Devco, LLC

It is our intention to enforce the covenant in court. Are you authorized to accept service?

Wallace W. Lien
Wallace W. Lien, P.C.
1775 32nd Place NE, Suite A
Salem, OR 97301-8774
phone: 503-585-0105 ext. 311
fax: 503-585-0108
<http://www.lienlaw.com>

CONFIDENTIALITY NOTICE:

If you have received this communication in error, please notify me immediately. This message is intended only for the use of the person or firm to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is prohibited.

From: George.Gregores@hklaw.com [<mailto:George.Gregores@hklaw.com>]
Sent: Tuesday, December 10, 2013 2:25 PM
To: Wallace Lien
Cc: josh@pdvco.com; louis.santiago@hklaw.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lien: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulla & Arias Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

EXHIBIT F
Page 1 of 1

HOME

OREGON SECRETARY OF STATE
► **Corporation Division**

business information center **business name search** oregon business guide
referral list business registry/renewal forms/fees notary public
uniform commercial code uniform commercial code search documents & data services

Business Name Search[New Search](#)[Printer Friendly](#)**Business Entity Data**

01-02-2014

11:57

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
628887-80	DLLC	ACT	OREGON	04-16-1998	04-16-2014	
Entity Name LAPOINT BUSINESS GROUP, LLC						
Foreign Name						

[New Search](#)[Printer Friendly](#)**Associated Names**

Type	PPB	PRINCIPAL PLACE OF BUSINESS		
Addr 1	25410 SW 95TH			
Addr 2				
CSZ	WILSONVILLE	OR	97070	Country UNITED STATES OF AMERICA

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	04-16-1998	Resign Date	
Name	GARRY	L	LAPOINT			
Addr 1	850 LAWSON AVE					
Addr 2						
CSZ	WOODBURN	OR	97071	Country	UNITED STATES OF AMERICA	

Type	MAL	MAILING ADDRESS		
Addr 1	10618 CROSBY RD			
Addr 2				
CSZ	WOODBURN	OR	97071	Country UNITED STATES OF AMERICA

Type	MEM	MEMBER		Resign Date	
Name	KATHERINE	M	LAPOINT		
Addr 1	10618 CROSBY RD				
Addr 2					
CSZ	WOODBURN	OR	97071	Country	UNITED STATES OF AMERICA



Type	MEM	MEMBER			Resign Date	
Name	GARRY	L	LAPOINT			
Addr 1	10618 CROSBY RD					
Addr 2						
CSZ	WOODBURN	OR	97071		Country	UNITED STATES OF AMERICA

New Search Printer Friendly Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
LAPOINT BUSINESS GROUP, LLC	EN	CUR	04-16-1998	

Please read before ordering Copies.

New Search Printer Friendly Summary History

Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	AMENDED ANNUAL REPORT	03-15-2013		FI		
	AMENDED ANNUAL REPORT	03-07-2012		FI		
	ANNUAL REPORT PAYMENT	03-04-2011		SYS		
	ANNUAL REPORT PAYMENT	03-05-2010	03-04-2010	SYS		
	ANNUAL REPORT PAYMENT	03-23-2009		SYS		
	ANNUAL REPORT PAYMENT	03-19-2008		SYS		
	ANNUAL REPORT PAYMENT	03-08-2007		SYS		
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	05-10-2006		FI		
	ANNUAL REPORT PAYMENT	05-04-2006	05-03-2006	SYS		
	NOTICE LATE ANNUAL	04-21-2006		SYS		
	ANNUAL REPORT PAYMENT	03-11-2005		SYS		

EXHIBIT

B

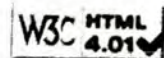
PAGE

2

	ANNUAL REPORT PAYMENT	04-28-2004		SYS		
	NOTICE LATE ANNUAL	04-23-2004		SYS		
	ANNUAL REPORT PAYMENT	04-17-2003		SYS		
	ANNUAL REPORT PAYMENT	04-12-2002		SYS		
	ANNUAL REPORT PAYMENT	04-19-2001		SYS		
	STRAIGHT RENEWAL	04-14-2000		FI		
	AMENDED RENEWAL	04-14-1999		FI		
	NEW FILING	04-16-1998		FI		

[About Us](#) | [Announcements](#) | [Laws & Rules](#) | [Feedback](#)
[Policy](#) | [SOS Home](#) | [Oregon Blue Book](#) | [Oregon.gov](#)

For comments or suggestions regarding the operation of this site,
please contact : corporation.division@state.or.us



© 2014 Oregon Secretary of State. All Rights Reserved.

25
235
42

Washington County, Oregon 2005-140371
11/08/2005 10:44:56 AM
D-DBB Cnt=1 Stn=7 K GRUNEWALD
\$25.00 \$0.00 \$11.00 - Total = \$42.00

RECORD AND RETURN TO:
Garry and Kathy LaPoint
LaPoint Business Group, LLC
10618 Crosby Rd. NE
Woodburn, OR 97071



00864899200501403710050051

I, Jerry Hanson, Director of Assessment and Taxation
and Ex-Officio County Clerk for Washington County,
Oregon, do hereby certify that the within instrument of
writing was received and recorded in the book of
records of said county.
Jerry R. Hanson, Director of Assessment and Taxation,
Ex-Officio County Clerk



**UNTIL A CHANGE IS REQUESTED ALL TAX
STATEMENTS SHALL BE SENT TO:**
No Change

FATCO. NO. NCS-156813

BARGAIN AND SALE DEED

Exxon of Wilsonville, LLC, an Oregon limited liability company, Grantor, conveys to LaPoint Business Group, LLC, an Oregon limited liability company, Grantee, the following real property situated in Washington County, Oregon and described on the attached Exhibit "A."

The true consideration for this conveyance is \$0.00. However, the actual consideration consists of other value given which is the whole consideration.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Dated this 4 day of November, 2005.

EXXON OF WILSONVILLE, LLC

BY: Garry L. LaPoint, Member

BY: Katherine M. LaPoint, Member

FDX 1349506v1 0-0
Portland

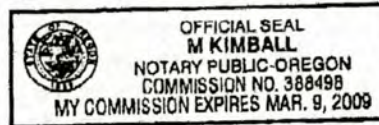


STATE OF OREGON)

County of Multnomah) ss.

This instrument was acknowledged before me on this 4 day of November, 2005, by Garry L. LaPoint, as a member of Exxon of Wilsonville, LLC.

M Kimball
Notary Public for Oregon
My Commission Expires: 3/9/09



STATE OF OREGON)

County of Multnomah) ss.

This instrument was acknowledged before me on this 4 day of November, 2005, by Katherine M. LaPoint, as a member of Exxon of Wilsonville, LLC.

M Kimball
Notary Public for Oregon
My Commission Expires: 3/9/09

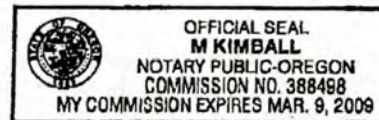




EXHIBIT A

PARCEL I:

A parcel of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the South line of said lot, a distance of 391.33 feet to the East line of Parcel I in Deed from John Q. Hammons, to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East, along said "ODOT" Deed, a distance of 359.27 feet; thence continuing along said "ODOT" Deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of $062^{\circ}51'50''$, a chord bearing of North $31^{\circ}35'19''$ East, a chord length of 133.67 feet to the intersection with the South line of SW Commerce Circle as dedicated in the plat of EDWARDS BUSINESS INDUSTRIAL PARK; thence non-tangent North $70^{\circ}34'24''$ East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius 25.00 feet, arc length of 32.72 feet, central angle of $074^{\circ}59'06''$, a chord bearing of South $71^{\circ}56'03''$ East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of $000^{\circ}41'10''$, a chord bearing of South $24^{\circ}13'24''$ East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 595.65 feet, arc length of 85.44 feet, central angle of $008^{\circ}13'06''$, a chord bearing of South $25^{\circ}08'24''$ East, and a chord length of 85.36 feet to Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South $15^{\circ}09'35''$ West, a distance of 83.41 feet, South $38^{\circ}02'13''$ East, a distance of 200.44 feet, North $46^{\circ}33'47''$ East, a distance of 48.10 feet, South $40^{\circ}56'40''$ East, a distance of 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of $00^{\circ}21'11''$, a chord bearing of South $38^{\circ}36'45''$ East, and a chord length of 17.49 feet to a point 100.00 feet North of, when measured at right angle to, the South line of said Lot 7; thence continuing along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of $00^{\circ}58'46''$, a chord bearing of South $37^{\circ}56'47''$ East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of $030^{\circ}31'07''$, a chord bearing of South $00^{\circ}03'01''$ West, and a chord length of 61.56 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the



South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 347.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Prairie Corp., an Oregon corporation, by instrument recorded July 19, 2000 as Fee No. 2000-48398, more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line



of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

FURTHER EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet to the true point of beginning; thence North $89^{\circ}38'33''$ East parallel to said South line of Lot 7, 95.10 feet; thence South $20^{\circ}29'49''$ West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North $00^{\circ}09'24''$ East parallel to said East line, 6.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

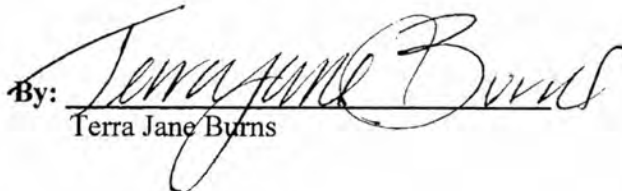
1 CERTIFICATE OF SERVICE

2 I hereby certify that on January 2, 2014, I served the foregoing *Defendants' ORCP 21*
3 *Motions, Declaration of Garry L. LaPoint in Support of Defendants' ORCP 21 Motions, and*
4 *Defendants' Counsel's Certificate of Compliance (UTC R 5.010)* on the following Parties by
5 mailing a true copy thereof, via first class mail, postage prepaid, to them at the following
6 address:

7
8 Garrett S. Garfield
9 Holland & Knight LLP
10 111 SW 5th Avenue, Ste. 2300
Portland, OR 97204
Counsel for Plaintiff

11 Wallace W. Lien
12 Wallace W. Lien, P.C.
13 1775 32nd Place NE, Suite A
Salem, OR 97301
Co-Counsel for Defendant

14
15 LAIDLAW & LAIDLAW, PC

16
17 By: 
18 Terra Jane Burns
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

LAIDLAW & LAIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 503.305.4840

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON
6

7 WILSONVILLE DEVCO, LLC, and NW) Case No. C138125CV
8 COFFEE GROUP, LLC,)
9 Plaintiffs,) **DECLARATION OF GARRY L. LAPOINT**
10 v.) **IN SUPPORT OF DEFENDANTS' ORCP**
11 LAPOINT BUSINESS GROUP, LLC and) **21 MOTIONS**
12 GARRY LAPOINT,)
13 Defendant)

14 I, Garry L. LaPoint, hereby declare and state, as follows:
15

- 16 1. I am at least 18 years of age and am competent to make this declaration. Each of the
17 facts set forth herein are based on my personal knowledge, except those facts set forth on
18 information and belief. As to those facts, I am informed and believe them to be true.
19 2. I make this declaration in support of Defendants' ORCP 21 Motions, filed concurrently
20 herewith.
21 3. At all times material, I have been a member of, and registered agent for, LaPoint
22 Business Group, LLC, an Oregon Limited Liability Company. A copy of LaPoint Business
23 Group, LLC's, Business Entity Data form, taken from the Oregon Secretary of State's website, is
24 marked as Exhibit B and attached to Defendants' ORCP 21 Motions.
25 4. A copy of the last vesting deed to the real property benefitted by the Restrictive Covenant
26 – 25410 SW 95th Avenue Wilsonville, Oregon ("the benefitted parcel") – is marked as Exhibit C

Page 1 – DECLARATION OF GARRY L. LAPOINT IN SUPPORT OF DEFENDANTS' ORCP 21
MOTIONS

LAIDLAW & LAIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840

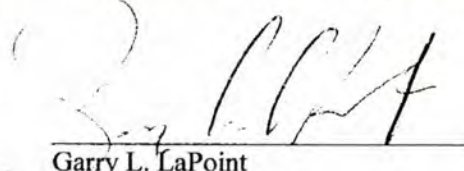
1 and attached to Defendants' ORCP 21 Motions.

2 5. LaPoint Business Group, LLC, is the sole owner of the benefitted parcel. I am a member
3 and of, and registered agent for, LaPoint Business Group, LLC. I hold no interest in and to the
4 benefitted parcel in my personal capacity.

5 6. I am informed and believe that Plaintiffs' complaint seeks a declaratory judgment against
6 me, in my personal capacity. I hold no interest in or to the benefitted parcel in my personal
7 capacity. I respectfully request, that the Court dismiss me from Plaintiffs' Complaint For
8 Declaratory Relief.

9
10 **I hereby declare that the above statement is true to the best of my knowledge and**
11 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**
12 **for perjury.**

13 Dated: December 30, 2013

14 
Garry L. LaPoint

15
16
17
18
19
20
21
22
23
24
25
26
Page 2 – DECLARATION OF GARRY L. LAPOINT IN SUPPORT OF DEFENDANTS' ORCP 21
MOTIONS

LAILAW & LAILAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON

6 WILSONVILLE DEVCO, LLC, and NW
7 COFFEE GROUP, LLC,

8 Plaintiffs,

9 v.

10 LAPOINT BUSINESS GROUP, LLC and
11 GARRY LAPOINT,

12 Defendant

) Case No. C138125CV
)
)
)

) **DEFENDANTS' COUNSEL'S**
) **CERTIFICATE OF COMPLIANCE**
) **(UTC R 5.010)**
)
)
)

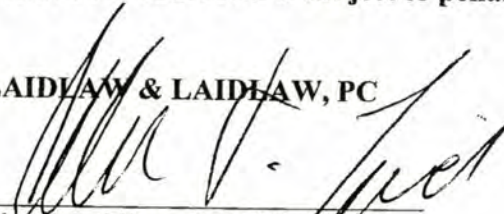
13
14 I, Alec J. Laidlaw, attorney for Defendants in the above captioned matter, hereby certify
15 as follows:

16 1. On December 27, 2013, I telephoned Plaintiffs' counsel to confer on the issues raised in
17 Defendants' ORCP 21 Motions, filed concurrently herewith. Despite the good-faith efforts of
18 counsel, the parties were not able to agree on the issues set forth in the accompanying ORCP 21
19 Motions.

20 **I hereby declare that the above statement is true to the best of my knowledge and**
21 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**
22 **for perjury.**

23 Dated: December 30, 2013

LAIDLAW & LAIDLAW, PC

24 
Alec J. Laidlaw, OSB #056154

25 Jason Janzen, OSB #063690

26 Attorneys for Defendants

alec@laidlawandlaidlaw.com

Page 1 – DEFENDANTS' COUNSEL'S CERTIFICATE OF COMPLIANCE (UTC R 5.010)

King, Sandy

From: King, Sandy
Sent: Thursday, March 13, 2014 12:02 PM
To: Wallace Lien (WLiен@lienlaw.com); spfeiffer@perkinscoie.com; garylappoint@gmail.com; josh@pdvco.com
Subject: Materials submitted March 10, 2014 for March 17, 2014 Council Meeting
Attachments: Appeal of Denial.pdf; LaPoint Submittal 3.10.14.pdf

Good afternoon:

I wanted to insure you received the documents submitted March 10, 2014 in support of each sides position on the Human Bean appeal to be heard by the City Council March 17, 2014. These items were sent to all City Council members and necessary staff in electronic format, including the link to Mr. LaPoint's video, which is on YouTube and can be viewed by using this link:

<http://youtu.be/xQ6KXdYoQZg>

Please let me know if you have questions.

Sandra C. King, MMC
City Recorder
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070
503-570-1506

PUBLIC RECORDS LAW DISCLOSURE: Messages to and from this e-mail address is a public record of the City of Wilsonville and may be subject to public disclosure. This e-mail is subject to the State Retention Schedule.

Steven L. Pfeiffer
PHONE: (503) 727-2261
FAX: (503) 346-2261
EMAIL: SPfeiffer@perkinscoie.com

March 10, 2014

VIA E-MAIL

Mr. Tim Knapp, Mayor
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070-6499

**Re: Appeal of Denial of The Human Bean Coffee Kiosk;
DB 13-0046, DB 13-0047, DB 13-0048**

Dear Mayor Knapp and City Councilors:

This office represents Wilsonville Devco, LLC ("Applicant"), the applicant in the above-referenced applications (the "Applications"), and the appellant in this appeal of the February 13, 2014 decision by the City of Wilsonville Development Review Board ("DRB"). The DRB denied the request for modification of an earlier Stage II Final Plan approval on the site to replace the approved 3,150 square foot multi-tenant retail building with a 450 square foot The Human Bean coffee kiosk at the corner of Boones Ferry Road and 95th Avenue. The DRB's denial of the Applications was predicated on Wilsonville City Code ("WCC") Sections 4.400.02 and 4.421C and its concerns with site traffic circulation, congestion and safety. As discussed in more detail below, the DRB misapplied and misinterpreted WCC 4.400.02 and 4.421C, thereby improperly denying the Applications. Further, the DRB decision is contrary to, and not supported by, substantial evidence in the record as a whole. For the reasons explained below, the City Council should reverse the DRB's decision and approve the Applications. Please include this letter and its attachments in the official record of this appeal proceeding.

I. Description of the Project.

At the outset, it is important to note that the Applicant had previously obtained Stage II Final Plan approval for a 3,150 square foot multi-tenant retail commercial building on the site. Such approval is still valid, and the retail building remains authorized for construction as approved. Notably, no one, not even the opponent in the present matter ("LaPoint"), appealed the approval of the 3,150 square foot retail building or the approval of the Carl's Jr. on the site. In fact, the

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 2

Applicant, LaPoint, Holiday Inn, and the City negotiated and entered into a Development Agreement, dated August 2012, which established the rights and responsibilities of each party respecting site access and circulation. The Development Agreement contemplated both a Carl's Jr. and a "other yet to be determined retail" use on the Applicant's property. It also called for the system of easements that are in place today and clearly evidences the parties' mutual understanding of how vehicle circulation would work on the site. This understanding was further developed as part of the previous Stage II Planned Development and Site Plan reviews (DB 12-0074, 0075, and 0076) that were approved early last year, and for which LaPoint was a co-applicant. In short, LaPoint's participation in the Development Agreement and as a co-applicant in the previous application demonstrate that LaPoint believed on-site circulation was safe and adequate to serve the Carl's Jr. and a then-unnamed future retail use.

Moreover, in reviewing the previous Stage II Final Plan for the 3,150 square foot multi-tenant commercial building, the DRB was provided the opportunity to review site circulation and expressly found that there was adequate on-site circulation in compliance with WDC 4.154. Additionally, Tualatin Valley Fire and Rescue ("TVFR") reviewed the prior master plan (case file DB 12-0074, 0075, and 0076) and indicated that "Tualatin Valley Fire and Rescue endorses this proposal."

The current proposal seeks to replace the approved, but unbuilt, retail commercial building with a new 450 square foot drive-through coffee kiosk, resulting in a 2,700 square foot reduction in the size of the building and an attendant reduction in overall traffic on the site. Given the size of the approved retail building and the various retail uses that could occupy the larger building, the traffic, site-circulation, and fire/life/safety impacts of the current proposal are much less than the originally-proposed, and approved, retail building.

II. Substantial Evidence Shows On-Site Circulation is Adequate and Safe.

In its decision, the DRB denied the proposed coffee kiosk and found that the Applications failed to comply with WCC requirements pertaining to safety and on-site circulation. One of the main concerns expressed by the DRB at the hearing was the worst case scenario of an occasional delivery truck in excess of 30 feet serving the coffee kiosk, and the perceived risk that such infrequent delivery truck would not be able to maneuver from the shared driveway onto the site without hitting the curb. In response to such concern, the Applicant has confirmed with The Human Bean and with its vendor, Umpqua Dairy, that deliveries to the coffee kiosk will be made in a box truck not to exceed an overall length of 30 feet. Attached as **Exhibit A** is an email from Scott Sayre at The Human Bean, dated February 14, 2014, and an email from Marty Weaver at Umpqua Dairy, dated February 26, 2014, confirming the size of the delivery truck. The Applicant has also obtained a Truck Turning and Circulation Analysis ("Truck Turning Analysis") performed by transportation engineering firm, Kittelson & Associates, Inc., dated March 2, 2014, and which is attached as **Exhibit B**. The Truck Turning Analysis analyzes a

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 3

30 foot Umpqua box truck with a wheelbase of 18.6 feet, which is the largest vehicle that would perform deliveries to the coffee kiosk. The Truck Turning Analysis concludes that the studied Umpqua delivery truck can successfully access the site in a safe and efficient manner.

Furthermore, the Applicant has provided evidence of safe and convenient circulation on the site in compliance with WCC Sections 4.400.02, 4.421C, 4.154 and 4.155. First of all, the Applicant's site plan demonstrates a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings. Specifically, the site plan shows the following:

- Two separate pedestrian connections to the 95th Avenue sidewalk, each with its own striped drive aisle crossing;
- Circulation and stacking patterns for vehicles visiting the coffee kiosk, with safe stacking for at least seven (7) vehicles;
- Directional arrows separating traffic flow;
- Eight (8) adjacent parking spaces;
- Paved walkways with striped drive aisle crossings connecting the coffee kiosk to parking, the trash enclosures, and the Chevron property to allow, if desired, those who are fueling their cars to walk to the coffee kiosk; and
- A patio area near the coffee kiosk to provide pedestrians with a safe space to drink their coffee other than the parking lot.

For ease of visual reference, attached as **Exhibit C** is a copy of the site plan showing the multiple safe pedestrian pathways highlighted in red.

At the DRB hearing, LaPoint rejected the Applicant's offer to develop pedestrian improvements on his property in order to better connect the adjacent properties. Accordingly, the Applicant has revised the proposed site plan to eliminate all such proposed improvements on LaPoint's property. As shown on the attached **Exhibit D**, all improvements to Applicant's property will be stubbed to, and end at, LaPoint's property. The only remaining additional proposed improvements are two (2) new directional signs directing customers of the coffee kiosk to exit using the drive aisle in front of Carl's Jr. to the shared driveway.

As discussed in detail above, site plans show a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings necessary to connect the proposed coffee kiosk with its associated parking, the sidewalk, and adjacent properties, as well as adequate access for passenger vehicles and delivery trucks. The Applicant has provided substantial evidence that access and circulation serving the coffee kiosk will be safe and adequate as proposed, and City Council can find that the proposed development is consistent with all applicable approval criteria.

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 4

III. Conclusion.

For the reasons discussed above and in the Applicant's submittals in the record below, the Applicant has met all applicable approval criteria. Therefore, the City Council should overturn the DRB's denial of the Applications and approve the requested Applications in their entirety.

Very truly yours,



Steven L. Pfeiffer

SLP:crl

Enclosures

cc: Ben Altman, SFA Design Group (via email) (with encs.)
Craig Anderson, CB Anderson Architects (via email) (with encs.)
Wallace Lien, Esq.(via email) (with encs.)
Client (via email) (with encs.)
George J. Gregores, Esq. (via email) (with encs.)

From: Scott Sayre [<mailto:Scott@thehumanbean.com>]
Sent: Friday, February 14, 2014 5:58 PM
To: josh@pdvco.com
Subject: RE: Wilsonville Truck Sizes

Howdy!

So, Core-Mark will deliver in a Twenty-two foot long box van. Umpqua Dairy will deliver in a twenty-six foot box van.

Have a great weekend!

Scott Sayre
Director of Franchise & Vendor Development
541-608-0564
Fax: 541-608-3757
thehumanbean.com



Visit The Human Bean [Website\[thehumanbean.com\]](http://Website[thehumanbean.com])

'Like' us on [Facebook\[facebook.com\]](https://www.facebook.com) | Connect with us on [Instagram\[instagram.com\]](https://www.instagram.com) | Follow us on [Twitter\[twitter.com\]](https://twitter.com)



From: Marty Weaver [<mailto:Martyw@umpquadairy.com>]
Sent: Wednesday, February 26, 2014 3:39 PM
To: josh@pdvco.com; Scott Sayre
Subject: RE: Human bean info

Gents-

Ok, I think we have this figured out. Box truck overall length bumper to bumper 30', height is 11' and wheelbase is 18.6' w/single axle. We will deliver around 4:00 a.m. before Carls Jr opens. May need to get a key to the HB if no employees there this early. Please let me know your thoughts on this.

Sincerely,
Marty Weaver
Umpqua Dairy Products Co
Director of Sales & Marketing
Phone 541-672-2638
Fax 541-673-0256
martyw@umpquadairy.com

EXHIBIT A



KITTELSON & ASSOCIATES, INC.

TRANSPORTATION ENGINEERING / PLANNING

610 SW Alder Street, Suite 700, Portland, OR 97205 503.228.5230 / 503.273.8169

March 2, 2014

Project #: 17656.0

Josh Veentjer
Pacific Development Ventures
4188 SW Greenleaf Dr.
Portland, OR 97221

RE: Human Bean Wilsonville Truck Turning and Circulation Analysis - Wilsonville, OR

Dear Josh,

Pursuant to your request, Kittelson & Associates, Inc. has prepared a truck turning and circulation analysis of the proposed Human Bean development project located in Wilsonville, Oregon. This truck turning analysis focuses on the ability of the standard 30-foot Umpqua delivery truck to access the Human Bean site. The remainder of this letter addresses the turning and circulation movements for trucks entering and exiting the site.

TRUCK TURNING MOVEMENT ANALYSIS

Figure 1 shows the site plan of the Human Bean, located at the corner of SW Boones Ferry Road and SW Commerce Circle. Truck turning movements were performed using AutoTurn Version 8, using a 30' Umpqua box truck as the model vehicle. With a total vehicle length of 30 feet and a wheelbase of 18.6 feet, the Umpqua box truck was determined to be the largest vehicle that would perform deliveries to the proposed Human Bean development. Figure 2 shows the turning and circulation movements for trucks entering the site, and Figure 3 shows the turning and circulation movements for trucks exiting the site. For trucks exiting the site, it is possible for the vehicles to back up in two ways. Figure 3 the truck demonstrates a maneuver to use the internal circulation aisle in the lower parking lot, and it is also possible for a truck to use the internal circulation aisle in the upper parking lot adjacent to Carls Junior. Under all three scenarios, the trucks are capable of successfully entering and exiting from the proposed Human Bean development.

CONCLUSION

Based on the truck turning and circulation analysis of the proposed Human Bean development contained herein, we have determined that the identified 30-foot Umpqua delivery truck can successfully access the site in a safe and efficient manner. As the Umpqua truck will be the largest delivery vehicle to the site, all other delivery vehicles will also have sufficient access to the Human Bean building.

We trust this truck turning and circulation analysis adequately addresses the delivery feasibility of the proposed Human Bean development. Please let us know if you have any additional questions

Sincerely,
KITTELSON & ASSOCIATES, INC.

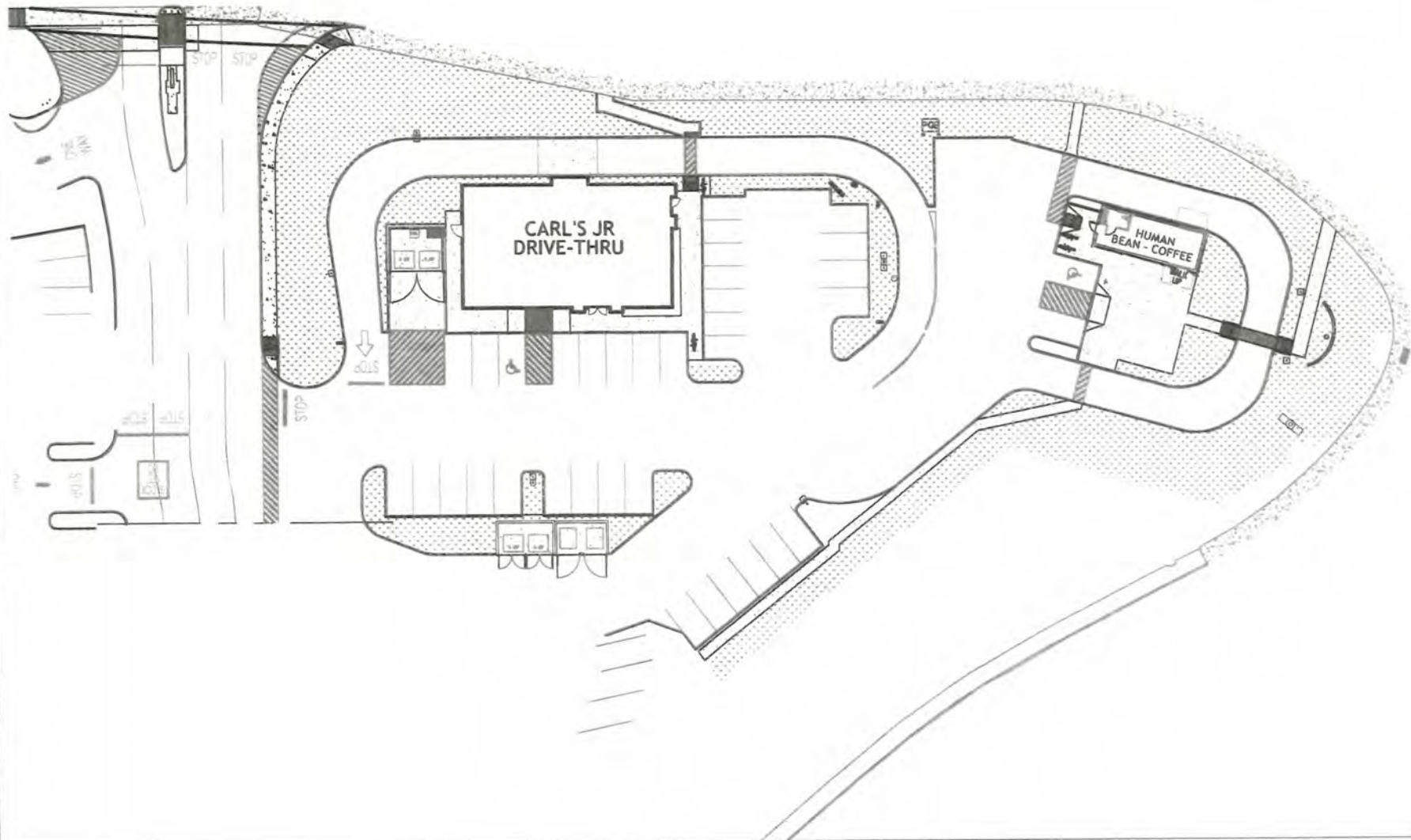


Marc Butorac, P.E., P.T.O.E.
Principal Engineer



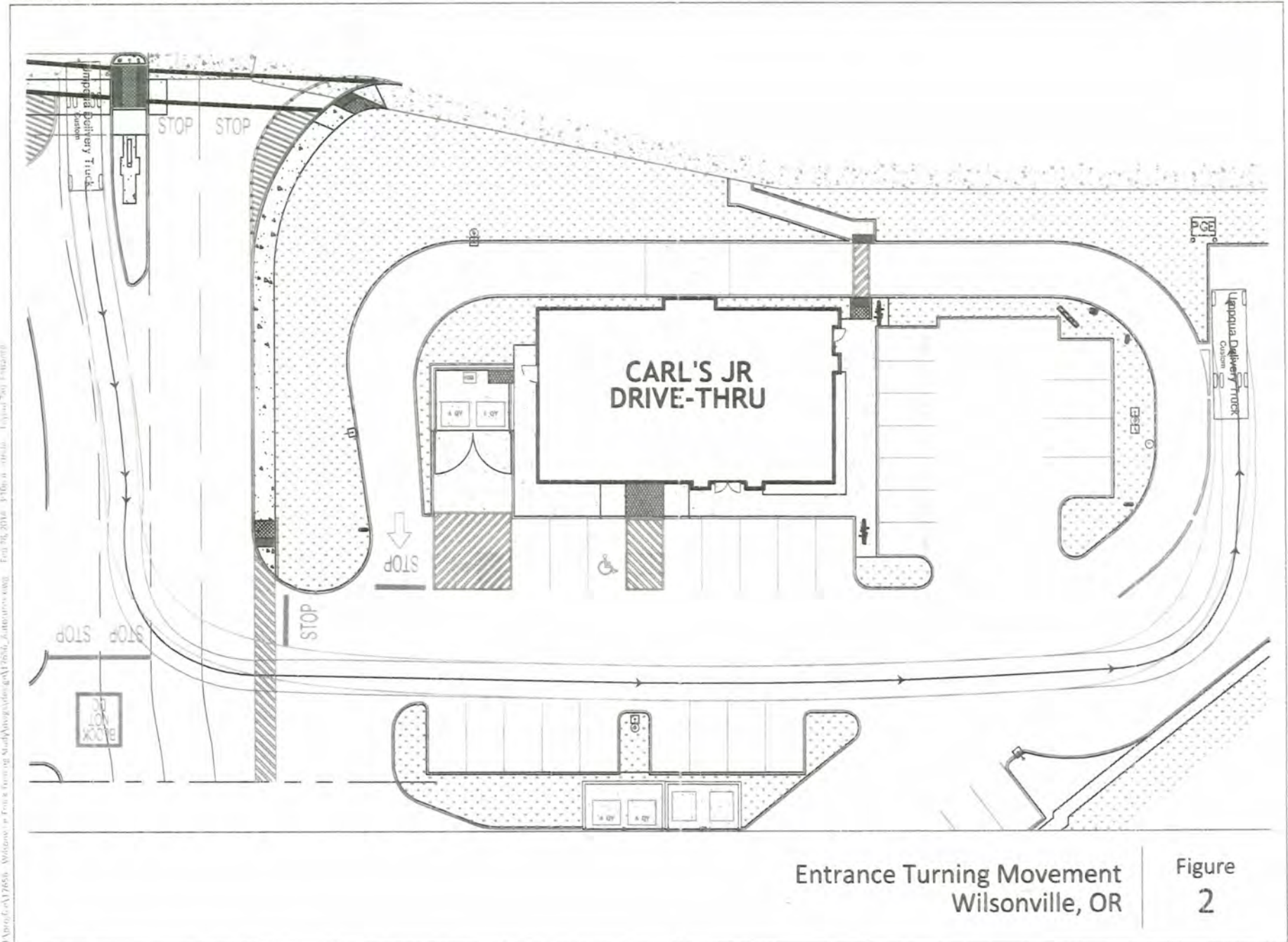
Ribeka Toda
Transportation Analyst

Attachments: 1 – Proposed Site Plan
2 – Entrance Turning Movement
3 – Exit Turning Movement



Proposed Site Plan
Wilsonville, OR

Figure
1



Entrance Turning Movement
Wilsonville, OR

Figure
2



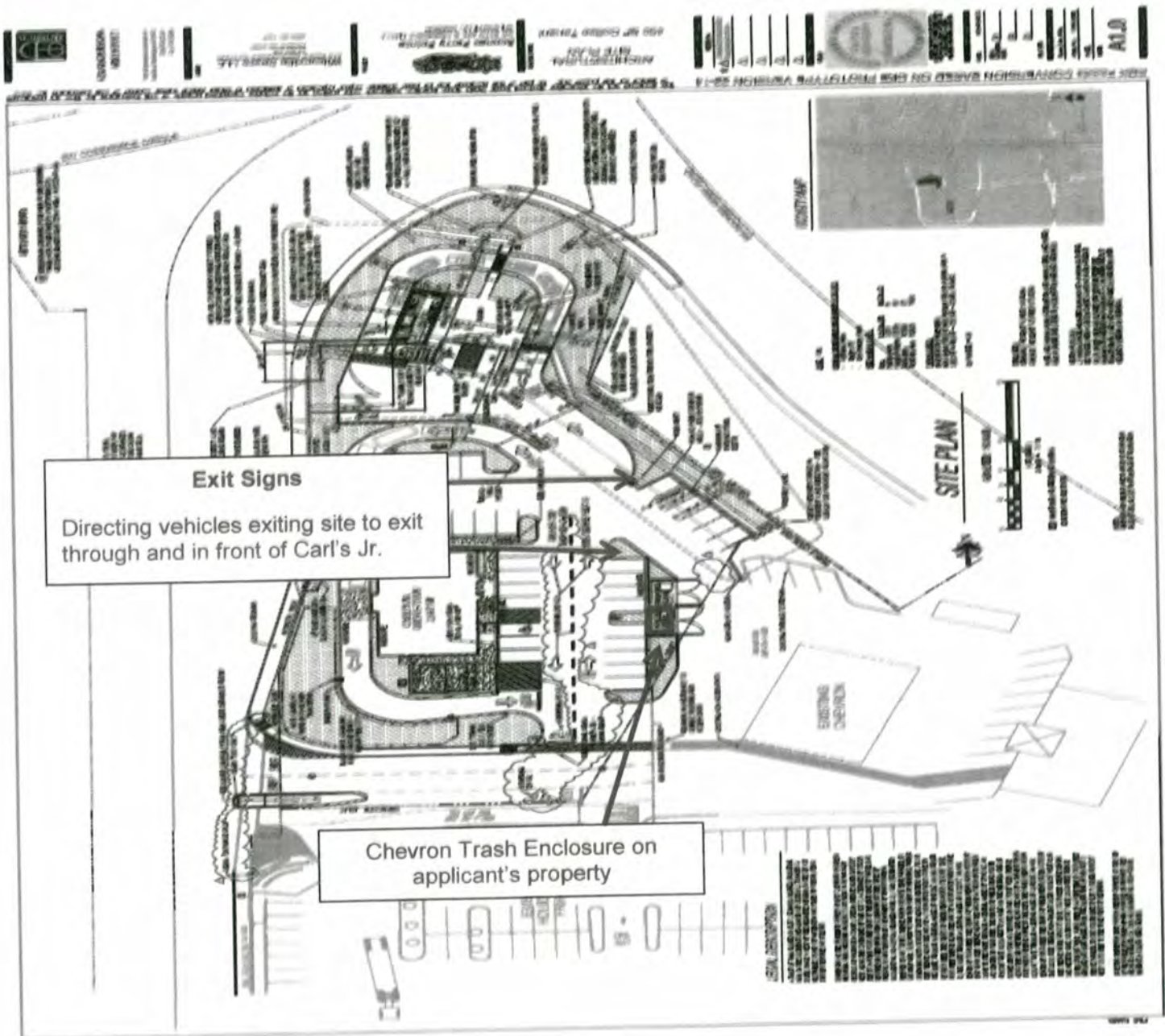
Figure
3

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26



A1.0

Revised Site Plan





Garry LaPoint <garrylapoint@gmail.com>

Chevron vs Human Bean

Mon, Feb 10, 2014 at 9:22 AM


gl@eoni.com <gl@eoni.com>
To: Steven.High@core-mark.com

Hi Steve,

Would you look at this Journey Plan for the Core-Mark truck and call me back at 503-720-0341.

Thanks,

Garry LaPoint

 **Exhibit B8 Truck Turning Movement 2.3.2014 (1).pdf**
123K

RECEIVED

MAR 10 2014

4:16 pm
JCH

CITY OF WILSONVILLE

Pg 1



Garry LaPoint <garrylapoint@gmail.com>

Chevron vs Human Bean

Mon, Feb 10, 2014 at 1:37 PM

High, Steven <Steven.High@core-mark.com>

To: "gl@eoni.com" <gl@eoni.com>

Cc: "Aiello, Anthony" <AAiello@core-mark.com>, "Rhodes, Doug" <DRhodes@core-mark.com>

Gary,

I have forwarded your attachment to, and discussed the matter with my associates. We are still looking at it. However, at this point, we see no significant reason to be alarmed, as our delivery procedure at your location, La Point Chevron, will remain unaltered. As far as the Human Bean is concerned, it is highly doubtful that we would adhere to the side-noted instructions, that include anything regarding 'backing out' or 'backing up into a loop'. Our delivery protocol mandates that we keep backing to a minimum, and especially, backing 'up into a loop'. We don't compromise when it comes to safety. We would look for an alternative delivery position at this location....one that minimizes or eliminates backing. That being said, however, it sounds like you have a lot of good, safety related information and concerns that should definitely help your case.

I wish you good luck with your meeting. Keep safety at the top of your agenda and you should do well; it is always our top priority, here at Core-Mark International, Inc.

Sincerely,

Steve High

Night Transportation Supervisor

Core-Mark Portland

503-786-4227 direct

503-652-0200 x4227

503-652-1079 fax

From: gl@eoni.com [mailto:gl@eoni.com]

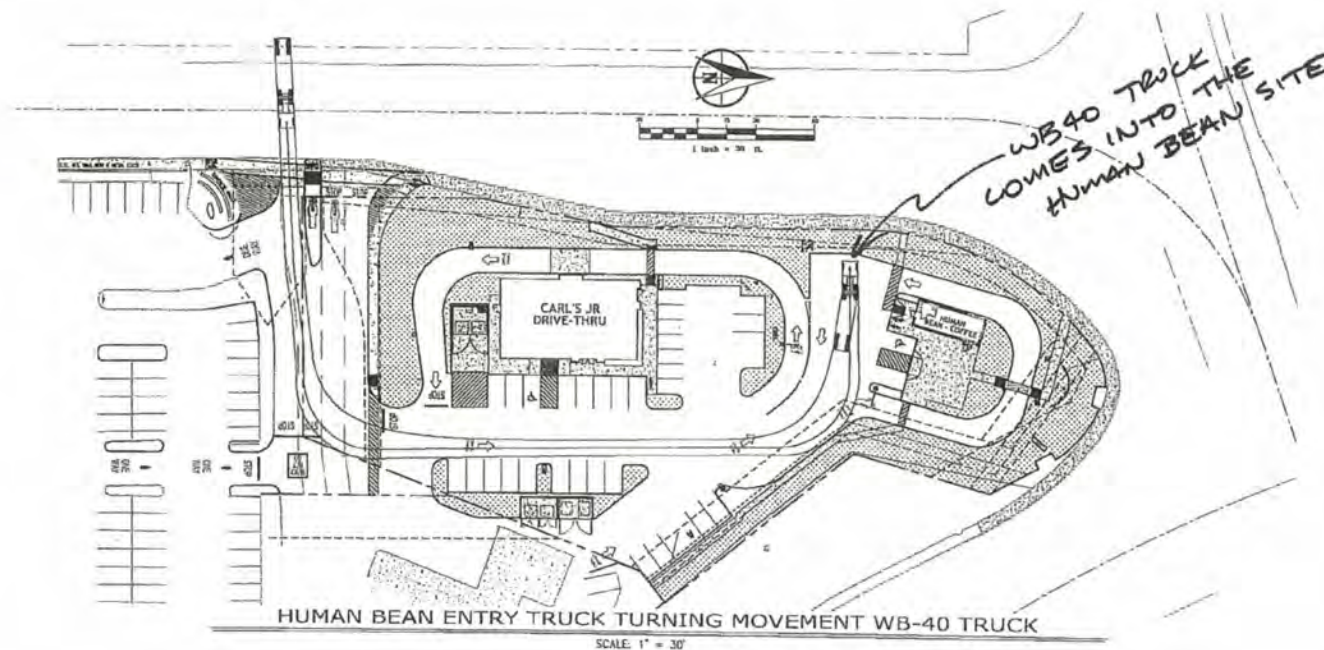
Sent: Monday, February 10, 2014 9:22 AM

To: High, Steven

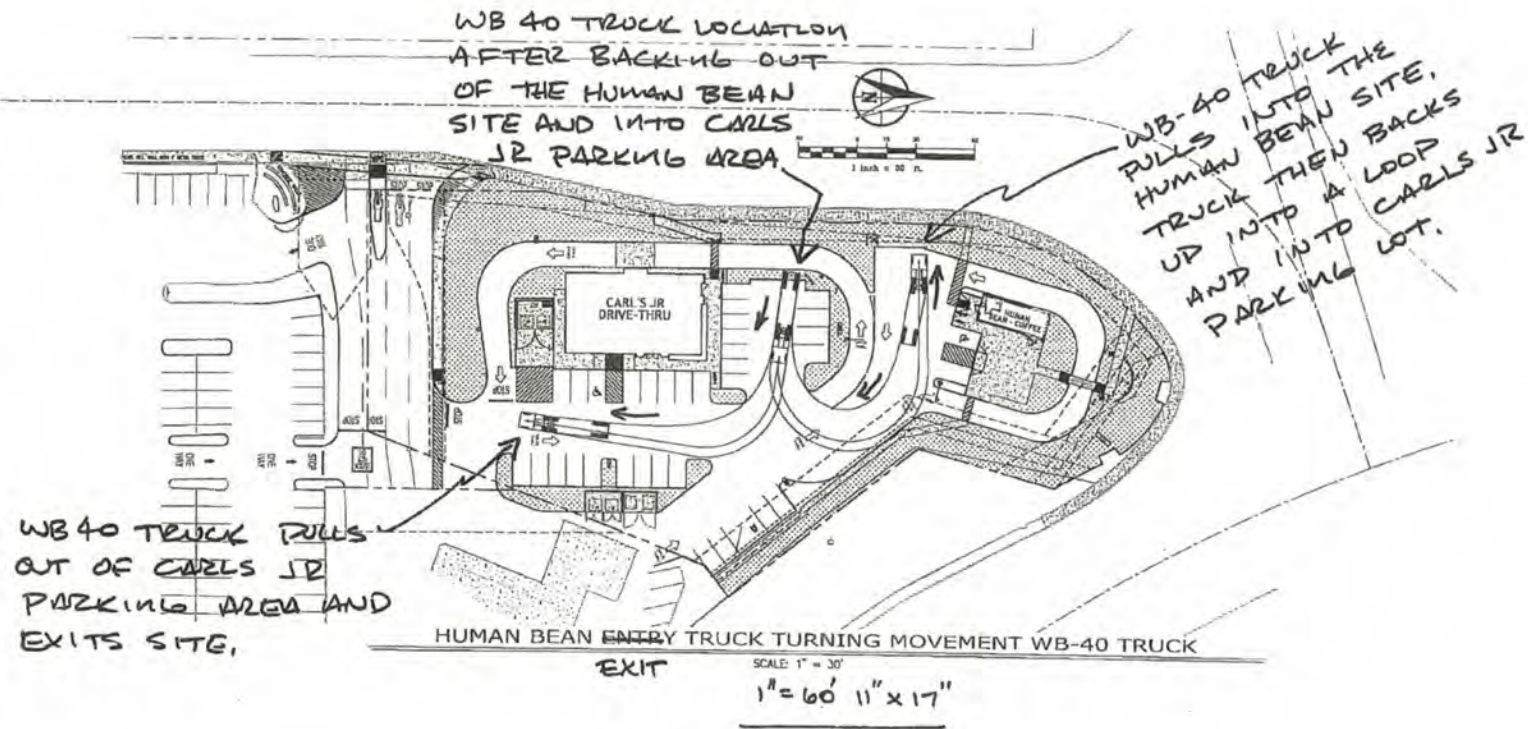
Subject: Chevron vs Human Bean

[Quoted text hidden]

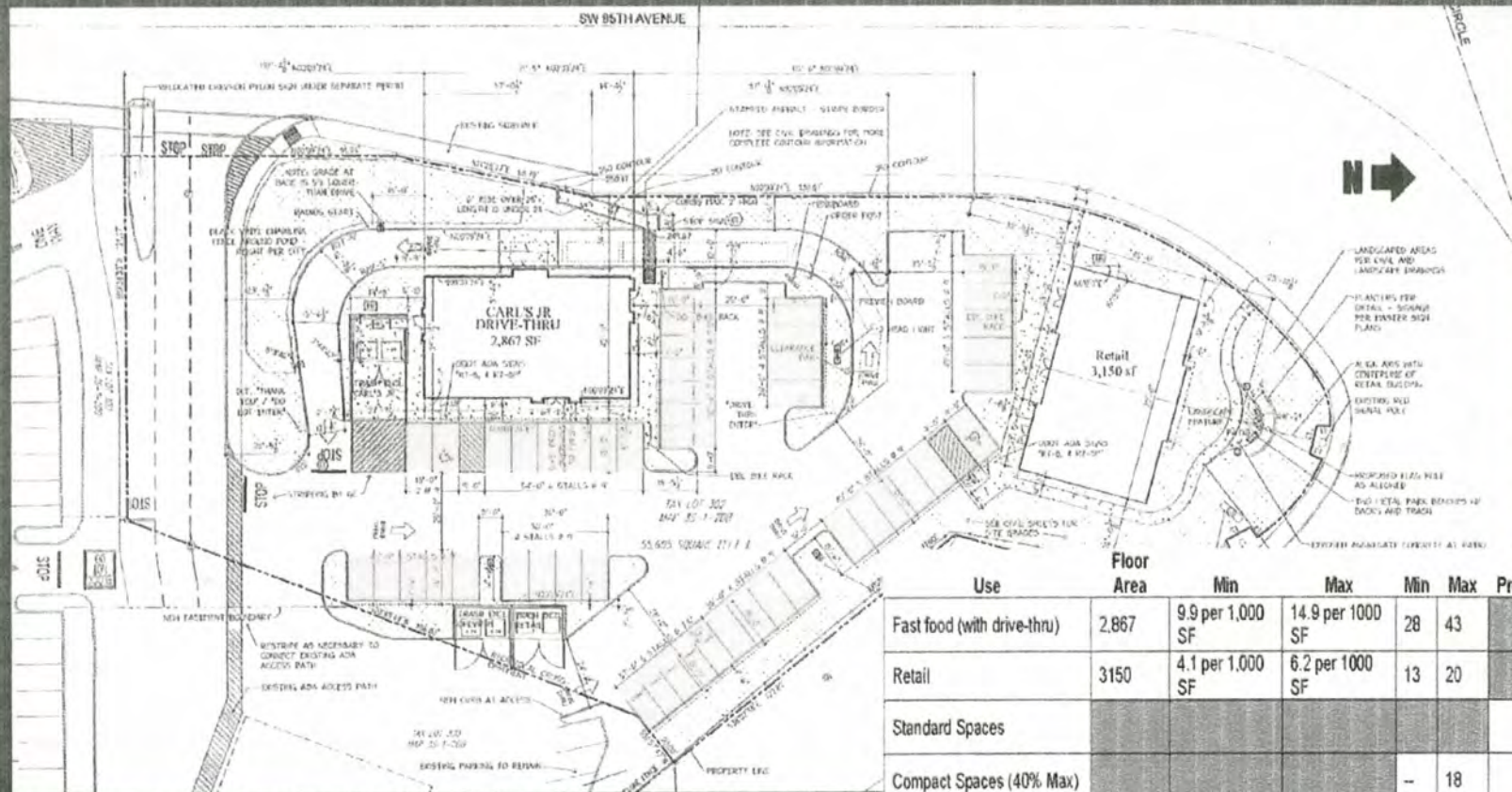
Pg. 2



1" = 60' 11" x 17"



Boones Ferry Pointe: Stage II Final Plan



Parking

Use	Floor Area	Min	Max	Min	Max	Provided
Fast food (with drive-thru)	2,867	9.9 per 1,000 SF	14.9 per 1000 SF	28	43	
Retail	3150	4.1 per 1,000 SF	6.2 per 1000 SF	13	20	
Standard Spaces						34
Compact Spaces (40% Max)				--	18	12
Total Non-ADA Spaces				41	60	46
ADA Spaces				1	--	2
Total Parking Spaces						48



Garry LaPoint <garrylapoint@gmail.com>

Chevron vs Human Bean

gl@eoni.com <gl@eoni.com>
To: Steven.High@core-mark.com


Mon, Feb 10, 2014 at 9:22 AM

Hi Steve,

Would you look at this Journey Plan for the Core-Mark truck and call me back at 503-720-0341.

Thanks,

Garry LaPoint

 **Exhibit B8 Truck Turning Movement 2.3.2014 (1).pdf**
123K

RECEIVED

MAR 10 2014

CITY OF WILSONVILLE

4:16 pm
Bek

Pg 1



Garry LaPoint <garrylapoint@gmail.com>

Chevron vs Human Bean

Mon, Feb 10, 2014 at 1:37 PM

High, Steven <Steven.High@core-mark.com>

To: "gl@eoni.com" <gl@eoni.com>

Cc: "Aiello, Anthony" <AAiello@core-mark.com>, "Rhodes, Doug" <DRhodes@core-mark.com>

Gary,

I have forwarded your attachment to, and discussed the matter with my associates. We are still looking at it. However, at this point, we see no significant reason to be alarmed, as our delivery procedure at your location, La Point Chevron, will remain unaltered. As far as the Human Bean is concerned, it is highly doubtful that we would adhere to the side-noted instructions, that include anything regarding 'backing out' or 'backing up into a loop'. Our delivery protocol mandates that we keep backing to a minimum, and especially, backing 'up into a loop'. We don't compromise when it comes to safety. We would look for an alternative delivery position at this location....one that minimizes or eliminates backing. That being said, however, it sounds like you have a lot of good, safety related information and concerns that should definitely help your case.

I wish you good luck with your meeting. Keep safety at the top of your agenda and you should do well; it is always our top priority, here at Core-Mark International, Inc.

Sincerely,

Steve High

Night Transportation Supervisor

Core-Mark Portland

503-786-4227 direct

503-652-0200 x4227

503-652-1079 fax

From: gl@eoni.com [mailto:gl@eoni.com]

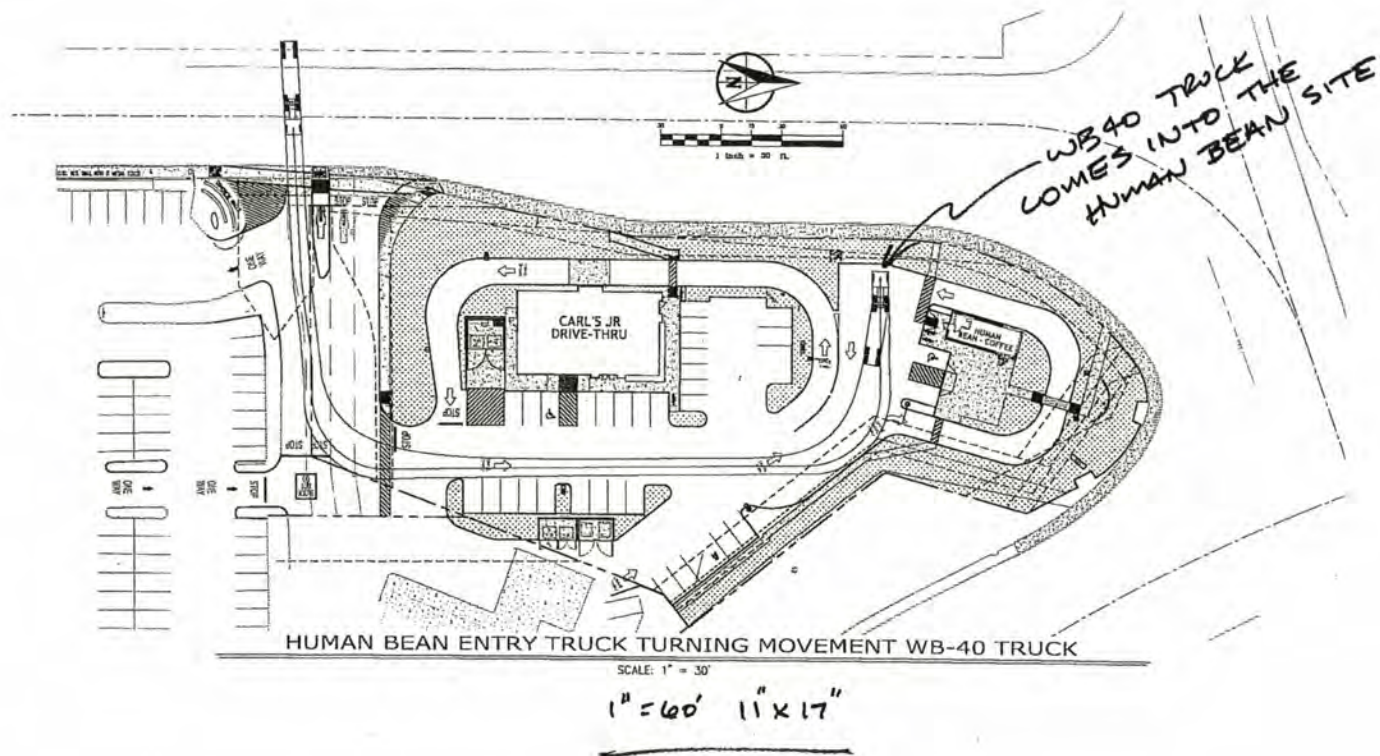
Sent: Monday, February 10, 2014 9:22 AM

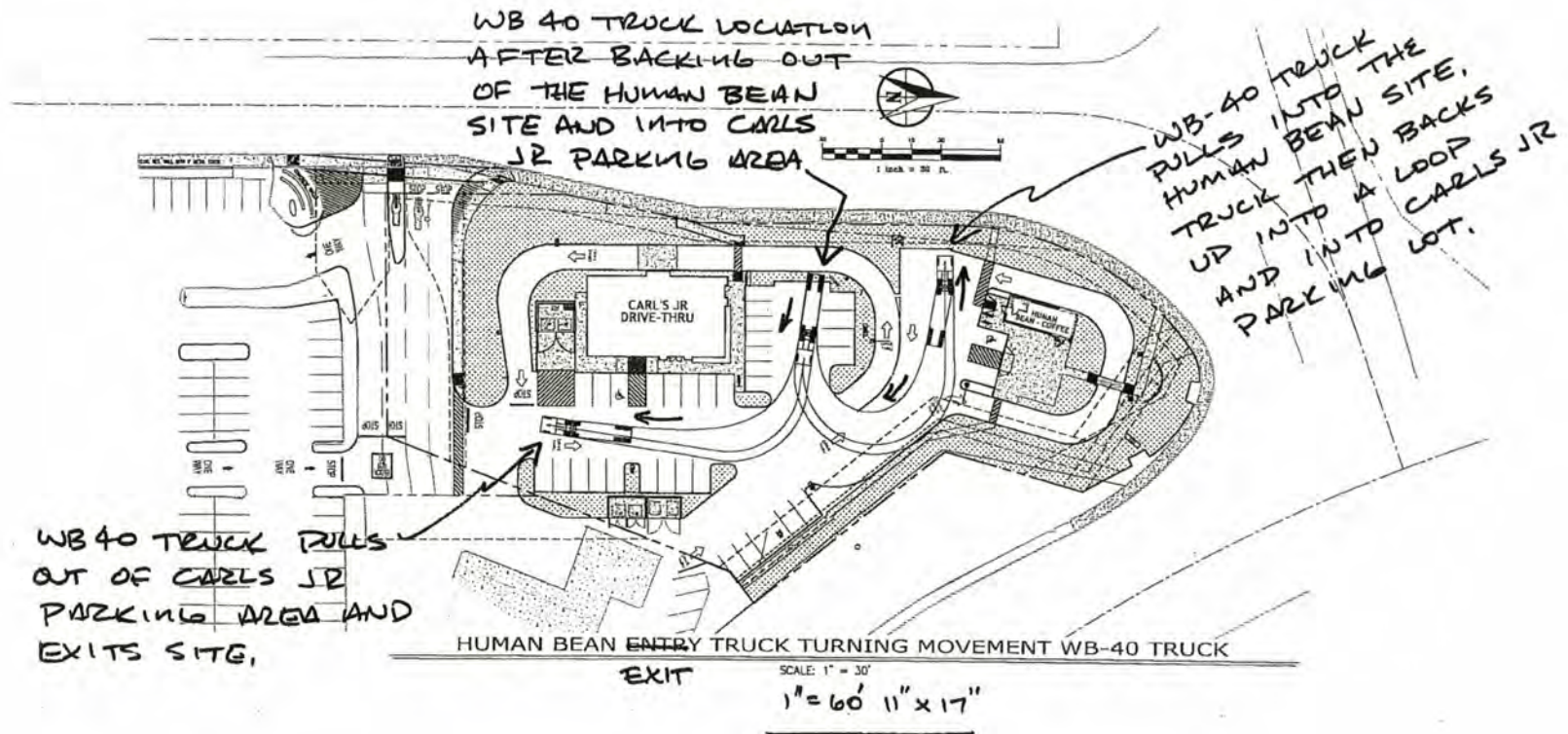
To: High, Steven

Subject: Chevron vs Human Bean

[Quoted text hidden]

Pg. 2







1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

PHONE: 503.727.2000

FAX: 503.727.2222

www.perkinscoie.com

Steven L. Pfeiffer

PHONE: (503) 727-2261

FAX: (503) 346-2261

EMAIL: SPfeiffer@perkinscoie.com

March 10, 2014

VIA E-MAIL

Mr. Tim Knapp, Mayor
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070-6499

**Re: Appeal of Denial of The Human Bean Coffee Kiosk;
DB 13-0046, DB 13-0047, DB 13-0048**

Dear Mayor Knapp and City Councilors:

This office represents Wilsonville Devco, LLC ("Applicant"), the applicant in the above-referenced applications (the "Applications"), and the appellant in this appeal of the February 13, 2014 decision by the City of Wilsonville Development Review Board ("DRB"). The DRB denied the request for modification of an earlier Stage II Final Plan approval on the site to replace the approved 3,150 square foot multi-tenant retail building with a 450 square foot The Human Bean coffee kiosk at the corner of Boones Ferry Road and 95th Avenue. The DRB's denial of the Applications was predicated on Wilsonville City Code ("WCC") Sections 4.400.02 and 4.421C and its concerns with site traffic circulation, congestion and safety. As discussed in more detail below, the DRB misapplied and misinterpreted WCC 4.400.02 and 4.421C, thereby improperly denying the Applications. Further, the DRB decision is contrary to, and not supported by, substantial evidence in the record as a whole. For the reasons explained below, the City Council should reverse the DRB's decision and approve the Applications. Please include this letter and its attachments in the official record of this appeal proceeding.

I. Description of the Project.

At the outset, it is important to note that the Applicant had previously obtained Stage II Final Plan approval for a 3,150 square foot multi-tenant retail commercial building on the site. Such approval is still valid, and the retail building remains authorized for construction as approved. Notably, no one, not even the opponent in the present matter ("LaPoint"), appealed the approval of the 3,150 square foot retail building or the approval of the Carl's Jr. on the site. In fact, the

LEGAL120046823.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

Perkins Coie LLP

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 2

Applicant, LaPoint, Holiday Inn, and the City negotiated and entered into a Development Agreement, dated August 2012, which established the rights and responsibilities of each party respecting site access and circulation. The Development Agreement contemplated both a Carl's Jr. and a "other yet to be determined retail" use on the Applicant's property. It also called for the system of easements that are in place today and clearly evidences the parties' mutual understanding of how vehicle circulation would work on the site. This understanding was further developed as part of the previous Stage II Planned Development and Site Plan reviews (DB 12-0074, 0075, and 0076) that were approved early last year, and for which LaPoint was a co-applicant. In short, LaPoint's participation in the Development Agreement and as a co-applicant in the previous application demonstrate that LaPoint believed on-site circulation was safe and adequate to serve the Carl's Jr. and a then-unnamed future retail use.

Moreover, in reviewing the previous Stage II Final Plan for the 3,150 square foot multi-tenant commercial building, the DRB was provided the opportunity to review site circulation and expressly found that there was adequate on-site circulation in compliance with WDC 4.154. Additionally, Tualatin Valley Fire and Rescue ("TVFR") reviewed the prior master plan (case file DB 12-0074, 0075, and 0076) and indicated that "Tualatin Valley Fire and Rescue endorses this proposal."

The current proposal seeks to replace the approved, but unbuilt, retail commercial building with a new 450 square foot drive-through coffee kiosk, resulting in a 2,700 square foot reduction in the size of the building and an attendant reduction in overall traffic on the site. Given the size of the approved retail building and the various retail uses that could occupy the larger building, the traffic, site-circulation, and fire/life/safety impacts of the current proposal are much less than the originally-proposed, and approved, retail building.

II. Substantial Evidence Shows On-Site Circulation is Adequate and Safe.

In its decision, the DRB denied the proposed coffee kiosk and found that the Applications failed to comply with WCC requirements pertaining to safety and on-site circulation. One of the main concerns expressed by the DRB at the hearing was the worst case scenario of an occasional delivery truck in excess of 30 feet serving the coffee kiosk, and the perceived risk that such infrequent delivery truck would not be able to maneuver from the shared driveway onto the site without hitting the curb. In response to such concern, the Applicant has confirmed with The Human Bean and with its vendor, Umpqua Dairy, that deliveries to the coffee kiosk will be made in a box truck not to exceed an overall length of 30 feet. Attached as **Exhibit A** is an email from Scott Sayre at The Human Bean, dated February 14, 2014, and an email from Marty Weaver at Umpqua Dairy, dated February 26, 2014, confirming the size of the delivery truck. The Applicant has also obtained a Truck Turning and Circulation Analysis ("Truck Turning Analysis") performed by transportation engineering firm, Kittelson & Associates, Inc., dated March 2, 2014, and which is attached as **Exhibit B**. The Truck Turning Analysis analyzes a

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 3

30 foot Umpqua box truck with a wheelbase of 18.6 feet, which is the largest vehicle that would perform deliveries to the coffee kiosk. The Truck Turning Analysis concludes that the studied Umpqua delivery truck can successfully access the site in a safe and efficient manner.

Furthermore, the Applicant has provided evidence of safe and convenient circulation on the site in compliance with WCC Sections 4.400.02, 4.421C, 4.154 and 4.155. First of all, the Applicant's site plan demonstrates a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings. Specifically, the site plan shows the following:

- Two separate pedestrian connections to the 95th Avenue sidewalk, each with its own striped drive aisle crossing;
- Circulation and stacking patterns for vehicles visiting the coffee kiosk, with safe stacking for at least seven (7) vehicles;
- Directional arrows separating traffic flow;
- Eight (8) adjacent parking spaces;
- Paved walkways with striped drive aisle crossings connecting the coffee kiosk to parking, the trash enclosures, and the Chevron property to allow, if desired, those who are fueling their cars to walk to the coffee kiosk; and
- A patio area near the coffee kiosk to provide pedestrians with a safe space to drink their coffee other than the parking lot.

For ease of visual reference, attached as **Exhibit C** is a copy of the site plan showing the multiple safe pedestrian pathways highlighted in red.

At the DRB hearing, LaPoint rejected the Applicant's offer to develop pedestrian improvements on his property in order to better connect the adjacent properties. Accordingly, the Applicant has revised the proposed site plan to eliminate all such proposed improvements on LaPoint's property. As shown on the attached **Exhibit D**, all improvements to Applicant's property will be stubbed to, and end at, LaPoint's property. The only remaining additional proposed improvements are two (2) new directional signs directing customers of the coffee kiosk to exit using the drive aisle in front of Carl's Jr. to the shared driveway.

As discussed in detail above, site plans show a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings necessary to connect the proposed coffee kiosk with its associated parking, the sidewalk, and adjacent properties, as well as adequate access for passenger vehicles and delivery trucks. The Applicant has provided substantial evidence that access and circulation serving the coffee kiosk will be safe and adequate as proposed, and City Council can find that the proposed development is consistent with all applicable approval criteria.

Mr. Tim Knapp, Mayor
City of Wilsonville
March 10, 2014
Page 4

III. Conclusion.

For the reasons discussed above and in the Applicant's submittals in the record below, the Applicant has met all applicable approval criteria. Therefore, the City Council should overturn the DRB's denial of the Applications and approve the requested Applications in their entirety.

Very truly yours,



Steven L. Pfeiffer

SLP:crl

Enclosures

cc: Ben Altman, SFA Design Group (via email) (with encs.)
Craig Anderson, CB Anderson Architects (via email) (with encs.)
Wallace Lien, Esq. (via email) (with encs.)
Client (via email) (with encs.)
George J. Gregores, Esq. (via email) (with encs.)

From: Scott Sayre [<mailto:Scott@thehumanbean.com>]
Sent: Friday, February 14, 2014 5:58 PM
To: josh@pdvco.com
Subject: RE: Wilsonville Truck Sizes

Howdy!

So, Core-Mark will deliver in a Twenty-two foot long box van. Umpqua Dairy will deliver in a twenty-six foot box van.

Have a great weekend!

Scott Sayre
Director of Franchise & Vendor Development
541-608-0564
Fax: 541-608-3757
thehumanbean.com



Visit The Human Bean [Website\[thehumanbean.com\]](http://Website[thehumanbean.com])

'Like' us on [Facebook\[facebook.com\]](http://Facebook[facebook.com]) | Connect with us on [Instagram\[instagram.com\]](http://Instagram[instagram.com]) | Follow us on [Twitter\[twitter.com\]](http://Twitter[twitter.com])



From: Marty Weaver [<mailto:Martyw@umpquadairy.com>]
Sent: Wednesday, February 26, 2014 3:39 PM
To: josh@pdvco.com; Scott Sayre
Subject: RE: Human bean info

Gents-

Ok, I think we have this figured out. Box truck overall length bumper to bumper 30', height is 11' and wheelbase is 18.6' w/single axle. We will deliver around 4:00 a.m. before Carls Jr opens. May need to get a key to the HB if no employees there this early. Please let me know your thoughts on this.

Sincerely,
Marty Weaver
Umpqua Dairy Products Co
Director of Sales & Marketing
Phone 541-672-2638
Fax 541-673-0256
martyw@umpquadairy.com

EXHIBIT A



KITTELSON & ASSOCIATES, INC.

TRANSPORTATION ENGINEERING / PLANNING

610 SW Alder Street, Suite 700, Portland, OR 97205 ☎ 503.228.5230 ✉ 503.273.8169

March 2, 2014

Project #: 17656.0

Josh Veentjer
Pacific Development Ventures
4188 SW Greenleaf Dr.
Portland, OR 97221

RE: Human Bean Wilsonville Truck Turning and Circulation Analysis - Wilsonville, OR

Dear Josh,

Pursuant to your request, Kittelson & Associates, Inc. has prepared a truck turning and circulation analysis of the proposed Human Bean development project located in Wilsonville, Oregon. This truck turning analysis focuses on the ability of the standard 30-foot Umpqua delivery truck to access the Human Bean site. The remainder of this letter addresses the turning and circulation movements for trucks entering and exiting the site.

TRUCK TURNING MOVEMENT ANALYSIS

Figure 1 shows the site plan of the Human Bean, located at the corner of SW Boones Ferry Road and SW Commerce Circle. Truck turning movements were performed using AutoTurn Version 8, using a 30' Umpqua box truck as the model vehicle. With a total vehicle length of 30 feet and a wheelbase of 18.6 feet, the Umpqua box truck was determined to be the largest vehicle that would perform deliveries to the proposed Human Bean development. Figure 2 shows the turning and circulation movements for trucks entering the site, and Figure 3 shows the turning and circulation movements for trucks exiting the site. For trucks exiting the site, it is possible for the vehicles to back up in two ways. Figure 3 the truck demonstrates a maneuver to use the internal circulation aisle in the lower parking lot, and it is also possible for a truck to use the internal circulation aisle in the upper parking lot adjacent to Carls Junior. Under all three scenarios, the trucks are capable of successfully entering and exiting from the proposed Human Bean development.

CONCLUSION

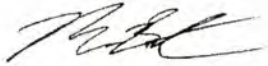
Based on the truck turning and circulation analysis of the proposed Human Bean development contained herein, we have determined that the identified 30-foot Umpqua delivery truck can successfully access the site in a safe and efficient manner. As the Umpqua truck will be the largest delivery vehicle to the site, all other delivery vehicles will also have sufficient access to the Human Bean building.

FILENAME: H:\PROJFILE\17656 - WILSONVILLE TRUCK TURNING STUDY\REPORT\FINAL\HUMANBEANTRUCKTURNINGASSESSMENT-030214.DOCX

EXHIBIT B

We trust this truck turning and circulation analysis adequately addresses the delivery feasibility of the proposed Human Bean development. Please let us know if you have any additional questions

Sincerely,
KITTELSON & ASSOCIATES, INC.

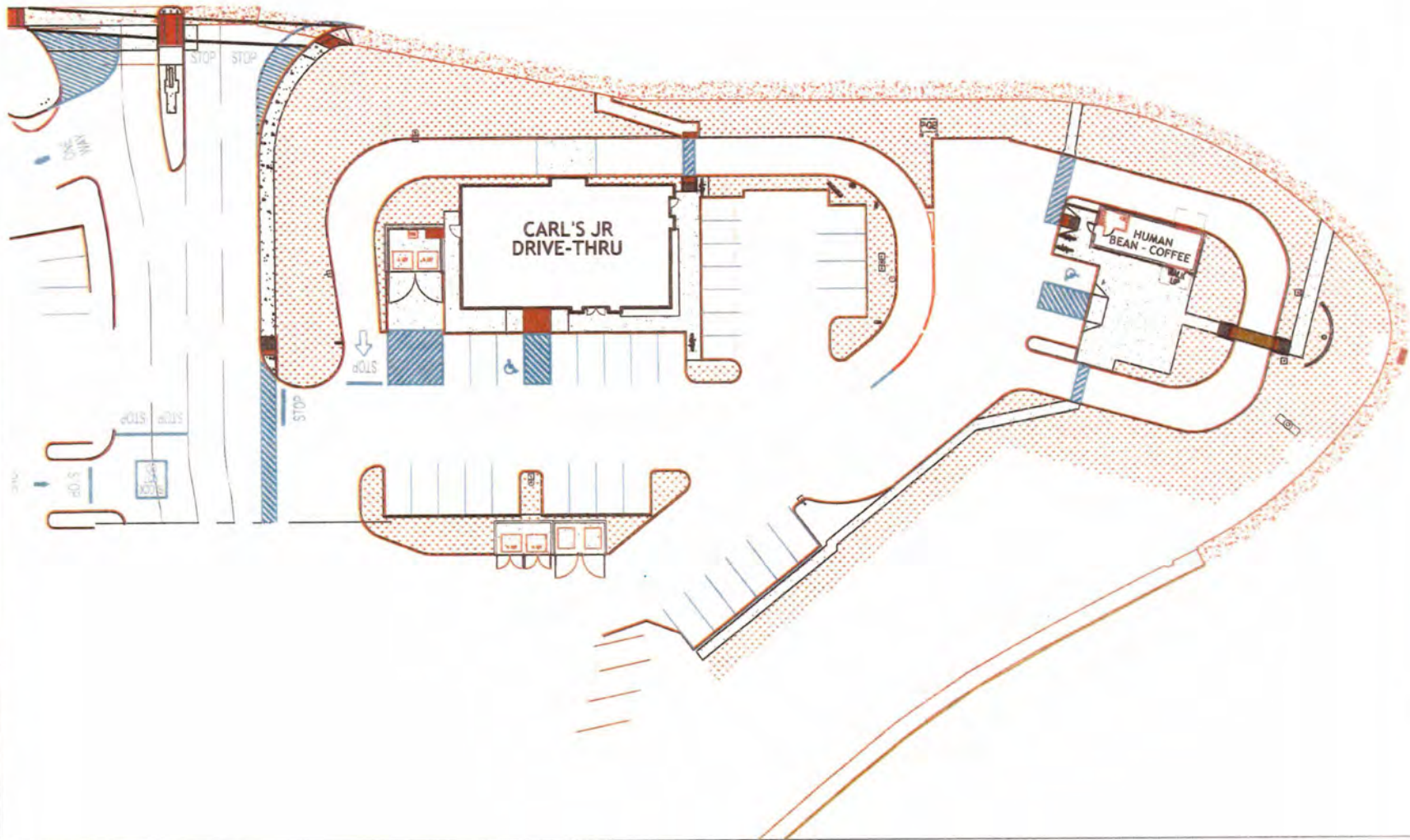


Marc Butorac, P.E., P.T.O.E.
Principal Engineer



Ribeka Toda
Transportation Analyst

Attachments: 1 – Proposed Site Plan
2 – Entrance Turning Movement
3 – Exit Turning Movement



Proposed Site Plan
Wilsonville, OR

Figure
1

H:\proj\17655 - Wilsonville - Free & Turn - Study\img\Map\17655_Automatic.dwg Feb 28, 2014 3:11pm drcia Layout Tab 3 of 4



Figure 2



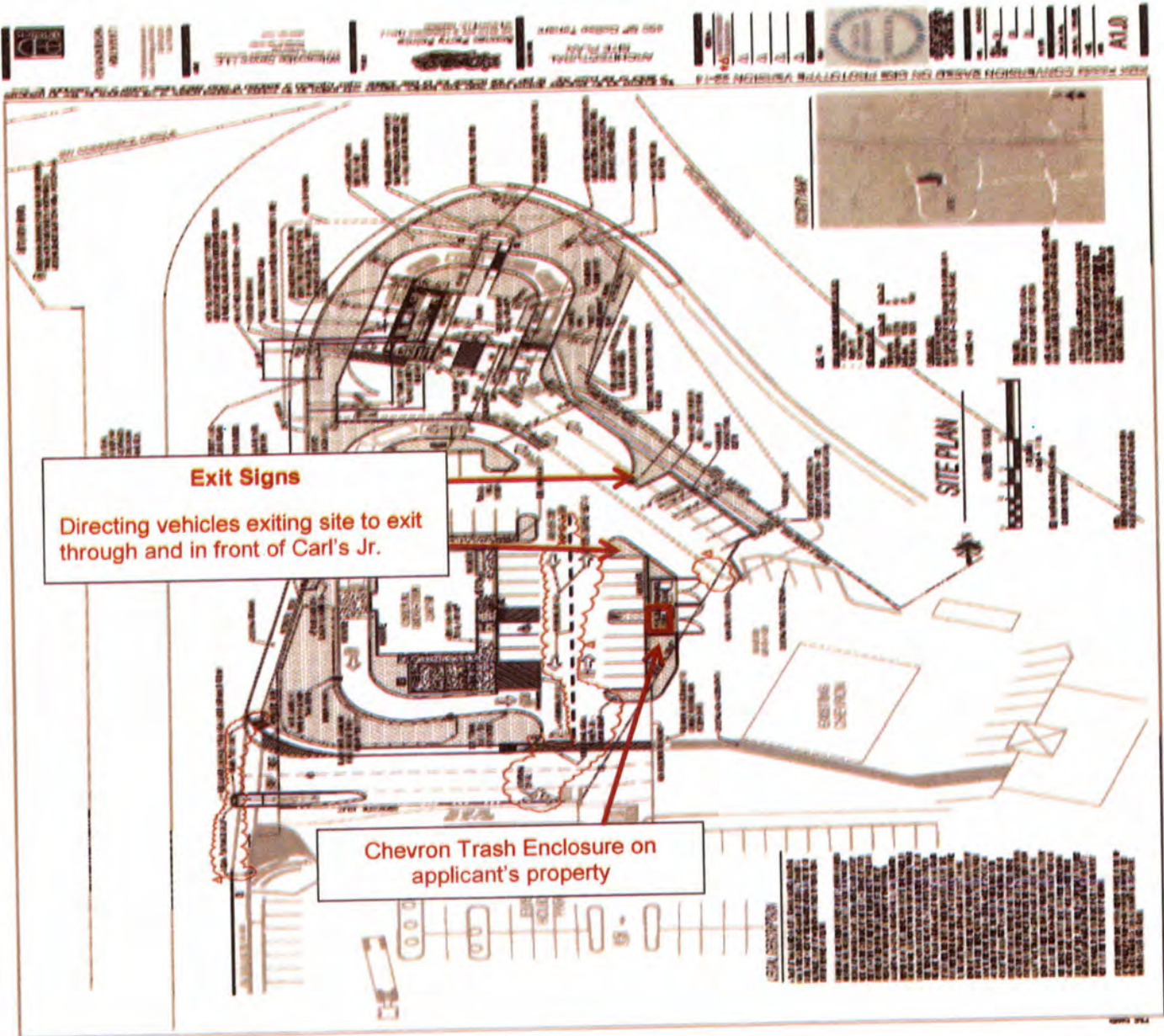
Figure 3

EXHIBIT C



A1.0

Revised Site Plan



INDEX OF RECORD

Appeal by the Applicant, Wilsonville Devco, LLC of a decision by the Development Review Board Panel "A", dated February 10, 2014, Denying the Application for a Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision (City File No. DB13-0046, DB13-0047, and DB13-0048).

Document Number	Title	Date of Document
1	<p>Staff Report Development Review Board Coffee Kiosk Application Appeal</p> <p><u>Resolution No. 2456</u> Resolution To Issue An Order By The City Council Concerning The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)</p> <p><u>Resolution No. 2457</u> Resolution To Issue An Order By The City Council Concerning The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)</p> <p><u>Resolution No. 2458</u> Resolution To Issue An Order By The City Council Concerning The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95th Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)</p>	March 17, 2014 Council Meeting
2	Notice of DRB Decision and Resolution No. 270	February 13, 2014
3	Notice of Intent to Appeal filed by Steven Pfeiffer, Perkins Coie on behalf of Wilsonville Devco, LLC	February 21, 2014

Document Number	Title	Date of Document
4	Objection to Appeal filed by Wallace Lien, PC, on behalf of LaPoint Business Group, LLC	February 28, 2014
5	City Council Meeting Staff Report dated March 3, 2014 re: Order Establishing Scope of Review of Appeal of DRB Panel A Decision Regarding the Human Bean Coffee Kiosk	March 3, 2014
6	Letter from Stephen Pfeiffer outlining reasons the opponents objection should be rejected in its entirety.	March 3, 2014
7	Email message from Barbara Jacobson, Assistant City Attorney to Wallace Lien, Steven Pfeiffer re: Appeal Hearing	March 4, 2014
8	Letter to Wallace Lien and Steven Pfeiffer from Barbara Jacobson, Assistant City Attorney, re: appeal of DRB decision regarding the Human Bean	March 5, 2014
9	Wilsonville Code Chapter 2, Section 2.560 Evidentiary Hearing Procedures	
10	<p>Compact Disk containing the entire Development Review Board Panel "A" Record as listed <i>except</i> for YouTube videos:</p> <ul style="list-style-type: none"> • Land Use Application Boones Ferry Pointe The Human Bean Drive-up Coffee Kiosk dated November 6, 2013 • Development Plans • Staff Report for January 13, 2014 DRB Panel "A" Hearing. Date of Report January 6, 2014 • February 20, 2014 DRB Panel "A" meeting record • January 13, 2014 DRB Panel "A" meeting Minutes as corrected • Draft February 10, 2014 DRB Panel "A" meeting Minutes <p>Two (2) DVD disks showing traffic circulation at LaPoint Chevron</p>	

1.

CITY COUNCIL MEETING STAFF REPORT

Meeting Date: March 17, 2014	Subject: Resolutions No. 2456, 2457 and 2458 Development Review Board Coffee Kiosk Application Appeal Staff Member: Daniel Pauly & Barbara Jacobson Department: Planning
Action Required <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: Action is to issue an Order, either approving or denying the Applications. Alternative may be to remand to DRB, but only with the Applicant's approval. See additional comments contained within staff report.
Staff Recommendation: N/A	
Recommended Language for Motion: I move to approve Resolution No. ____ authorizing issuance of an Order on Appeal for the Human Bean Drive Through Coffee Kiosk Stage II Final Plan Revision Application Nos. DB 13-0046, DB 13-0047, and DB 13-0048.	
PROJECT / ISSUE RELATES TO: <i>[Identify which goal(s), master plans(s) issue relates to.]</i>	
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)
<input checked="" type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL:

Applicant Wilsonville Devco LLC has appealed the Development Review Board's denial of its applications to modify its already approved Stage II Final Plan to allow for a drive through Human Bean Coffee Kiosk.

EXECUTIVE SUMMARY:

The DRB denied Wilsonville Devco's applications for a Stage II Final Plan Revision that would have replaced the already approved small mall project with a drive through coffee kiosk and store due to concerns about safety and internal traffic circulation, given the tight nature of the site and the adjoining development's drive through, coupled with traffic to and from the Chevron station. City Council granted the Appeal at the March 3, 2014 City Council meeting. The City Council determined that the appeal would be based on review of the DRB record, with allowance for limited new evidence and testimony relating only to on-site traffic congestion; adequacy, efficiency and safety of on-site pedestrian and vehicle circulation, inclusive of delivery and other larger format vehicles; and Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A and 4.421(.01)C of the Wilsonville City Code.

EXPECTED RESULTS:

The Order will be final action by the City Council on the Appeal.

CURRENT YEAR BUDGET IMPACTS:

None.

FINANCIAL REVIEW / COMMENTS: NA

Reviewed by: _____ Date: _____

LEGAL REVIEW / COMMENT:

Reviewed by: MEK Date: 3/6/14

It should be noted that the three attached draft Resolutions are in the alternative, depending on the decision reached by the City Council. It is also important to note that the attached Findings attached to each Resolution are simply proposed Findings to aid the Council as to what the Findings might look like, based on current evidence, without knowing what new evidence might be presented during the Hearing that could lead to a different outcome. Thus, Council members must form their own opinions and reach their own Findings of Fact, Determinations and Conclusions, which may or may not be as written on the draft Resolutions enclosed. If the Council's Findings are significantly different or complex, staff will be tasked with creating new Findings, as directed by Council, which will be brought back before City Council at the next City Council meeting for final review and approval. The next meeting is April 7, 2014 and the 120-day period will expire on April 8, 2014. Thus, unless the Applicant agrees to toll the time period, the remand option is not viable.

COMMUNITY INVOLVEMENT PROCESS:

N/A

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups:

Resolution of the Applications.

ALTERNATIVES:

The Council has the following options for consideration:

- 1) To deny the Appeal and Applications, upholding the DRB decision;
- 2) To approve the Applications, overturning or modifying the DRB decision and adopting the original staff report to the DRB, with or without modifications;
- 3) To remand to the DRB (understanding that this is not an option unless the Applicant agrees to extend the deadline for final action by the City).

Option 1 or 2 is recommended by staff given the time constraints for final decision, unless the Applicant voluntarily waives this time limit. Please take special note of the City Attorney's comments with respect to how Council's final Order may be framed.

CITY MANAGER COMMENT:**ATTACHMENTS**

- A. Draft Order Denying the Appeal and Applications
Draft Order Reversing the DRB Decision and Approving the Applications
Draft Order Remanding the Applications back to the DRB for further consideration

**RESOLUTION NO. 2456
AND ORDER**

RESOLUTION TO ISSUE AN ORDER BY THE CITY COUNCIL CONCERNING THE APPEAL OF THE THE STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW, AND MASTER SIGN PLAN REVISION AND SIGN WAIVER OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. APPLICANT/APPELLANT/OWNER WILSONVILLE DEVCO, LLC. APPLICATION NOS. DB 13-0046, DB 13-0047, AND DB 13-0048.

WHEREAS, City Council received a timely filed appeal from Appellant/Applicant Wilsonville Devco LLC of the decision of the Development Review Board, Panel A ("DRB"), denying the above captioned project applications ("Applications") made pursuant to Wilsonville City Code 4.022(.02), following a denial of said Applications at the public hearing held on February 2014; and

WHEREAS, after granting the Appeal at a public meeting held on March 3, 2014, setting the date for public hearing of the appeal for March 17, 2014, and limiting the record on appeal to evidence already in the DRB record and limited new evidence and testimony relating only to on-site traffic congestion; adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation, inclusive of delivery vehicles and other larger format vehicles; and Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C of the Wilsonville City Code requirements; and

WHEREAS, having conducted the appeal hearing and having reviewed all of the evidence in the DRB record, including DRB member reasoning and findings for denial or approval; and having heard new evidence, as allowed, from both the appellant/applicant and opponents to the Applications at the appeal hearing; and

WHEREAS, having considered all of the foregoing evidence and following all applicable requirements of the Wilsonville Development Code pertaining to the Applications and appeal, the City Council hereby orders as follows:

1. The City Council hereby orders that the decision of the DRB on the above referenced Applications is hereby reversed and the Applications approved, adopting the Staff Report, dated January 6, 2014, as amended by the Planning

Division memorandum, dated February 10, 2014, which is incorporated by reference herein, and as modified by the City Council's Findings of Fact, Determinations and Conclusions, attached hereto as **Exhibit A**, and incorporated by reference herein.

2. City Council authorizes the City staff to implement this Order as directed by the Findings of Fact, Determinations and Conclusions.
3. This Order is subject to the rights of appeal, as set forth in Oregon law. If you desire to appeal this decision to the Oregon Land Use Board of Appeals you must make application stating the grounds for appeal with the Land Use Board of Appeals, as proscribed by State law and within the timeframe proscribed by State Law.

IT IS HEREBY ORDERED by the Wilsonville City Council at a regular meeting thereof this ____ day of _____, 2014, to be effective immediately and filed with the Wilsonville City Recorder on this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

WILSONVILLE CITY COUNCIL

FINDINGS OF FACT, DETERMINATIONS AND CONCLUSIONS

APPROVING APPLICATION

1. City Council hereby adopts the Staff Report, dated January 6, 2014, as amended by the Planning Division memorandum, dated February 10, 2014, but modifies and amends them as follows:

RESOLUTION NO. 2457

RESOLUTION TO ISSUE AN ORDER BY THE CITY COUNCIL CONCERNING THE APPEAL OF THE STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW, AND MASTER SIGN PLAN REVISION AND SIGN WAIVER OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. APPLICANT/APPELLANT/OWNER WILSONVILLE DEVCO, LLC. APPLICATION NOS. DB 13-0046, DB 13-0047, AND DB 13-0048.

WHEREAS, City Council received a timely filed appeal from Appellant/Applicant Wilsonville Devco LLC of the decision of the Development Review Board, Panel A ("DRB"), denying the above captioned project applications ("Applications") made pursuant to Wilsonville City Code 4.022(.02), following a denial of said Applications at the public hearing held on February 2014; and

WHEREAS, after granting the Appeal at a public meeting held on March 3, 2014, setting the date for public hearing of the appeal for March 17, 2014, and limiting the record on appeal to evidence already in the DRB record and limited new evidence and testimony relating only to on-site traffic congestion; adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation, inclusive of delivery vehicles and other larger format vehicles; and Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C of the Wilsonville City Code requirements; and

WHEREAS, having conducted the appeal hearing and having reviewed all of the evidence in the DRB record, including DRB member reasoning and findings for denial or approval; and having heard new evidence, as allowed, from both the appellant/applicant and opponents to the Applications at the appeal hearing; and

WHEREAS, having considered all of the foregoing evidence and following all applicable requirements of the Wilsonville Development Code pertaining to the Applications and appeal, the City Council hereby orders as follows:

1. The City Council hereby orders that the decision of the DRB on the above referenced Applications is hereby affirmed and upheld, incorporating the Staff Report, dated January 6, 2014, as amended by the Planning Division

memorandum, dated February 10, 2014, and as further amended and modified by the City Council's Findings of Fact, Determinations and Conclusions, attached hereto as **Exhibit A**, and incorporated by reference herein.

2. City Council authorizes the City staff to implement this Order as directed by the Findings of Fact, Determinations and Conclusions.
3. This Order is subject to the rights of appeal, as set forth in Oregon law. If you desire to appeal this decision to the Oregon Land Use Board of Appeals you must make application stating the grounds for appeal with the Land Use Board of Appeals, as proscribed by State law and within the timeframe proscribed by State Law.

IT IS HEREBY ORDERED by the Wilsonville City Council at a regular meeting thereof this ____ day of _____, 2014, to be effective immediately and filed with the Wilsonville City Recorder on this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

WILSONVILLE CITY COUNCIL

FINDINGS OF FACT, DETERMINATIONS AND CONCLUSIONS

DENYING APPLICATION

On-site Pedestrian Access and Circulation

Subsection 4.154 (.01) B. 1. Continuous Pathway System

- A1. **Review Criterion:** "A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has provided a network a network of pathways from the proposed location of the coffee kiosk to support a continuous pathway system throughout the site. This includes two connections to the 95th Avenue sidewalk which then connects to Carl's Jr. and Holiday Inn as well as a pathway connection to the east to provide access to parking and trash enclosures. See sheet A1.0 in Exhibit B2. This is the last phase of a development, and though adjoining development may not meet these standards, they were developed prior to adoption of the current on-site pedestrian regulations including this subsection.

Subsection 4.154 (.01) B. 2. Safe, Direct, and Convenient Pathways

- A2. **Review Criteria:** "Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:

- a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.
- b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.
- c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.
- d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)(B.)(3.)(d.)."

Finding: These criteria are satisfied.

Explanation of Finding:

- All proposed pathways are of smooth and consistent concrete and no hazards are evident on the site plan.
- All proposed pathways are reasonably direct. The path from Carl's Jr. to the 95th Avenue sidewalk then across to the coffee kiosk is reasonably direct. The path from the intersection of 95th Avenue/Boones Ferry is reasonably direct. A direct path is provided from the parking stalls and trash enclosure serving the coffee kiosk.
- Where required, pathways meet ADA requirements or will be required to by the building code.
- The parking lot is not larger than 3 acres in size.

Subsection 4.154 (.01) B. 3. Vehicle/Pathway Separation

- A3. **Review Criterion:** "Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards."

Finding: This criterion is satisfied.

Explanation of Finding: All pathways affected by this review are separated consistent with this subsection. Staff notes pathways marked during previous phases of development do not meet this standard. This is a new standard was adopted after the approval of adjoining development.

Subsection 4.154 (.01) B. 4. Crosswalks

- A4. **Review Criterion:** "Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light-color concrete inlay between asphalt, or similar contrast)."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has proposed crosswalks meeting this standard.

Subsection 4.154 (.01) B. 5. Pathway Width and Surface

- A5. **Review Criteria:** "Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five (5) feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA."

Finding: These criteria are satisfied.

Explanation of Finding: Primary pathways are the required width. The pathway from the parking area/trash enclosure near Chevron is not a primary pathway and is allowed to be less than five (5) feet in width.

Subsection 4.154 (.01) B. 6. Signs for Pathways

A6. **Review Criteria:** "All pathways shall be clearly marked with appropriate standard signs."

Finding: These criteria are satisfied.

Explanation of Finding: No pathways requiring signs are proposed.

Parking and Loading

Subsection 4.155 (.02) General Parking Provisions

A7. **Review Criteria:** This subsection lists a number of general provisions for parking.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the provisions in this subsection applicable to State II Final Plan review. Among the information provided are parking calculations on sheet A1.0. of Exhibit B2. Staff specifically points out the following:

- In relation to provision B. all parking areas are accessible and usable for parking
- In relation to provisions D. the provided parking meets the sum of the minimum parking for the fast food restaurant and the coffee kiosk.
- In relation to provision J. a note on sheet A1.0 of Exhibit B2 states this requirement will be met.
- In relation to provision K. the parking area is paved and provided with adequate drainage. See Sheets A1.0 and DD102 in Exhibit B2.
- In relation to provision L. the parking lot lighting is fully shielded as to not shine into adjoining structures or the eyes of passerby's.
- In relation to provision N. 6 compact parking spaces are proposed, which is less than forty (40) percent of the proposed parking spaces. They are shown appropriately marked on Sheet A1.0 of Exhibit B2.

Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas

A8. **Review Criteria:** "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

Finding: These criteria are **NOT** satisfied.

Explanation of Finding: For a development of the proposed size Wilsonville Development Code does not require a separate loading/delivery area. As is typical of fast food and coffee kiosk type uses in general, the deliveries by necessity happen in the customer/employee parking and circulation areas. The parking, loading, and delivery areas are the same for this project. The first criterion in this subsection relates to access and maneuvering areas requiring them to be "adequate to serve the functional needs of the site". Analysis of compliance for this criterion first must identify the functional needs of the site. As identified by the applicant and in testimony at the DRB hearing functional needs include but are not limited to: traffic circulation and parking for customers of the proposed coffee kiosk including those with larger vehicles, and deliveries of inventory to the coffee kiosk. Once identifying what the functional needs are compliance must next look at what is adequate to serve these needs. No specific definition of adequate is offered in Wilsonville's Development Code therefore the dictionary definition is relied upon. As defined in Webster's New Collegiate Dictionary "adequate" means "sufficient for a specific requirement", "especially barely sufficient or satisfactory" or "lawfully and reasonably sufficient." In looking at adequacy for compliance sufficient compliance is reviewed rather than optimal compliance.

Delivery Vehicles

In relation to deliveries Exhibit B8 shows the movement of a WB40 truck on the site, which requires significant backing and appears to drive over the curb. As demonstrated by the difficult maneuverings indicated in Exhibit B8 the site is not adequate to provide the functional need of potential delivery trucks. The trucks are not able to operate in a reasonable manner that would minimize backing and avoid obstacles on the site, including pedestrians. Proposed backing up maneuvers within this tightly constrained site raise safety concerns for other vehicles and pedestrians traveling within the site. The applicant has not provided any other on-site design alternatives that would enable sufficient maneuvering areas for this size of delivery truck.

Alternative Circulation Plan for Delivery Vehicles

Exhibit E of Exhibit B6 shows access and maneuvering areas for inventory deliveries using portions of the adjacent LaPoint property. This eliminates a great deal of the backing and does

not show close proximity to obstacles on the site. However, it requires the use of a reciprocal cross easement. The parties to the easement disagree on the extent of the easement and whether it would allow delivery truck access for the Human Bean Development. The City is not in a situation to arbitrate or interpret the meaning of this private easement without clarity on whether the adjoining property is available for access and maneuvering and must assume that it is not available.

Customer Traffic Generally

Testimony has been received and shown on Exhibits D3 and D6, traffic videos, of difficult traffic patterns with surrounding development that shares access and maneuvering areas. While it is replacing a previously approved commercial use, testimony was given that the peak nature of the coffee kiosk operation would worsen traffic for access and maneuvering areas in a manner not anticipated with the previous planned use in the subject portion of the site. The applicant has failed in their duty to provide sufficient evidence demonstrating the access and maneuvering areas for customers, including queuing area are adequate to serve the expected peak volume. Where there is substantial testimony and evidence that it is not adequate creates a special burden on the applicant to prove otherwise. Of chief concern is volume. While site plans show sufficient turning radii for the typical customer vehicle, no volume to capacity or level of service information is provided for the internal site to demonstrate adequacy for expected traffic volume at peak times. In addition, insufficient evidence has been submitted to demonstrate how queuing vehicles may conflict with the vehicles queuing for the adjacent fast food drive-through causing gridlock on the site and not allowing use of key access and maneuvering areas.

Council finds a lack of access and maneuvering areas adequate to serve the functional needs for inventory delivery to the site which is grounds for denying the proposed revision to the Stage II Final Plan. As addition ground for denying the requested revision to the Stage II Final Plan, Council finds a lack of sufficient evidence relating to adequate access and maneuvering areas, including queuing areas, especially when viewed in concert with queuing requirements for Carl's Jr., located on the same parcel, for the expected customer volume.

Because minimum criteria were not met for the Stage II Final Master Plan Revision, it was not necessary to address Site Design Revision criteria.

**RESOLUTION NO. 2458
AND ORDER**

RESOLUTION TO ISSUE AN ORDER BY THE CITY COUNCIL CONCERNING THE APPEAL OF THE STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW, AND MASTER SIGN PLAN REVISION AND SIGN WAIVER OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. APPLICANT/APPELLANT/OWNER WILSONVILLE DEVCO, LLC. APPLICATION NOS. DB 13-0046, DB 13-0047, AND DB 13-0048.

WHEREAS, City Council received a timely filed appeal from Appellant/Applicant Wilsonville Devco LLC of the decision of the Development Review Board, Panel A ("DRB"), denying the above captioned project applications ("Applications") made pursuant to Wilsonville City Code 4.022(.02), following a denial of said Applications at the public hearing held on February 2014; and

WHEREAS, after granting the Appeal at a public meeting held on March 3, 2014, setting the date for public hearing of the appeal for March 17, 2014, and limiting the record on appeal to evidence already in the DRB record and limited new evidence and testimony relating only to on-site traffic congestion; adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation, inclusive of delivery vehicles and other larger format vehicles; and Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C of the Wilsonville City Code requirements; and

WHEREAS, having conducted the appeal hearing and having reviewed all of the evidence in the DRB record, including DRB member reasoning and findings for denial or approval; and having heard new evidence, as allowed, from both the appellant/applicant and opponents to the Applications at the appeal hearing; and

WHEREAS, having considered all of the foregoing evidence and following all applicable requirements of the Wilsonville Development Code pertaining to the Applications and appeal, the City Council hereby orders as follows:

1. The City Council hereby orders that the decision of the DRB on the above referenced Applications is hereby remanded to the DRB for further consideration

of new evidence placed on the record, and the City Council's Findings of Fact, Determinations, and Conclusions is attached hereto as **Exhibit A**.

2. This Order is subject to the rights of appeal, as set forth in Oregon law. If you desire to appeal this decision to the Oregon Land Use Board of Appeals you must make application stating the grounds for appeal with the Land Use Board of Appeals, as proscribed by State law and within the timeframe proscribed by State Law.

IT IS HEREBY ORDERED by the Wilsonville City Council at a regular meeting thereof this ____ day of _____, 2014, to be effective immediately and filed with the Wilsonville City Recorder on this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

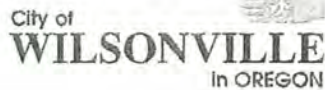
WILSONVILLE CITY COUNCIL

FINDINGS OF FACT, DETERMINATIONS AND CONCLUSIONS

REMANDING APPLICATION

1. City Council hereby adopts the Staff Report, dated January 6, 2014, as amended by the Planning Division memorandum, dated February 10, 2014, but modifies and amends them as follows:

2.



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

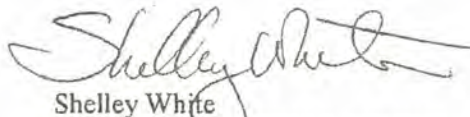
VIA: Certified Mail, Return Receipt Requested

February 13, 2014

Josh Veentjer
Wilsonville Devco LLC
P.O. Box 6437
La Quinta, CA 92248

Re: Case File DB13-0046 et seq

The Development Review Board's Decision and Resolution No. 270 are attached, denying your request for a Stage II Final Plan revision, Site Design Review, and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk. Thank you.



Shelley White
Planning Administrative Assistant

CC: Ben Altman - SFA Design Group
Craig Anderson - CB Anderson Architects
Tom Berg
Garry LaPoint
Jason LaPoint
Steve Pfeiffer - Perkins Coie

CC via e-mail: Wallace W. Lien
George Gregory

February 13, 2014

DEVELOPMENT REVIEW BOARD PANEL A

NOTICE OF DECISION

Project Name: Boones Ferry Pointe – The Human Bean Drive-Up Coffee Kiosk

Case File Nos.: DB13-0046 – Stage II Final Plan revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan revision and Sign Waiver

Applicant/Owner: Josh Veentjer – Wilsonville Devco LLC

**Authorized
Representatives:** Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects

Property Description: Tax Lots 302, Section 2DB; T3S R1W; Washington County;
Wilsonville, Oregon

Location: Corner of 95th Avenue and Boones Ferry Road

On February 10, 2014, at the meeting of the Development Review Board the following action was taken on the above-referenced proposed development applications:

Denied

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022(.02).*

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this **13th day of February 2014** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022(.09)*

Written decision is attached

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960

Attachments: DRB Resolution No. 270, Copy of proposed DRB Resolution No. 268 which was rejected.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 270**

A RESOLUTION REJECTING PROPOSED RESOLUTION NO. 268 AND DENYING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits, exhibits, and staff report were duly considered by the Development Review Board Panel A at a scheduled meetings conducted on January 13 and February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

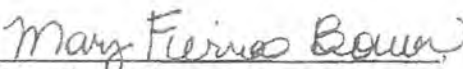
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject, and


WHEREAS citing concerns about on site traffic circulation, congestion and safety in general and referring specifically to Wilsonville City Code Section 4.400.02 and 4.421 C, the Development Review Board moved, seconded and passed a motion, by a vote of 4 to 1, rejecting proposed Resolution No. 268, and by reference the staff report dated January 6, 2014, finding that the Application did not satisfy Wilsonville Code requirements pertaining to safety and circulation.

NOW, THEREFORE, BE IT RESOLVED THAT THE City of Wilsonville Development Review Board does hereby reject proposed Resolution No. 268, thereby denying the above described Application for reasons stated herein and with more particularity in the record of decision.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10th day of February, 2014 and filed with the Planning Administrative Assistant on February 13, 2014. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022(.09) unless appealed per WC Sec 4.022(.02) or called up for review by the council in accordance with WC Sec 4.022(.03).


Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:


Shelley White, Planning Administrative Assistant

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.068 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13th day of January, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.09)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

3.

Steven L. Pfeiffer
PHONE: (503) 727-2261
FAX: (503) 346-2261
EMAIL: SPfeiffer@perkinscoie.com

February 21, 2014

BY HAND DELIVERY

Sandra C. King, MMC
City Recorder
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070

*Rec'd 2/21/14
\$800.00
paid. check #10049*

Re: City Files DB 13-0046, BD 13-0047, and DB 13-0048, Wilsonville Devco, LLC

Dear Ms. King:

This office represents Wilsonville Devco, LLC the Applicant in the above-referenced matter. Enclosed please find a Notice of Intent to Appeal the above-referenced matter to City Council, as well as a check in the amount of \$800.00 as the appeal fee. Please process this Notice of Intent to Appeal and advise me of the scheduled hearing date. Please also include me on the notice list for all correspondence related to this appeal.

Very truly yours,

Steven L. Pfeiffer

SLP:GHS

Enclosures

Cc: Client (w/encls.) (via email)
Wallace Lein (w/encls.) (via email)

CITY OF WILSONVILLE

29799 SW Town Center Loop East

Wilsonville, OR 97070

Phone: 503.682.4960

Fax: 503.682.7025

Web: www.ci.wilsonville.or.us

Pre-Application meeting date:

TO BE COMPLETED BY APPLICANT:

Please PRINT legibly

Planning Division Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

Applicant:

Josh Veentjer

Address: 4188 SW Greenleaf Dr. Portland, OR 97221

Phone: 503.201.1309

Fax:

E-mail: josh@pdvco.com

Authorized Representative:

Stephen L. Pfeiffer

Address: 1120 NW Couch Street, Tenth Flr., Portland, OR 97209

Phone: 503.727.2261

Fax:

E-mail: spfeiffer@perkinscoie.com

Property Owner:

Josh Veentjer, Wilsonville Devco, LLC

Address: 4188 SW Greenleaf Dr. Portland, OR 97221

Phone: 503.201.1309

Fax:

E-mail: josh@pdvco.com

Property Owner's Signature:

Printed Name: Josh Veentjer Date: 2/20/14

Applicant's Signature (if different from Property Owner):

Printed Name: Date:

Site Location and Description:

Project Address if Available: 25250 SW 95th Avenue Suite/Unit

Project Location: Northern portion of Boones Ferry Pointe, adjacent to Carl's Jr. and Chevron Station.

Tax Map #(s): 2DB Tax Lot #(s): 302 County: ☒ Washington ☐ Clackamas

Request: Appeal of DRB Decision in DB 13-0047, and DB 13-0048

Project Type: Class I ☐ Class II ☐ Class III ☐

☐ Residential

☐ Commercial

☐ Industrial

☐ Other (describe below)

Application Type:

☐ Annexation

☐ Final Plat

☐ Plan Amendment

☐ Request for Special Meeting

☐ SROZ/SRIR Review

☐ Type C Tree Removal Plan

☐ Villebois SAP

☐ Zone Map Amendment

☒ Appeal

☐ Major Partition

☐ Planned Development

☐ Request for Time Extension

☐ Staff Interpretation

☐ Tree Removal Permit (B or C)

☐ Villebois PDP

☐ Other

☐ Comp Plan Map Amend

☐ Minor Partition

☐ Preliminary Plat

☐ Signs

☐ Stage I Master Plan

☐ Temporary Use

☐ Villebois PDP

☐ Conditional Use

☐ Parks Plan Review

☐ Request to Modify Conditions

☐ Site Design Review

☐ Stage II Final Plan

☐ Variance

☐ Waiver

**BEFORE THE CITY COUNCIL
FOR THE CITY OF WILSONVILLE, OREGON**

In the Matter of an Appeal by the)	
Applicant, Wilsonville Devco, LLC of a	)	WRITTEN NOTICE OF INTENT TO
Decision by the Development Review	)	APPEAL
Board, dated February 10, 2014, Denying)	
the Application for a Stage II Final Plan)	
Revision, Site Design Review, and Master)	
Sign Plan Revision (City File Nos. DB13-)	
0046, DB13-0047, and DB 13-0048))	

1. Introduction.

Wilsonville Devco, LLC ("Appellant"), the Applicant in the above-referenced application, submits this appeal of the February 10, 2014 decision by the Development Review Board ("DRB") of the City of Wilsonville ("City"), which denied the request for a Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision (City File Nos. DB13-0046, DB13-0047, and DB 13-0048) ("Proposed Development"). Appellant applied for these land use permits on November 12, 2013 and the DRB considered them at public hearings held on January 13, 2014 and February 10, 2014. Despite City staff's recommendation for approval in which it stated the Proposed Development met all applicable criteria as proposed and with recommended conditions of approval (**Exhibit 1**), as well as additional memoranda from staff indicating that the proposed circulation on the site was sufficient (**Exhibit 2**), the DRB denied the application. Specifically, the DRP denied the application based on concerns "about on-site traffic circulation, congestion and safety in general and referring specifically to Wilsonville Code Section 4.400.02 and 4.421C." (**Exhibit 3**).

In denying the application, the DRB misapplied and misinterpreted WDC 4.400.02 and 4.421C. Moreover, its determination that these provisions were not satisfied is not supported by, and is contrary to, the substantial evidence in the record. For the reasons explained below, the City Council should reverse the DRC's decision and find that the Proposed Development satisfies site circulation requirements specified in WDC 4.400.02 and 4.432C. It should therefore approve Appellant's application in its entirety.

This appeal is timely filed prior to the February 27, 2014 deadline.

2. Reason for Appeal.

Wilsonville Devco, LLC is the owner of the subject property and the Applicant in the above-referenced application. As demonstrated by substantial evidence in the record and contrary to the DRB findings, Appellant has demonstrated that the Proposed Development meets all applicable criteria. With respect to the specific issue of internal vehicle circulation, the Appellant has demonstrated adequate and safe turning movements, vehicle stacking, and truck

access, as discussed in the Planning Division Memorandum of February 10, 2014. **Exhibit 2.**

3. Procedural History.

Appellant applied for these land use permits on November 12, 2013. The application was deemed incomplete on November 20, 2013. Appellant submitted additional materials on December 4 and December 7, 2013. The application was deemed complete on December 19, 2013. An initial DRB hearing was conducted on January 13, 2014. The record of this hearing was held open until January 27, 2014. A second DRB hearing and final consideration of the Proposed Development was held on February 10, 2014. Notice of the DRB's decision was mailed on February 13, 2014. Under the 120-day rule, the City must issue a final decision by April 8, 2014.

4. Compliance with Appeal Requirements.

Wilsonville's procedures for an appeal of a DRB decision are set forth in WDC 4.022(.02). This appeal is consistent with that section, as discussed below:

Section 4.022 Appeal and Call-up Procedures.

(.02) Board Action. A decision of the Development Review Board may be appealed to the Council by any affected party who participated in the hearing before the Board by filing an appeal within fourteen (14) calendar days of the posting of the notice of decision, or by the call-up procedures listed below. The notice of appeal shall indicate the decision that is being appealed.

RESPONSE: The City mailed its notice of the DRB's decision on February 13, 2014. Exhibit 3. The deadline for appeal is February 27, 2014. This Notice of Intent to Appeal, dated February 21, 2014, is therefore timely. This Notice of Intent to Appeal also indicates the decisions being appealed, which are stated in **Exhibit 3**. Therefore, this Notice of Intent to Appeal meets the requirements of WDC 4.022(.02).

5. Conclusion.

For the reasons stated herein, which will be supplemented prior to the hearing on this appeal, the City Council should reverse the February 10, 2014 decision of the DRB and approve Appellant's application in its entirety.



Steven L. Pfeiffer, Appellant's Representative
Perkins Coie LLP
1120 NW Couch St., 10th Floor
Portland, OR 97209-4128
Phone: (503)-727-2261

Dated: 2/21/14

EXHIBITS

- Exhibit 1: DRB Staff Report
- Exhibit 2: Staff Memorandum (February 10, 2014)
- Exhibit 3: Notice of DRB Decision

DEVELOPMENT REVIEW BOARD MEETING

MONDAY, JANUARY 13, 2014
6:30 PM

VIII. Public Hearing:

B. Resolution No. 268. Boones Ferry Pointe – The Human Bean Drive-up Coffee Kiosk: SFA Design Group and CB Anderson Architects – Representatives for Wilsonville Devco LLC – Applicant/Owner. The applicant is requesting approval of a Stage II Final Plan revision, Site Design Review and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk at the corner of 95th Avenue and Boones Ferry Road. The subject site is located on Tax Lot 302 of Section 2DB, T3S, R1W, Washington County, Oregon. Staff: Daniel Pauly

Case Files: DB13-0046 – Stage II Final Plan Revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan Revision
and Sign Waiver

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS – REPRESENTATIVES FOR WILSONVILLE DEVCO LLC – APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13th day of January, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.09)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

Exhibit A1
STAFF REPORT
WILSONVILLE PLANNING DIVISION

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

DEVELOPMENT REVIEW BOARD PANEL 'A'
QUASI-JUDICIAL PUBLIC HEARING
STAFF REPORT

HEARING DATE	January 13, 2014
DATE OF REPORT:	January 6, 2014

APPLICATION NOS.: DB13-0046 Stage II Final Plan Revision
DB13-0047 Site Design Review
DB13-0048 Master Sign Plan Revision and Sign Waiver

REQUEST/SUMMARY: The Development Review Board is being asked to review a revised Stage II Final Plan, Site Design Review, and revised Master Sign Plan for the development of a new 450 square foot drive-thru coffee shop to replace an approved but un-built 3,150 square foot multi-tenant commercial building at the corner of 95th Avenue and Boones Ferry Road in North Wilsonville.

LOCATION: The proposed coffee shop location is on the southeast corner of the 95th Avenue/Boones Ferry Road intersection near Elligsen Road/I-5 Interchange. The property is specifically known as Tax Lot 0302, Section 2DB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon.

OWNER/APPLICANT: Josh Veentjer
Wilsonville Devco LLC

APPLICANT'S REPS.: Ben Altman
SFA Design Group

Craig Anderson
CB Anderson Architects

COMPREHENSIVE PLAN MAP DESIGNATION: Commercial

ZONE MAP CLASSIFICATION: PDC (Planned Development Commercial)

STAFF REVIEWERS: Daniel Pauly AICP, Associate Planner
Steve Adams PE, Development Engineering Manager
Don Walters, Building Plans Examiner

STAFF RECOMMENDATION: Approve with conditions the requested revised Stage II Final Plan, Site Design Review request, and revised Master Sign Plan.

Development Review Board Panel „A’ Staff Report January 6, 2014
Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk
DB13-0046, DB13-0047, DB13-0048

Exhibit A1

Page 1 of 50

APPLICABLE REVIEW CRITERIA

Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Section 4.031	Authority of the Development Review Board
Subsection 4.035 (.04)	Site Development Permit Application
Subsection 4.035 (.05)	Complete Submittal Requirement
Section 4.110	Zones
Section 4.116	Standards Applying to Commercial Development in All Zones
Section 4.118	Standards Applying to Planned Development Zones
Section 4.131	Planned Development Commercial Zone (PDC)
Section 4.140	Planned Development Regulations
Section 4.154	On-site Pedestrian Access and Circulation
Section 4.155	Parking, Loading, and Bicycle Parking
Sections 4.156.01 through 4.156.11	Sign Regulations
Section 4.167	Access, Ingress, and Egress
Section 4.171	Protection of Natural Features and Other Resources
Section 4.175	Public Safety and Crime Prevention
Section 4.176	Landscaping, Screening, and Buffering
Section 4.177	Street Improvement Standards
Section 4.179	Mixed Solid Waste and Recyclables Storage
Sections 4.199.20 through 4.199.60	Outdoor Lighting
Sections 4.300 through 4.320	Underground Utilities
Sections 4.400 through 4.450 as applicable	Site Design Review

Vicinity Map



BACKGROUND/SUMMARY:

Approved Stage I Master Plan/Site History

The subject property is part of the Edwards Business Center Industrial Master Plan. This master plan envisioned a variety of industrial and commercial uses. The Master Plan designated the subject site as commercial, but did not specify the type of commercial use. Previously the City received an application for an office building on the site, which was never built. In March 2013 the Development Review Board approved an application to construct a fast-food restaurant and a multi-tenant commercial building consistent with the designation of the property in the Master Plan. The restaurant building has been built, but the property owner determined they were unable to find appropriate tenants and finance the commercial building. The applicant is now requesting to replace the multi-tenant commercial building portion of the development with a drive-thru coffee kiosk which remains consistent with the Stage I Master Plan commercial designation.

Stage II Final Plan (DB13-0046)

The Stage II Final Plan looks at the function and overall aesthetics of the proposed development, including traffic, parking, and circulation.

The proposed revised master plan includes a 450 square foot drive-thru coffee kiosk, and associated site improvements including parking, circulation, and landscaping. The coffee kiosk development replaces a multi-tenant commercial building approved by the DRB in March 2013

at the same time the adjacent Carl's Jr. restaurant was approved. The development site sits just north of the recently completed Carl's Jr. restaurant at the southeast corner of SW 95th Avenue and SW Boones Ferry Road. The kiosk building has a flat roof with a parapet to screen view of mechanical equipment. The north end of the building has a tower featuring the sign bands. A drive through lane wraps around the east, north, and west side of the kiosk and the adjoining patio and parking area. Parking is to the south and southeast.

Vehicle access to the coffee kiosk is via an existing shared driveway with Holiday Inn, Chevron, and Carl's Jr.

The Modified Stage II Final Plan for Boones Ferry Point, which will include Carl's Jr. and the proposed coffee kiosk, proposes approximately 15569 square feet of landscaping, 37 parking spaces (35 required), maneuvering and circulations areas, and mixed solid waste and recyclables storage. The total gross area of the site covered by the Stage II Master Plan is 55,605 square feet or 1.28 acres.

Site Design Review (DB13-0047)

Architectural Design

In the application for the original Boones Ferry Point (DB12-0074 et. seq.) the applicant explained how the design goal was to identify with the general environment of commercial development at Argyle Square and along Wilsonville Road while also adding a unique personality to the development and proper identity to the planned tenants. Smaller scale wood-frame structures using traditional exterior materials intended to reinforced their location in Wilsonville's small town setting. The approved buildings featured brick, horizontal lap siding, and board and batten materials. The proposed coffee kiosk follows this same architectural theme previously proposed and approved. The building features brick around the base, with a mix of lap siding and horizontal siding on the main body of the building. The tower design has similar shape as the Carl's Jr. building towers, but uses different material and colors. The Carl's Jr. building and the proposed coffee kiosk incorporate similar architectural elements, but have enough differences to be unique and complementary.

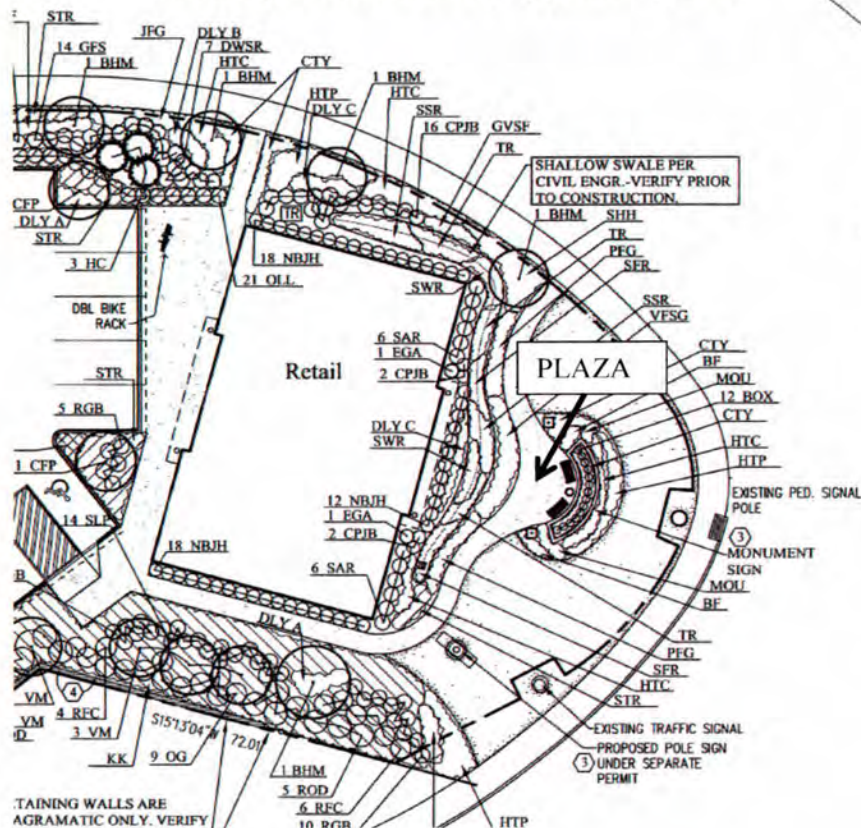
Proposed Drive-thru Coffee Kiosk Rendering



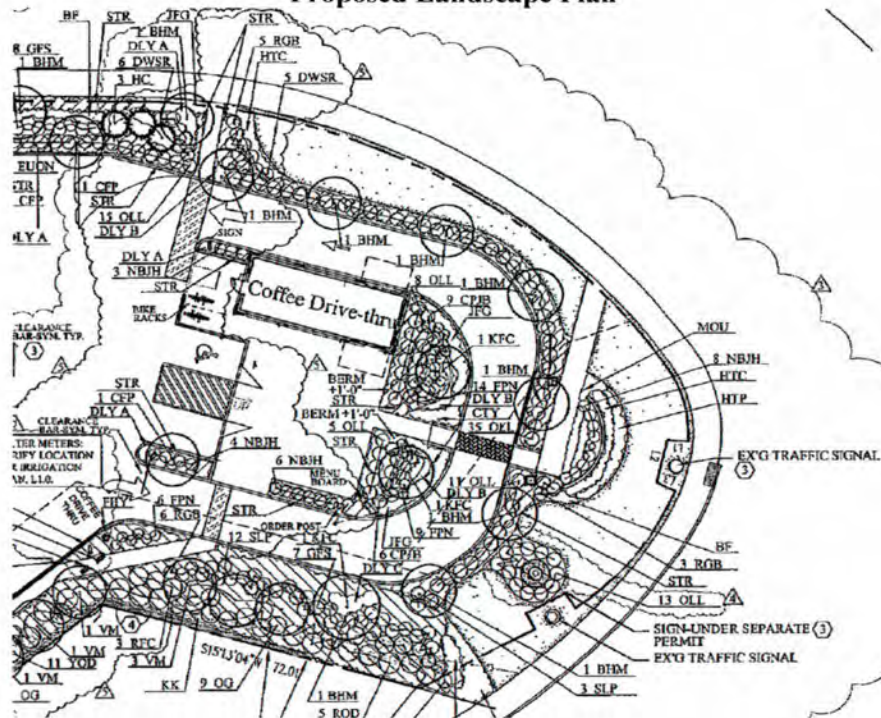
Landscape and Hardscape Design

In the design of Boones Ferry Pointe previously approved by the DRB a planter and plaza are featured at the north of the site to acknowledge the gateway at a prominent intersection on the northern edge of the City. The remainder of the landscaping is typical of parking lots and commercial areas in Wilsonville. In the proposed revised plan the planter and gateway sign with flag remain, but the plaza has been replaced with a patio area adjacent to the coffee kiosk. The remainder of the area around the coffee kiosk accommodates the drive-thru lane and otherwise remains typical of parking lots and commercial areas in Wilsonville.

Landscape Plan Previously Approved by DRB



Proposed Landscape Plan



Master Sign Plan and Sign Area Waiver (DB13-0048)

Building Signs

All three facades of the coffee kiosk where signs are proposed are eligible for building signs, with the allowed area based on the length of the different facades. The building signs will be wall mounted internally illuminated logo cabinets, like Carl's Jr., or individual internally illuminated channel letters. The signs will be appropriately placed on the buildings either centered in architectural features or centered above doors or windows. The sign design and placement is similar to other commercial retail developments in Wilsonville including Argyle Square and Old Town Square. Due to the narrow length of the north façade of the building, the applicant is requesting a waiver to allow a sign of the same size as the east and west facades, providing consistency on each of the three facades of the northern portion of the building, which are very similar architecturally.

Proposed Building Signs



Development Review Board Panel „A‘Staff Report January 6, 2014
Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk
DB13-0046, DB13-0047, DB13-0048

Exhibit A1

Page 6 of 50

DISCUSSION TOPICS:

Bicycle Parking

While the required number of bicycle parking spaces is provided, a couple requirements for bicycle parking are not met. The requirements not met include the spacing between bike parking and the kiosk building and the distance of the bike parking from the pedestrian service window. Condition of Approval PDA 2 requires the bicycle parking to be relocated within the plaza area or otherwise modified to meet these requirements.

Existing Hardscape and Landscape Improvements

Most of the hardscape and landscape for the proposed development has already been installed. This was done by the developer at their own risk. While, staff recommends approval, with modifications, of the hardscape and landscape as installed, the Development Review Board has full authority to require changes to the hardscape and landscape as if none had yet been installed.

Tables and Other Furnishings for Patio Area

The applicant has not provided information on tables or other furnishings for the patio area adjacent to the coffee kiosk. While none are currently proposed, it is understood furnishings will be placed in this area. Condition of Approval PDB 9 ensures the design of these furnishings will be durable and match or complement to the neighboring building thus helping to meet the site design review standards.

Restrictive Covenant Legal Dispute

As described in Exhibit D1 a legal dispute is ongoing regarding whether a restrictive covenant on the property prevents the operation of the proposed coffee kiosk. This is a private matter to be resolved between the parties. Staff does not see a reason to delay City approval with conditions of the proposed development. See letter regarding this matter from Barbara Jacobson, Assistant City Attorney, Exhibit C3.

CONCLUSION AND CONDITIONS OF APPROVAL:

Staff has reviewed the applicant's analysis of compliance with the applicable criteria. The Staff report adopts the applicant's responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, staff recommends that the Development Review Board approve the proposed application (DB13-0046, DB13-0047, DB13-0048) with the following conditions:

REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION

Planning Division Conditions:

- PDA 1.** The approved final plan schedule shall control the issuance of all building permits and shall restrict the nature, location and design of all uses. Minor changes to the approved final development plan may be approved by the Planning Director through administrative review pursuant to Section 4.030 if such changes are consistent with the purposes and general character of the plan. All other modifications shall be processed in the same manner as the original application and shall be subject to the same procedural requirements.
- PDA 2.** The applicant shall modify or relocate the bicycle parking spaces to meet the following standards identified in Subsection 4.155 (.04) B. while continuing to meet all other applicable standards:
- An aisle at least 5 feet wide shall be maintained behind all required bicycle parking to allow room for bicycle maneuvering.
 - Each space be located within 30 feet of the pedestrian service window.

REQUEST B: DB13-0047 SITE DESIGN REVIEW

Planning Division Conditions:

- PDB 1.** Construction, site development, and landscaping shall be carried out in substantial accord with the Development Review Board approved plans, drawings, sketches, and other documents. Minor revisions may be approved by the Planning Director through administrative review pursuant to Section 4.030. See Findings B3.
- PDB 2.** All landscaping required and approved by the Board shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping as determined by the Planning Director is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City will be returned to the applicant. See Finding B9.

PDB 3.	The approved landscape plan is binding upon the applicant/owner. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, pursuant to the applicable sections of Wilsonville's Development Code. See Finding B10.
PDB 4.	All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved by the Board, unless altered as allowed by Wilsonville's Development Code. See Findings B11 and B12.
PDB 5.	<p>The following requirements for planting of shrubs and ground cover shall be met:</p> <ul style="list-style-type: none"> • Non-horticultural plastic sheeting or other impermeable surface shall not be placed under landscaping mulch. • Native topsoil shall be preserved and reused to the extent feasible. • Surface mulch or bark dust shall be fully raked into soil of appropriate depth, sufficient to control erosion, and shall be confined to areas around plantings. • All shrubs shall be well branched and typical of their type as described in current AAN Standards and shall be equal to or better than 2-gallon containers and 10" to 12" spread. • Shrubs shall reach their designed size for screening within three (3) years of planting. • Ground cover shall be equal to or better than the following depending on the type of plant materials used: gallon containers spaced at 4 feet on center minimum, 4" pot spaced 2 feet on center minimum, 2-1/4" pots spaced at 18 inch on center minimum. • No bare root planting shall be permitted. • Ground cover shall be sufficient to cover at least 80% of the bare soil in required landscape areas within three (3) years of planting. • Appropriate plant materials shall be installed beneath the canopies of trees and large shrubs to avoid the appearance of bare ground in those locations. • Compost-amended topsoil shall be integrated in all areas to be landscaped, including lawns. <p>See Finding B22.</p>
PDB 6.	Plant materials shall be installed to current industry standards and be properly staked to ensure survival. Plants that die shall be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City. See Finding B27.
PDB 7.	Outdoor lighting associated with the coffee kiosk use shall be dimmed at 10:00 p.m. by an automatic system. See Finding B38.
PDB 8.	All non-exempt luminaires shall be limited to down lighting. Non-exempt luminaires, except luminaire DD, shall be mounted and aimed consistent with their fully shielded classification. See Finding B35 and B37.
PDB 9.	Furnishings for the patio area shall be of durable materials that can withstand multiple years of outdoor exposure and remain in a like-new condition. Furnishings for the patio area shall be colors matching or complementary to the coffee kiosk building. Furnishings are not approved to have any signage. Final design and

placement of furnishings shall be approved by the Planning Division through the Class I Administrative Review process.	
REQUEST C DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER	
PDC 1.	Non-exempt signs shall be issued a Class I Sign Permit through the Planning Division prior to installation to ensure compliance with the approved Master Sign Plan.
PDC 2.	This action only changes the components of the Master Sign Plan explicitly noted. All other aspects of the Master Sign Plan and Conditions of Approval of Case File DB12-0076 remain in effect.
PDC 3.	The illuminated directional signs at internal circulation drive intersections shall be limited to six (6) square feet. See Finding C24.

CONDITIONS OF APPROVAL FROM THE ENGINEERING AND BUILDING DIVISIONS FOR ALL REQUESTS

The following Conditions of Approval are provided by the Engineering and Building Divisions of the City's Community Development Department which have authority over development approval. A number of these Conditions of Approval are not related to land use regulations under the authority of the Development Review Board or Planning Director. Only those Conditions of Approval related to criteria in Chapter 4 of Wilsonville Code and the Comprehensive Plan, including but not limited to those related to traffic level of service, site vision clearance, and concurrency, are subject to the Land Use review and appeal process defined in Wilsonville Code and Oregon Revised Statutes and Administrative Rules. Other Conditions of Approval are based on City Code chapters other than Chapter 4, state law, federal law, or other agency rules and regulations. Questions or requests about the applicability, appeal, exemption or non-compliance related to these other Conditions of Approval should be directed to the City Division with authority over the relevant portion of the development approval.

Engineering Division Conditions:	
Specific Comments:	
PF 1.	Engineering Public Facilities Conditions of Approval (PF conditions) for DB12-0074 and DB12-0075 remain in effect for this project except as further modified below.
PF 2.	At the request of Staff, DKS Associates completed a Trip Generation memo dated September 5, 2013 revising a previously completed Carl's Jr. Traffic Impact Study that was completed in May 2012. The proposed use is expected to generate 13 fewer new primary trips than the previously approved use. The project is hereby limited to no more than the following impacts. <div style="text-align: center;">Estimated New PM Peak Hour Trips 117</div>
PF 3.	Stormwater detention and storm water quality for this site will be handled via the stormwater facility constructed with the Boones Ferry Pointe project.
PF 4.	The project shall connect to the existing Storm lateral constructed with the Boones Ferry Pointe project.
PF 5.	The project shall connect to the existing Sanitary Sewer stub constructed with the

	Boones Ferry Pointe project.
PF 6.	The project shall connect to the existing Water service constructed with the Boones Ferry Pointe. project.

Building Division Conditions:

BD 1. ACCESSIBLE. At least one of the walk-up service windows shall be accessible.

MASTER EXHIBIT LIST:

The following exhibits are hereby entered into the public record by the Development Review Board as confirmation of its consideration of the application as submitted. This is the exhibit list that includes exhibits for Planning Case Files DB13-0046, DB13-0047, DB13-0048.

- A1.** Staff report and findings (this document)
- A2.** Staff's public hearing presentation slides (not available until public hearing)
- B1.** Applicant's Notebook:
 - 1. Notice of Complete Application Dated December 9, 2013
 - 2. Response to Letter of Incomplete Application Dated December 4, 2013
 - 3. Notice of Incomplete Application Dated November 20, 2013
 - 4. Application Form Signed by Josh Ventjeer, Managing Member of Wilsonville Devco LLC
 - 5. Compliance Report
 - 6. DKS Traffic Memo
 - 7. Site Plans Approved by DRB in Case Files DB12-0074 through DB12-0076
 - 8. Signage (Proposed)
 - 9. Lighting Detail & Photometrics (Proposed)
 - 10. Revised Site & Architectural Plans (Proposed)
- B2.** Plan Sets and Architectural Drawings:
 - Color Architectural Renderings (Proposed)
 - C105 Previous Approved Grading Plan (DB12-0074 through DB12-0076)
 - A1.0 Architectural Site Plan (Proposed)
 - DD101 Composite Utility Plan (Proposed)
 - DD102 Grading Plan (Proposed)
 - L2.0 Landscape Planting Plan (Proposed)
 - L1.0 Landscape Irrigation Plan (Proposed)
 - A-1 Coffee Kiosk Floor Plan and Upper Wall Framing Plan from Pacific Mobile
 - A-3 Coffee Kiosk Wall Elevations from Pacific Mobile
 - E-1 Coffee Kiosk Electrical Plan from Pacific Mobile
 - SE1.0 Photometric Site Plan (Proposed)
 - Sign Drawings
- B3.** Materials Boards for Coffee Kiosk (available at public hearing)
- C1.** Engineering Division Comments and Conditions
- C2.** Building Division Comments and Conditions
- C3.** January 3, 2014 Letter from Barbara Jacobson, Assistant City Attorney, to Alec Laidlaw RE: The Human Bean Coffee Store Legal Dispute
- D1.** Written Testimony Received January 3, 2014 on behalf of Garry Lapoint

Development Review Board Panel „A' Staff Report January 6, 2014
Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk
DB13-0046, DB13-0047, DB13-0048

Exhibit A1

Page 11 of 50

January 3, 2014 email from Terra Burns, Laidlaw and Laidlaw Paralegal, to Daniel Pauly, Associate Planner
 January 3, 2014 Letter from Alec Laidlaw to Daniel Pauly, Associate Planner
 Copy of Washington County Circuit Court Case No. C138125CV Defendants' ORCP 21 Motions
 Copy of Washington County Circuit Court Case No. C138125CV Declaration of Garry L. Lapoint in Support of Defendants' ORCP 21 Motions
 Copy of Washington County Circuit Court Case No. C138125CV Defendants' Counsel's Certificate of Compliance (UTCR 5.010)

FINDINGS OF FACT:

1. The statutory 120-day time limit applies to this application. The application was received on November 12, 2013. On November 20, 2013, staff conducted a completeness review within the statutorily allowed 30-day review period, and, on December 4, 2013, the Applicant submitted new materials. Additional materials were submitted on December 7, 2013. On December 9, 2013 the application was deemed complete. The City must render a final decision for the request, including any appeals, by April 8, 2014.

2. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	PDI	95 th /Boones Ferry Intersection/ Riverwood Industrial Campus
East:	PDC	Chevron/Boones Ferry Rd.
South:	PDC	Holiday Inn
West:	PDC	95 th Avenue/AGC Center

3. Prior land use actions include:

Edwards Business Center Industrial Park Plat-Stage I
 97DB28 Stage II, Site Design Review, LaPoint Center
 DB06-0041, DB06-0043, DB06-0057, DB06-0042 Stage II Final Plan, Site Design Review, Waiver to Building Height, Master Sign Plan for Brice Office Building (Expired)
 DB12-0074 through DB12-0076 Stage II Final Plan, Site Design Review, and Master Sign Plan for fast food restaurant and multi-tenant commercial building.
 DB13-0027 Site Design Review for accent lighting on fast food restaurant.

4. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

CONCLUSIONARY FINDINGS:

NOTE: Pursuant to Section 4.014 the burden of proving that the necessary findings of fact can be made for approval of any land use or development application rests with the applicant in the case.

GENERAL INFORMATION

Section 4.008 Application Procedures-In General

Review Criteria: This section lists general application procedures applicable to a number of types of land use applications and also lists unique features of Wilsonville's development review process.

Finding: These criteria are met.

Explanation of Finding: The application is being processed in accordance with the applicable general procedures of this Section.

Section 4.009 and Subsection 4.140 (.03) Who May Initiate Application and Ownership

Review Criterion: "Except for a Specific Area Plan (SAP), applications involving specific sites may be filed only by the owner of the subject property, by a unit of government that is in the process of acquiring the property, or by an agent who has been authorized by the owner, in writing, to apply." "The tract or tracts of land included in a proposed Planned Development must be in one (1) ownership or control or the subject of a joint application by the owners of all the property included."

Finding: This criterion is satisfied.

Explanation of Finding: The application has been submitted on behalf of the property owner, Wilsonville Devco LLC. The application form is signed by Josh Veentjer, Managing Member.

Subsection 4.010 (.02) Pre-Application Conference

Review Criteria: This section lists the pre-application process

Finding: These criteria are satisfied.

Explanation of Finding: A pre-application conference was held on August 22, 2013 in accordance with this subsection.

Subsection 4.011 (.02) B. Lien Payment before Application Approval

Review Criterion: "City Council Resolution No. 796 precludes the approval of any development application without the prior payment of all applicable City liens for the subject property. Applicants shall be encouraged to contact the City Finance Department to verify that there are no outstanding liens. If the Planning Director is advised of outstanding liens while an application is under consideration, the Director shall advise the applicant that payments must be made current or the existence of liens will necessitate denial of the application."

Finding: This criterion is satisfied.

Explanation of Finding: No applicable liens exist for the subject property. The application can thus move forward.

Subsection 4.035 (.04) A. General Site Development Permit Submission Requirements

Review Criteria: “An application for a Site Development Permit shall consist of the materials specified as follows, plus any other materials required by this Code.” Listed 1. through 6. j.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided all of the applicable general submission requirements contained in this subsection.

Section 4.110 Zoning-Generally

Review Criteria: “The use of any building or premises or the construction of any development shall be in conformity with the regulations set forth in this Code for each Zoning District in which it is located, except as provided in Sections 4.189 through 4.192.” “The General Regulations listed in Sections 4.150 through 4.199 shall apply to all zones unless the text indicates otherwise.”

Finding: These criteria are satisfied.

Explanation of Finding: This proposed development is in conformity with the applicable zoning district and general development regulations listed in Sections 4.150 through 4.199 have been applied in accordance with this Section.

REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION

Planned Development Regulations

Subsection 4.140 (.01) Purpose of Planned Development Regulations

- A1. **Review Criterion:** The proposed Stage II Final Plan shall be consistent with the Planned Development Regulations purpose statement.

Finding: This criterion is satisfied.

Explanation of Finding: Based on the information provided by the applicant in their narrative, staff is of the professional opinion that the purpose of the planned development regulations is met by the proposed Stage II Final Plan.

Subsections 4.140 (.02) and (.05) Planned Development Lot Size and Permit Process

- A2. **Review Criteria:** "Planned Development may be established on lots which are suitable for and of a size to be planned and developed in a manner consistent with the purposes and objectives of Section 4.140." "Any site designated for development in the Comprehensive Plan may be developed as a Planned Development, provided that it is zoned ,PD.' All sites which are greater than two (2) acres in size, and designated in the Comprehensive Plan for commercial, residential, or industrial use shall be developed as Planned Developments, unless approved for other uses permitted by the Development Code."

"All parcels of land exceeding two (2) acres in size that are to be used for residential, commercial or industrial development, shall, prior to the issuance of any building permit:

1. Be zoned for planned development;
2. Obtain a planned development permit; and
3. Obtain Development Review Board, or, on appeal, City Council approval."

Finding: These criteria are satisfied.

Explanation of Finding: The development site is less than two (2) acres. However, it is previously been zoned for Planned Development. The property is designated for commercial development in the Comprehensive Plan, and is zoned Planned Development Commercial. The property is of sufficient size and will be developed as a planned development in accordance with this subsection.

Subsection 4.140 (.04) Professional Design Team Required for Planned Developments

- A3. **Review Criteria:** "The applicant for all proposed Planned Developments shall certify that the professional services of the appropriate professionals have been utilized in the planning process for development. One of the professional consultants chosen by the applicant shall be designated to be responsible for conferring with the planning staff with respect to the concept and Explanation of the plan."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant's compliance narrative lists the appropriate professionals involved in the planning and permitting process. Ben Altman of SFA Design Group has been designated the coordinator for the planning portion of the project.

Stage II Final Plan Submission Requirements and Process

Subsection 4.140 (.09) A. Timing of Submission

- A4. **Review Criterion:** "Unless an extension has been granted by the Development Review Board, within two (2) years after the approval or modified approval of a preliminary development plan (Stage I), the applicant shall file with the City Planning Department a final plan for the entire development or when submission in stages has been authorized pursuant to Section 4.035 for the first unit of the development"

Finding: This criterion is satisfied.

Explanation of Finding: A previous Stage I approval identified the subject property as a future commercial stage. A Stage II Final Plan was approved consistent with the previous Stage I Master Plan in March 2013. This application requests revision of the Stage II Final plan.

Subsection 4.140 (.09) C. Conformance with Stage I and Additional Submission Requirements

- A5. **Review Criteria:** "The final plan shall conform in all major respects with the approved preliminary development plan, and shall include all information included in the preliminary plan plus the following:" listed 1. through 6.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant states, and staff concurs, that the Stage II plans substantially conforms to the Stage I Master plan. The applicant has provided the required drawings and other documents showing all the additional information required by this subsection.

Subsection 4.140 (.09) D. Stage II Final Plan Detail

- A6. **Review Criterion:** "The final plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development or phase of development."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has provided sufficiently detailed information to indicate fully the ultimate operation and appearance of the development, including a detailed site plan, landscape plans, floor plans, elevation drawings, and material information.

Subsection 4.140 (.09) E. Submission of Legal Documents

- A7. **Review Criterion:** "Copies of legal documents required by the Development Review Board for dedication or reservation of public facilities, or for the creation of a non-profit homeowner's association, shall also be submitted."

Finding: This criterion is satisfied.

Explanation of Finding: No additional legal documentation is required for dedication or reservation of public facilities.

Subsection 4.140 (.09) J. Planned Development Permit Requirements

- A8. **Review Criteria:** "A planned development permit may be granted by the Development Review Board only if it is found that the development conforms to all the following criteria, as well as to the Planned Development Regulations in Section 4.140:" listed J. 1. through 3. Includes traffic level of service requirements.

Finding: These criteria are satisfied.

Explanation of Finding: Proposed is a coffee kiosk in an area designated for commercial in the Comprehensive Plan. The proposed use is at a corner and clustered with commercial uses similarly serving the travelling public, thus being part of a commercial center rather than strip commercial development. As demonstrated in the DKS Traffic Memo in the applicant's notebook, Exhibit B1, specifically page 2 of 3 of the memo, the required traffic level of service is being maintained. All utilities and services are available to serve the development.

Commercial Development in Any Zone

Subsection 4.116 (.01) Commercial Development to be in Centers and Complexes

- A9. **Review Criterion:** "Commercial developments shall be planned in the form of centers or complexes as provided in the City's Comprehensive Plan. As noted in the Comprehensive Plan, Wilsonville's focus on centers or complexes is intended to limit strip commercial development."

Finding: This criterion is satisfied.

Explanation of Finding: The approved Boones Ferry Pointe commercial development is in the form of a center clustered at an intersection with other commercial development.

Subsection 4.116 (.05) All Commercial Activity to be Completely Enclosed

- A10. **Review Criteria:** "All businesses, service or processing, shall be conducted wholly within a completely enclosed building; except for:" Listed A. through G.

Finding: These criteria are satisfied.

Explanation of Finding: All commercial activity other than exempt activities will be within in the proposed buildings. The only exceptions from the list given noted by the applicant are off-street parking for customers and employees, and outdoor seating. Staff notes there is the possibility as well for temporary outside sales.

Subsection 4.116 (.07) Uses Limited to those Meeting Industrial Performance Standards

- A11. **Review Criteria:** "Uses shall be limited to those which will meet the performance standards specified in Section 4.135(.05), with the exception of 4.135(.05)(M.)(3.)."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development facilitates commercial uses meeting these performance standards. It is understood that all uses will need to continue to meet these standards over time.

Subsection 4.116 (.08) Vision Clearance Standards for Corner Lots

- A12. **Review Criteria:** "Corner lots shall conform to the vision clearance standards set forth in Section 4.177."

Finding: These criteria are satisfied.

Explanation of Finding: Vision clearance has been reviewed by the City's Engineering Division and the City's Public Works standards for vision clearance are met.

Subsection 4.116 (.10) Commercial Development Generally

- A13. **Review Criteria:** This subsection lists a number of requirements for commercial development such as setback, lot size, lot coverage, and street frontage requirements.

Finding: These criteria are satisfied.

Explanation of Finding: All the applicable standards listed in this subsection are met.

Subsection 4.116 (.14) B. Prohibited Uses

- A14. **Review Criteria:** "Any use that violates the performance standards of Section 4.135(.05), other than 4.135(.05)(M.)(3.) is prohibited within commercial developments."

Finding: These criteria are satisfied.

Explanation of Finding: No uses prohibited by this subsection are proposed.

Standards Applying in All Planned Development Zones

Subsection 4.118 (.01) Additional Height Guidelines

- A15. **Review Criterion:** "In cases that are subject to review by the Development Review Board, the Board may further regulate heights as follows:

A. Restrict or regulate the height or building design consistent with adequate provision of fire protection and fire-fighting apparatus height limitations.

B. To provide buffering of low density developments by requiring the placement of three or more story buildings away from the property lines abutting a low density zone.

C. To regulate building height or design to protect scenic vistas of Mt. Hood or the Willamette River."

Finding: This criterion is satisfied.

Explanation of Finding: Staff does not recommend the Development Review Board require a height less than the applicant proposes as the proposed height provides for fire protection access, does not abut a low density zone, and does not impact scenic views of Mt. Hood or the Willamette River.

Subsection 4.118 (.03) Waivers

- A16. **Review Criteria:** "Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may" waive a number of standards as listed in A. through E.

Finding: These criteria are satisfied.

Explanation of Finding: No planned development waivers have been requested by the applicant or are necessary to approve the application as proposed.

Subsection 4.118 (.03) E. Other Requirements or Restrictions

A17. **Review Criteria:** “Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may adopt other requirements or restrictions, inclusive of, but not limited to, the following:” Listed 1. through 12.

Finding: These criteria are satisfied.

Explanation of Finding: No additional requirements or restrictions are recommended pursuant to this subsection.

Subsection 4.118 (.04) Effect of Determination of Compliance and Conditions of Approval on Development Cost

A18. **Review Criteria:** “The Planning Director and Development Review Board shall, in making their determination of compliance in attaching conditions, consider the effects of this action on availability and cost. The provisions of this section shall not be used in such a manner that additional conditions, either singularly or cumulatively, have the effect of unnecessarily increasing the cost of development. However, consideration of these factors shall not prevent the Board from imposing conditions of approval necessary to meet the minimum requirements of the Comprehensive Plan and Code.”

Finding: These criteria are satisfied.

Explanation of Finding: It is staff’s professional opinion that the determination of compliance or attached conditions do not unnecessarily increase the cost of development, and no evidence has been submitted to the contrary.

Subsection 4.118 (.05) Requirements to Set Aside Tracts for Certain Purposes

A19. **Review Criteria:** “The Planning Director, Development Review Board, or on appeal, the City Council, may as a condition of approval for any development for which an application is submitted, require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated for the following uses:” Recreational Facilities, Open Space Area, Easements.”

Finding: These criteria are satisfied.

Explanation of Finding: No additional tracts are being required for the purposes given.

Subsection 4.118 (.09) Habitat Friendly Development Practices

A20. **Review Criteria:** “To the extent practicable, development and construction activities of any lot shall consider the use of habitat-friendly development practices, which include:

A. Minimizing grading, removal of native vegetation, disturbance and removal of native soils, and impervious area;

B. Minimizing adverse hydrological impacts on water resources, such as using the practices described in Part (a) of Table NR-2 in Section 4.139.03, unless their use is prohibited by an applicable and required state or federal permit, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;

C. Minimizing impacts on wildlife corridors and fish passage, such as by using the practices described in Part (b) of Table NR-2 in Section 4.139.03; and

D. Using the practices described in Part (c) of Table NR-2 in Section 4.139.03.”

Finding: These criteria are satisfied.

Explanation of Finding: As stated by the applicant and adopted by DRB for the previous Stage II approval, “The site has previously been rough graded and there is no significant native vegetation. The site does not contain any SROZ and no fish or wildlife habitats are associated with this property. The site has been designed consistent with the Habitat-Friendly practices. The storm system design provides for on-site water quality and volume control which protects the downstream wetland area south of the AGC building.” The proposal does not significantly alter compliance as previously found.

Planned Development Commercial Zone

Subsection 4.131 (.01) A. 1. Uses Typically Permitted

A21. **Review Criteria:** This subsection lists the uses that are typically permitted in the PDC Zone.

Finding: These criteria are satisfied.

Explanation of Finding: The proposal replaces an approved but un-built multi-tenant commercial building with drive-thru coffee kiosk which is an allowed service establishment use.

Subsection 4.131 (.02) Prohibited Uses

A22. **Review Criteria:** This subsection lists the prohibited uses in the PDC Zone.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has not proposed any prohibited uses for the site.

Subsection 4.131 (.03) 1. Block and Access Standards: Connectivity for Different Modes

A23. **Review Criteria:** “The Development Review Board shall determine appropriate conditions of approval to assure that adequate connectivity results for pedestrians, bicyclists, and motor vehicle drivers. Consideration shall be given to the use of public transit as a means of meeting access needs.”

Finding: These criteria are satisfied.

Explanation of Finding: No new blocks are proposed, and the proposed development proposes to use the existing shared private driveway on 95th Avenue partially on the subject property. A development agreement has been agreed upon between the owner of the subject property, neighboring properties, and the City ensuring appropriate access from the shared driveway.

On-site Pedestrian Access and Circulation

Subsection 4.154 (.01) B. 1. Continuous Pathway System

A24. **Review Criterion:** “A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable.”

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has provided a network a network of pathways from the proposed location of the coffee kiosk to support a continuous pathway system

throughout the site. This includes two connections to the 95th Avenue sidewalk which then connects to Carl's Jr. and Holiday Inn as well as a pathway connection to the east to provide access to parking, trash enclosures, and the Chevron property. See sheet A1.0 in Exhibit B2.

Subsection 4.154 (.01) B. 2. Safe, Direct, and Convenient Pathways

A25. **Review Criteria:** "Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:

- a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.
- b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.
- c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.
- d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)(B.)(3.)(d.)."

Finding: These criteria are satisfied.

Explanation of Finding:

- All proposed pathways are of smooth and consistent concrete and no hazards are evident on the site plan.
- All proposed pathways are reasonably direct. The path from Carl's Jr. to the 95th Avenue sidewalk then across to the coffee kiosk is reasonably direct. The path from the intersection of 95th Avenue/Boones Ferry is reasonably direct. A direct path is provided from the parking stalls and trash enclosure serving the coffee kiosk.
- Where required, pathways meet ADA requirements or will be required to by the building code.
- The parking lot is not larger than 3 acres in size.

Subsection 4.154 (.01) B. 3. Vehicle/Pathway Separation

A26. **Review Criterion:** "Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards."

Finding: This criterion is satisfied.

Explanation of Finding: All pathways affected by this review are separated consistent with this subsection. Staff notes pathways marked during previous phases of development do not meet this standard.

Subsection 4.154 (.01) B. 4. Crosswalks

A27. **Review Criterion:** "Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light-color concrete inlay between asphalt, or similar contrast)."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has proposed crosswalks meeting this standard.

Subsection 4.154 (.01) B. 5. Pathway Width and Surface

A28. **Review Criteria:** "Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five (5) feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA."

Finding: These criteria are satisfied.

Explanation of Finding: Primary pathways are the required width. The pathway from the parking area/trash enclosure near Chevron is not a primary pathway and is allowed to be less than five (5) feet in width.

Subsection 4.154 (.01) B. 6. Signs for Pathways

A29. **Review Criteria:** "All pathways shall be clearly marked with appropriate standard signs."

Finding: These criteria are satisfied.

Explanation of Finding: No pathways requiring signs are proposed.

Parking and Loading

Subsection 4.155 (.02) General Parking Provisions

A30. **Review Criteria:** This subsection lists a number of general provisions for parking.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the provisions in this subsection applicable to State II Final Plan review. Among the information provided are parking calculations on sheet A1.0. of Exhibit B2. Staff specifically points out the following:

- In relation to provision B. all parking areas are accessible and usable for parking
- In relation to provisions D. the provided parking meets the sum of the minimum parking for the fast food restaurant and the coffee kiosk.
- In relation to provision J. a note on sheet A1.0 of Exhibit B2 states this requirement will be met.
- In relation to provision K. the parking area is paved and provided with adequate drainage. See Sheets A1.0 and DD102 in Exhibit B2.
- In relation to provision L. the parking lot lighting is fully shielded as to not shine into adjoining structures or the eyes of passerby's.
- In relation to provision N. 6 compact parking spaces are proposed, which is less than forty (40) percent of the proposed parking spaces. They are shown appropriately marked on Sheet A1.0 of Exhibit B2.

Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas

A31. **Review Criteria:** "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet DD5 "Proposed Truck Turning Movements" of Exhibit B2 of DB12-0074 through 0076 demonstrates sufficient access and maneuvering areas for delivery trucks, both for the Chevron fuel and Carl's Jr. and the coffee kiosk. Staff notes fuel off-loading, and restaurant other commercial delivery parking are in the same area of the site separating these operations from the general employee and customer parking and pedestrian areas. The access and maneuvering areas for passenger vehicle parking areas appears sufficient providing adequate space for two-way travel. The applicant states in their compliance narrative in their notebook, Exhibit B1, that "care has been given to the extent practicable to separate vehicle and pedestrian traffic." Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic.

Subsection 4.155 (.03) B. 1.-3. Parking Area Landscaping

A32. **Review Criteria:** "Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:" Listed 1. through 3.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the planting plans (applicant's sheet L1.0), the required amount of landscaping and trees are provided.

Subsection 4.155 (.03) C. Parking and Loading Areas-Safe and Convenient Access

A33. **Review Criterion:** "Be designed for safe and convenient access that meets ADA and ODOT standards. All parking areas which contain ten (10) or more parking spaces, shall for every fifty (50) standard spaces., provide one ADA-accessible parking space that is constructed to building code standards, Wilsonville Code 9.000."

Finding: This criterion is satisfied.

Explanation of Finding: The required ADA space for the coffee kiosk is provided.

Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation

A34. **Review Criteria:** "Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses as well as the existing Chevron and Holiday Inn share a common driveway off 95th Avenue and their access and parking areas are interconnected.

Joint use of many the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations, and direct vehicle and pedestrian paths between destinations with limited choke points. To the extent practicable parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron a direct pedestrian path is provided to the coffee kiosk. Multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site.

Subsection 4.155 (.03) G. Parking Minimum and Maximum

- A35. **Review Criteria:** “Tables 5, below, shall be used to determine the minimum and maximum parking standards for various land uses. The minimum number of required parking spaces shown on Tables 5 shall be determined by rounding to the nearest whole parking space.”

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the table below, the proposed parking is consistent with Table 5: Parking Standards. Staff notes the parking count differs from the submitted drawings and narrative, Exhibits B1 and B2, and this finding corrects the inaccurate counts provided in those documents.

Use	Floor Area	Min	Max	Min	Max	Provided
Fast food (with drive-thru)	2,867	9.9 per 1,000 SF	14.9 per 1000 SF	29	43	
Coffee Kiosk	450	9.9 per 1,000 SF	14.9 per 1000 SF	4	7	
Standard Spaces						29
Compact Spaces (40% Max)				--	18	6
Total Non-ADA Spaces				33	50	35
ADA Spaces				2	--	2
Total Parking Spaces						37

Subsection 4.155 (.04) A. Bicycle Parking-General Provisions

- A36. **Review Criteria:** This subsection lists general provisions for bicycle parking, listed 1. through 4., including required number of spaces.

Finding: These criteria are satisfied.

Explanation of Finding: A minimum of four (4) spaces are required for the drive-thru coffee kiosk, and four (4) are provided.

Subsection 4.155 (.04) B. Bicycle Parking-Standards

A37. **Review Criteria:** This subsection lists standards for required bicycle parking, listed 1. through 5., including size, access aisle size, spacing between racks, anchoring of lockers and racks, and location standards.

Finding: These criteria are satisfied.

Explanation of Finding: As shown on sheet A1.0 of Exhibit B2 each of the 4 required parking stalls exceeds the minimum dimensions of 2 feet by 6 feet. There is sufficient space to use the bicycle racks without obstructions. Bicycle racks will be securely fastened. Five (5) feet of spacing is not provided between the bicycle racks and the kiosk. The bicycle racks are further than 30 feet from the primary entrance, which in this case staff understands to be the service window open to pedestrians. Condition of Approval PDA 2 will ensure bicycle parking is placed to meet all requirements of this subsection including the spacing from the building and distance from the service window.

Subsection 4.155 (.05) Minimum Off-street Loading Requirements

A38. **Review Criteria:** This subsection defines the requirements for loading berths including when loading berths are required and size requirements.

Finding: These criteria are not applicable.

Explanation of Finding: No loading berths are required for commercial uses of the proposed floor area.

Subsection 4.155 (.06) Carpool and Vanpool Parking Requirements

A39. **Review Criteria:** This subsection defines the requirements for carpool and vanpool parking.

Finding: These criteria are not applicable.

Explanation of Finding: No carpool or vanpool parking is required for commercial parking lots of the proposed size.

Section 4.167 Access, Ingress, and Egress

A40. **Review Criterion:** "Each access onto streets or private drives shall be at defined points as approved by the City and shall be consistent with the public's health, safety and general welfare. Such defined points of access shall be approved at the time of issuance of a building permit if not previously determined in the development permit."

Finding: This criterion is satisfied.

Explanation of Finding: The access points for the development site are existing and approved by the City. No change in access is proposed.

Natural Features

Section 4.171 Protection of Natural Features and Other Resources

A41. **Review Criteria:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.

Finding: These criteria are satisfied.

Explanation of Finding: None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

Public Safety and Crime Prevention

Subsection 4.175 (.01) Design to Deter Crime and Ensure Public Safety

A42. **Review Criterion:** "All developments shall be designed to deter crime and insure public safety."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant asserts, and staff concurs, that attention has been given to site design to deter crime and allow natural surveillance. Staff has no evidence that the proposed development would otherwise negatively impact public safety.

Subsection 4.175 (.02) Addressing and Directional Signing

A43. **Review Criteria:** "Addressing and directional signing shall be designed to assure identification of all buildings and structures by emergency response personnel, as well as the general public."

Finding: These criteria are satisfied.

Explanation of Finding: The design of the site provides for appropriate addressing and directional signage to assure easy identification.

Subsection 4.175 (.03) Surveillance and Police Access

A44. **Review Criterion:** "Areas vulnerable to crime shall be designed to allow surveillance. Parking and loading areas shall be designed for access by police in the course of routine patrol duties."

Finding: This criterion is satisfied.

Explanation of Finding: The parking and loading areas are easily assessable to law enforcement.

Subsection 4.175 (.04) Lighting to Discourage Crime

A45. **Review Criterion:** "Exterior lighting shall be designed and oriented to discourage crime."

Finding: This criterion is satisfied.

Explanation of Finding: While exterior lighting has been minimized it was previously found to discourage crime and continues to do so.

Landscaping Standards

Subsection 4.176 (.01) Purpose of Landscape, Screening, and Buffering

A46. **Review Criteria:** "This Section consists of landscaping and screening standards and regulations for use throughout the City. The regulations address materials, placement, layout, and timing of installation. The City recognizes the ecological and economic value of landscaping and requires the use of landscaping and other screening or buffering to:" Listed A. through K.

Finding: These criteria are satisfied.

Explanation of Finding: In complying with the various landscape standards in Section 4.176 the applicant has demonstrated the proposed Stage II Final Plan is in compliance with the landscape purpose statement.

Subsection 4.176 (.02) B. Landscaping Standards and Code Compliance

A47. **Review Criteria:** "All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length"

Finding: These criteria are satisfied.

Explanation of Finding: No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent

A48. **Review Criteria:** "The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant's submitted landscape plans (applicant's sheets L 1.0 and L2.0) show a variety of plant materials and placement consistent with the general landscape standard, specifically along the frontage with SW 95th Avenue and SW Boones Ferry Road.

Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials

A49. **Review Criteria:** "Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.

b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet."

Finding: These criteria are satisfied.

Explanation of Finding: The planting plan (applicant's sheet L2.0) shows landscaping meeting the functional requirements of this subsection.

Subsection 4.176 (.02) E. 1. High Screen Landscape Standard-Intent

A50. **Review Criterion:** "The High Screen Landscaping Standard is a landscape treatment that relies primarily on screening to separate uses or developments. It is intended to be applied in situations where visual separation is required."

Finding: This criterion is satisfied.

Explanation of Finding: No development related to the coffee kiosk requires the high screen standards be applied, especially as menu boards are oriented as to not be visible off site. If menu boards are relocated so the face of the sign faces Boones Ferry Road or 95th Avenue, then additional review will be needed to provide landscaping that provides appropriate screening such as the planting screening the Carl's Jr. menu board.

Subsection 4.176 (.03) Landscape Area and Locations

- A51. **Review Criteria:** "Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable."

Finding: These criteria are satisfied.

Explanation of Finding: According to the applicant twenty-eight percent (28%) of the site is proposed to be in landscaping. The landscaping is in a variety of areas throughout the site, including the street frontage areas. Landscaping is placed along the streets to soften the look of off-street parking areas. As shown on the applicant's sheet L 2.0 a variety of landscape materials are being used.

Subsection 4.176 (.04) Buffering and Screening

- A52. **Review Criteria:** "Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.

C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.

D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.

E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.

F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval."

Finding: These criteria are satisfied.

Explanation of Finding: The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.

Subsection 4.176 (.09) Landscape Plans

- A53. **Review Criteria:** "Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated."

Finding: These criteria are satisfied.

Explanation of Finding: Applicant's sheets L1.0 and L2. in Exhibit B2 provide the required information.

Subsection 4.176 (.12) Mitigation Standards

A54. **Review Criterion:** "A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants."

Finding: This criterion is satisfied.

Explanation of Finding: No existing native plants are being removed requiring a mitigation plan pursuant to this subsection.

Other Standards

Section 4.177 Street Improvement Standards

A55. **Review Criteria:** This section establishes improvement standards for public streets, along with private access drives and travel lanes.

Finding: These criteria are satisfied.

Explanation of Finding:

- Access is provided to the proposed development clear of any obstructions.
- The travel lanes are proposed to be asphalt and have been constructed to City standards.
- All access lanes are a minimum of 12 feet.
- The development will comply with requirements of the Fire District.
- No construction is proposed in the public right-of-way

Section 4.179 Mixed Solid Waste and Recyclables Storage

A56. **Review Criteria:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

Finding: These criteria are satisfied.

Explanation of Finding: No changes to the mixed solid waste facilities are proposed. The proposed coffee kiosk replaces a larger multi-tenant commercial building. The mixed-solid waste enclosure designed and built for the multi-tenant building is adequately sized for the smaller coffee kiosk.

Sections 4.199.20 Outdoor Lighting

A57. **Review Criteria:** This section states that the outdoor lighting ordinance is applicable to "Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas" and "Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas." In addition the exempt luminaires and lighting systems are listed.

Finding: These criteria are satisfied.

Explanation of Finding: All the outdoor lighting for the new development on the site is being required to comply with the outdoor lighting ordinance. A photometric site plan has been provided, sheet SE1.0 (Exhibit B2), showing the functional effect of the proposed

lighting on the site. Detailed requirements for site lighting are being reviewed as a component of Request B, Site Design Review, of this application. See Findings B32 through B39.

Sections 4.300-4.320 and Subsection 4.118 (.02) Underground Installation of Utilities

A58. **Review Criteria:** These sections list requirements regarding the underground installation of utilities.

Finding: These criteria are satisfied.

Explanation of Finding: There are no existing overhead facilities that require undergrounding as part of this development. All new utilities associated with the development are proposed to be installed underground.

REQUEST B: DB13-0047 SITE DESIGN REVIEW

Site Design Review

Subsection 4.400 (.01) and Subsection 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.

- B1. **Review Criteria:** "The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards." "Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant provides a response to this subsection on pages 18-20 of the compliance narrative in their notebook, Exhibit B1. Staff summarizes the compliance with this subsection as follows:

Excessive Uniformity: The design of the coffee kiosk is different from the Carl's Jr. building, yet complementary, and has an architectural character unique from other surrounding development preventing uniformity. The coffee kiosk uses the same brick around the base as used on the Carl's Jr. building. lap siding and board and baton siding are used similarly as with the Carl's Jr. building, only painted different colors.

Inappropriate or Poor Design of the Exterior Appearance of Structures: The coffee kiosk is professionally designed with a unique historic "small-town" theme indicative of other commercial development in Wilsonville including Old Town Square (Fred Meyer development). The result is a professional design appropriate for Wilsonville.

Inappropriate or Poor Design of Signs: Signs are typical of the type of development proposed and meet applicable City standards. See Request C, Master Sign Plan.

Lack of Proper Attention to Site Development: The appropriate professional services have been used to design the site incorporating unique features of the site including site size and shape and available access, demonstrating appropriate attention being given to site development.

Lack of Proper Attention to Landscaping: Landscaping is provided exceeding the area requirements, has been professionally designed by a landscape architect, and includes a variety of plant materials, all demonstrating appropriate attention being given to landscaping.

Subsection 4.400 (.02) and Subsection 4.421 (.03) Purposes of Objectives of Site Design Review

- B2. **Review Criteria:** "The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards." "The City Council declares that the purposes and objectives of site development requirements and the site design review procedure are to:" Listed A through J.

Development Review Board Panel „A' Staff Report January 6, 2014
Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk
DB13-0046, DB13-0047, DB13-0048

Exhibit A1

Page 31 of 50

Finding: These criteria are satisfied.

Explanation of Finding: The applicant provides a response to design on pages 18-20 of the compliance narrative in their notebook, Exhibit B1, demonstrating compliance with the listed purposes and objectives. In short, the proposal provides a high quality design appropriate for the site and its location in Wilsonville.

Section 4.420 Development in Accordance with Plans

- B3. **Review Criteria:** The section states that development is required in accord with plans approved by the Development Review Board.

Finding: These criteria will be satisfied by Condition of Approval PDB 1.

Explanation of Finding: A condition of approval has been included to ensure construction, site development, and landscaping are carried out in substantial accord with the Development Review Board approved plans, drawings, sketches, and other documents. No building permits will be granted prior to development review board approval.

Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards

- B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the applicant's notebook, Exhibit B1. Staff notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met.

Subsection 4.421 (.05) Site Design Review-Conditions of Approval

- B5. **Review Criterion:** "The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code."

Finding: This criterion is satisfied.

Explanation of Finding: No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

Subsection 4.421 (.06) Color or Materials Requirements

- B6. **Review Criterion:** "The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City."

Finding: This criterion is satisfied.

Explanation of Finding: All material and color information has been provided by the applicant.

Section 4.430 Design of Trash and Recycling Enclosures

- B7. **Review Criteria:** "The following locations, design and access standards for mixed solid waste and recycling storage areas shall be applicable to the requirements of Section 4.179 of the Wilsonville City Code." Listed (.02) A. through (.04) C.

Finding: These criteria are satisfied.

Explanation of Finding: No design to the trash and recycling enclosures are proposed as part of this application.

Section 4.440 Site Design Review-Submittal Requirements

- B8. **Review Criteria:** This section lists additional submittal requirements for Site Design Review in addition to those listed in Section 4.035.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted the required additional materials, as applicable.

Subsection 4.450 (.01) Landscape Installation or Bonding

- B9. **Review Criterion:** "All landscaping required by this section and approved by the Board shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping as determined by the Planning Director is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City shall be returned to the applicant."

Finding: This criterion will be satisfied by Condition of Approval PDB 2.

Explanation of Finding: The condition of approval will assure installation or appropriate security at the time occupancy is requested.

Subsection 4.450 (.02) Approved Landscape Plan Binding

- B10. **Review Criterion:** "Action by the City approving a proposed landscape plan shall be binding upon the applicant. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, as specified in this Code."

Finding: This criterion will be satisfied by Condition of Approval PDB 3.

Explanation of Finding: The condition of approval shall provide ongoing assurance this criterion is met.

Subsection 4.450 (.03) Landscape Maintenance and Watering

B11. **Review Criterion:** "All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved by the Board, unless altered with Board approval."

Finding: This criterion will be satisfied by Condition of Approval PDB 4.

Explanation of Finding: The condition of approval will ensure landscaping is continually maintained in accordance with this subsection.

Subsection 4.450 (.04) Addition and Modifications of Landscaping

B12. **Review Criterion:** "If a property owner wishes to add landscaping for an existing development, in an effort to beautify the property, the Landscape Standards set forth in Section 4.176 shall not apply and no Plan approval or permit shall be required. If the owner wishes to modify or remove landscaping that has been accepted or approved through the City's development review process, that removal or modification must first be approved through the procedures of Section 4.010."

Finding: This criterion will be satisfied by Condition of Approval PDB 4.

Explanation of Finding: The condition of approval shall provide ongoing assurance that this criterion is met by preventing modification or removal without the appropriate City review.

On-site Pedestrian Access and Circulation

Subsection 4.154 (.01) B. Standards for On-site Pedestrian Access and Circulation

B13. **Review Criteria:** This subsection lists standards for on-site pedestrian access and circulation, listed 1. through 6.

Finding: These criteria are satisfied.

Explanation of Finding: The design of the on-site pedestrian access and circulation described and illustrated in the applicant's submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review and the proposed revised Stage II Final Plan for the site. See Findings A24 through A29 under Request A.

Parking

Subsection 4.155 (.02) Provision and Maintenance of Off-Street Parking

B14. **Review Criteria:** This subsection lists general provisions for parking, A. through O.

Finding: These criteria are satisfied.

Explanation of Finding: The design of the parking described and illustrated in the applicant's submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review and the proposed revised Stage II Final Plan for the site. See Finding A30 under Request A.

Subsection 4.155 (.03) B. 1.-3. Landscaping of Parking Areas

B15. **Review Criteria:** "Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:" Listed 1. through 3.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the planting plans, sheet L2.0 of Exhibit B2, landscape screening is provided between the proposed parking and the public right-of-way. Trees are provided for the proposed parking spaces as required by this subsection. Tree planting areas generally meet the minimum size requirements. However, the planting area with a tree between a parking stall and the entry to the coffee drive-thru queuing area is less than 8 feet wide. Staff has examined other site design option to make this a wider planting area, but site constraints prevent making it wider. It is desirable to have a tree and other plantings at this location and the planter is as wide a practicable balancing competing design requirements and site restraints.

Section 4.171 Protection of Natural Features and Other Resources

B16. **Review Criterion:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.

Finding: This criterion is satisfied.

Explanation of Finding: None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

Landscaping

Subsection 4.176 (.02) B. Landscape Standards and Compliance with Code

B17. **Review Criterion:** "All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length"

Finding: This criterion is satisfied.

Explanation of Finding: No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent

B18. **Review Criteria:** "The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant's sheet L2.0 of Exhibit B2 shows a variety of plant materials and placement consistent with the general landscape standard.

Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials

B19. **Review Criteria:** "Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General

Development Review Board Panel ,A'Staff Report January 6, 2014

Exhibit A1

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

DB13-0046, DB13-0047, DB13-0048

Page 35 of 50

Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

- a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.
- b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet."

Finding: These criteria are satisfied.

Explanation of Finding: The planting plan, sheet L2.0 of Exhibit B2, shows landscaping meeting the requirements of this subsection.

Subsection 4.176 (.03) Landscape Area and Locations

- B20. **Review Criteria:** "Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable."

Finding: These criteria are satisfied.

Explanation of Finding: Consistent with the proposed revised Stage II Final Plan for the site, the proposed design of the site provides for more than the required amount of landscaping and landscaping in at least three separate and distinct areas, including the area along SW 95th Avenue and SW Boones Ferry Road. See Finding A51 of Request A. The planting plans, sheet L2.0 of Exhibit B2, show landscape placed in areas that will define, soften, and screen the appearance of buildings and off-street parking areas.

Subsection 4.176 (.04) Buffering and Screening

- B21. **Review Criteria:** "Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.

C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.

D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.

E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.

F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval."

Finding: These criteria are satisfied.

Explanation of Finding: The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.

Subsection 4.176 (.06) A. Plant Materials-Shrubs and Groundcover

B22. **Review Criteria:** This subsection establishes plant material and planting requirements for shrubs and ground cover.

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 5.

Explanation of Finding: The condition of approval requires that the detailed requirements of this subsection are met.

Subsection 4.176 (.06) B. Plant Materials-Trees

B23. **Review Criteria:** This subsection establishes plant material requirements for trees.

Finding: These criteria are satisfied.

Explanation of Finding: The plants material requirements for trees will be met as follows:

- The applicant's planting plan, sheet L2.0 of Exhibit B2, shows all trees as B&B (Balled and Burlapped)
- Landscaping is being required to meet ANSI standards.
- The applicant's planting plan lists tree sizes required by code.

Subsection 4.176 (.06) D. Plant Materials-Street Trees

B24. **Review Criteria:** This subsection establishes plant material requirements for street trees.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in their planting plan, sheet L2.0 of Exhibit B2, the applicant proposes Bowhall Maple street trees (*Acer rubrum* "Bowhall"). The proposed trees are a cultivar of *Acer rubrum*, which is listed as a satisfactory street tree in this subsection. The trees are proposed to be planted at 3" caliper, the required size for arterial streets.

Subsection 4.176 (.06) E. Types of Plant Species

B25. **Review Criteria:** This subsection discusses use of existing landscaping or native vegetation, selection of plant materials, and prohibited plant materials.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information showing the proposed landscape design meets the standards of this subsection. See sheet L2.0 of Exhibit B2.

Subsection 4.176 (.06) G. Exceeding Plant Material Standards

B26. **Review Criterion:** "Landscape materials that exceed the minimum standards of this Section are encouraged, provided that height and vision clearance requirements are met."

Finding: This criterion is satisfied.

Explanation of Finding: The selected landscape materials do not violate any height or visions clearance requirements.

Subsection 4.176 (.07) Installation and Maintenance of Landscaping

B27. **Review Criteria:** This subsection establishes installation and maintenance standards for landscaping.

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 6.

Explanation of Finding: The installation and maintenance standards are or will be met as follows:

- Plant materials are required to be installed to current industry standards and be properly staked to ensure survival
- Plants that die are required to be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City.
- Sheet L1.0 of Exhibit B2 shows a permanent built-in irrigation system with an automatic controller satisfying the related standards of this subsection.

Subsection 4.176 (.09) Landscape Plans

B28. **Review Criterion:** "Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated."

Finding: This criterion is satisfied.

Explanation of Finding: Sheets L1.0 and L2.0, of Exhibit B2 provide the required information.

Subsection 4.176 (.10) Completion of Landscaping

B29. **Review Criterion:** "The installation of plant materials may be deferred for a period of time specified by the Board or Planning Director acting on an application, in order to avoid hot summer or cold winter periods, or in response to water shortages. In these cases, a temporary permit shall be issued, following the same procedures specified in subsection (.07)(C)(3), above, regarding temporary irrigation systems. No final Certificate of Occupancy shall be granted until an adequate bond or other security is posted for the completion of the landscaping, and the City is given written authorization to enter the property and install the required landscaping, in the event that the required landscaping has not been installed. The form of such written authorization shall be submitted to the City Attorney for review."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has not requested to defer installation of plant materials.

Subsection 4.176 (.12) Mitigation and Restoration Plantings

B30. **Review Criterion:** "A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants."

Finding: This criterion is satisfied.

Explanation of Finding: Consistent with the proposed revised Stage II Final Plan, the proposed landscape design involves no removal of existing native plants requiring a mitigation plan pursuant to this subsection.

Other Standards

Section 4.179 Mixed Solid Waste and Recyclables Storage

B31. **Review Criterion:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

Finding: This criterion is satisfied.

Explanation of Finding: The design of the mixed-solid waste and recycling enclosures is not proposed to be changed by this application.

Outdoor Lighting

Section 4.199.20 Applicability of Outdoor Lighting Standards

B32. **Review Criterion:** This section states that the outdoor lighting ordinance is applicable to "Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas" and "Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas." In addition the exempt luminaires and lighting systems are listed.

Finding: This criterion is satisfied.

Explanation of Finding: Non-exempt new outdoor lighting proposed for the development site is being required to comply with the outdoor lighting ordinance.

Section 4.199.30 Outdoor Lighting Zones

B33. **Review Criterion:** "The designated Lighting Zone as indicated on the Lighting Overlay Zone Map for a commercial, industrial, multi-family or public facility parcel or project shall determine the limitations for lighting systems and fixtures as specified in this Ordinance."

Finding: This criterion is satisfied.

Explanation of Finding: The development site is within LZ 2 and the proposed outdoor lighting systems are being reviewed under the standards of this lighting zone.

Subsection 4.199.40 (.01) A. Alternative Methods of Outdoor Lighting Compliance

B34. **Review Criterion:** "All outdoor lighting shall comply with either the Prescriptive Option or the Performance Option below."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has submitted information to comply with the performance option.

Subsection 4.199.40 (.01) C. Performance Option for Outdoor Lighting Compliance

"If the lighting is to comply with the Performance Option, the proposed lighting design shall be submitted by the applicant for approval by the City meeting all of the following:" Listed 1. through 3.

Subsection 4.199.40 (.01) C. 1. Weighted Average of Direct Uplight Lumens Standard

B35. **Review Criteria:** "The weighted average percentage of direct uplight lumens shall be less than the allowed amount per Table 9."

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 8.

Explanation of Finding: As shown in the revised sheet SE1.0 provided with the applicant's notebook, Exhibit B1, the only luminaires that are not fully shielded are the landscape bollards. The luminaires are such that the weighted average percentage of direct uplight lumens will be less than five percent (5%). A condition of approval limits all wall mounted fixtures to down lighting.

Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines

B36. **Review Criteria:** "The maximum light level at any property line shall be less than the values in Table 9, as evidenced by a complete photometric analysis including horizontal illuminance of the site and vertical illuminance on the plane facing the site up to the mounting height of the luminaire mounted highest above grade."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet SE1.0 shows the horizontal foot candles comply with Table 9. The applicant states on page 18 of their compliance narrative, the vertical foot candles remain substantially the same as previously approved as compliant with Table 9.

Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines

B37. **Review Criteria:** "Luminaires shall not be mounted so as to permit aiming or use in any way other than the manner maintaining the shielding classification required herein:"

Finding: These criteria are satisfied.

Explanation of Finding: The mountings will be in a downward position. Condition of Approval PDB 8 helps ensure this

Subsection 4.199.40 (.01) D. Outdoor Lighting Curfew

B38. **Review Criterion:** "All prescriptive or performance based exterior lighting systems shall be controlled by automatic device(s) or system(s) that:" Listed 1. through 3.

Finding: This criterion is satisfied or will be satisfied by Condition of Approval PDB 7.

Explanation of Finding: As previously approved, Carl's Jr. is exempt from lighting curfew as a 24/7 operation. However, the coffee kiosk is not. A condition of approval requires lighting associated with this building and supporting parking shall be dimmed at 10:00 p.m. pursuant to Table 10.

Subsection 4.199.50 Submittal Requirements

B39. **Review Criteria:** "Applicants shall submit the following information as part of DRB review or administrative review of new commercial, industrial, multi-family or public facility projects:" Listed A. through F. "In addition to the above submittal requirements, Applicants using the Prescriptive Method shall submit the following information as part of the permit set plan review:

A. A site lighting plan (items 1 A - F, above) which indicates for each luminaire the 3 mounting height line to demonstrate compliance with the setback requirements. For luminaires

mounted within 3 mounting heights of the property line the compliance exception or special shielding requirements shall be clearly indicated.”

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted sufficient information to review the application.

REQUEST C: DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER

Subsection 4.031 (.01) M. and Subsection 4.156.02 (.07) and (.07) C. Review Process

- C1. **Review Criteria:** These subsections establish that Master Sign Plans are reviewed by the Development Review Board and that modifications to Master Sign Plans other than minor and major adjustments are reviewed the same as a new Master Sign Plan.

Finding: These criteria are satisfied.

Explanation of Finding: Due to the request for a waiver the request does not qualify as a minor or major adjustment and is therefore being reviewed the same as a new Master Sign Plan.

Subsection 4.156.02 (.07) A. Master Sign Plan Submission Requirements

- C2. **Review Criteria:** This subsection identifies submission requirements for Master Sign Plans

Finding: These criteria are satisfied.

Explanation of Finding: As indicated in the table below the applicant has either satisfied the submission requirements, or has been granted a waiver under Subsection 4.156.02 (.10).

Requirement	Submitted	Waiver Granted		Condition of Approval	Not Applicable	Additional findings/notes
		Info Already Available to City	Info Not Necessary for Review			
Completed Application Form	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sign Drawings or Descriptions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Documentation of Building/Tenant Space Lengths	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Drawings of Sign Placement of Building Facades	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Project Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Subsection 4.156.02 (.05) E. Class II Sign Permit Review Criteria: Generally and Site Design Review

- C3. **Review Criteria:** "Class II Sign Permits shall satisfy the sign regulations for the applicable zoning district and the Site Design Review Criteria in Sections 4.400 through 4.421," Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.
Finding: These criteria are satisfied.
Explanation of Finding: As indicated in Findings C25 through C31 these criteria are met.

Subsection 4.156.02 (.05) E. 1. Class II Sign Permit Review Criteria: Compatibility with Zone

- C4. **Review Criteria:** "The proposed signage is compatible with developments or uses permitted in the zone in terms of design, materials used, color schemes, proportionality, and location, so that it does not interfere with or detract from the visual appearance of surrounding development;" Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.
Finding: These criteria are satisfied.
Explanation of Finding: The proposed signage is typical of and compatible with development within the PDC zones. This includes a design and colors reflecting corporate identity, illuminated channel letters and logo on a raceway, freestanding cabinet signs, and individual non-illuminated letters on an architectural wall. The placement of signs on buildings is in recognizable sign bands, and proportional to the building facades. No evidence exists nor has testimony been received that the subject signs would detract from the visual appearance of the surrounding development.

Subsection 4.156.02 (.05) E. 2. Class II Sign Permit Review Criteria: Nuisance and Impact on Surrounding Properties

- C5. **Review Criteria:** "The proposed signage will not create a nuisance or result in a significant reduction in the value or usefulness of surrounding development;" Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.
Finding: These criteria are satisfied.
Explanation of Finding: There is no evidence and no testimony has been received that the subject signs would create a nuisance or negatively impact the value of surrounding properties.

Subsection 4.156.02 (.05) E. 3. Class II Sign Permit Review Criteria: Items for Special Attention

- C6. **Review Criteria:** "Special attention is paid to the interface between signs and other site elements including building architecture and landscaping, including trees." Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.
Finding: These criteria are satisfied.
Explanation of Finding: The building signs are within an architectural feature identifiable as a sign band with a buffer within the sign band around the sign, which demonstrates consideration of the interface between the signs and building architecture. No sign-tree conflicts have been noted.

Subsection 4.156.02 (.06) B. Class III Sign Permit Review Criteria

- C7. **Review Criteria:** "The review criteria for Class II Sign Permits plus waiver or variance criteria when applicable." Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: A waiver is being requested and responses to the waiver criteria have been provided.

Subsection 4.156.02 (.07) B.1. Master Sign Plan Review Criteria: Consistent and Compatible Design

- C8. **Review Criteria:** "The Master Sign Plan provides for consistent and compatible design of signs throughout the development."

Finding: These criteria are satisfied.

Explanation of Finding: The channel letter/logo design is similar to what was previously approved for the multi-tenant commercial building. The coffee kiosk signs are consistent with the design of the signs approved and installed on the Carl's Jr. building. No additional freestanding signs are proposed. Directional signs are similar in character to the Carl's Jr. directional signs and are typical of drive-thru establishments.

Subsection 4.156.02 (.07) B.2. Master Sign Plan Review Criteria: Future Needs

- C9. **Review Criteria:** "The Master Sign Plan considers future needs, including potential different configuration of tenant spaces and different sign designs, if allowed."

Finding: These criteria are satisfied.

Explanation of Finding: Staff recommends increasing the sign allowance to 25.4 square feet on each façade to allow flexibility of sign design over time within a rectangle that the proposed sign fits within.

Subsection 4.156.02 (.08) A. Sign Waiver

Subsection 4.156.02 (.08) A. Waivers in General

- C10. **Review Criteria:** "The DRB may grant waivers for sign area, sign height from ground (no waiver shall be granted to allow signs to exceed thirty-five (35) feet in height), number of signs, or use of electronic changeable copy signs in order to better implement the purpose and objectives of the sign regulations as determined by making findings that all of the following criteria are met:" Listed 1.-4. See Findings C12 through C15 below.

Finding: These criteria are satisfied.

Explanation of Finding: A waiver is being requested for sign area consistent with this subsection.

Subsection 4.156.02 (.08) A. 1. Waivers Criteria: Improved Design

- C11. **Review Criteria:** "The waiver will result in improved sign design, in regards to both aesthetics and functionality."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed coffee kiosk is a particularly long narrow building at only 12' 10" wide with a length of 35' 4". According to the table showing the sign area allowed in Subsection 4.156.08 (.02) B. 1. the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The waiver allows signs of equal size to be placed on three facades that are of a consistent size and design creating a consistent look for portions of the buildings that are otherwise architecturally similar. The applicant in their narrative requests 15.83 square feet of signage for each of three facades. Staff notes the applicant's method of measurement does not follow the measurement method prescribed in Section 4.156.03. Staff additionally notes greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Staff recommends a waiver be approved for the allowed sign area to be increased to 25.4 square feet on the 12.83 long facade.

Subsection 4.156.02 (.08) A. 2. Waivers Criteria: More Compatible and Complementary

- C12. **Review Criteria:** "The waiver will result in improved sign design, in regards to both aesthetics and functionality."

Finding: These criteria are satisfied.

Explanation of Finding: The waiver will provide for more consistent signs around the building and neighboring buildings providing for compatible and complementary design.

Subsection 4.156.02 (.08) A .3. Waivers Criteria: Impact on Public Safety

- C13. **Review Criteria:** "The waiver will result in a sign or signs that improve, or at least do not negatively impact, public safety, especially traffic safety."

Finding: These criteria are satisfied.

Explanation of Finding: If anything, the added readability of the sign facing the intersection will aid drivers in making decisions on maneuvers earlier. No negative impacts on safety have been noted.

Subsection 4.156.02 (.08) A .4. Waivers Criteria: Content Neutrality

- C14. **Review Criteria:** "Sign content is not being considered when determining whether or not to grant a waiver."

Finding: These criteria are satisfied.

Explanation of Finding: Sign content is not being considered in granting the waiver. Similar consideration on building shape would occur regardless of the tenant or message.

Section 4.156.03 Sign Measurement

Subsection 4.156.03 (.01) B. Measurement of Individual Element Signs

- C15. **Review Criteria:** "The area for signs constructed of individual elements (letters, figures, etc.) attached to a building wall or similar surface or structure shall be the summed area of up to three squares, rectangles, circles, or triangles drawn around all sign elements."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed signs have not been measured consistent with this subsection. However, as recommended by Staff the proposed Master Sign Plan revision allows for the proposed signs measured according to this subsection.

Subsection 4.156.03 (.03) A.-B. Measurement of Sign Height and Length

- C16. **Review Criteria:** “Height of a sign is the vertical distance between the lowest and highest points of the sign.”

Length of a sign is the horizontal distance between the furthest left and right points of the sign.”

Finding: These criteria are satisfied.

Explanation of Finding: The proposed signs have been measured consistent with this subsection.

Subsection 4.156.08 (.01) L. Design of Sign Based on Initial Tenant Configuration and Size

- C17. **Review Criteria:** “When a sign is designed based on the number of planned tenant spaces it shall remain a legal, conforming sign regardless of the change in the number of tenants or configuration of tenant spaces.”

Finding: These criteria are satisfied.

Explanation of Finding: The master sign plan is proposed based on the number of planned tenants, and it is understood the sign plan will be valid regardless on the number of future tenants.

Subsection 4.156.08 (.02) Building Signs in the PDC, PDI, and PF Zones

Subsection 4.156.08 (.02) A. Sign Eligible Facades

- C18. **Review Criteria:** “Building signs are allowed on a facade of a tenant space or single tenant building when one or more of the following criteria are met:

1. The facade has one or more entrances open to the general public;
2. The facade faces a lot line with frontage on a street or private drive with a cross section similar to a public street, and no other buildings on the same lot obstruct the view of the building facade from the street or private drive; or
3. The facade is adjacent to the primary parking area for the building or tenant.”

Finding: These criteria are satisfied.

Explanation of Finding: All facades of the proposed coffee kiosk are sign eligible. The north, east, and west face lot lines with frontages of public streets. The south facade faces the primary parking area.

Subsection 4.156.08 (.02) B. Building Sign Area Allowed

- C19. **Review Criteria:** This subsection includes a table identifying the sign area allowed for facades based on the linear length of the façade. Exception are listed 2, through 5.

Finding: These criteria are satisfied.

Explanation of Finding: There are no changes to the previously approved sign allowance for the Carl's Jr. building. The following are the allowances for the proposed coffee kiosk.

Coffee Kiosk				
Façade	Linear Length	Sign Area Allowed	Proposed Max	Staff Recommendation
North	12.83 feet	12.83 sf	15.86 sf	25.4 sf
East	34.33 feet	34.33 sf	15.86 sf	25.4 sf
South	12.83 feet	12.83 sf	0 sf	0 sf
West	34.33 feet	34.33 sf	15.86 sf	25.4 sf

The proposed coffee kiosk in a particularly long narrow building at only 12' 10" wide with a length of 35' 4". According to the table showing the sign area allowed in Subsection 4.156.08 (.02) B. 1. the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The applicant in their narrative requests 15.83 square feet of signage for each of three facades, which includes a waiver to increase the sign area on the north facade. Staff notes the applicant's method of measurement does not follow the measurement method prescribed in Section 4.156.03. Staff additionally notes greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Staff recommends the DRB approve 25.4 square feet on the east, west, and north facades. See also Finding C11 regarding waiver request.

Subsection 4.156.08 (.02) B. 6. Calculating Linear Length to Determine Sign Area Allowed.

- C20. **Review Criteria:** "For facades of a single tenant building the length the facade measured at the building line, except as noted in a. and b. below. For multi-tenant buildings the width of the façade of the tenant space shall be measured from the centerline of the party walls or the outer extent of the exterior wall at the building line, as applicable, except as noted in a. and b. below. Applicants shall provide the dimensions needed to calculate the length. Each tenant space or single occupant building shall not be considered to have more than five (5) total facades."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has supplied the required measurements used to determine linear lengths according to this subsection.

Subsection 4.156.08 (.02) C. Building Sign Length Allowed

- C21. **Review Criterion:** "The length of individual tenant signs shall not exceed seventy-five (75) percent of the length of the facade of the tenant space."

Finding: This criterion is satisfied.

Explanation of Finding: None of the proposed sign bands exceed seventy-five (75) percent of the length of the façade.

Subsection 4.156.08 (.02) D. Building Sign Height Allowed

- C22. **Review Criteria:** "The height of building signs shall be within a definable sign band, fascia, or architectural feature and allow a definable space between the sign and the top and bottom of the sign band, fascia, or architectural feature."

Finding: These criteria are satisfied.

Explanation of Finding: All of the proposed sign bands are within a definable architectural feature and have a definable space between the sign and the top and bottom of the architectural feature.

Subsection 4.156.08 (.02) E. Building Sign Types Allowed

- C23. **Review Criterion:** "Types of signs permitted on buildings include wall flat, fascia, projecting, blade, marquee and awning signs. Roof-top signs are prohibited."

Finding: This criterion is satisfied.

Explanation of Finding: All the proposed buildings signs are wall flat, which is an allowable type.

Subsection 4.156.08 (.03) A. Additional Signs: Directional Signs

- C24. **Review Criteria:** "Notwithstanding the signs allowed based on the site in (.01) and (.02) above, the following signs may be permitted, subject to standards and conditions in this Code:" "In addition to exempt directional signs allowed under Subsection 4.156.05 (.02) C. freestanding or ground mounted directional signs six (6) square feet or less in area and four (4) feet or less in height:

1. The signs shall be designed to match or complement the architectural design of buildings on the site;
2. The signs shall only be placed at the intersection of internal circulation drives; and
3. No more than one (1) sign shall be placed per intersection corner with no more than two (2) signs per intersection."

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDC 3.

Explanation of Finding: Two (2) illuminated double faced directional signs are proposed as part of the Master Sign Plan. The signs are shown in the applicant's sign section of their notebook, Exhibit B1. Exhibit B1 shows the signs slightly larger than 6 square feet. A condition of approval requires they be limited to six (6) square feet. The signs are shown at 4' tall. The signs match the design of other signs on the property and complement the architecture of the building similarly. The signs are placed at the intersection of internal circulation drives, and only one sign is placed per intersection.

Site Design Review

Subsections 4.400 (.01) and 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.

- C25. **Review Criteria:** "The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards." "Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the

Development Review Board Panel „A’ Staff Report January 6, 2014

Exhibit A1

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

DB13-0046, DB13-0047, DB13-0048

Page 48 of 50

desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor.”

Finding: These criteria are satisfied.

Explanation of Finding:

Excessive Uniformity: The sign plan allows for a variety of sign shapes, fonts, and colors chosen by different tenants so as to avoid excessive uniformity.

Inappropriate or Poor Design of Signs: Signs are typical of the type of development proposed found to be appropriate throughout the City. As issuance of the Class I Sign Permits consistent with the Master Sign Plan the City will ensure quality design of signs.

Lack of Proper Attention to Site Development: The appropriate professional services have been used to design the site incorporating unique features of the site including site size and shape, and available access, demonstrating appropriate attention being given to site development and sign placement.

Lack of Proper Attention to Landscaping: Landscaping around the monument sign and freestanding sign is consistent with other landscaping on the property and is of an acceptable quality and design.

Subsections 4.400 (.02) and 4.421 (.03) Purposes of Objectives of Site Design Review

- C26. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “The City Council declares that the purposes and objectives of site development requirements and the site design review procedure are to:” Listed A through J. including D. which reads “Conserve the City’s natural beauty and visual character and charm by assuring that structures, signs and other improvements are properly related to their sites, and to surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to exterior appearances of structures, signs and other improvements;”

Finding: These criteria are satisfied.

Explanation of Finding: It is staff’s professional opinion that the signs comply with the purposes and objectives of site design review, especially objective D. which specifically mentions signs. The proposed signs are of a scale and design appropriately related to the subject site and the appropriate amount of attention has been given to visual appearance.

Subsection 4.421 (.01) Site Design Review-Design Standards

- C27. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Only F. is applicable to this application, which reads, “Advertising Features. In addition to the requirements of the City’s sign regulations, the following criteria should be included: the size, location, design, color, texture, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.”

Finding: These criteria are satisfied.

Explanation of Finding: There is no indication that the size, location, design, color, texture, lighting or material of the proposed signs would detract from the design of the building and the surrounding properties.

Subsection 4.421 (.02) Applicability of Design Standards to Signs

- C28. **Review Criteria:** "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

Finding: These criteria are satisfied.

Explanation of Finding: Design standards have been applied to exterior signs, as applicable, see Finding C27 above.

Subsection 4.421 (.05) Site Design Review-Conditions of Approval

- C29. **Review Criterion:** "The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code."

Finding: This criterion is satisfied.

Explanation of Finding: No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

Subsection 4.421 (.06) Color or Materials Requirements

- C30. **Review Criterion:** "The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City."

Finding: This criterion is satisfied.

Explanation of Finding: Staff does not recommend any additional requirements for materials or colors for the proposed signs.

Section 4.440 Site Design Review-Procedures

- C31. **Review Criteria:** "A prospective applicant for a building or other permit who is subject to site design review shall submit to the Planning Department, in addition to the requirements of Section 4.035, the following:" Listed A through F.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted a sign plan as required by this section.

**EXHIBIT C1
PLANNING DIVISION
STAFF REPORT**

BOONES FERRY POINTE – HUMAN BEAN COFFEE KIOSK

**DEVELOPMENT REVIEW BOARD PANEL ‘ ___ ’
QUASI JUDICIAL HEARING**

Public Hearing Date:

Date of Report:

Application Numbers:

Request A: DB13-0046

Request B: DB13-0047

Request C: DB13-0048

Property

Owners/Applicants:

PD = Planning Division conditions

BD – Building Division Conditions

PF = Engineering Conditions.

NR = Natural Resources Conditions

TR = SMART/Transit Conditions

FD = Tualatin Valley Fire and Rescue Conditions



City of Wilsonville

EXHIBIT C1 DB13-0046 et seq

Specific Comments:			
PF 1.	Engineering Public Facilities Conditions of Approval (PF conditions) for DB12-0074 and DB12-0075 remain in effect for this project accept as further modified below.		
PF 2.	At the request of Staff, DKS Associates completed a Trip Generation memo dated September 5, 2013 revising a previously completed Carl's Jr. Traffic Impact Study that was completed in May 2012. The proposed use is expected to generate 13 fewer new primary trips than the previously approved use. The project is hereby limited to no more than the following impacts.		
	<table> <tr> <td>Estimated New PM Peak Hour Trips</td><td>117</td></tr> </table>	Estimated New PM Peak Hour Trips	117
Estimated New PM Peak Hour Trips	117		
PF 3.	Stormwater detention and storm water quality for this site will be handled via the stormwater facility constructed with the Boones Ferry Pointe project.		
PF 4.	The project shall connect to the existing Storm lateral constructed with the Boones Ferry Pointe project.		
PF 5.	The project shall connect to the existing Sanitary Sewer stub constructed with the Boones Ferry Pointe project.		
PF 6.	The project shall connect to the existing Water service constructed with the Boones Ferry Pointe. project.		

Development Review Template

DATE: 12/12/13
TO: DAN PAULY AICP, ASSOCIATE PLANNER
FROM: DON WALTERS
SUBJECT: DEVELOPMENT REVIEW # DB13-46, -47, -48

WORK DESCRIPTION: NEW HUMAN BEAN DRIVE/WALK-UP COFFEE KIOSK

Building Division Conditions:

BD 1. ACCESSIBLE. At least one of the walk-up service windows shall be accessible.





29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

January 3, 2014

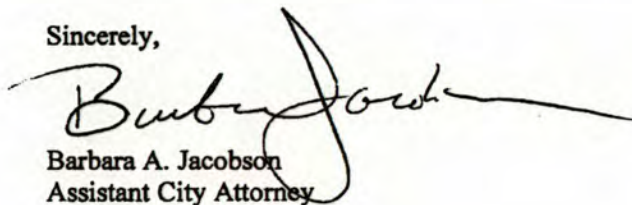
Alec J. Laidlaw
Laidlaw & Laidlaw
21590 Willamette Dr
West Linn OR 97068

Re: The Human Bean Coffee Store

Dear Mr. Laidlaw:

The City is in receipt of your letter dated January 3, 2014. Although we appreciate knowing that the dispute exists, it has no bearing on the application made by the property owner to the Wilsonville Development Review Board, which will be considered as scheduled. I trust that if you and your client believe that approval of the application, if granted, will violate a contractual agreement and cause your client harm, you will seek the proper legal recourse with the Washington County Circuit Court before which this matter is being heard, as and when needed to protect your client's interests.

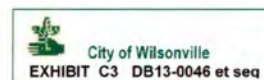
Sincerely,



Barbara A. Jacobson
Assistant City Attorney

baj:tec

cc: Wallace W. Lien
Daniel Pauly



"Serving The Community With Pride"

Pauly, Daniel

From: Terra Burns <Terra@laidlawandlaidlaw.com>
Sent: Friday, January 03, 2014 1:55 PM
To: Pauly, Daniel
Cc: Alec Laidlaw; wallace.lien@lienlaw.com; garrylapoint@gmail.com; gl@eoni.com
Subject: Development Review Board Public Hearing- The Human Bean
Attachments: Ltr to DRB re Devco public hearing submittal 2014.01.03.pdf; ORCP 21 Motions 2013.12.27.pdf; Dec of Garry LaPoint in Support 2013.12.30.pdf; UTCR 5.010 CERT OF COMPLAINCE 2013.12.27.pdf

Hello Mr. Pauly—

Attached please find the letter and referenced pleadings regarding the Public Hearing set for January 13, 2014 regarding The Human Bean.

Thank you,
Terra Jane Burns
Paralegal

Laidlaw & Laidlaw, PC
21590 Willamette Drive
West Linn, Oregon 97068
Tel. 503.305.6894
Fax. 888.287.4840
www.laidlawandlaidlaw.com
Terra@laidlawandlaidlaw.com

Terra Burns is not an attorney and not licensed to practice law. She does not intend to give legal advice to anyone, and no information in this email should be construed as such.

CONFIDENTIALITY STATEMENT: This electronic message contains information that may be confidential or privileged. The information contained herein is intended solely for the use of the people named above. If you are not the intended recipient of this message, you are hereby advised that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please notify me immediately by telephone at (503) 305-6894 or by e-mail reply, and delete this message.





January 3, 2014

BY EMAIL (pauly@ci.wilsonville.or.us) AND U.S. MAIL

Daniel Pauly
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070

Re: *The Human Bean Coffee Store*

Our Client: LaPoint Business Group, LLC; Garry LaPoint
Case No.: Washington County Circuit Court – C138125CV

Dear Mr. Pauly:

This firm, along with the law firm of Wallace W. Lien, P.C., represents LaPoint Business Group, LLC. LaPoint Business Group, LLC, is the owner of the adjoining parcel of property, and of the Chevron Fuel Station/Fountain Mart Convenience Store situated thereon.

As you may be aware, there is an action currently pending in Washington County Circuit Court (Case No. C138125CV), between LaPoint Business Group, LLC, and Wilsonville Devco, LLC, ("owner/applicant"). Enclosed herein for your and the Panel's review is a copy of a Motion that was filed yesterday against owner/applicant's complaint. Please note that a full and complete copy of owner/applicant's complaint, filed on December 16, 2013, is marked and attached as Exhibit A to our clients' Motion.

There is a dispute between the parties as to the breadth and scope of a restrictive covenant affecting owner/applicant's property. It is LaPoint Business Group, LLC's, position that the restrictive covenant prohibits the construction of the Human Bean Coffee Store. Owner/applicant believes otherwise.

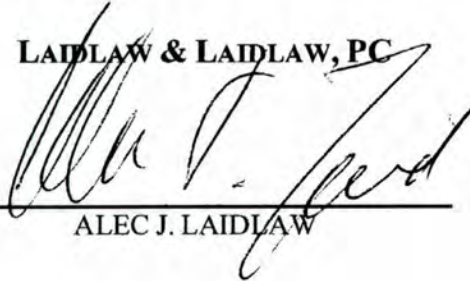
The case pending in Washington County is less than one month old. LaPoint Business Group, LLC, anticipates that this matter will not be resolved without amendment to the pleadings, significant discovery, and perhaps even a trial on the merits. As such, it is LaPoint Business Group, LLC's, position that any consideration of the change proposed by owner/applicant is premature. LaPoint Business Group, LLC, respectfully requests that this matter be setover for further consideration for at least 90 days.

Mr. Lien and/or I plan on appearing at the hearing set for Monday, January 13, 2014. In the meantime, please direct all inquiries regarding this matter to me, at 503.305.6894, or Mr. Lien,

at: Wallace W. Lien PC, 1775 32nd Place NE, Ste. A, Salem, OR 97301; Phone: 503.585.0105;
Fax: 503.585.0106; Email: wallace.lien@lienlaw.com. Thank you.

Sincerely,

LIDLAW & LAIDLAW, PC


ALEC J. LAIDLAW

Enclosures: Defendant's ORCP 21 Motions (w/ exhibits)

Cc: Wallace W. Lien

LaPoint Business Group, LLC

Garry LaPoint

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON
6

7 WILSONVILLE DEVCO, LLC, and NW
8 COFFEE GROUP, LLC,

9 Plaintiffs,

10 v.

11 LAPOINT BUSINESS GROUP, LLC and
12 GARRY LAPOINT,

13 Defendant
14

) Case No. C138125CV
)
)

) **DEFENDANTS' ORCP 21 MOTIONS**
)
)

) **Oral Argument Requested**
)
)
)

15 Defendants LaPoint Business Group, LLC, and Garry LaPoint (collectively
16 "Defendants") move the Court for an Order dismissing Plaintiffs Wilsonville Devco, LLC and
17 NW Coffee Group, LLC's (collectively "Plaintiffs") Complaint in that it fails to state ultimate
18 facts sufficient to constitute a claim against Garry LaPoint, pursuant to ORCP 21A(8).
19 Alternatively, and without waiving the above motion, LaPoint Business Group, LLC, moves the
20 court for an Order striking Plaintiffs' Complaint, pursuant to ORCP 21E.

21 Official court reporting services are not requested. The estimated time for hearing is 30
22 minutes.

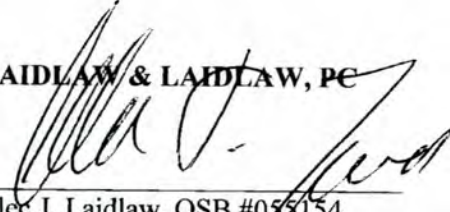
23 Defendants' motions are supported by the attached Memorandum, the Exhibits,
24 Defendant's counsel's UTCR 5.010 Certificate of Compliance, and the records and file herein.
25 The portions of the Complaint to be stricken is shown in parentheses, as required by UTCR
26 5.020, is marked as Exhibit A, is attached hereto, and incorporated herein.

Page 1 – DEFENDANTS' ORCP 21 MOTIONS

LAILAW & LAILAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840
58 of 92

1
2 Dated: December 30, 2013

LAILAW & LAIDLAW, PC


Alec J. Laidlaw, OSB #053154
Jason Janzen, OSB #063790
Attorneys for Defendants
alec@laidlawandlaidlaw.com

1 **MEMORANDUM**

2 **Legal Argument**

3 1. Plaintiffs' Complaint Should Be Dismissed As To Defendant Garry LaPoint Because It
4 Fails To State Ultimate Facts Sufficient To Constitute A Claim For Relief.

5 ORCP 21 A(8) provides for a motion to dismiss for "failure to state ultimate facts
6 sufficient to constitute a claim." To survive a motion for failure to state facts constituting a
7 claim for relief, a complaint must include some allegation of material fact regarding each and
8 every material element of the claim. *Suess Builders v. City of Beaverton*, 294 Or 254, 656 P2d
9 306 (1982).

10 The debts, obligations and liabilities of a limited liability company, whether arising in
11 contract, tort or otherwise, are solely the debts, obligations and liabilities of the limited liability
12 company. ORS 63.165(1). A member or a manager of an LLC is not personally liable for any
13 debt, obligation, or liability of the LLC merely by reason of being a member, a manager, or both.
14 *Id.*

15 Defendant LaPoint Business Group, LLC ("LaPoint Business Group") is a Limited
16 Liability Company, duly organized under the laws of the state of Oregon. A copy of the
17 Business Entity Data, from the Oregon Secretary of State's website, is marked as Exhibit B,
18 attached hereto, and incorporated herein. LaPoint Business Group is the sole owner of the
19 property benefitted by the Restrictive Covenant at issue in this matter. A copy of the deed to the
20 benefitted property is marked as Exhibit C, attached hereto, and incorporated herein.

21 At all times relevant, Defendant Garry LaPoint ("LaPoint") was a member of, and
22 registered agent for, LaPoint Business Group. He holds no interest in the befitted property in his
23 *personal capacity*. On these issues there is no factual dispute¹.

24
25 ¹ See *Complaint for Declaratory Relief*, page 1, line 26 ("Garry LaPoint is a member of and the registered agent for
26 LaPoint, LLC"); page 2, line 22 ("[t]he Restrictive Covenant benefits a neighboring parcel owned by LaPoint, LLC").

1 The Complaint contains no ultimate facts which could be construed as sufficiently stating
2 a claim against Defendant LaPoint, in his personal capacity. The Court should therefore dismiss
3 any claim(s) against Defendant LaPoint personally.

4
5 2. Paragraphs 16 Through 21 of The Complaint Are Frivolous And Should Be Stricken.

6 In pertinent part, ORCP 21E provides that the Court may order stricken any frivolous or
7 irrelevant pleading. A frivolous plea, while true in its allegations, is completely insufficient in
8 substance. *Andrysek v. Andrysek*, 280 Or 61 (1977). A frivolous plea has been characterized as
9 not raising any issue in the proceeding. *Kashmir Corp. v. Nelson*, 37 Or App 887 (1978).

10 There is no dispute that a controversy exists between Plaintiffs and Defendant LaPoint
11 Business Group as to the scope and construction of the Restrictive Covenant. Paragraphs 1
12 through 15, and 23 through 27 allege as much.

13 Paragraphs 16 through 22 do not raise any issues in this matter. They are repetitive to
14 Plaintiffs' sole claim for relief: that a dispute exists, between owners of adjoining parcels of real
15 property, as to the breadth and scope of a Restrictive Covenant, which benefits one parcel, and
16 burdens the other.

17 Paragraphs 16 through 22 add nothing to the Complaint, save for volume of text. They
18 should therefore be stricken.

19 **Conclusion**

20 Defendant LaPoint's only connection to this matter is his status as a member and
21 registered agent of LaPoint Business Group. Plaintiffs' Complaint states no ultimate facts
22 sufficient to constitute a claim against Defendant LaPoint. Plaintiffs' claim against Defendant
23 LaPoint therefore fails as a matter of law.

24 //

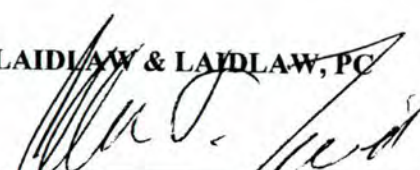
25 //

26 //

1 Alternatively, and without waiving the foregoing motion to dismiss, the Court should
2 strike paragraphs 16 through 21 of the Complaint in that they are frivolous and raise no issues in
3 this case.

4
5 Dated: December 30, 2013

LAIDLAW & LAIDLAW, PC


Alec J. Laidlaw, OSB #055154
Jason Janzen, OSB #063790
Attorneys for Defendants
alec@laidlawandlaidlaw.com

COPY

COPY
10:09

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

WILSONVILLE DEVCO, LLC, and NW
COFFEE GROUP, LLC,

Plaintiffs,

v.

LAPOINT BUSINESS GROUP, LLC; and
GARRY LAPOINT,

Defendants.

Case No. ~~0130101~~ C1381250

COMPLAINT FOR DECLARATORY
RELIEF (ORS 28.010 *ET SEQ.*)

CASE NOT SUBJECT TO MANDATORY
ARBITRATION

Plaintiffs Wilsonville Devco, LLC ("Wilsonville Devco") and NW Coffee Group, LLC
("NW Coffee"), allege as follows:

Parties

1.

Plaintiff Wilsonville Devco is a limited liability company incorporated in the state of
Oregon.

2.

Plaintiff NW Coffee is a limited liability company incorporated in the state of Oregon.

3.

Defendant LaPoint Business Group, LLC ("LaPoint, LLC") is a limited liability company
incorporated in the state of Oregon.

4.

Defendant Garry LaPoint is an individual residing, upon information and belief, in the
state of Oregon. Garry LaPoint is a member of and the registered agent for LaPoint, LLC.

Page 1 - COMPLAINT FOR DECLARATORY RELIEF

HOLLAND & KNIGHT LLP
111 S.W. Fifth Avenue
2300 U.S. Bancorp Tower
Portland, Oregon 97204
Telephone: 503.243.2300

#26839050 v1

COPY

EXHIBIT A
PAGE 1

Facts

5.

Wilsonville Devco owns a parcel of land in the City of Wilsonville, County of Washington, and state of Oregon (the "Property"). The Property's legal description is fully set forth in Exhibit A, which is incorporated here by reference.

6.

The Property is subject to a restrictive covenant recorded in the Washington County property records on March 10, 2005 under recording number 2005-025345 (the "Restrictive Covenant"). The Restrictive Covenant provides that the Property

... shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

The Restrictive Covenant is fully set forth in Exhibit B, which is incorporated here by reference.

7.

The Restrictive Covenant was executed on or about March 8, 2005 by South Sea, LLC. The Restrictive Covenant states that it is binding upon South Sea, LLC, its successors and assigns forever.

8.

On or about May 24, 2012, Wilsonville Devco purchased the Property from South Sea, LLC. Wilsonville Devco is the current owner of the Property.

9.

The Restrictive Covenant benefits a neighboring parcel owned by LaPoint, LLC. LaPoint, LLC and Garry LaPoint operate a Chevron gasoline station and Fountain Mart convenience store on the benefitted parcel.

///

///

Page 2 - COMPLAINT FOR DECLARATORY RELIEF

#26839050 v1

HOLLAND & KNIGHT LLP
111 S.W. Fifth Avenue
2300 U.S. Bancorp Tower
Portland, Oregon 97204
Telephone: 503.243.2300

EXHIBIT
PAGE

A
2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

10.

Wilsonville Devco and NW Coffee have begun the process of constructing The Human Bean coffee restaurant on the Property. The Human Bean coffee restaurant is a drive-through coffee shop that primarily sells different kinds of coffee drinks, as well as tea, frozen drinks, and bottled water.

11.

Wilsonville Devco has fully negotiated the terms of a build to suit lease agreement with NW Coffee. The build to suit lease agreement contemplates that Wilsonville Devco will construct and NW Coffee will operate The Human Bean coffee restaurant upon a portion of the Property.

12.

NW Coffee has fully negotiated a franchise agreement under which NW Coffee will operate The Human Bean coffee restaurant on the Property.

13.

Wilsonville Devco has completed and submitted its project submittal for construction of The Human Bean coffee restaurant on the Property to the City of Wilsonville. The submittal is complete and is scheduled for public hearing on January 13, 2014.

14.

Wilsonville Devco has expended approximately \$80,000 to date in site work improvements in preparation for construction of The Human Bean coffee restaurant on the Property. The project is expected to be complete and the restaurant open in April 2014.

15.

LaPoint, LLC and Garry LaPoint have asserted that the development and operation of The Human Bean coffee restaurant on the Property is prohibited by the Restrictive Covenant.

///

///

1

16.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

(On or about November 19, 2013, Garry LaPoint's counsel sent a letter to Josh Veentjer, who is Wilsonville Devco's managing member, asserting that the development and operation of The Human Bean coffee restaurant violates the Restrictive Covenant (the "November 19, 2013 Letter"). The November 19, 2013 Letter is fully set forth in Exhibit C, which is incorporated here by reference.)

17.

(The November 19, 2013 Letter asserted that the Restrictive Covenant prohibits the Property from being used to sell any products normally sold in a convenience store, including coffee.)

18.

(The November 19, 2013 Letter demanded that Wilsonville Devco "immediately CEASE and DESIST all activities relative to the siting and construction of The Human Bean facility on [the Property].")

19.

(On or about November 27, 2013, Wilsonville Devco's counsel sent a letter to Garry LaPoint's counsel explaining that under Oregon law, the Restrictive Covenant's language does not bar development and operation of The Human Bean coffee restaurant on the Property. Wilsonville Devco's counsel's November 27, 2013 letter is fully set forth in Exhibit D, which is incorporated here by reference.)

20.

(On or about December 10, 2013, Wilsonville Devco's counsel sent an email to Garry LaPoint's counsel again explaining that the Restrictive Covenant does not bar development and operation of The Human Bean coffee restaurant on the Property. Wilsonville Devco's counsel's December 10, 2013 email is fully set forth in Exhibit E, which is incorporated here by reference.)

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

21.

(On or about December 10, 2013, Garry LaPoint's counsel sent an email responding to Wilsonville Devco's counsel and stating his client's intention to enforce the Restrictive Covenant in court. Garry LaPoint's counsel's December 10, 2013 email is fully set forth in Exhibit F, which is incorporated here by reference.)

Claim for Declaratory Relief

22.

Plaintiffs incorporate by reference and reallege paragraphs 1-21 above.

23.

Wilsonville Devco and NW Coffee claim that the Restrictive Covenant does not prevent development and operation of The Human Bean coffee restaurant on the Property.

24.

LaPoint, LLC and Garry LaPoint claim that the Restrictive Covenant prevents development and operation of The Human Bean coffee restaurant on the Property.

25.

Development of The Human Bean coffee restaurant on the Property is underway. The agreements necessary to develop and operate The Human Bean coffee restaurant on the Property have been fully negotiated. The necessary approval process with the City of Wilsonville is also near completion. Preliminary site work improvements are also ongoing.

26.

The dispute between Plaintiffs and Defendants regarding the effect of the Restrictive Covenant upon development and operation of The Human Bean coffee restaurant on the Property is an actual and substantial controversy between parties with adverse interests, and arises from present facts. The dispute is accordingly appropriate for judicial disposition and resolution by binding decree.

///

27.

The Court is specifically authorized under Oregon law to declare the parties' rights, status, and other legal relations under the Restrictive Covenant. ORS 28.020 provides, in part:

Any person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under any such . . . contract . . . and obtain a declaration of rights status or other legal relations thereunder.

WHEREFORE, Plaintiffs Wilsonville Devco and NW Coffee request the following relief:

1. Judgment declaring that the Restrictive Covenant does not prohibit the development or operation of The Human Bean coffee restaurant on the Property;
2. Plaintiffs' costs and disbursements incurred in this action; and
3. Any other relief that the Court deems just and proper.

DATED this 16 day of December, 2013.

HOLLAND & KNIGHT LLP

By: 
Louis A. Santiago, OSB # 783610
E-mail: louis.santiago@hklaw.com
Garrett S. Garfield, OSB # 093634
E-mail: garrett.garfield@hklaw.com
111 SW Fifth Avenue
2300 U.S. Bancorp Tower
Portland, Oregon 97204
Telephone: 503.243.2300
Fax: 503.241.8014
Attorneys for Plaintiffs Wilsonville Devco,
LLC and NW Coffee Group, LLC

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.83 feet to a point on the Westerly line of Doones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

#25841631 v1

EXHIBIT A
Page 1 of 1

EXHIBIT A
PAGE 1

Washington County, Oregon 2005-025345
03/10/2005 03:14:18 PM
D-478 Orig=1 Item=4 A DUYCK
\$26.00 \$6.00 \$11.00 - Total = \$43.00



00734070700500733450040018

I, Jerry M. LaPoint, Director of Assessments and Taxation
and Washington County Clerk for Washington County,
Oregon, do hereby certify that the within instrument of
recording was prepared and recorded in the name of
Washington County.
Jerry M. LaPoint, Director of Assessments and Taxation
Washington County Clerk



AFTER RECORDING MAIL TO:

Name Garry M. LaPoint
Address 10618 Crosby Road NE
City/State Woodburn, OR 97071

Document Title(s) (for transactions contained therein):

1. Restrictive Covenant

20
1-5
37

FATCO NLS-NLS-14477-OR

Title Data, Inc. CH POR10593 WH 2005025345.001

EXHIBIT B
Page 1 of 4

EXHIBIT A
PAGE 8



RESTRICTIVE COVENANT

FOR GOOD AND VALUABLE CONSIDERATION, the undersigned, hereby creates and imposes upon the real property described in Exhibit A attached hereto and by this reference made a part hereof, to be binding upon itself, its successors and assigns forever, the following restriction on use of the property:

The property described in Exhibit A attached hereto and by this reference, incorporated herein, shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

IN WITNESS WHEREOF, the undersigned, being the owner of the real property described above, has executed this restrictive covenant on the 8th day of March, 2005.

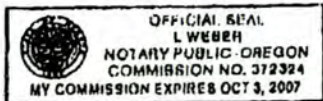
SOUTH SEA, LLC, an Oregon Limited Liability Company

BY George F. Brice III
George F. Brice III, Member

BY Zsuzsanna Brice
Zsuzsanna Brice, Member

STATE OF OREGON)
County of Multnomah) "

Before me, a notary public in and for the State of Oregon, personally appeared George F. Brice, III and Zsuzsanna Brice and acknowledged the foregoing to be their voluntary act and deed.



L. Weber
Notary Public for Oregon
My commission expires: 10/3/07



EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North $00^{\circ}09'24''$ East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 341.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of $49^{\circ}50'12''$, a chord bearing of North $25^{\circ}04'30''$ East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of $33^{\circ}01'29''$, a chord bearing South $71^{\circ}56'03''$ East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of $35^{\circ}01'29''$, a chord bearing of South $43^{\circ}49'18''$ East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North $63^{\circ}41'28''$ East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of $02^{\circ}56'25''$, a chord bearing of South $27^{\circ}46'44''$ East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South $15^{\circ}09'35''$ West, a distance of 83.41 feet; thence South $38^{\circ}02'13''$ East, a distance of 120.44 feet; thence South $57^{\circ}57'47''$ West, a distance of 55.00 feet; thence South $20^{\circ}29'49''$ West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South $89^{\circ}38'33''$ West, a distance of 97.95 feet, more or less, to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to Exon Wilsonville, LLC, an Oregon limited liability company, by instrument recorded June 19, 2000 as Fee No. 2000-48397 and being more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:



Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet to the true point of beginning; thence North $89^{\circ}38'33''$ East parallel to said South line of Lot 7, 95.10 feet; thence South $20^{\circ}29'49''$ West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North $00^{\circ}09'24''$ East parallel to said East line, 6.00 feet to the true point of beginning.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet; thence North $89^{\circ}38'33''$ East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North $20^{\circ}29'49''$ East, 170.00 feet; thence North $57^{\circ}57'47''$ East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South $38^{\circ}02'13''$ East, 2.34 feet; thence leaving said Westerly line South $51^{\circ}57'47''$ West, 20.00 feet; thence South $20^{\circ}40'49''$ West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

Title Data, Inc. CH POR10503 WN 2000025345.004

EXHIBIT B
Page 4 of 4

EXHIBIT A
PAGE 11

WALLACE W. LIEN

A PROFESSIONAL CORPORATION



Wallace W. Lien

Attorney at Law

Contact by e-mail at
walace.lien@lienlaw.com

November 19, 2013

Mr. Josh Vcentjer
President
Pacific Development Ventures
P. O. Box 6437
La Quinta, CA 92248

By Certified Mail No. 7012 1010 0000 0856 6155
Return Receipt Requested
Copy by Regular Mail

Re: Wilsonville Proposed Human Bean Coffee Shop

Dear Mr. Vcentjer:

Please be advised that I represent Garry LaPoint, and his Chevron station and Fountain Mart. Mr. LaPoint has been advised that it is your intention to construct a Human Bean Coffee Shop with drive through, which would serve all kinds of coffee drinks, fountain drinks, bottled water, frozen drinks, fruit and baked goods among other convenience food products.

You should be advised that when Mr. LaPoint sold your property to George Brice (South Sea LLC) a Restrictive Covenant was imposed on the property you now own that strictly prohibits your property from being used for the sale of any products that would normally occur in a convenience store business. All of the products that are proposed to be sold at this Human Bean location are products that are currently for sale in Mr. LaPoint's Fountain Mart.

This Restrictive Covenant was recorded as Document No. 2005-025345, on March 12, 2005, and it binds successors to Brice/South Sea, such as yourself. Documents related to the creation of the Restrictive Covenant clearly show the intent was to prohibit anything that competes with my client's Fountain Mart. My client believes strongly that your proposed Human Bean facility will be in direct competition with his Fountain Mart, and therefore is prohibited by the Restrictive Covenant.

You should immediately CEASE and DESIST all activities relative to the siting and construction of the Human Bean facility on the property subject to the above-referenced Restrictive Covenant. This must include the immediate withdrawal of any permit applications with the City of Wilsonville.

This is a serious matter for my client, as a large portion of the revenue for the Fountain Mart comes from the sale of products your proposed Human Bean would be offering. In the event you do not CEASE and DESIST, and provide evidence to my office by the close of business on November 29, 2013 that you have done so, I will assume that you intend to violate the Restrictive Covenant, and I will file a Complaint in Clackamas County Circuit Court to obtain an injunction to enforce the prohibitions in the covenant.

1775 32nd Place NE, Suite A • Salem, Oregon 97301-0774

(503) 585-0105 office • (503) 585-0106 fax

Web site at <http://www.lienlaw.com>

EXHIBIT C
Page 1 of 2

EXHIBIT A
PAGE 12

Mr. Josh Veentjer

November 19, 2013

Page 2

If you are represented by legal counsel, please refer this letter to your attorney and have that attorney contact me with any questions.

Otherwise, I will expect to hear from you by November 29, 2013, that you have taken all steps necessary to come into compliance with the Restrictive Covenant.

Yours truly,

WALLACE W. LIEN, P.C.

/s/ Wallace W. Lien

By: Wallace W. Lien

cc: Garry LaPoint
Daniel Pauly, City of Wilsonville ✓
Josh Veentjer (Copy by Regular Mail)

EXHIBIT C
Page 2 of 2

Holland & Knight

1111 W. Fifth Avenue, 2000 1st Floor Tower, Portland, OR 97204 | 503.243.2500 | F 503.243.1014
Holland & Knight LLP | www.hkllw.com

November 27, 2013

GEORGE J. GREGORES
503.243.5879
george.gregores@hkllw.com

Wallace.lien@lienlaw.com

Wallace W. Lien
Attorney at Law
1773 32nd Place SE, Suite A
Salem, Oregon 97301-8774

Re: Our Client: Wilsonville Devco, LLC

Dear Mr. Lien:

This firm represents Wilsonville Devco, LLC, the owner of the real property and improvements located adjacent to Mr. LaPoint's Chevron gas station and Fountain Mart in Wilsonville, Oregon. I am in receipt of your November 19, 2013 letter directed to Josh Veentjer of Pacific Development Ventures in which you reference the Restrictive Covenant recorded as Document No. 2005-025345 against the Wilsonville Devco property. You contend in your letter to Mr. Veentjer that operation of a Human Bean Coffee restaurant on the Wilsonville Devco property is prohibited by the Restrictive Covenant. We believe that you have engaged in a tortured analysis to reach this conclusion, and in connection therewith, seek to expand the scope of the restriction well beyond the clear text of the provision.

You state in the second paragraph of your November 19 letter that the Restrictive Covenant strictly prohibits the Wilsonville Devco property "from being used for the sale of any products that would normally occur in a convenience store business." The Restrictive Covenant prohibits "the operation of a convenience store business" only, not the sale of products that are sold in a convenience store as you suggest. The only way to construe the Restrictive Covenant as you contend would require reading into the provision language that simply does not exist in the recorded document, something a court will not do. There is no ambiguity in the text of the covenant, the language is clear. In the case of a restrictive covenant, the appropriate maxim of construction provides that the covenant is to be construed strictly against the restriction. Unless the use complained of is plainly within the provisions of the covenant, it will not be restrained. Yogman v. Parrot, 325 Or 358 (1997). In analyzing contractual language, a court is "to ascertain and declare what is, in terms or in substance, contained therein, not to omit what has been inserted."

The dictionary definition of "convenience store" is a small retail store that stocks a range of everyday items such as groceries, toiletries, alcoholic and soft drinks, tobacco products,

EXHIBIT D
Page 1 of 2

November 27, 2013
Page 2

newspapers and sometimes gasoline. The fact that a few of the products sold in your client's convenience store will also be sold in the Human Bean Coffee restaurant doesn't fall within the prohibition of the Restrictive Covenant. The operation of a Human Bean Coffee restaurant is not the "operation of a convenience store business."

Our client intends to proceed with the leasing of the property to the operator of the Human Bean Coffee restaurant and respectfully rejects your request that it cease and desist all activities in that regard. With respect to your threat of litigation, please be advised that we have been instructed to vigorously defend any claims that you bring on behalf of your client under the Restrictive Covenant. In that regard, given the clear and unambiguous language of the Restrictive Covenant and the law applicable to it, we would view the filing of any claim as spurious and will respond appropriately.

If you have any questions or wish to discuss this matter further, please advise.

Very truly yours,

HOLLAND & KNIGHT LLP

George J. Oregores

#26639028 v1

EXHIBIT D
Page 2 of 2

EXHIBIT A
PAGE 15

Gregores, George J (POR - X55879)

To: wallace.lien@lienlaw.com
Cc: josh@pdvco.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lien: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawaid v. Murgulla & Arlas Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an Injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

George Gregores, Esq. Portland, Oregon

Partner

1000 NE Oregon Street, Suite 1115 Portland, Oregon 97232-4724

Phone: (503) 241-1111 Fax: (503) 241-6014

ggregores@gregoreslaw.com www.ggregoreslaw.com

© 2013 Gregores Law Firm, PLLC

EXHIBIT E
Page 1 of 1

EXHIBIT A
PAGE 16

Gregores, George J (POR - X55879)

From: Wallace Lien (WLi@lienlaw.com)
Sent: Tuesday, December 10, 2013 2:30 PM
To: Gregores, George J (POR - X55879)
Cc: Wallace Lien
Subject: RE: Our Client: Wilsonville Devco, LLC

It is our intention to enforce the covenant in court. Are you authorized to accept service?

Wallace W. Lien
Wallace W. Lien, P.C.
1775 32nd Place NE, Suite A
Salem, OR 97301-8774
phone: 503-585-0105 ext. 311
fax: 503-585-0106
<http://www.lienlaw.com>

CONFIDENTIALITY NOTICE:

If you have received this communication in error, please notify me immediately. This message is intended only for the use of the person or firm to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is prohibited.

From: George.Gregores@hklaw.com [<mailto:George.Gregores@hklaw.com>]
Sent: Tuesday, December 10, 2013 2:25 PM
To: Wallace Lien
Cc: josh@pdvco.com; louis.santolugo@hklaw.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lien: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulla & Arias Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an Injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

EXHIBIT F
Page 1 of 1

Gregores, George J (POR - X55879)

From: Wallace Lien [WLIen@lienlaw.com]
Sent: Tuesday, December 10, 2013 2:30 PM
To: Gregores, George J (POR - X55879)
Cc: Wallace Lien
Subject: RE: Our Client: Wilsonville Devco, LLC

It is our intention to enforce the covenant in court. Are you authorized to accept service?

Wallace W. Lien
Wallace W. Lien, P.C.
1775 32nd Place NE, Suite A
Salem, OR 97301-8774
phone: 503-585-0105 ext. 311
fax: 503-585-0106
<http://www.lienlaw.com>

CONFIDENTIALITY NOTICE:

If you have received this communication in error, please notify me immediately. This message is intended only for the use of the person or firm to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is prohibited.

From: George.Gregores@hklaw.com (<mailto:George.Gregores@hklaw.com>)
Sent: Tuesday, December 10, 2013 2:25 PM
To: Wallace Lien
Cc: josh@pdvco.com; jovis.santiago@hklaw.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lien: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulia & Arias Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

EXHIBIT F
Page 1 of 1

EXHIBIT A
PAGE 17

OREGON SECRETARY OF STATE
Corporation Division

HOME

business information center **business name search** oregon business guide
 referral list business registry/renewal forms/fees notary public
 uniform commercial code uniform commercial code search documents & data services

Business Name SearchNew Search Printer Friendly**Business Entity Data**

01-02-2014

11:57

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
628887-80	DLLC	ACT	OREGON	04-16-1998	04-16-2014	
Entity Name LAPOINT BUSINESS GROUP, LLC						
Foreign Name						

New Search Printer Friendly**Associated Names**

Type	PPB	PRINCIPAL PLACE OF BUSINESS		
Addr 1	25410 SW 95TH			
Addr 2				
CSZ	WILSONVILLE	OR	97070	Country UNITED STATES OF AMERICA

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	04-16-1998	Resign Date	
Name	GARRY	L	LAPOINT			
Addr 1	850 LAWSON AVE					
Addr 2						
CSZ	WOODBURN	OR	97071	Country	UNITED STATES OF AMERICA	

Type	MAL	MAILING ADDRESS		
Addr 1	10618 CROSBY RD			
Addr 2				
CSZ	WOODBURN	OR	97071	Country UNITED STATES OF AMERICA

Type	MEM	MEMBER		Resign Date	
Name	KATHERINE	M	LAPOINT		
Addr 1	10618 CROSBY RD				
Addr 2					
CSZ	WOODBURN	OR	97071	Country	UNITED STATES OF AMERICA



Type	MEM	MEMBER			Resign Date	
Name	GARRY	L	LAPOINT			
Addr 1	10618 CROSBY RD					
Addr 2						
CSZ	WOODBURN	OR	97071		Country	UNITED STATES OF AMERICA

New Search Printer Friendly **Name History**

Business Entity Name	Name Type	Name Status	Start Date	End Date
LAPOINT BUSINESS GROUP, LLC	EN	CUR	04-16-1998	

Please read before ordering Copies.

New Search Printer Friendly **Summary History**

Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	AMENDED ANNUAL REPORT	03-15-2013		FI		
	AMENDED ANNUAL REPORT	03-07-2012		FI		
	ANNUAL REPORT PAYMENT	03-04-2011		SYS		
	ANNUAL REPORT PAYMENT	03-05-2010	03-04-2010	SYS		
	ANNUAL REPORT PAYMENT	03-23-2009		SYS		
	ANNUAL REPORT PAYMENT	03-19-2008		SYS		
	ANNUAL REPORT PAYMENT	03-08-2007		SYS		
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	05-10-2006		FI		
	ANNUAL REPORT PAYMENT	05-04-2006	05-03-2006	SYS		
	NOTICE LATE ANNUAL	04-21-2006		SYS		
	ANNUAL REPORT PAYMENT	03-11-2005		SYS		

EXHIBIT

B

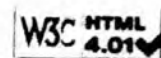
PAGE

2

	ANNUAL REPORT PAYMENT	04-28-2004		SYS		
	NOTICE LATE ANNUAL	04-23-2004		SYS		
	ANNUAL REPORT PAYMENT	04-17-2003		SYS		
	ANNUAL REPORT PAYMENT	04-12-2002		SYS		
	ANNUAL REPORT PAYMENT	04-19-2001		SYS		
	STRAIGHT RENEWAL	04-14-2000		FI		
	AMENDED RENEWAL	04-14-1999		FI		
	NEW FILING	04-16-1998		FI		

[About Us](#) | [Announcements](#) | [Laws & Rules](#) | [Feedback](#)
[Policy](#) | [SOS Home](#) | [Oregon Blue Book](#) | [Oregon.gov](#)

For comments or suggestions regarding the operation of this site,
please contact : corporation.division@state.or.us



© 2014 Oregon Secretary of State. All Rights Reserved.

25
235
42

Washington County, Oregon 2005-140371
11/08/2005 10:44:56 AM
D-088 Cnt=1 Stn=7 K GRUNEWALD
\$25.00 \$6.00 \$11.00 - Total = \$42.00



RECORD AND RETURN TO:
Garry and Kathy LaPoint
LaPoint Business Group, LLC
10618 Crosby Rd. NE
Woodburn, OR 97071

00864899200501403710050051
I, Jerry Hansen, Director of Assessment and Taxation
and Ex-Officio County Clerk for Washington County,
Oregon, do hereby certify that the within instrument of
writing was received and recorded in the book of
records of said county.
Jerry R. Hansen, Director of Assessment and Taxation,
Ex-Officio County Clerk



**UNTIL A CHANGE IS REQUESTED ALL TAX
STATEMENTS SHALL BE SENT TO:**
No Change

BARGAIN AND SALE DEED

Exxon of Wilsonville, LLC, an Oregon limited liability company, Grantor, conveys to LaPoint Business Group, LLC, an Oregon limited liability company, Grantee, the following real property situated in Washington County, Oregon and described on the attached Exhibit "A."

The true consideration for this conveyance is \$0.00. However, the actual consideration consists of other value given which is the whole consideration.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Dated this 4 day of November, 2005.

EXXON OF WILSONVILLE, LLC

BY: Garry L. LaPoint, Member

BY: Katherine M. LaPoint, Member

PDX 1349506v1 0-0
Portland

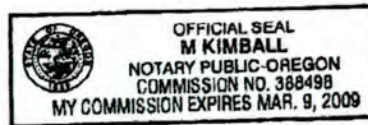


STATE OF OREGON)

County of Multnomah) ss.

This instrument was acknowledged before me on this 4 day of November, 2005, by Garry L. LaPoint, as a member of Exxon of Wilsonville, LLC..

M Kimball
Notary Public for Oregon
My Commission Expires: 3/9/09

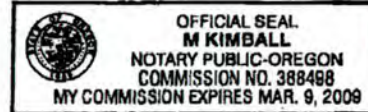


STATE OF OREGON)

County of Multnomah) ss.

This instrument was acknowledged before me on this 4 day of November, 2005, by Katherine M. LaPoint, as a member of Exxon of Wilsonville, LLC.

M Kimball
Notary Public for Oregon
My Commission Expires: 3/9/09



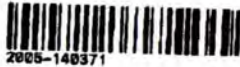


EXHIBIT A

PARCEL I:

A parcel of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the South line of said lot, a distance of 391.33 feet to the East line of Parcel I in Deed from John Q. Hammons, to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East, along said "ODOT" Deed, a distance of 359.27 feet; thence continuing along said "ODOT" Deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of $062^{\circ}51'50''$, a chord bearing of North $31^{\circ}35'19''$ East, a chord length of 133.67 feet to the intersection with the South line of SW Commerce Circle as dedicated in the plat of EDWARDS BUSINESS INDUSTRIAL PARK; thence non-tangent North $70^{\circ}34'24''$ East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius 25.00 feet, arc length of 32.72 feet, central angle of $074^{\circ}59'06''$, a chord bearing of South $71^{\circ}56'03''$ East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of $000^{\circ}41'10''$, a chord bearing of South $24^{\circ}13'24''$ East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 595.65 feet, arc length of 85.44 feet, central angle of $008^{\circ}13'06''$, a chord bearing of South $25^{\circ}08'24''$ East, and a chord length of 85.36 feet to Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South $15^{\circ}09'35''$ West, a distance of 83.41 feet, South $38^{\circ}02'13''$ East, a distance of 200.44 feet, North $46^{\circ}33'47''$ East, a distance of 48.10 feet, South $40^{\circ}56'40''$ East, a distance of 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of $00^{\circ}21'11''$, a chord bearing of South $38^{\circ}36'45''$ East, and a chord length of 17.49 feet to a point 100.00 feet North of, when measured at right angle to, the South line of said Lot 7; thence continuing along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of $00^{\circ}58'46''$, a chord bearing of South $37^{\circ}56'47''$ East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of $030^{\circ}31'07''$, a chord bearing of South $00^{\circ}03'01''$ West, and a chord length of 61.56 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the



South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 347.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Prairie Corp., an Oregon corporation, by instrument recorded July 19, 2000 as Fee No. 2000-48398, more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line



of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

FURTHER EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South $89^{\circ}38'33''$ West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North $00^{\circ}09'24''$ East parallel to said East line, 18.00 feet to the true point of beginning; thence North $89^{\circ}38'33''$ East parallel to said South line of Lot 7, 95.10 feet; thence South $20^{\circ}29'49''$ West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South $89^{\circ}38'33''$ West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North $00^{\circ}09'24''$ East parallel to said East line, 6.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.


1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 2, 2014, I served the foregoing *Defendants' ORCP 21*
3 *Motions, Declaration of Garry L. LaPoint in Support of Defendants' ORCP 21 Motions, and*
4 *Defendants' Counsel's Certificate of Compliance (UTCR 5.010)* on the following Parties by
5 mailing a true copy thereof, via first class mail, postage prepaid, to them at the following
6 address:

7
8 Garrett S. Garfield
9 Holland & Knight LLP
10 111 SW 5th Avenue, Ste. 2300
11 Portland, OR 97204
12 *Counsel for Plaintiff*

11 Wallace W. Lien
12 Wallace W. Lien, P.C.
13 1775 32nd Place NE, Suite A
14 Salem, OR 97301
15 *Co-Counsel for Defendant*

15 **LAIDLAW & LAIDLAW, PC**

16
17 By: 
18 Terra Jane Burns
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

LAIDLAW & LAIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON
6

7 WILSONVILLE DEVCO, LLC, and NW) Case No. C138125CV
8 COFFEE GROUP, LLC,)
9 Plaintiffs,) **DECLARATION OF GARRY L. LAPOINT**
10 v.) **IN SUPPORT OF DEFENDANTS' ORCP**
11 LAPOINT BUSINESS GROUP, LLC and) **21 MOTIONS**
12 GARRY LAPOINT,)
13 Defendant)

14 I, Garry L. LaPoint, hereby declare and state, as follows:
15

- 16 1. I am at least 18 years of age and am competent to make this declaration. Each of the
17 facts set forth herein are based on my personal knowledge, except those facts set forth on
18 information and belief. As to those facts, I am informed and believe them to be true.
19 2. I make this declaration in support of Defendants' ORCP 21 Motions, filed concurrently
20 herewith.
21 3. At all times material, I have been a member of, and registered agent for, LaPoint
22 Business Group, LLC, an Oregon Limited Liability Company. A copy of LaPoint Business
23 Group, LLC's, Business Entity Data form, taken from the Oregon Secretary of State's website, is
24 marked as Exhibit B and attached to Defendants' ORCP 21 Motions.
25 4. A copy of the last vesting deed to the real property benefitted by the Restrictive Covenant
26 – 25410 SW 95th Avenue Wilsonville, Oregon ("the benefitted parcel") – is marked as Exhibit C

Page 1 – DECLARATION OF GARRY L. LAPOINT IN SUPPORT OF DEFENDANTS' ORCP 21
MOTIONS

LAILAW & LAILAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840

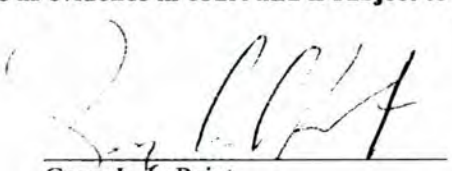
1 and attached to Defendants' ORCP 21 Motions.

2 5. LaPoint Business Group, LLC, is the sole owner of the benefitted parcel. I am a member
3 and of, and registered agent for, LaPoint Business Group, LLC. I hold no interest in and to the
4 benefitted parcel in my personal capacity.

5 6. I am informed and believe that Plaintiffs' complaint seeks a declaratory judgment against
6 me, in my personal capacity. I hold no interest in or to the benefitted parcel in my personal
7 capacity. I respectfully request, that the Court dismiss me from Plaintiffs' Complaint For
8 Declaratory Relief.

9
10 **I hereby declare that the above statement is true to the best of my knowledge and
11 belief, and that I understand it is made for use as evidence in court and is subject to penalty
12 for perjury.**

13 Dated: December 30, 2013

14 
Garry L. LaPoint

15
16
17
18
19
20
21
22
23
24
25
26
Page 2 – DECLARATION OF GARRY L. LAPOINT IN SUPPORT OF DEFENDANTS' ORCP 21
MOTIONS

LAILAW & LAILAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON

6 WILSONVILLE DEVCO, LLC, and NW
7 COFFEE GROUP, LLC,

8 Plaintiffs,

9 v.

10 LAPOINT BUSINESS GROUP, LLC and
11 GARRY LAPOINT,

12 Defendant

) Case No. C138125CV
)
)
)

) **DEFENDANTS' COUNSEL'S**
) **CERTIFICATE OF COMPLIANCE**
) **(UTCR 5.010)**
)
)
)

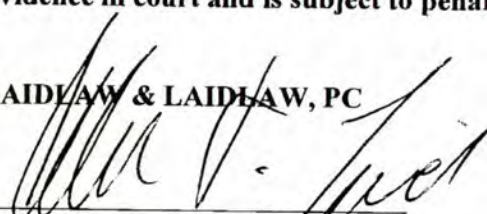
13
14 I, Alec J. Laidlaw, attorney for Defendants in the above captioned matter, hereby certify
15 as follows:

16 1. On December 27, 2013, I telephoned Plaintiffs' counsel to confer on the issues raised in
17 Defendants' ORCP 21 Motions, filed concurrently herewith. Despite the good-faith efforts of
18 counsel, the parties were not able to agree on the issues set forth in the accompanying ORCP 21
19 Motions.

20 **I hereby declare that the above statement is true to the best of my knowledge and**
21 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**
22 **for perjury.**

23 Dated: December 30, 2013

24 **LAIDLAW & LAIDLAW, PC**

25 
Alec J. Laidlaw, OSB #058194

Jason Janzen, OSB #063790

Attorneys for Defendants

alec@laidlawandlaidlaw.com

26 Page 1 – DEFENDANTS' COUNSEL'S CERTIFICATE OF COMPLIANCE (UTCR 5.010)

LAIDLAW & LAIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840
92 of 92

EXHIBIT 1

PLANNING DIVISION MEMORANDUM

February 10, 2014

To: Development Review Board Panel A

From: Daniel Pauly AICP, Associate Planner

Re: The Human Bean Update and Recommend Staff Report Changes for DB13-0046 et. seq.

A number of materials have been submitted during the open record period and in response and rebuttal to those submittals. This memo covers two topics in these materials, the additional a.m. peak traffic study and internal site circulation, including delivery traffic. This memo will be Exhibit A4.

An a.m. peak traffic study has been completed by DKS and included in Exhibit B6, applicants open record submittal. The report concludes "there are no operating concerns at the study intersections or project driveway during the a.m. peak hour."

Internal site circulation and parking for larger vehicles including delivery trucks remains a discussion point. As far as vehicle circulation, the applicant has proposed additional striping and site directional signage to aid circulation. Exhibit E of Exhibit B6 shows delivery truck circulation using LaPoint's property for ingress circulation, but parking on the Wilsonville Devco property to avoid conflicts with fuel delivery. However, there remains disagreement among the property owners whether the current easements and agreement allow such circulation. The easement disagreement will need to be resolved privately by the parties. In Exhibit B8 Wilsonville Devco shows a workable Human Bean delivery truck circulation in the case that it is determined they are unable to use LaPoint's property. The scope of the current review is limited to the Human Bean and Carl's Jr deliveries and site circulation are out of that scope.

Staff recommends the DRB amend the staff report findings related to circulation as follows. Changes are in ***bold italic underline text***:

Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas

A31. **Review Criteria**: "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet DD5 "Proposed Truck Turning Movements" of Exhibit B2 of DB12-0074 through 0076 demonstrates sufficient access and maneuvering areas for delivery trucks, both for the Chevron fuel and Carl's Jr. and the coffee kiosk. Staff notes fuel off-loading, and restaurant ***and*** other commercial delivery parking are in the same area

of the site separating these operations from the general employee and customer parking and pedestrian areas. The access and maneuvering areas for passenger vehicle parking areas appears sufficient providing adequate space for two-way travel. As shown in Exhibits B6 and B7 additional pavement markings and signs are being added to aid in vehicle circulation. The applicant states in their compliance narrative in their notebook, Exhibit B1, that "care has been given to the extent practicable to separate vehicle and pedestrian traffic." Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic. Staff notes disagreement exists between LaPoint and Wilsonville Devco concerning the extent of the easement that would allow deliveries trucks to access the Wilsonville Devco site via LaPoint's property as shown on Exhibit E of Exhibit B6. Exhibit B8 shows an alternative for larger trucks delivering to the Human Bean in the case that private resolution of the easement disagreement does not allow the trucks to maneuver on LaPoint's property. Exhibit B8 shows adequate truck access and circulation to the Human Bean portion of the site. For a development of the proposed size Wilsonville Development Code does not require a separate loading/delivery area, and therefore as is typical of fast food and coffee kiosk type uses in general, the deliveries by necessity happen in the customer/employee parking and circulation areas.

Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation

- A34. **Review Criteria:** "Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses as well as the existing Chevron and Holiday Inn share a common driveway off 95th Avenue and their access and parking areas are interconnected. Joint use of many of the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations, and direct vehicle and pedestrian paths between destinations with limited choke points. To the extent practicable parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron a direct pedestrian path is provided to the coffee kiosk. Multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site. As shown in Exhibits B6 and B7 additional signs and pavement markings have been added to further aid in directing circulation thus aiding efficiency.

Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards

- B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the applicant's notebook, Exhibit B1. Staff notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met. *Among the design standards is a requirement that special attention be paid to general circulation and parking areas that are safe and convenient. As shown by the number of added signs and markings, as well as specific drawings for different truck circulation scenarios (see Exhibits B6, B7, and B8), the applicant has demonstrate special attention has been given to site circulation and safe and convenient parking areas.*



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

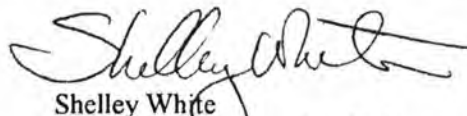
VIA: Certified Mail, Return Receipt Requested

February 13, 2014

Josh Veentjer
Wilsonville Devco LLC
P.O. Box 6437
La Quinta, CA 92248

Re: Case File DB13-0046 et seq

The Development Review Board's Decision and Resolution No. 270 are attached, denying your request for a Stage II Final Plan revision, Site Design Review, and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk. Thank you.



Shelley White
Planning Administrative Assistant

CC: Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects
Tom Berg
Garry LaPoint
Jason LaPoint
Steve Pfeiffer – Perkins Coie

CC via e-mail: Wallace W. Lien
George Gregory



"Serving The Community With Pride"

EXHIBIT 3

February 13, 2014

DEVELOPMENT REVIEW BOARD PANEL A

NOTICE OF DECISION

Project Name: Boones Ferry Pointe – The Human Bean Drive-Up Coffee Kiosk

Case File Nos.: DB13-0046 – Stage II Final Plan revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan revision and Sign Waiver

Applicant/Owner: Josh Veentjer – Wilsonville Devco LLC

**Authorized
Representatives:** Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects

Property Description: Tax Lots 302, Section 2DB; T3S R1W; Washington County;
Wilsonville, Oregon

Location: Corner of 95th Avenue and Boones Ferry Road

On February 10, 2014, at the meeting of the Development Review Board the following action was taken on the above-referenced proposed development applications:

Denied

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022(.02)*.

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this **13th day of February 2014** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022(.09)*

Written decision is attached

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960

Attachments: DRB Resolution No. 270, Copy of proposed DRB Resolution No. 268 which was rejected.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 270**

A RESOLUTION REJECTING PROPOSED RESOLUTION NO. 268 AND DENYING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits, exhibits, and staff report were duly considered by the Development Review Board Panel A at a scheduled meetings conducted on January 13 and February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

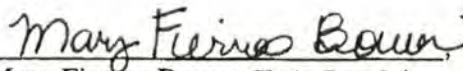
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject, and

WHEREAS citing concerns about on site traffic circulation, congestion and safety in general and referring specifically to Wilsonville City Code Section 4.400.02 and 4.421 C, the Development Review Board moved, seconded and passed a motion, by a vote of 4 to 1, rejecting proposed Resolution No. 268, and by reference the staff report dated January 6, 2014, finding that the Application did not satisfy Wilsonville Code requirements pertaining to safety and circulation.

NOW, THEREFORE, BE IT RESOLVED THAT THE City of Wilsonville Development Review Board does hereby reject proposed Resolution No. 268, thereby denying the above described Application for reasons stated herein and with more particularity in the record of decision.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10th day of February, 2014 and filed with the Planning Administrative Assistant on February 13, 2014. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022(.09) unless appealed per WC Sec 4.022(.02) or called up for review by the council in accordance with WC Sec 4.022(.03).


Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:


Shelley White, Planning Administrative Assistant

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13th day of January, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.09)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

4.

BEFORE THE CITY COUNCIL

FOR THE

CITY OF WILSONVILLE

In the Matter of the Application for)
a Stage II Final Plan Revision,)
Site Design Review and Master Sign)
Plan Revision and Sign Waiver of:)
WILSONVILLE DEVCO, LLC)
On property addressed as)
25250 SW 95th Avenue and identified as)
TL 302, Section 2DB, Township 3 South,)
Range 1 West, Willamette Meridian,)
City of Wilsonville, Washington County,)
Oregon)

Case Nos.

DB13-0046 (Stage II Final Plan Revision)

DB13-0047 (Site Plan Review)

DB13-0048 (Master Sign Plan Revision and
Sign Waiver)

OBJECTION TO APPEAL

COMES NOW, LaPoint Business Group, LLC, by and through its attorney, Wallace W. Lien, of Wallace W. Lien, P.C., and does hereby object to the Appeal filed by the Applicant in this case.

This objection is based on the fact that the Applicant has provided no legal basis for its appeal. The sum total of the appeal is that the Applicant disagrees with the action of the DRB. The Applicant provides no legal or factual argument for why the DRB decision is wrong. Applicant states that the "DRB misapplied and misinterpreted WDC 4.400.02 and 4.421C" but does not say how or in what manner the DRB decision "misapplied" and "misinterpreted" the approval criteria.

Further, under "Reasons for Appeal" the Applicant again simply disagrees with the DRB decision without providing any legal or factual justification for its appeal. Applicant asserts it has demonstrated adequate internal vehicle circulation, but provides no support for that position other than a staff report done before the DRB decision was made. In fact, what the DRB had in front of it when it made its decision was several video's of the on-site traffic circulation showing accidents

and chaotic vehicular movements in addition to extensive testimony about the vast problems associated with the current circulation. Adding additional traffic for a coffee kiosk would only exacerbate an already unworkable situation. The DRB, after reviewing all the evidence and the approval criteria, made a nearly unanimous decision that modification of this site plan to remove the office building and replace it with a coffee kiosk was not appropriate or in compliance with the approval criteria.

It is insufficient for an appeal to singularly rely on a staff report that was essentially rejected by the DRB based on other evidence, without providing some additional factual or legal justification for why the DRB decision was legally wrong. The fact that the Applicant disagrees with the DRB is not enough to warrant an appeal, and the appeal should be rejected as incomplete and insufficient to warrant consideration by the City Council.

Applicant has played hide and seek with the facts in this case throughout. The proposed site plan has been modified, delivery locations are moved like chess pieces, and pedestrian and bicycle access have been located and relocated as the case has progressed through the City. If the Applicant is allowed to file a generic, non-specific appeal, it will simply be another tactic to hide the ball, and spring on both the City Council, staff and my client, what the Applicant's real justification for the appeal is, if in fact there even is one. This tactic will simply lead to continuation of the hearing in order to allow all parties to properly prepare and rebut whatever the hidden rationale for this appeal is. The land use process is intended to be open and fair, and the Applicant's tactics to hide the ball should not be allowed.

The appeal should be denied as legally insufficient in not stating with any particularity why the DRB decision is incorrect. In the event the appeal is accepted a hearing scheduled, the Applicant

should be required to state in writing at least 14 days before any scheduled hearing, the reasons for the appeal with sufficient specificity so that staff and my client understand the reasons for the appeal and can be prepared to defend the actions of the DRB.

DATED this 28th day of February, 2014.

Wallace W. Lien, OSB 79-3011
Attorney for LaPoint Business Group, LLC

5.

CITY COUNCIL MEETING STAFF REPORT

Meeting Date: March 3, 2014	Subject: Order Establishing Scope of Review of Appeal of DRB Panel A Decision Regarding the Human Bean Coffee Kiosk Staff Member: Daniel Pauly AICP, Associate Planner Department: Planning Division
Action Required <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Development Review Board Recommendation <input type="checkbox"/> Approval <input checked="" type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comment: Following their review at the January 13 th and February 10 th meetings Development Review Board Panel A rejected proposed Resolution No. 268 to approve with conditions the Human Bean Coffee Kiosk and denied the application. On January 21 st , the applicant filed an appeal of the DRB's decision.
Staff Recommendation: The City Council's scope of review be limited to the issues related to the reasons DRB members stated for denial. These issues are: <ul style="list-style-type: none"> On-site traffic congestion, Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles. 	
Recommended Language for Motion: Having considered the factors in WC 4.022(.07) A, I move the City Council order that the appeal hearing of the denial Human Bean application by Development Review Board Panel A at its February 10, 2014 hearing, be limited to additional testimony and evidence on the following issues and related development code provisions: <ul style="list-style-type: none"> On-site traffic congestion, Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles. Section 4.154, Subsections 4.155 (.03) A., 4.400 (.02) A., and 4.421 (.01) C. 	
PROJECT / ISSUE RELATES TO: Development Code	
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)
<input checked="" type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL: At their February 10, 2014 meeting on this matter, Development Review Board Panel A voted 4-1 to deny the applications for the Human Bean Coffee Kiosk. On January 21, 2014, the applicant filed an appeal of the DRB's decision. The City's Development

Code (Subsection 4.022 (.05) B.) provides the City Council as the reviewing body shall order the scope of review on appeal to be one of the following:

- Restricted to the record, meaning only evidence and testimony entered into the DRB record shall be considered, but the right of argument as to how the evidence in the record meets or does not meet the applicable standards is granted.
- Limit the scope to issues the Council determines necessary for a proper resolution of the matter. This allows any party to testify and submit new evidence related to the stated issues, but considers all other matters related to the applications on the record. For example, a new concern about architecture can't be raised on appeal if architecture wasn't an issue identified by the Council. Both parties had new evidence on the seminal issue they wanted to present to the DRB, but the record had been closed. This option takes away any claim they parties were not fully heard. This option also gives staff the ability to more thoroughly present the facts surrounding the reasons DRB denied the applications and gives the applicant and the opponent the opportunity to present further approaches to consider that might resolve the problems identified by the DRB.
- A de novo hearing, meaning new evidence and testimony on any topic related to the applications can be submitted during the City Council review. This could lengthen the hearing and not make efficient use of the Council's hearing time.

EXECUTIVE SUMMARY: On January 21, 2014 the applicant filed an appeal of the recent DRB decision to deny the applications allowing for building a coffee kiosk on the same property as the Carl's Jr. Restaurant in North Wilsonville. The appeal will first be heard during the Council's March 17, 2014 meeting. A final decision must be rendered by the City no later than the Council's April 7, 2014 meeting in order to not violate the state's 120-day rule for land use reviews. After discussion between planning and legal staff, staff recommends the council keep the record open on a limited basis to allow additional evidence, staff discussion, and analysis of the issues surrounding the reasons the DRB denied the applications. All other issues and topics will be on the record. This approach allows for more thorough discussion of the issues surrounding the denial and allows the applicant to address concerns raised by the DRB, and opponents of the application to comment on any new ideas proposed to address concerns.

EXPECTED RESULTS: Identification of the level of new evidence and testimony the Council will consider for the Human Bean coffee kiosk applications on appeal

TIMELINE: Making the decision on the type of hearing to hold will allow all parties, including staff, the applicant, and opponents of the application to understand and prepare for the anticipated City Council hearing later in the month.

CURRENT YEAR BUDGET IMPACTS: None anticipated

FINANCIAL REVIEW / COMMENTS:

Reviewed by: JEO, Date: 2/21/14

No financial impact.

LEGAL REVIEW / COMMENT:

Reviewed by: MEK, Date: 2/14/ 2014

The Council has the discretion to set the scope of review on appeal. The factors that the Council shall consider in allowing additional evidence are set forth in WC 4.022 (.07) A. Allowing both parties to address this issue eliminates any claim of prejudice (factor 1); will allow both the parties to know they can bring available evidence as this was not the case with the DRB record being closed (factor 2); this will eliminate any claim of surprise (factor 4), albeit this was not a claim in front of the DRB; and to the extent the proposed testimony and evidence of each party was offered to the DRB (but not admitted) the proposed testimony and evidence appears to have some competency and materiality to the determining issue (factor 4). There may such other factors as the Council may determine apply (factor 5).

COMMUNITY INVOLVEMENT PROCESS: The standards public notice procedures for the DRB have been followed. The DRB has allowed interested parties to testify during their hearing process.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY Making a motion to determine the extent of new evidence and testimony that will be allowed for the Human Bean applications on appeal allows for clear expectations for all the parties involved. The recommendation of keeping the record open only on the issues identified by the DRB in the denial allows for thorough consideration of the issues in relation to the best interest of the community.

ALTERNATIVES: As alternatives to Planning and Legal staff's recommendation to allow new evidence and testimony only on those issues identified for the DRB as reasons for denial the Council could:

- Not allow any new evidence or testimony and review only the DRB record

- Hold a de novo hearing which will allow evidence and testimony on any topic related to the Human Bean.

CITY MANAGER COMMENT:**ATTACHMENTS:**

DRB Notice of Decision, Resolution 270 Denying the Application, and Proposed Resolution Non. 268 rejected by the DRB.



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

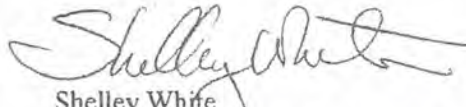
VIA: Certified Mail, Return Receipt Requested

February 13, 2014

Josh Veentjer
Wilsonville Devco LLC
P.O. Box 6437
La Quinta, CA 92248

Re: Case File DB13-0046 et seq

The Development Review Board's Decision and Resolution No. 270 are attached, denying your request for a Stage II Final Plan revision, Site Design Review, and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk. Thank you.



Shelley White
Planning Administrative Assistant

CC: Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects
Tom Berg
Garry LaPoint
Jason LaPoint
Steve Pfeiffer – Perkins Coie

CC via e-mail: Wallace W. Lien
George Gregory

February 13, 2014

DEVELOPMENT REVIEW BOARD PANEL A

NOTICE OF DECISION

Project Name: Boones Ferry Pointe – The Human Bean Drive-Up Coffee Kiosk

Case File Nos.: DB13-0046 – Stage II Final Plan revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan revision and Sign Waiver

Applicant/Owner: Josh Veentjer – Wilsonville Devco LLC

**Authorized
Representatives:** Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects

Property Description: Tax Lots 302, Section 2DB; T3S R1W; Washington County;
Wilsonville, Oregon

Location: Corner of 95th Avenue and Boones Ferry Road

On February 10, 2014, at the meeting of the Development Review Board the following action was taken on the above-referenced proposed development applications:

Denied

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022(.02).*

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this **13th day of February 2014** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022(.09)*

Written decision is attached

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960

Attachments: DRB Resolution No. 270, Copy of proposed DRB Resolution No. 268 which was rejected.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 270**

A RESOLUTION REJECTING PROPOSED RESOLUTION NO. 268 AND DENYING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits, exhibits, and staff report were duly considered by the Development Review Board Panel A at a scheduled meetings conducted on January 13 and February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

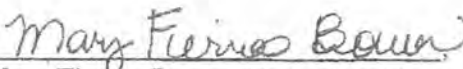
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject, and

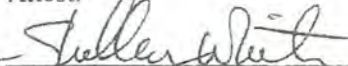
WHEREAS citing concerns about on site traffic circulation, congestion and safety in general and referring specifically to Wilsonville City Code Section 4.400.02 and 4.421 C, the Development Review Board moved, seconded and passed a motion, by a vote of 4 to 1, rejecting proposed Resolution No. 268, and by reference the staff report dated January 6, 2014, finding that the Application did not satisfy Wilsonville Code requirements pertaining to safety and circulation.

NOW, THEREFORE, BE IT RESOLVED THAT THE City of Wilsonville Development Review Board does hereby reject proposed Resolution No. 268, thereby denying the above described Application for reasons stated herein and with more particularity in the record of decision.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10th day of February, 2014 and filed with the Planning Administrative Assistant on February 13, 2014. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022(.09) unless appealed per WC Sec 4.022(.02) or called up for review by the council in accordance with WC Sec 4.022(.03).


Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:


Shelley White, Planning Administrative Assistant

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.068 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13th day of January, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.02)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

6.



Steven L. Pfeiffer
PHONE: (503) 727-2261
FAX: (503) 346-2261
EMAIL: SPfeiffer@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

March 3, 2014

VIA EMAIL

Mr. Tim Knapp, Mayor
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070

**Re: Appeal of DRB Decision Regarding the Human Bean, Wilsonville Devco LLC
DB13-0046, DB13-0047, DB13-0048**

Dear Mayor Knapp and City Councilors:

This office represents the applicant and appellant, Wilsonville Devco, LLC ("Applicant"), in the appeal of the Development Review Board's ("DRB's") decision to deny the above-referenced applications for Stage II Final Plan Revision, Site Design Review and Master Sign Plan Revision and Sign Waiver (together, "Applications") for a coffee kiosk at the corner of Boones Ferry Road and 95th Avenue (the "Site"). The City mailed its notice of the DRB's decision on February 13, 2014, making the deadline for appeal February 27, 2014. Applicant's Notice of Intent to Appeal, dated February 21, 2014, is therefore timely.

On February 28, 2014, LaPoint Business Group, LLC and its attorney, Wallace Lien (together, the "Opponent"), filed an objection to the appeal, asserting that the Applicant failed to provide a legal basis for the appeal. However, as discussed more fully below, Opponent is mistaken and its objection should be rejected. First and foremost, there is no requirement that a Notice of Intent to Appeal contain a legal basis for the appeal, and Opponent has failed to cite to any law or code regulation requiring such legal basis. Wilsonville Development Code ("WDC") Section 4.022 provides the requirements for appeals as follows:

"(.02) Board Action. A decision of the Development Review Board may be appealed to the Council by any affected party who participated in the hearing before the Board by filing an appeal within fourteen (14) calendar days of the posting of the notice of decision, or by the call-up procedures listed below. The notice of appeal shall indicate the decision that is being appealed."

LEGAL120011420.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

Perkins Coie LLP

Mr. Tim Knapp, Mayor
City of Wilsonville
March 3, 2014
Page 2

As previously noted, Applicant's Notice of Intent to Appeal, dated February 21, 2014, was timely filed. Moreover, it clearly indicated the DRB decision being appealed by referencing the applications' City File Numbers, and by attaching a copy of the DRB decision being appealed. Therefore, Applicant's Notice of Intent to Appeal met the requirements of WDC 4.022(.02).

Secondly, Applicant's Notice of Intent to Appeal stated the legal basis for its appeal. Specifically, the notice stated as follows:

"In denying the application, the DRB misapplied and misinterpreted WDC 4.400.02 and 4.421C. Moreover, its determination that these provisions were not satisfied is not supported by, and is contrary to, the substantial evidence in the record." Applicant's Notice of Intent to Appeal, p.1.

This statement is sufficient to put the City, and Opponent, on notice regarding the reasons for the appeal. It is worth noting that once City Council determines the type of review for this appeal, Applicant fully intends to provide City Council with a written statement setting forth its argument, testimony, and evidence in support of this appeal prior to the appeal hearing. The WDC contains no requirement that such written statement be submitted at least fourteen (14) days prior to the appeal hearing, and Opponent fails to cite to any authority containing such requirement.

For the reasons discussed above, Applicant has perfected its appeal and is entitled to an appeal hearing. Opponent's objection should be rejected in its entirety, and City Council should move forward with scheduling a hearing on this appeal. Please add this letter to the official record of this appeal proceeding.

Very truly yours,


Steven L. Pfeiffer

SLP:crl

cc: Client (via email)
George J. Gregores, Esq. (via email)
Wallace Lien (via email)

7.

From: Jacobson, Barbara

Sent: Tuesday, March 04, 2014 9:44 AM

To: Wallace Lien (WLien@lienlaw.com); Pfeiffer, Steven L. (Perkins Coie) (SPfeiffer@perkinscoie.com); ccelko@perkinscoie.com

Cc: Kohlhoff, Mike

Subject: Appeal Hearing

Gentlemen:

Both Mr. Lien's objection and Mr. Pfeiffer's letter in response to it were entered into the record last night. The City Council voted unanimously to hear the appeal limiting evidence to what is already on the record but allowing new evidence only as it directly pertains to internal traffic circulation and safety. Each side will be limited to a maximum presentation time of 20 minutes, with the Appellant/Applicant being allowed to reserve 5 minutes of its allotted time for final rebuttal. If you are interested, the hearing was recorded and you can watch it on online. Go to the City of Wilsonville website and then go to wgctv. I believe its channel 30 City Council meeting.

Barbara A. Jacobson

Assistant City Attorney

City of Wilsonville

29799 SW Town Center Loop E

Wilsonville OR 97070

503-570-1509

503-682-1015 fax

jacobson@ci.wilsonville.or.us

Disclosure: Messages to and from this email address may be subject to the Oregon Public Records Law.

The information contained in this email transmission is confidential and is intended only for the use of the individual or entity intended to receive it. This message may contain information protected by the attorney-client privilege. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this email transmission in error, please immediately notify the sender by return email and delete the original email.

Circular 230 Disclaimer: If any portion of this communication is interpreted as providing federal tax advice, Treasury Regulations require that we inform you that we neither intended nor wrote this communication for you to use in avoiding federal tax penalties that the IRS may attempt to impose and that you may not use it for such purpose.

8.



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

March 5, 2014

Wallace W. Lien
Wallace W. Lien P.C.
1775 32nd Pl NE Ste A
Salem OR 97301

Steven L. Pfeiffer
Perkins Coie LLP
1120 NW Couch St 10th Fl
Portland OR 97209

Re: Appeal of DRB Decision Regarding the Human Bean

Dear Messrs. Lien and Pfeiffer:

As you know from my earlier email to both of you, the City Council has granted Applicant Wilsonville Devco's appeal of the Development Review Board denial of the proposed Human Bean land use application. The appeal will be held on March 17, 2014 on or about 7:00 p.m. The City Council Agenda is available on line at www.ci.wilsonville.or.us. As I also briefly mentioned in my earlier email, the City Council's scope of review will be limited to the DRB record, with the ability for each side to submit limited additional information only as it pertains to the following:

- On-site traffic congestion;
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation, inclusive of delivery vehicles and other larger format vehicles; and
- Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C.

Testimony by the Applicant will be limited to 20 minutes, out of which time 5 minutes may be preserved for rebuttal. Testimony by any opponent(s) is limited to 20 minutes. This does not preclude City Council questions beyond these timeframes.

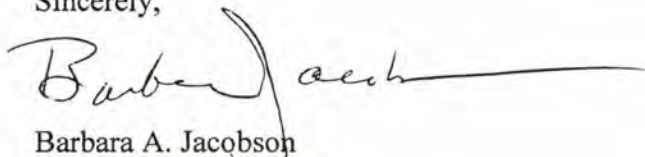
All additional material you would like admitted into the record and considered by City Council, including any briefs, must be received by no later than 5:00 p.m. on March 10, 2014. I would advise you to get the additional information you would like entered into the record here a bit earlier than the last minute of the last day in that City Hall does generally close promptly at 5:00 p.m. Materials sent via email or U.S. Mail are sent at the sender's own risk for timely arrival. Materials not received by this exact deadline will not be considered.



Wallace W. Lien
Steven L. Pfeiffer
March 5, 2014
Page 2

Prior to the hearing, I would encourage both sides to continue to work together to find a reasonable resolution to the issues in dispute. Please recall that this appeal only involves the Stage II Final Plan Revision to allow for a drive through coffee kiosk, in lieu of the development for the site that was previously finally approved. The original approval remains in place and the timeframe for appeal of that approval has long passed.

Sincerely,

A handwritten signature in dark ink, appearing to read "Barbara A. Jacobson", with a long horizontal flourish extending to the right.

Barbara A. Jacobson
Assistant City Attorney

baj:tec

cc: Bryan Cosgrove, City Manager
Michael Kohlhoff, City Attorney
Nancy Kraushaar, Community Development Director
Chris Neamtzu, Planning Director
Dan Pauly, Associate Planner

9.

or Police, any police officer of the City or the City Recorder to summon forthwith from the body of the City persons whose names are on the voter registration books and who have the qualifications of jurors to serve in the Court.

2.538 Jury Verdict.

The six jurors summoned to try the cause must unanimously concur to render a verdict.

2.540 Trial Procedure.

Trials shall be conducted as trials in District Courts and rules of evidence shall be the same as in State Courts, and shall include the applicable status of the State of Oregon regarding the introduction or admission of evidence.

2.550 Municipal Court Privilege, Power and Duties.

The Municipal Court shall possess and exercise within the City all the privileges, powers, duties and jurisdiction, civil and criminal, of a Justice's Court according to ORS, Chapter 51, except that it shall not have a Small Claims Department. It shall be subject to all of the general laws prescribing the duties of a Justice's Court and perform such other duties as may be required by the State, the City Council or this Code.

2.560 Evidentiary Hearing Procedures.

(1) In all evidentiary hearings before the City Council, Planning Commission, Design Review Board or other Board, Commission, Committee or City agency, the following procedures for the conduct of the hearings are prescribed:

(a) All interested persons in attendance shall be heard on the matter for hearing, and this fact shall be communicated to those in attendance.

(b) A summary of the application or other matter for hearing shall be given by the presiding officer or someone appointed by him or her. In the case of land use hearings, a statement of the applicable criteria shall also be given.

(c) The staff report, if any, shall be made.

(d) Questions, if any, by the hearing body of the staff.

(e) Testimony shall be received in the following order:

1) Applicant

- 2) Proponents
- 3) Opponents
- 4) Rebuttal by proponents
- 5) Others

(f) Close public hearing.

(g) Questions, if any, by the hearing body.

(h) Discussion by the hearing body.

(i) A decision shall be made by the hearing body, except, however, that further discussion and/or decision by the hearing body may be postponed to another meeting, the time, date and place of which shall be announced before adjournment.

(j) All persons who speak at such hearing shall identify themselves by name, address and interest in the matter. Attorneys or others shall be allowed to speak on behalf of proponents or opponents.

(k) Written briefs by any interested parties, their attorney or other agent will be accepted if filed with the secretary or clerk of the hearing body at least three (3) days prior to the hearing.

(l) A record made at any prior evidentiary hearing may be accepted, considered and used by the hearing body at any subsequent hearing; and said body by majority vote of a quorum present may deny to accept or hear any repetitious matter.

Section 2.600 Measure 37 Compensation Procedures and Standards.

(1) Purpose: The purpose of this section is to provide procedures and standards for claims for compensation made pursuant to 2004 Measure 37.

(2) Definitions: As used in this section, unless the context requires otherwise:

(a) "Affected property" means the private real property or any interest therein that is alleged to have suffered a reduction in fair market value as a result of the City's regulation restricting the use of that property or interest and for which a property owner seeks compensation for the reduction in value.

(b) "Claimant" means the present owner or owners of the property or any interest therein, who submits a written claim for compensation under Subsection 2.600(3).

(c) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the

10.

City of

WILSONVILLE
in OREGON



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: March 3, 2014	Subject: Order Establishing Scope of Review of Appeal of DRB Panel A Decision Regarding the Human Bean Coffee Kiosk Staff Member: Daniel Pauly AICP, Associate Planner Department: Planning Division	
Action Required <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Development Review Board Recommendation <input type="checkbox"/> Approval <input checked="" type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comment: Following their review at the January 13 th and February 10 th meetings Development Review Board Panel A rejected proposed Resolution No. 268 to approve with conditions the Human Bean Coffee Kiosk and denied the application. On January 21 st , the applicant filed an appeal of the DRB's decision.	
Staff Recommendation: The City Council's scope of review be limited to the issues related to the reasons DRB members stated for denial. These issues are: <ul style="list-style-type: none"> • On-site traffic congestion, • Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles. 		
Recommended Language for Motion: Having considered the factors in WC 4.022(.07) A, I move the City Council order that the appeal hearing of the denial Human Bean application by Development Review Board Panel A at its February 10, 2014 hearing, be limited to additional testimony and evidence on the following issues and related development code provisions: <ul style="list-style-type: none"> • On-site traffic congestion, • Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles. • Section 4.154, Subsections 4.155 (.03) A., 4.400 (.02) A., and 4.421 (.01) C. 		
PROJECT / ISSUE RELATES TO: Development Code		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL: At their February 10, 2014 meeting on this matter, Development Review Board Panel A voted 4-1 to deny the applications for the Human Bean Coffee Kiosk. On January 21, 2014, the applicant filed an appeal of the DRB's decision. The City's Development

Code (Subsection 4.022 (.05) B.) provides the City Council as the reviewing body shall order the scope of review on appeal to be one of the following:

- Restricted to the record, meaning only evidence and testimony entered into the DRB record shall be considered, but the right of argument as to how the evidence in the record meets or does not meet the applicable standards is granted.
- Limit the scope to issues the Council determines necessary for a proper resolution of the matter. This allows any party to testify and submit new evidence related to the stated issues, but considers all other matters related to the applications on the record. For example, a new concern about architecture can't be raised on appeal if architecture wasn't an issue identified by the Council. Both parties had new evidence on the seminal issue they wanted to present to the DRB, but the record had been closed. This option takes away any claim they parties were not fully heard. This option also gives staff the ability to more thoroughly present the facts surrounding the reasons DRB denied the applications and gives the applicant and the opponent the opportunity to present further approaches to consider that might resolve the problems identified by the DRB.
- A de novo hearing, meaning new evidence and testimony on any topic related to the applications can be submitted during the City Council review. This could lengthen the hearing and not make efficient use of the Council's hearing time.

EXECUTIVE SUMMARY: On January 21, 2014 the applicant filed an appeal of the recent DRB decision to deny the applications allowing for building a coffee kiosk on the same property as the Carl's Jr. Restaurant in North Wilsonville. The appeal will first be heard during the Council's March 17, 2014 meeting. A final decision must be rendered by the City no later than the Council's April 7, 2014 meeting in order to not violate the state's 120-day rule for land use reviews. After discussion between planning and legal staff, staff recommends the council keep the record open on a limited basis to allow additional evidence, staff discussion, and analysis of the issues surrounding the reasons the DRB denied the applications. All other issues and topics will be on the record. This approach allows for more thorough discussion of the issues surrounding the denial and allows the applicant to address concerns raised by the DRB, and opponents of the application to comment on any new ideas proposed to address concerns.

EXPECTED RESULTS: Identification of the level of new evidence and testimony the Council will consider for the Human Bean coffee kiosk applications on appeal

TIMELINE: Making the decision on the type of hearing to hold will allow all parties, including staff, the applicant, and opponents of the application to understand and prepare for the anticipated City Council hearing later in the month.

CURRENT YEAR BUDGET IMPACTS: None anticipated

FINANCIAL REVIEW / COMMENTS:

Reviewed by: JEO, Date: 2/21/14

No financial impact.

LEGAL REVIEW / COMMENT:

Reviewed by: MEK, Date: 2/14/ 2014

The Council has the discretion to set the scope of review on appeal. The factors that the Council shall consider in allowing additional evidence are set forth in WC 4.022 (.07) A. Allowing both parties to address this issue eliminates any claim of prejudice (factor 1); will allow both the parties to know they can bring available evidence as this was not the case with the DRB record being closed (factor 2); this will eliminate any claim of surprise (factor 4), albeit this was not a claim in front of the DRB; and to the extent the proposed testimony and evidence of each party was offered to the DRB (but not admitted) the proposed testimony and evidence appears to have some competency and materiality to the determining issue (factor 4). There may such other factors as the Council may determine apply (factor 5).

COMMUNITY INVOLVEMENT PROCESS: The standards public notice procedures for the DRB have been followed. The DRB has allowed interested parties to testify during their hearing process.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY Making a motion to determine the extent of new evidence and testimony that will be allowed for the Human Bean applications on appeal allows for clear expectations for all the parties involved. The recommendation of keeping the record open only on the issues identified by the DRB in the denial allows for thorough consideration of the issues in relation to the best interest of the community.

ALTERNATIVES: As alternatives to Planning and Legal staff's recommendation to allow new evidence and testimony only on those issues identified for the DRB as reasons for denial the Council could:

- Not allow any new evidence or testimony and review only the DRB record

- Hold a de novo hearing which will allow evidence and testimony on any topic related to the Human Bean.

CITY MANAGER COMMENT:**ATTACHMENTS:**

DRB Notice of Decision, Resolution 270 Denying the Application, and Proposed Resolution Non. 268 rejected by the DRB.



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

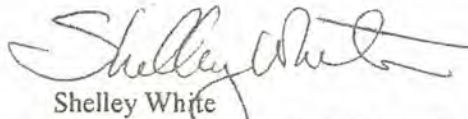
VIA: Certified Mail, Return Receipt Requested

February 13, 2014

Josh Veentjer
Wilsonville Devco LLC
P.O. Box 6437
La Quinta, CA 92248

Re: Case File DB13-0046 et seq

The Development Review Board's Decision and Resolution No. 270 are attached, denying your request for a Stage II Final Plan revision, Site Design Review, and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk. Thank you.


Shelley White
Planning Administrative Assistant

CC: Ben Altman - SFA Design Group
Craig Anderson - CB Anderson Architects
Tom Berg
Garry LaPoint
Jason LaPoint
Steve Pfeiffer - Perkins Coie

CC via e-mail: Wallace W. Lien
George Gregory

February 13, 2014

DEVELOPMENT REVIEW BOARD PANEL A

NOTICE OF DECISION

Project Name: Boones Ferry Pointe – The Human Bean Drive-Up Coffee Kiosk

Case File Nos.: DB13-0046 – Stage II Final Plan revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan revision and Sign Waiver

Applicant/Owner: Josh Veentjer – Wilsonville Devco LLC

**Authorized
Representatives:** Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects

Property Description: Tax Lots 302, Section 2DB; T3S R1W; Washington County;
Wilsonville, Oregon

Location: Corner of 95th Avenue and Boones Ferry Road

On February 10, 2014, at the meeting of the Development Review Board the following action was taken on the above-referenced proposed development applications:

Denied

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022(.02).*

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this **13th day of February 2014** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022(.09)*

Written decision is attached

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960

Attachments: DRB Resolution No. 270, Copy of proposed DRB Resolution No. 268 which was rejected.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 270**

A RESOLUTION REJECTING PROPOSED RESOLUTION NO. 268 AND DENYING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits, exhibits, and staff report were duly considered by the Development Review Board Panel A at a scheduled meetings conducted on January 13 and February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

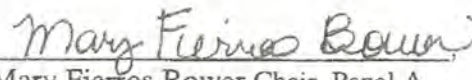
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject, and


WHEREAS citing concerns about on site traffic circulation, congestion and safety in general and referring specifically to Wilsonville City Code Section 4.400.02 and 4.421 C, the Development Review Board moved, seconded and passed a motion, by a vote of 4 to 1, rejecting proposed Resolution No. 268, and by reference the staff report dated January 6, 2014, finding that the Application did not satisfy Wilsonville Code requirements pertaining to safety and circulation.

NOW, THEREFORE, BE IT RESOLVED THAT THE City of Wilsonville Development Review Board does hereby reject proposed Resolution No. 268, thereby denying the above described Application for reasons stated herein and with more particularity in the record of decision.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10th day of February, 2014 and filed with the Planning Administrative Assistant on February 13, 2014. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022(.09) unless appealed per WC Sec 4.022(.02) or called up for review by the council in accordance with WC Sec 4.022(.03).


Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:


Shelley White, Planning Administrative Assistant

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.068 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13th day of January, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.02)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant



1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

PHONE: 503.727.2000

FAX: 503.727.2222

www.perkinscoie.com

Steven L. Pfeiffer

PHONE: (503) 727-2261

FAX: (503) 346-2261

EMAIL: SPfeiffer@perkinscoie.com

February 21, 2014

BY HAND DELIVERY

Sandra C. King, MMC
City Recorder
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070


*Recd 2/21/14
\$ 800.00 ACK
paid. check #10049*

Re: City Files DB 13-0046, BD 13-0047, and DB 13-0048, Wilsonville Devco, LLC

Dear Ms. King:

This office represents Wilsonville Devco, LLC the Applicant in the above-referenced matter. Enclosed please find a Notice of Intent to Appeal the above-referenced matter to City Council, as well as a check in the amount of \$800.00 as the appeal fee. Please process this Notice of Intent to Appeal and advise me of the scheduled hearing date. Please also include me on the notice list for all correspondence related to this appeal.

Very truly yours,


Steven L. Pfeiffer

SLP:GHS

Enclosures

Cc: Client (w/encls.) (via email)
Wallace Lein (w/encls.) (via email)

112634-0001/LEGAL29527672.1

ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DALLAS • DENVER • LOS ANGELES • MADISON • NEW YORK
PALO ALTO • PHOENIX • PORTLAND • SAN DIEGO • SAN FRANCISCO • SEATTLE • SHANGHAI • TAIPEI • WASHINGTON, D.C.

Perkins Coie LLP

CITY OF WILSONVILLE

29799 SW Town Center Loop East

Wilsonville, OR 97070

Phone: 503.682.4960

Fax: 503.682.7025

Web: www.ci.wilsonville.or.us

Pre-Application meeting date:

TO BE COMPLETED BY APPLICANT:

Please PRINT legibly

Planning Division Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

Applicant:

Josh Veentjer

Address: 4188 SW Greenleaf Dr. Portland, OR 97221

Phone: 503.201.1309

Fax:

E-mail: josh@pdvco.com

Authorized Representative:

Stephen L. Pfeiffer

Address: 1120 NW Couch Street, Tenth Flr., Portland, OR 97209

Phone: 503.727.2261

Fax:

E-mail: spfeiffer@perkinscoie.com

Property Owner:

Josh Veentjer, Wilsonville Devco, LLC

Address: 4188 SW Greenleaf Dr. Portland, OR 97221

Phone: 503.201.1309

Fax:

E-mail: josh@pdvco.com

Property Owner's Signature:

Printed Name: Josh Veentjer Date: 2/20/14

Applicant's Signature (if different from Property Owner):

Printed Name: Date:

Site Location and Description:

Project Address if Available: 25250 SW 95th Avenue Suite/Unit

Project Location: Northern portion of Boones Ferry Pointe, adjacent to Carl's Jr. and Chevron Station.

Tax Map #(s): 2DB Tax Lot #(s): 302 County: ☒ Washington ☐ Clackamas

Request: Appeal of DRB Decision in DB 13-0047, and DB 13-0048

Project Type: Class I ☐ Class II ☐ Class III ☐

☐ Residential

☐ Commercial

☐ Industrial

☐ Other (describe below)

Application Type:

☐ Annexation

☐ Final Plat

☐ Plan Amendment

☐ Request for Special Meeting

☐ SROZ/SRIR Review

☐ Type C Tree Removal Plan

☐ Villebois SAP

☐ Zone Map Amendment

☒ Appeal

☐ Major Partition

☐ Planned Development

☐ Request for Time Extension

☐ Staff Interpretation

☐ Tree Removal Permit (B or C)

☐ Villebois PDP

☐ Other

☐ Comp Plan Map Amend

☐ Minor Partition

☐ Preliminary Plat

☐ Signs

☐ Stage I Master Plan

☐ Temporary Use

☐ Villebois PDP

☐ Conditional Use

☐ Parks Plan Review

☐ Request to Modify Conditions

☐ Site Design Review

☐ Stage II Final Plan

☐ Variance

☐ Waiver

**BEFORE THE CITY COUNCIL
FOR THE CITY OF WILSONVILLE, OREGON**

In the Matter of an Appeal by the)	
Applicant, Wilsonville Devco, LLC of a	)	WRITTEN NOTICE OF INTENT TO
Decision by the Development Review	)	APPEAL
Board, dated February 10, 2014, Denying)	
the Application for a Stage II Final Plan)	
Revision, Site Design Review, and Master)	
Sign Plan Revision (City File Nos. DB13-)	
0046, DB13-0047, and DB 13-0048))	

1. Introduction.

Wilsonville Devco, LLC ("Appellant"), the Applicant in the above-referenced application, submits this appeal of the February 10, 2014 decision by the Development Review Board ("DRB") of the City of Wilsonville ("City"), which denied the request for a Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision (City File Nos. DB13-0046, DB13-0047, and DB 13-0048) ("Proposed Development"). Appellant applied for these land use permits on November 12, 2013 and the DRB considered them at public hearings held on January 13, 2014 and February 10, 2014. Despite City staff's recommendation for approval in which it stated the Proposed Development met all applicable criteria as proposed and with recommended conditions of approval (**Exhibit 1**), as well as additional memoranda from staff indicating that the proposed circulation on the site was sufficient (**Exhibit 2**), the DRB denied the application. Specifically, the DRP denied the application based on concerns "about on-site traffic circulation, congestion and safety in general and referring specifically to Wilsonville Code Section 4.400.02 and 4.421C." (**Exhibit 3**).

In denying the application, the DRB misapplied and misinterpreted WDC 4.400.02 and 4.421C. Moreover, its determination that these provisions were not satisfied is not supported by, and is contrary to, the substantial evidence in the record. For the reasons explained below, the City Council should reverse the DRC's decision and find that the Proposed Development satisfies site circulation requirements specified in WDC 4.400.02 and 4.432C. It should therefore approve Appellant's application in its entirety.

This appeal is timely filed prior to the February 27, 2014 deadline.

2. Reason for Appeal.

Wilsonville Devco, LLC is the owner of the subject property and the Applicant in the above-referenced application. As demonstrated by substantial evidence in the record and contrary to the DRB findings, Appellant has demonstrated that the Proposed Development meets all applicable criteria. With respect to the specific issue of internal vehicle circulation, the Appellant has demonstrated adequate and safe turning movements, vehicle stacking, and truck

access, as discussed in the Planning Division Memorandum of February 10, 2014. **Exhibit 2.**

3. Procedural History.

Appellant applied for these land use permits on November 12, 2013. The application was deemed incomplete on November 20, 2013. Appellant submitted additional materials on December 4 and December 7, 2013. The application was deemed complete on December 19, 2013. An initial DRB hearing was conducted on January 13, 2014. The record of this hearing was held open until January 27, 2014. A second DRB hearing and final consideration of the Proposed Development was held on February 10, 2014. Notice of the DRB's decision was mailed on February 13, 2014. Under the 120-day rule, the City must issue a final decision by April 8, 2014.

4. Compliance with Appeal Requirements.

Wilsonville's procedures for an appeal of a DRB decision are set forth in WDC 4.022(.02). This appeal is consistent with that section, as discussed below:

Section 4.022 Appeal and Call-up Procedures.

(.02) Board Action. A decision of the Development Review Board may be appealed to the Council by any affected party who participated in the hearing before the Board by filing an appeal within fourteen (14) calendar days of the posting of the notice of decision, or by the call-up procedures listed below. The notice of appeal shall indicate the decision that is being appealed.

RESPONSE: The City mailed its notice of the DRB's decision on February 13, 2014. Exhibit 3. The deadline for appeal is February 27, 2014. This Notice of Intent to Appeal, dated February 21, 2014, is therefore timely. This Notice of Intent to Appeal also indicates the decisions being appealed, which are stated in **Exhibit 3**. Therefore, this Notice of Intent to Appeal meets the requirements of WDC 4.022(.02).

5. Conclusion.

For the reasons stated herein, which will be supplemented prior to the hearing on this appeal, the City Council should reverse the February 10, 2014 decision of the DRB and approve Appellant's application in its entirety.



Steven L. Pfeiffer, Appellant's Representative
Perkins Coie LLP
1120 NW Couch St., 10th Floor
Portland, OR 97209-4128
Phone: (503)-727-2261

Dated: 2/21/14

EXHIBITS

- Exhibit 1: DRB Staff Report
- Exhibit 2: Staff Memorandum (February 10, 2014)
- Exhibit 3: Notice of DRB Decision

DEVELOPMENT REVIEW BOARD MEETING

MONDAY, JANUARY 13, 2014

6:30 PM

VIII. Public Hearing:

B. Resolution No. 268. Boones Ferry Pointe – The Human Bean Drive-up Coffee Kiosk: SFA Design Group and CB Anderson Architects – Representatives for Wilsonville Devco LLC – Applicant/Owner. The applicant is requesting approval of a Stage II Final Plan revision, Site Design Review and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk at the corner of 95th Avenue and Boones Ferry Road. The subject site is located on Tax Lot 302 of Section 2DB, T3S, R1W, Washington County, Oregon. Staff: Daniel Pauly

Case Files: DB13-0046 – Stage II Final Plan Revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan Revision
and Sign Waiver

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13th day of January, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.09)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

Exhibit A1
STAFF REPORT
WILSONVILLE PLANNING DIVISION

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

DEVELOPMENT REVIEW BOARD PANEL 'A'
QUASI-JUDICIAL PUBLIC HEARING
STAFF REPORT

HEARING DATE	January 13, 2014
DATE OF REPORT:	January 6, 2014

APPLICATION NOS.: DB13-0046 Stage II Final Plan Revision
DB13-0047 Site Design Review
DB13-0048 Master Sign Plan Revision and Sign Waiver

REQUEST/SUMMARY: The Development Review Board is being asked to review a revised Stage II Final Plan, Site Design Review, and revised Master Sign Plan for the development of a new 450 square foot drive-thru coffee shop to replace an approved but un-built 3,150 square foot multi-tenant commercial building at the corner of 95th Avenue and Boones Ferry Road in North Wilsonville.

LOCATION: The proposed coffee shop location is on the southeast corner of the 95th Avenue/Boones Ferry Road intersection near Elligsen Road/I-5 Interchange. The property is specifically known as Tax Lot 0302, Section 2DB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon.

OWNER/APPLICANT: Josh Veentjer
Wilsonville Devco LLC

APPLICANT'S REPS.: Ben Altman
SFA Design Group

Craig Anderson
CB Anderson Architects

COMPREHENSIVE PLAN MAP DESIGNATION: Commercial

ZONE MAP CLASSIFICATION: PDC (Planned Development Commercial)

STAFF REVIEWERS: Daniel Pauly AICP, Associate Planner
Steve Adams PE, Development Engineering Manager
Don Walters, Building Plans Examiner

STAFF RECOMMENDATION: Approve with conditions the requested revised Stage II Final Plan, Site Design Review request, and revised Master Sign Plan.

APPLICABLE REVIEW CRITERIA

Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Section 4.031	Authority of the Development Review Board
Subsection 4.035 (.04)	Site Development Permit Application
Subsection 4.035 (.05)	Complete Submittal Requirement
Section 4.110	Zones
Section 4.116	Standards Applying to Commercial Development in All Zones
Section 4.118	Standards Applying to Planned Development Zones
Section 4.131	Planned Development Commercial Zone (PDC)
Section 4.140	Planned Development Regulations
Section 4.154	On-site Pedestrian Access and Circulation
Section 4.155	Parking, Loading, and Bicycle Parking
Sections 4.156.01 through 4.156.11	Sign Regulations
Section 4.167	Access, Ingress, and Egress
Section 4.171	Protection of Natural Features and Other Resources
Section 4.175	Public Safety and Crime Prevention
Section 4.176	Landscaping, Screening, and Buffering
Section 4.177	Street Improvement Standards
Section 4.179	Mixed Solid Waste and Recyclables Storage
Sections 4.199.20 through 4.199.60	Outdoor Lighting
Sections 4.300 through 4.320	Underground Utilities
Sections 4.400 through 4.450 as applicable	Site Design Review

Vicinity Map



BACKGROUND/SUMMARY:

Approved Stage I Master Plan/Site History

The subject property is part of the Edwards Business Center Industrial Master Plan. This master plan envisioned a variety of industrial and commercial uses. The Master Plan designated the subject site as commercial, but did not specify the type of commercial use. Previously the City received an application for an office building on the site, which was never built. In March 2013 the Development Review Board approved an application to construct a fast-food restaurant and a multi-tenant commercial building consistent with the designation of the property in the Master Plan. The restaurant building has been built, but the property owner determined they were unable to find appropriate tenants and finance the commercial building. The applicant is now requesting to replace the multi-tenant commercial building portion of the development with a drive-thru coffee kiosk which remains consistent with the Stage I Master Plan commercial designation.

Stage II Final Plan (DB13-0046)

The Stage II Final Plan looks at the function and overall aesthetics of the proposed development, including traffic, parking, and circulation.

The proposed revised master plan includes a 450 square foot drive-thru coffee kiosk, and associated site improvements including parking, circulation, and landscaping. The coffee kiosk development replaces a multi-tenant commercial building approved by the DRB in March 2013

at the same time the adjacent Carl's Jr. restaurant was approved. The development site sits just north of the recently completed Carl's Jr. restaurant at the southeast corner of SW 95th Avenue and SW Boones Ferry Road. The kiosk building has a flat roof with a parapet to screen view of mechanical equipment. The north end of the building has a tower featuring the sign bands. A drive through lane wraps around the east, north, and west side of the kiosk and the adjoining patio and parking area. Parking is to the south and southeast.

Vehicle access to the coffee kiosk is via an existing shared driveway with Holiday Inn, Chevron, and Carl's Jr.

The Modified Stage II Final Plan for Boones Ferry Point, which will include Carl's Jr. and the proposed coffee kiosk, proposes approximately 15569 square feet of landscaping, 37 parking spaces (35 required), maneuvering and circulations areas, and mixed solid waste and recyclables storage. The total gross area of the site covered by the Stage II Master Plan is 55,605 square feet or 1.28 acres.

Site Design Review (DB13-0047)

Architectural Design

In the application for the original Boones Ferry Point (DB12-0074 et. seq.) the applicant explained how the design goal was to identify with the general environment of commercial development at Argyle Square and along Wilsonville Road while also adding a unique personality to the development and proper identity to the planned tenants. Smaller scale wood-frame structures using traditional exterior materials intended to reinforced their location in Wilsonville's small town setting. The approved buildings featured brick, horizontal lap siding, and board and batten materials. The proposed coffee kiosk follows this same architectural theme previously proposed and approved. The building features brick around the base, with a mix of lap siding and horizontal siding on the main body of the building. The tower design has similar shape as the Carl's Jr. building towers, but uses different material and colors. The Carl's Jr. building and the proposed coffee kiosk incorporate similar architectural elements, but have enough differences to be unique and complementary.

Proposed Drive-thru Coffee Kiosk Rendering



In the design of Boones Ferry Pointe previously approved by the DRB a planter and plaza are featured at the north of the site to acknowledge the gateway at a prominent intersection on the northern edge of the City. The remainder of the landscaping is typical of parking lots and commercial areas in Wilsonville. In the proposed revised plan the planter and gateway sign with flag remain, but the plaza has been replaced with a patio area adjacent to the coffee kiosk. The remainder of the area around the coffee kiosk accommodates the drive-thru lane and otherwise remains typical of parking lots and commercial areas in Wilsonville.

[illegible]

[illegible]

Building Signs

Proposed Building Signs



DISCUSSION TOPICS:

Bicycle Parking

While the required number of bicycle parking spaces is provided, a couple requirements for bicycle parking are not met. The requirements not met include the spacing between bike parking and the kiosk building and the distance of the bike parking from the pedestrian service window. Condition of Approval PDA 2 requires the bicycle parking to be relocated within the plaza area or otherwise modified to meet these requirements.

Existing Hardscape and Landscape Improvements

Most of the hardscape and landscape for the proposed development has already been installed. This was done by the developer at their own risk. While, staff recommends approval, with modifications, of the hardscape and landscape as installed, the Development Review Board has full authority to require changes to the hardscape and landscape as if none had yet been installed.

Tables and Other Furnishings for Patio Area

The applicant has not provided information on tables or other furnishings for the patio area adjacent to the coffee kiosk. While none are currently proposed, it is understood furnishings will be placed in this area. Condition of Approval PDB 9 ensures the design of these furnishings will be durable and match or complement to the neighboring building thus helping to meet the site design review standards.

Restrictive Covenant Legal Dispute

As described in Exhibit D1 a legal dispute is ongoing regarding whether a restrictive covenant on the property prevents the operation of the proposed coffee kiosk. This is a private matter to be resolved between the parties. Staff does not see a reason to delay City approval with conditions of the proposed development. See letter regarding this matter from Barbara Jacobson, Assistant City Attorney, Exhibit C3.

CONCLUSION AND CONDITIONS OF APPROVAL:

Staff has reviewed the applicant's analysis of compliance with the applicable criteria. The Staff report adopts the applicant's responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, staff recommends that the Development Review Board approve the proposed application (DB13-0046, DB13-0047, DB13-0048) with the following conditions:

REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION

Planning Division Conditions:

- PDA 1.** The approved final plan schedule shall control the issuance of all building permits and shall restrict the nature, location and design of all uses. Minor changes to the approved final development plan may be approved by the Planning Director through administrative review pursuant to Section 4.030 if such changes are consistent with the purposes and general character of the plan. All other modifications shall be processed in the same manner as the original application and shall be subject to the same procedural requirements.
- PDA 2.** The applicant shall modify or relocate the bicycle parking spaces to meet the following standards identified in Subsection 4.155 (.04) B. while continuing to meet all other applicable standards:
- An aisle at least 5 feet wide shall be maintained behind all required bicycle parking to allow room for bicycle maneuvering.
 - Each space be located within 30 feet of the pedestrian service window.

REQUEST B: DB13-0047 SITE DESIGN REVIEW

Planning Division Conditions:

- PDB 1.** Construction, site development, and landscaping shall be carried out in substantial accord with the Development Review Board approved plans, drawings, sketches, and other documents. Minor revisions may be approved by the Planning Director through administrative review pursuant to Section 4.030. See Findings B3.
- PDB 2.** All landscaping required and approved by the Board shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping as determined by the Planning Director is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City will be returned to the applicant. See Finding B9.

PDB 3.	The approved landscape plan is binding upon the applicant/owner. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, pursuant to the applicable sections of Wilsonville's Development Code. See Finding B10.
PDB 4.	All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved by the Board, unless altered as allowed by Wilsonville's Development Code. See Findings B11 and B12.
PDB 5.	<p>The following requirements for planting of shrubs and ground cover shall be met:</p> <ul style="list-style-type: none"> • Non-horticultural plastic sheeting or other impermeable surface shall not be placed under landscaping mulch. • Native topsoil shall be preserved and reused to the extent feasible. • Surface mulch or bark dust shall be fully raked into soil of appropriate depth, sufficient to control erosion, and shall be confined to areas around plantings. • All shrubs shall be well branched and typical of their type as described in current AAN Standards and shall be equal to or better than 2-gallon containers and 10" to 12" spread. • Shrubs shall reach their designed size for screening within three (3) years of planting. • Ground cover shall be equal to or better than the following depending on the type of plant materials used: gallon containers spaced at 4 feet on center minimum, 4" pot spaced 2 feet on center minimum, 2-1/4" pots spaced at 18 inch on center minimum. • No bare root planting shall be permitted. • Ground cover shall be sufficient to cover at least 80% of the bare soil in required landscape areas within three (3) years of planting. • Appropriate plant materials shall be installed beneath the canopies of trees and large shrubs to avoid the appearance of bare ground in those locations. • Compost-amended topsoil shall be integrated in all areas to be landscaped, including lawns. <p>See Finding B22.</p>
PDB 6.	Plant materials shall be installed to current industry standards and be properly staked to ensure survival. Plants that die shall be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City. See Finding B27.
PDB 7.	Outdoor lighting associated with the coffee kiosk use shall be dimmed at 10:00 p.m. by an automatic system. See Finding B38.
PDB 8.	All non-exempt luminaires shall be limited to down lighting. Non-exempt luminaires, except luminaire DD, shall be mounted and aimed consistent with their fully shielded classification. See Finding B35 and B37.
PDB 9.	Furnishings for the patio area shall be of durable materials that can withstand multiple years of outdoor exposure and remain in a like-new condition. Furnishings for the patio area shall be colors matching or complementary to the coffee kiosk building. Furnishings are not approved to have any signage. Final design and

placement of furnishings shall be approved by the Planning Division through the Class I Administrative Review process.

REQUEST C DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER

- | | |
|---------------|---|
| PDC 1. | Non-exempt signs shall be issued a Class I Sign Permit through the Planning Division prior to installation to ensure compliance with the approved Master Sign Plan. |
| PDC 2. | This action only changes the components of the Master Sign Plan explicitly noted. All other aspects of the Master Sign Plan and Conditions of Approval of Case File DB12-0076 remain in effect. |
| PDC 3. | The illuminated directional signs at internal circulation drive intersections shall be limited to six (6) square feet. See Finding C24. |

CONDITIONS OF APPROVAL FROM THE ENGINEERING AND BUILDING DIVISIONS FOR ALL REQUESTS

The following Conditions of Approval are provided by the Engineering and Building Divisions of the City's Community Development Department which have authority over development approval. A number of these Conditions of Approval are not related to land use regulations under the authority of the Development Review Board or Planning Director. Only those Conditions of Approval related to criteria in Chapter 4 of Wilsonville Code and the Comprehensive Plan, including but not limited to those related to traffic level of service, site vision clearance, and concurrency, are subject to the Land Use review and appeal process defined in Wilsonville Code and Oregon Revised Statutes and Administrative Rules. Other Conditions of Approval are based on City Code chapters other than Chapter 4, state law, federal law, or other agency rules and regulations. Questions or requests about the applicability, appeal, exemption or non-compliance related to these other Conditions of Approval should be directed to the City Division with authority over the relevant portion of the development approval.

Engineering Division Conditions:

Specific Comments:

- | | |
|--------------|---|
| PF 1. | Engineering Public Facilities Conditions of Approval (PF conditions) for DB12-0074 and DB12-0075 remain in effect for this project accept as further modified below. |
| PF 2. | At the request of Staff, DKS Associates completed a Trip Generation memo dated September 5, 2013 revising a previously completed Carl's Jr. Traffic Impact Study that was completed in May 2012. The proposed use is expected to generate 13 fewer new primary trips than the previously approved use. The project is hereby limited to no more than the following impacts.

<div style="display: flex; justify-content: space-between;"> Estimated New PM Peak Hour Trips 117 </div> |
| PF 3. | Stormwater detention and storm water quality for this site will be handled via the stormwater facility constructed with the Boones Ferry Pointe project. |
| PF 4. | The project shall connect to the existing Storm lateral constructed with the Boones Ferry Pointe project. |
| PF 5. | The project shall connect to the existing Sanitary Sewer stub constructed with the |

	Boones Ferry Pointe project.
PF 6.	The project shall connect to the existing Water service constructed with the Boones Ferry Pointe. project.

<u>Building Division Conditions:</u>	
BD 1.	ACCESSIBLE. At least one of the walk-up service windows shall be accessible.

MASTER EXHIBIT LIST:

The following exhibits are hereby entered into the public record by the Development Review Board as confirmation of its consideration of the application as submitted. This is the exhibit list that includes exhibits for Planning Case Files DB13-0046, DB13-0047, DB13-0048.

- A1.** Staff report and findings (this document)
- A2.** Staff's public hearing presentation slides (not available until public hearing)
- B1.** Applicant's Notebook:
 - 1. Notice of Complete Application Dated December 9, 2013
 - 2. Response to Letter of Incomplete Application Dated December 4, 2013
 - 3. Notice of Incomplete Application Dated November 20, 2013
 - 4. Application Form Signed by Josh Ventjeer, Managing Member of Wilsonville Devco LLC
 - 5. Compliance Report
 - 6. DKS Traffic Memo
 - 7. Site Plans Approved by DRB in Case Files DB12-0074 through DB12-0076
 - 8. Signage (Proposed)
 - 9. Lighting Detail & Photometrics (Proposed)
 - 10. Revised Site & Architectural Plans (Proposed)
- B2.** Plan Sets and Architectural Drawings:
 - Color Architectural Renderings (Proposed)
 - C105 Previous Approved Grading Plan (DB12-0074 through DB12-0076)
 - A1.0 Architectural Site Plan (Proposed)
 - DD101 Composite Utility Plan (Proposed)
 - DD102 Grading Plan (Proposed)
 - L2.0 Landscape Planting Plan (Proposed)
 - L1.0 Landscape Irrigation Plan (Proposed)
 - A-1 Coffee Kiosk Floor Plan and Upper Wall Framing Plan from Pacific Mobile
 - A-3 Coffee Kiosk Wall Elevations from Pacific Mobile
 - E-1 Coffee Kiosk Electrical Plan from Pacific Mobile
 - SE1.0 Photometric Site Plan (Proposed)
 - Sign Drawings
- B3.** Materials Boards for Coffee Kiosk (available at public hearing)
- C1.** Engineering Division Comments and Conditions
- C2.** Building Division Comments and Conditions
- C3.** January 3, 2014 Letter from Barbara Jacobson, Assistant City Attorney, to Alec Laidlaw RE: The Human Bean Coffee Store Legal Dispute
- D1.** Written Testimony Received January 3, 2014 on behalf of Garry Lapoint

Development Review Board Panel „A“ Staff Report January 6, 2014
Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk
DB13-0046, DB13-0047, DB13-0048

Exhibit A1

Page 11 of 50

January 3, 2014 email from Terra Burns, Laidlaw and Laidlaw Paralegal, to Daniel Pauly, Associate Planner
 January 3, 2014 Letter from Alec Laidlaw to Daniel Pauly, Associate Planner
 Copy of Washington County Circuit Court Case No. C138125CV Defendants' ORCP 21 Motions
 Copy of Washington County Circuit Court Case No. C138125CV Declaration of Garry L. Lapoint in Support of Defendants' ORCP 21 Motions
 Copy of Washington County Circuit Court Case No. C138125CV Defendants' Counsel's Certificate of Compliance (UTCR 5.010)

FINDINGS OF FACT:

1. The statutory 120-day time limit applies to this application. The application was received on November 12, 2013. On November 20, 2013, staff conducted a completeness review within the statutorily allowed 30-day review period, and, on December 4, 2013, the Applicant submitted new materials. Additional materials were submitted on December 7, 2013. On December 9, 2013 the application was deemed complete. The City must render a final decision for the request, including any appeals, by April 8, 2014.
2. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	PDI	95 th /Boones Ferry Intersection/ Riverwood Industrial Campus
East:	PDC	Chevron/Boones Ferry Rd.
South:	PDC	Holiday Inn
West:	PDC	95 th Avenue/AGC Center

3. Prior land use actions include:

Edwards Business Center Industrial Park Plat-Stage I
 97DB28 Stage II, Site Design Review, LaPoint Center
 DB06-0041, DB06-0043, DB06-0057, DB06-0042 Stage II Final Plan, Site Design Review, Waiver to Building Height, Master Sign Plan for Brice Office Building (Expired)
 DB12-0074 through DB12-0076 Stage II Final Plan, Site Design Review, and Master Sign Plan for fast food restaurant and multi-tenant commercial building.
 DB13-0027 Site Design Review for accent lighting on fast food restaurant.

4. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

CONCLUSIONARY FINDINGS:

NOTE: Pursuant to Section 4.014 the burden of proving that the necessary findings of fact can be made for approval of any land use or development application rests with the applicant in the case.

GENERAL INFORMATION

Section 4.008 Application Procedures-In General

Review Criteria: This section lists general application procedures applicable to a number of types of land use applications and also lists unique features of Wilsonville's development review process.

Finding: These criteria are met.

Explanation of Finding: The application is being processed in accordance with the applicable general procedures of this Section.

Section 4.009 and Subsection 4.140 (.03) Who May Initiate Application and Ownership

Review Criterion: "Except for a Specific Area Plan (SAP), applications involving specific sites may be filed only by the owner of the subject property, by a unit of government that is in the process of acquiring the property, or by an agent who has been authorized by the owner, in writing, to apply." "The tract or tracts of land included in a proposed Planned Development must be in one (1) ownership or control or the subject of a joint application by the owners of all the property included."

Finding: This criterion is satisfied.

Explanation of Finding: The application has been submitted on behalf of the property owner, Wilsonville Devco LLC. The application form is signed by Josh Veentjer, Managing Member.

Subsection 4.010 (.02) Pre-Application Conference

Review Criteria: This section lists the pre-application process

Finding: These criteria are satisfied.

Explanation of Finding: A pre-application conference was held on August 22, 2013 in accordance with this subsection.

Subsection 4.011 (.02) B. Lien Payment before Application Approval

Review Criterion: "City Council Resolution No. 796 precludes the approval of any development application without the prior payment of all applicable City liens for the subject property. Applicants shall be encouraged to contact the City Finance Department to verify that there are no outstanding liens. If the Planning Director is advised of outstanding liens while an application is under consideration, the Director shall advise the applicant that payments must be made current or the existence of liens will necessitate denial of the application."

Finding: This criterion is satisfied.

Explanation of Finding: No applicable liens exist for the subject property. The application can thus move forward.

Subsection 4.035 (.04) A. General Site Development Permit Submission Requirements

Review Criteria: “An application for a Site Development Permit shall consist of the materials specified as follows, plus any other materials required by this Code.” Listed 1. through 6. j.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided all of the applicable general submission requirements contained in this subsection.

Section 4.110 Zoning-Generally

Review Criteria: “The use of any building or premises or the construction of any development shall be in conformity with the regulations set forth in this Code for each Zoning District in which it is located, except as provided in Sections 4.189 through 4.192.” “The General Regulations listed in Sections 4.150 through 4.199 shall apply to all zones unless the text indicates otherwise.”

Finding: These criteria are satisfied.

Explanation of Finding: This proposed development is in conformity with the applicable zoning district and general development regulations listed in Sections 4.150 through 4.199 have been applied in accordance with this Section.

REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION

Planned Development Regulations

Subsection 4.140 (.01) Purpose of Planned Development Regulations

- A1. **Review Criterion:** The proposed Stage II Final Plan shall be consistent with the Planned Development Regulations purpose statement.

Finding: This criterion is satisfied.

Explanation of Finding: Based on the information provided by the applicant in their narrative, staff is of the professional opinion that the purpose of the planned development regulations is met by the proposed Stage II Final Plan.

Subsections 4.140 (.02) and (.05) Planned Development Lot Size and Permit Process

- A2. **Review Criteria:** "Planned Development may be established on lots which are suitable for and of a size to be planned and developed in a manner consistent with the purposes and objectives of Section 4.140." "Any site designated for development in the Comprehensive Plan may be developed as a Planned Development, provided that it is zoned 'PD.' All sites which are greater than two (2) acres in size, and designated in the Comprehensive Plan for commercial, residential, or industrial use shall be developed as Planned Developments, unless approved for other uses permitted by the Development Code."

"All parcels of land exceeding two (2) acres in size that are to be used for residential, commercial or industrial development, shall, prior to the issuance of any building permit:

1. Be zoned for planned development;
2. Obtain a planned development permit; and
3. Obtain Development Review Board, or, on appeal, City Council approval."

Finding: These criteria are satisfied.

Explanation of Finding: The development site is less than two (2) acres. However, it is previously been zoned for Planned Development. The property is designated for commercial development in the Comprehensive Plan, and is zoned Planned Development Commercial. The property is of sufficient size and will be developed as a planned development in accordance with this subsection.

Subsection 4.140 (.04) Professional Design Team Required for Planned Developments

- A3. **Review Criteria:** "The applicant for all proposed Planned Developments shall certify that the professional services of the appropriate professionals have been utilized in the planning process for development. One of the professional consultants chosen by the applicant shall be designated to be responsible for conferring with the planning staff with respect to the concept and Explanation of the plan."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant's compliance narrative lists the appropriate professionals involved in the planning and permitting process. Ben Altman of SFA Design Group has been designated the coordinator for the planning portion of the project.

Stage II Final Plan Submission Requirements and Process

Subsection 4.140 (.09) A. Timing of Submission

- A4. **Review Criterion:** “Unless an extension has been granted by the Development Review Board, within two (2) years after the approval or modified approval of a preliminary development plan (Stage I), the applicant shall file with the City Planning Department a final plan for the entire development or when submission in stages has been authorized pursuant to Section 4.035 for the first unit of the development”

Finding: This criterion is satisfied.

Explanation of Finding: A previous Stage I approval identified the subject property as a future commercial stage. A Stage II Final Plan was approved consistent with the previous Stage I Master Plan in March 2013. This application requests revision of the Stage II Final plan.

Subsection 4.140 (.09) C. Conformance with Stage I and Additional Submission Requirements

- A5. **Review Criteria:** “The final plan shall conform in all major respects with the approved preliminary development plan, and shall include all information included in the preliminary plan plus the following:” listed 1. through 6.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant states, and staff concurs, that the Stage II plans substantially conforms to the Stage I Master plan. The applicant has provided the required drawings and other documents showing all the additional information required by this subsection.

Subsection 4.140 (.09) D. Stage II Final Plan Detail

- A6. **Review Criterion:** “The final plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development or phase of development.”

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has provided sufficiently detailed information to indicate fully the ultimate operation and appearance of the development, including a detailed site plan, landscape plans, floor plans, elevation drawings, and material information.

Subsection 4.140 (.09) E. Submission of Legal Documents

- A7. **Review Criterion:** “Copies of legal documents required by the Development Review Board for dedication or reservation of public facilities, or for the creation of a non-profit homeowner’s association, shall also be submitted.”

Finding: This criterion is satisfied.

Explanation of Finding: No additional legal documentation is required for dedication or reservation of public facilities.

Subsection 4.140 (.09) J. Planned Development Permit Requirements

- A8. **Review Criteria:** "A planned development permit may be granted by the Development Review Board only if it is found that the development conforms to all the following criteria, as well as to the Planned Development Regulations in Section 4.140:" listed J. 1. through 3. Includes traffic level of service requirements.

Finding: These criteria are satisfied.

Explanation of Finding: Proposed is a coffee kiosk in an area designated for commercial in the Comprehensive Plan. The proposed use is at a corner and clustered with commercial uses similarly serving the travelling public, thus being part of a commercial center rather than strip commercial development. As demonstrated in the DKS Traffic Memo in the applicant's notebook, Exhibit B1, specifically page 2 of 3 of the memo, the required traffic level of service is being maintained. All utilities and services are available to serve the development.

Commercial Development in Any Zone

Subsection 4.116 (.01) Commercial Development to be in Centers and Complexes

- A9. **Review Criterion:** "Commercial developments shall be planned in the form of centers or complexes as provided in the City's Comprehensive Plan. As noted in the Comprehensive Plan, Wilsonville's focus on centers or complexes is intended to limit strip commercial development."

Finding: This criterion is satisfied.

Explanation of Finding: The approved Boones Ferry Pointe commercial development is in the form of a center clustered at an intersection with other commercial development.

Subsection 4.116 (.05) All Commercial Activity to be Completely Enclosed

- A10. **Review Criteria:** "All businesses, service or processing, shall be conducted wholly within a completely enclosed building; except for:" Listed A. through G.

Finding: These criteria are satisfied.

Explanation of Finding: All commercial activity other than exempt activities will be within in the proposed buildings. The only exceptions from the list given noted by the applicant are off-street parking for customers and employees, and outdoor seating. Staff notes there is the possibility as well for temporary outside sales.

Subsection 4.116 (.07) Uses Limited to those Meeting Industrial Performance Standards

- A11. **Review Criteria:** "Uses shall be limited to those which will meet the performance standards specified in Section 4.135(.05), with the exception of 4.135(.05)(M.)(3.)."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development facilitates commercial uses meeting these performance standards. It is understood that all uses will need to continue to meet these standards over time.

Subsection 4.116 (.08) Vision Clearance Standards for Corner Lots

- A12. **Review Criteria:** "Corner lots shall conform to the vision clearance standards set forth in Section 4.177."

Finding: These criteria are satisfied.

Explanation of Finding: Vision clearance has been reviewed by the City's Engineering Division and the City's Public Works standards for vision clearance are met.

Subsection 4.116 (.10) Commercial Development Generally

- A13. **Review Criteria:** This subsection lists a number of requirements for commercial development such as setback, lot size, lot coverage, and street frontage requirements.

Finding: These criteria are satisfied.

Explanation of Finding: All the applicable standards listed in this subsection are met.

Subsection 4.116 (.14) B. Prohibited Uses

- A14. **Review Criteria:** "Any use that violates the performance standards of Section 4.135(.05), other than 4.135(.05)(M.)(3.) is prohibited within commercial developments."

Finding: These criteria are satisfied.

Explanation of Finding: No uses prohibited by this subsection are proposed.

Standards Applying in All Planned Development Zones

Subsection 4.118 (.01) Additional Height Guidelines

- A15. **Review Criterion:** "In cases that are subject to review by the Development Review Board, the Board may further regulate heights as follows:

A. Restrict or regulate the height or building design consistent with adequate provision of fire protection and fire-fighting apparatus height limitations.

B. To provide buffering of low density developments by requiring the placement of three or more story buildings away from the property lines abutting a low density zone.

C. To regulate building height or design to protect scenic vistas of Mt. Hood or the Willamette River."

Finding: This criterion is satisfied.

Explanation of Finding: Staff does not recommend the Development Review Board require a height less than the applicant proposes as the proposed height provides for fire protection access, does not abut a low density zone, and does not impact scenic views of Mt. Hood or the Willamette River.

Subsection 4.118 (.03) Waivers

- A16. **Review Criteria:** "Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may" waive a number of standards as listed in A. through E.

Finding: These criteria are satisfied.

Explanation of Finding: No planned development waivers have been requested by the applicant or are necessary to approve the application as proposed.

Subsection 4.118 (.03) E. Other Requirements or Restrictions

- A17. **Review Criteria:** “Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may adopt other requirements or restrictions, inclusive of, but not limited to, the following:” Listed 1. through 12.

Finding: These criteria are satisfied.

Explanation of Finding: No additional requirements or restrictions are recommended pursuant to this subsection.

Subsection 4.118 (.04) Effect of Determination of Compliance and Conditions of Approval on Development Cost

- A18. **Review Criteria:** “The Planning Director and Development Review Board shall, in making their determination of compliance in attaching conditions, consider the effects of this action on availability and cost. The provisions of this section shall not be used in such a manner that additional conditions, either singularly or cumulatively, have the effect of unnecessarily increasing the cost of development. However, consideration of these factors shall not prevent the Board from imposing conditions of approval necessary to meet the minimum requirements of the Comprehensive Plan and Code.”

Finding: These criteria are satisfied.

Explanation of Finding: It is staff’s professional opinion that the determination of compliance or attached conditions do not unnecessarily increase the cost of development, and no evidence has been submitted to the contrary.

Subsection 4.118 (.05) Requirements to Set Aside Tracts for Certain Purposes

- A19. **Review Criteria:** “The Planning Director, Development Review Board, or on appeal, the City Council, may as a condition of approval for any development for which an application is submitted, require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated for the following uses:” Recreational Facilities, Open Space Area, Easements.”

Finding: These criteria are satisfied.

Explanation of Finding: No additional tracts are being required for the purposes given.

Subsection 4.118 (.09) Habitat Friendly Development Practices

- A20. **Review Criteria:** “To the extent practicable, development and construction activities of any lot shall consider the use of habitat-friendly development practices, which include:

A. Minimizing grading, removal of native vegetation, disturbance and removal of native soils, and impervious area;

B. Minimizing adverse hydrological impacts on water resources, such as using the practices described in Part (a) of Table NR-2 in Section 4.139.03, unless their use is prohibited by an applicable and required state or federal permit, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;

C. Minimizing impacts on wildlife corridors and fish passage, such as by using the practices described in Part (b) of Table NR-2 in Section 4.139.03; and

D. Using the practices described in Part (c) of Table NR-2 in Section 4.139.03.”

Finding: These criteria are satisfied.

Explanation of Finding: As stated by the applicant and adopted by DRB for the previous Stage II approval, “The site has previously been rough graded and there is no significant native vegetation. The site does not contain any SROZ and no fish or wildlife habitats are associated with this property. The site has been designed consistent with the Habitat-Friendly practices. The storm system design provides for on-site water quality and volume control which protects the downstream wetland area south of the AGC building.” The proposal does not significantly alter compliance as previously found.

Planned Development Commercial Zone

Subsection 4.131 (.01) A. 1. Uses Typically Permitted

A21. **Review Criteria:** This subsection lists the uses that are typically permitted in the PDC Zone.

Finding: These criteria are satisfied.

Explanation of Finding: The proposal replaces an approved but un-built multi-tenant commercial building with drive-thru coffee kiosk which is an allowed service establishment use.

Subsection 4.131 (.02) Prohibited Uses

A22. **Review Criteria:** This subsection lists the prohibited uses in the PDC Zone.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has not proposed any prohibited uses for the site.

Subsection 4.131 (.03) 1. Block and Access Standards: Connectivity for Different Modes

A23. **Review Criteria:** “The Development Review Board shall determine appropriate conditions of approval to assure that adequate connectivity results for pedestrians, bicyclists, and motor vehicle drivers. Consideration shall be given to the use of public transit as a means of meeting access needs.”

Finding: These criteria are satisfied.

Explanation of Finding: No new blocks are proposed, and the proposed development proposes to use the existing shared private driveway on 95th Avenue partially on the subject property. A development agreement has been agreed upon between the owner of the subject property, neighboring properties, and the City ensuring appropriate access from the shared driveway.

On-site Pedestrian Access and Circulation

Subsection 4.154 (.01) B. 1. Continuous Pathway System

A24. **Review Criterion:** “A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable.”

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has provided a network a network of pathways from the proposed location of the coffee kiosk to support a continuous pathway system

throughout the site. This includes two connections to the 95th Avenue sidewalk which then connects to Carl's Jr. and Holiday Inn as well as a pathway connection to the east to provide access to parking, trash enclosures, and the Chevron property. See sheet A1.0 in Exhibit B2.

Subsection 4.154 (.01) B. 2. Safe, Direct, and Convenient Pathways

A25. **Review Criteria:** "Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:

- a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.
- b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.
- c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.
- d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)(B.)(3.)(d.)."

Finding: These criteria are satisfied.

Explanation of Finding:

- All proposed pathways are of smooth and consistent concrete and no hazards are evident on the site plan.
- All proposed pathways are reasonably direct. The path from Carl's Jr. to the 95th Avenue sidewalk then across to the coffee kiosk is reasonably direct. The path from the intersection of 95th Avenue/Boones Ferry is reasonably direct. A direct path is provided from the parking stalls and trash enclosure serving the coffee kiosk.
- Where required, pathways meet ADA requirements or will be required to by the building code.
- The parking lot is not larger than 3 acres in size.

Subsection 4.154 (.01) B. 3. Vehicle/Pathway Separation

A26. **Review Criterion:** "Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards."

Finding: This criterion is satisfied.

Explanation of Finding: All pathways affected by this review are separated consistent with this subsection. Staff notes pathways marked during previous phases of development do not meet this standard.

Subsection 4.154 (.01) B. 4. Crosswalks

A27. **Review Criteria:** “Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light-color concrete inlay between asphalt, or similar contrast).”

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has proposed crosswalks meeting this standard.

Subsection 4.154 (.01) B. 5. Pathway Width and Surface

A28. **Review Criteria:** “Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five (5) feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA.”

Finding: These criteria are satisfied.

Explanation of Finding: Primary pathways are the required width. The pathway from the parking area/trash enclosure near Chevron is not a primary pathway and is allowed to be less than five (5) feet in width.

Subsection 4.154 (.01) B. 6. Signs for Pathways

A29. **Review Criteria:** “All pathways shall be clearly marked with appropriate standard signs.”

Finding: These criteria are satisfied.

Explanation of Finding: No pathways requiring signs are proposed.

Parking and Loading

Subsection 4.155 (.02) General Parking Provisions

A30. **Review Criteria:** This subsection lists a number of general provisions for parking.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the provisions in this subsection applicable to State II Final Plan review. Among the information provided are parking calculations on sheet A1.0. of Exhibit B2. Staff specifically points out the following:

- In relation to provision B. all parking areas are accessible and usable for parking
- In relation to provisions D. the provided parking meets the sum of the minimum parking for the fast food restaurant and the coffee kiosk.
- In relation to provision J. a note on sheet A1.0 of Exhibit B2 states this requirement will be met.
- In relation to provision K. the parking area is paved and provided with adequate drainage. See Sheets A1.0 and DD102 in Exhibit B2.
- In relation to provision L. the parking lot lighting is fully shielded as to not shine into adjoining structures or the eyes of passerby's.
- In relation to provision N. 6 compact parking spaces are proposed, which is less than forty (40) percent of the proposed parking spaces. They are shown appropriately marked on Sheet A1.0 of Exhibit B2.

Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas

A31. **Review Criteria:** "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet DD5 "Proposed Truck Turning Movements" of Exhibit B2 of DB12-0074 through 0076 demonstrates sufficient access and maneuvering areas for delivery trucks, both for the Chevron fuel and Carl's Jr. and the coffee kiosk. Staff notes fuel off-loading, and restaurant other commercial delivery parking are in the same area of the site separating these operations from the general employee and customer parking and pedestrian areas. The access and maneuvering areas for passenger vehicle parking areas appears sufficient providing adequate space for two-way travel. The applicant states in their compliance narrative in their notebook, Exhibit B1, that "care has been given to the extent practicable to separate vehicle and pedestrian traffic." Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic.

Subsection 4.155 (.03) B. 1.-3. Parking Area Landscaping

A32. **Review Criteria:** "Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:" Listed 1. through 3.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the planting plans (applicant's sheet L1.0), the required amount of landscaping and trees are provided.

Subsection 4.155 (.03) C. Parking and Loading Areas-Safe and Convenient Access

A33. **Review Criterion:** "Be designed for safe and convenient access that meets ADA and ODOT standards. All parking areas which contain ten (10) or more parking spaces, shall for every fifty (50) standard spaces, provide one ADA-accessible parking space that is constructed to building code standards, Wilsonville Code 9.000."

Finding: This criterion is satisfied.

Explanation of Finding: The required ADA space for the coffee kiosk is provided.

Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation

A34. **Review Criteria:** "Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses as well as the existing Chevron and Holiday Inn share a common driveway off 95th Avenue and their access and parking areas are interconnected.

Joint use of many the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations, and direct vehicle and pedestrian paths between destinations with limited choke points. To the extent practicable parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron a direct pedestrian path is provided to the coffee kiosk. Multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site.

Subsection 4.155 (.03) G. Parking Minimum and Maximum

- A35. **Review Criteria:** "Tables 5, below, shall be used to determine the minimum and maximum parking standards for various land uses. The minimum number of required parking spaces shown on Tables 5 shall be determined by rounding to the nearest whole parking space."

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the table below, the proposed parking is consistent with Table 5: Parking Standards. Staff notes the parking count differs from the submitted drawings and narrative, Exhibits B1 and B2, and this finding corrects the inaccurate counts provided in those documents.

Use	Floor Area	Min	Max	Min	Max	Provided
Fast food (with drive-thru)	2,867	9.9 per 1,000 SF	14.9 per 1000 SF	29	43	
Coffee Kiosk	450	9.9 per 1,000 SF	14.9 per 1000 SF	4	7	
Standard Spaces						29
Compact Spaces (40% Max)				--	18	6
Total Non-ADA Spaces				33	50	35
ADA Spaces				2	--	2
Total Parking Spaces						37

Subsection 4.155 (.04) A. Bicycle Parking-General Provisions

- A36. **Review Criteria:** This subsection lists general provisions for bicycle parking, listed 1. through 4., including required number of spaces.

Finding: These criteria are satisfied.

Explanation of Finding: A minimum of four (4) spaces are required for the drive-thru coffee kiosk, and four (4) are provided.

Subsection 4.155 (.04) B. Bicycle Parking-Standards

A37. **Review Criteria:** This subsection lists standards for required bicycle parking, listed 1. through 5., including size, access aisle size, spacing between racks, anchoring of lockers and racks, and location standards.

Finding: These criteria are satisfied.

Explanation of Finding: As shown on sheet A1.0 of Exhibit B2 each of the 4 required parking stalls exceeds the minimum dimensions of 2 feet by 6 feet. There is sufficient space to use the bicycle racks without obstructions. Bicycle racks will be securely fastened. Five (5) feet of spacing is not provided between the bicycle racks and the kiosk. The bicycle racks are further than 30 feet from the primary entrance, which in this case staff understands to be the service window open to pedestrians. Condition of Approval PDA 2 will ensure bicycle parking is placed to meet all requirements of this subsection including the spacing from the building and distance from the service window.

Subsection 4.155 (.05) Minimum Off-street Loading Requirements

A38. **Review Criteria:** This subsection defines the requirements for loading berths including when loading berths are required and size requirements.

Finding: These criteria are not applicable.

Explanation of Finding: No loading berths are required for commercial uses of the proposed floor area.

Subsection 4.155 (.06) Carpool and Vanpool Parking Requirements

A39. **Review Criteria:** This subsection defines the requirements for carpool and vanpool parking.

Finding: These criteria are not applicable.

Explanation of Finding: No carpool or vanpool parking is required for commercial parking lots of the proposed size.

Section 4.167 Access, Ingress, and Egress

A40. **Review Criterion:** "Each access onto streets or private drives shall be at defined points as approved by the City and shall be consistent with the public's health, safety and general welfare. Such defined points of access shall be approved at the time of issuance of a building permit if not previously determined in the development permit."

Finding: This criterion is satisfied.

Explanation of Finding: The access points for the development site are existing and approved by the City. No change in access is proposed.

Natural Features

Section 4.171 Protection of Natural Features and Other Resources

A41. **Review Criteria:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.

Finding: These criteria are satisfied.

Explanation of Finding: None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

Public Safety and Crime Prevention

Subsection 4.175 (.01) Design to Deter Crime and Ensure Public Safety

A42. **Review Criterion:** "All developments shall be designed to deter crime and insure public safety."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant asserts, and staff concurs, that attention has been given to site design to deter crime and allow natural surveillance. Staff has no evidence that the proposed development would otherwise negatively impact public safety.

Subsection 4.175 (.02) Addressing and Directional Signing

A43. **Review Criteria:** "Addressing and directional signing shall be designed to assure identification of all buildings and structures by emergency response personnel, as well as the general public."

Finding: These criteria are satisfied.

Explanation of Finding: The design of the site provides for appropriate addressing and directional signage to assure easy identification.

Subsection 4.175 (.03) Surveillance and Police Access

A44. **Review Criterion:** "Areas vulnerable to crime shall be designed to allow surveillance. Parking and loading areas shall be designed for access by police in the course of routine patrol duties."

Finding: This criterion is satisfied.

Explanation of Finding: The parking and loading areas are easily assessable to law enforcement.

Subsection 4.175 (.04) Lighting to Discourage Crime

A45. **Review Criterion:** "Exterior lighting shall be designed and oriented to discourage crime."

Finding: This criterion is satisfied.

Explanation of Finding: While exterior lighting has been minimized it was previously found to discourage crime and continues to do so.

Landscaping Standards

Subsection 4.176 (.01) Purpose of Landscape, Screening, and Buffering

A46. **Review Criteria:** "This Section consists of landscaping and screening standards and regulations for use throughout the City. The regulations address materials, placement, layout, and timing of installation. The City recognizes the ecological and economic value of landscaping and requires the use of landscaping and other screening or buffering to:" Listed A. through K.

Finding: These criteria are satisfied.

Explanation of Finding: In complying with the various landscape standards in Section 4.176 the applicant has demonstrated the proposed Stage II Final Plan is in compliance with the landscape purpose statement.

Subsection 4.176 (.02) B. Landscaping Standards and Code Compliance

- A47. **Review Criteria:** “All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length”

Finding: These criteria are satisfied.

Explanation of Finding: No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent

- A48. **Review Criteria:** “The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees.”

Finding: These criteria are satisfied.

Explanation of Finding: The applicant’s submitted landscape plans (applicant’s sheets L 1.0 and L2.0) show a variety of plant materials and placement consistent with the general landscape standard, specifically along the frontage with SW 95th Avenue and SW Boones Ferry Road.

Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials

- A49. **Review Criteria:** “Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.

b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet.”

Finding: These criteria are satisfied.

Explanation of Finding: The planting plan (applicant’s sheet L2.0) shows landscaping meeting the functional requirements of this subsection.

Subsection 4.176 (.02) E. 1. High Screen Landscape Standard-Intent

- A50. **Review Criterion:** “The High Screen Landscaping Standard is a landscape treatment that relies primarily on screening to separate uses or developments. It is intended to be applied in situations where visual separation is required.”

Finding: This criterion is satisfied.

Explanation of Finding: No development related to the coffee kiosk requires the high screen standards be applied, especially as menu boards are oriented as to not be visible off site. If menu boards are relocated so the face of the sign faces Boones Ferry Road or 95th Avenue, then additional review will be needed to provide landscaping that provides appropriate screening such as the planting screening the Carl's Jr. menu board.

Subsection 4.176 (.03) Landscape Area and Locations

- A51. **Review Criteria:** "Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable."

Finding: These criteria are satisfied.

Explanation of Finding: According to the applicant twenty-eight percent (28%) of the site is proposed to be in landscaping. The landscaping is in a variety of areas throughout the site, including the street frontage areas. Landscaping is placed along the streets to soften the look of off-street parking areas. As shown on the applicant's sheet L 2.0 a variety of landscape materials are being used.

Subsection 4.176 (.04) Buffering and Screening

- A52. **Review Criteria:** "Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.

C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.

D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.

E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.

F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval."

Finding: These criteria are satisfied.

Explanation of Finding: The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.

Subsection 4.176 (.09) Landscape Plans

- A53. **Review Criteria:** "Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated."

Finding: These criteria are satisfied.

Explanation of Finding: Applicant's sheets L1.0 and L2. in Exhibit B2 provide the required information.

Subsection 4.176 (.12) Mitigation Standards

A54. **Review Criterion:** "A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants."

Finding: This criterion is satisfied.

Explanation of Finding: No existing native plans are being removed requiring a mitigation plan pursuant to this subsection.

Other Standards

Section 4.177 Street Improvement Standards

A55. **Review Criteria:** This section establishes improvement standards for public streets, along with private access drives and travel lanes.

Finding: These criteria are satisfied.

Explanation of Finding:

- Access is provided to the proposed development clear of any obstructions.
- The travel lanes are proposed to be asphalt and have been constructed to City standards.
- All access lanes are a minimum of 12 feet.
- The development will comply with requirements of the Fire District.
- No construction is proposed in the public right-of-way

Section 4.179 Mixed Solid Waste and Recyclables Storage

A56. **Review Criteria:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

Finding: These criteria are satisfied.

Explanation of Finding: No changes to the mixed solid waste facilities are proposed. The proposed coffee kiosk replaces a larger multi-tenant commercial building. The mixed-solid waste enclosure designed and built for the multi-tenant building is adequately sized for the smaller coffee kiosk.

Sections 4.199.20 Outdoor Lighting

A57. **Review Criteria:** This section states that the outdoor lighting ordinance is applicable to "Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas" and "Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas." In addition the exempt luminaires and lighting systems are listed.

Finding: These criteria are satisfied.

Explanation of Finding: All the outdoor lighting for the new development on the site is being required to comply with the outdoor lighting ordinance. A photometric site plan has been provided, sheet SE1.0 (Exhibit B2), showing the functional effect of the proposed

lighting on the site. Detailed requirements for site lighting are being reviewed as a component of Request B, Site Design Review, of this application. See Findings B32 through B39.

Sections 4.300-4.320 and Subsection 4.118 (.02) Underground Installation of Utilities

A58. **Review Criteria:** These sections list requirements regarding the underground installation of utilities.

Finding: These criteria are satisfied.

Explanation of Finding: There are no existing overhead facilities that require undergrounding as part of this development. All new utilities associated with the development are proposed to be installed underground.

REQUEST B: DB13-0047 SITE DESIGN REVIEW

Site Design Review

Subsection 4.400 (.01) and Subsection 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.

- B1. **Review Criteria:** "The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards." "Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant provides a response to this subsection on pages 18-20 of the compliance narrative in their notebook, Exhibit B1. Staff summarizes the compliance with this subsection as follows:

Excessive Uniformity: The design of the coffee kiosk is different from the Carl's Jr. building, yet complementary, and has an architectural character unique from other surrounding development preventing uniformity. The coffee kiosk uses the same brick around the base as used on the Carl's Jr. building. lap siding and board and baton siding are used similarly as with the Carl's Jr. building, only painted different colors.

Inappropriate or Poor Design of the Exterior Appearance of Structures: The coffee kiosk is professionally designed with a unique historic "small-town" theme indicative of other commercial development in Wilsonville including Old Town Square (Fred Meyer development). The result is a professional design appropriate for Wilsonville.

Inappropriate or Poor Design of Signs: Signs are typical of the type of development proposed and meet applicable City standards. See Request C, Master Sign Plan.

Lack of Proper Attention to Site Development: The appropriate professional services have been used to design the site incorporating unique features of the site including site size and shape and available access, demonstrating appropriate attention being given to site development.

Lack of Proper Attention to Landscaping: Landscaping is provided exceeding the area requirements, has been professionally designed by a landscape architect, and includes a variety of plant materials, all demonstrating appropriate attention being given to landscaping.

Subsection 4.400 (.02) and Subsection 4.421 (.03) Purposes of Objectives of Site Design Review

- B2. **Review Criteria:** "The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards." "The City Council declares that the purposes and objectives of site development requirements and the site design review procedure are to:" Listed A through J.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant provides a response to design on pages 18-20 of the compliance narrative in their notebook, Exhibit B1, demonstrating compliance with the listed purposes and objectives. In short, the proposal provides a high quality design appropriate for the site and its location in Wilsonville.

Section 4.420 Development in Accordance with Plans

- B3. **Review Criteria:** The section states that development is required in accord with plans approved by the Development Review Board.

Finding: These criteria will be satisfied by Condition of Approval PDB 1.

Explanation of Finding: A condition of approval has been included to ensure construction, site development, and landscaping are carried out in substantial accord with the Development Review Board approved plans, drawings, sketches, and other documents. No building permits will be granted prior to development review board approval.

Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards

- B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the applicant's notebook, Exhibit B1. Staff notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met.

Subsection 4.421 (.05) Site Design Review-Conditions of Approval

- B5. **Review Criterion:** "The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code."

Finding: This criterion is satisfied.

Explanation of Finding: No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

Subsection 4.421 (.06) Color or Materials Requirements

- B6. **Review Criterion:** "The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City."

Finding: This criterion is satisfied.

Explanation of Finding: All material and color information has been provided by the applicant.

Section 4.430 Design of Trash and Recycling Enclosures

- B7. **Review Criteria:** "The following locations, design and access standards for mixed solid waste and recycling storage areas shall be applicable to the requirements of Section 4.179 of the Wilsonville City Code." Listed (.02) A. through (.04) C.

Finding: These criteria are satisfied.

Explanation of Finding: No design to the trash and recycling enclosures are proposed as part of this application.

Section 4.440 Site Design Review-Submittal Requirements

- B8. **Review Criteria:** This section lists additional submittal requirements for Site Design Review in addition to those listed in Section 4.035.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted the required additional materials, as applicable.

Subsection 4.450 (.01) Landscape Installation or Bonding

- B9. **Review Criterion:** "All landscaping required by this section and approved by the Board shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping as determined by the Planning Director is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City shall be returned to the applicant."

Finding: This criterion will be satisfied by Condition of Approval PDB 2.

Explanation of Finding: The condition of approval will assure installation or appropriate security at the time occupancy is requested.

Subsection 4.450 (.02) Approved Landscape Plan Binding

- B10. **Review Criterion:** "Action by the City approving a proposed landscape plan shall be binding upon the applicant. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, as specified in this Code."

Finding: This criterion will be satisfied by Condition of Approval PDB 3.

Explanation of Finding: The condition of approval shall provide ongoing assurance this criterion is met.

Subsection 4.450 (.03) Landscape Maintenance and Watering

- B11. **Review Criterion:** "All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved by the Board, unless altered with Board approval."

Finding: This criterion will be satisfied by Condition of Approval PDB 4.

Explanation of Finding: The condition of approval will ensure landscaping is continually maintained in accordance with this subsection.

Subsection 4.450 (.04) Addition and Modifications of Landscaping

- B12. **Review Criterion:** "If a property owner wishes to add landscaping for an existing development, in an effort to beautify the property, the Landscape Standards set forth in Section 4.176 shall not apply and no Plan approval or permit shall be required. If the owner wishes to modify or remove landscaping that has been accepted or approved through the City's development review process, that removal or modification must first be approved through the procedures of Section 4.010."

Finding: This criterion will be satisfied by Condition of Approval PDB 4.

Explanation of Finding: The condition of approval shall provide ongoing assurance that this criterion is met by preventing modification or removal without the appropriate City review.

On-site Pedestrian Access and Circulation

Subsection 4.154 (.01) B. Standards for On-site Pedestrian Access and Circulation

- B13. **Review Criteria:** This subsection lists standards for on-site pedestrian access and circulation, listed 1. through 6.

Finding: These criteria are satisfied.

Explanation of Finding: The design of the on-site pedestrian access and circulation described and illustrated in the applicant's submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review and the proposed revised Stage II Final Plan for the site. See Findings A24 through A29 under Request A.

Parking

Subsection 4.155 (.02) Provision and Maintenance of Off-Street Parking

- B14. **Review Criteria:** This subsection lists general provisions for parking, A. through O.

Finding: These criteria are satisfied.

Explanation of Finding: The design of the parking described and illustrated in the applicant's submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review and the proposed revised Stage II Final Plan for the site. See Finding A30 under Request A.

Subsection 4.155 (.03) B. 1.-3. Landscaping of Parking Areas

- B15. **Review Criteria:** "Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:" Listed 1. through 3.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in the planting plans, sheet L2.0 of Exhibit B2, landscape screening is provided between the proposed parking and the public right-of-way. Trees are provided for the proposed parking spaces as required by this subsection. Tree planting areas generally meet the minimum size requirements. However, the planting area with a tree between a parking stall and the entry to the coffee drive-thru queuing area is less than 8 feet wide. Staff has examined other site design option to make this a wider planting area, but site constraints prevent making it wider. It is desirable to have a tree and other plantings at this location and the planter is as wide a practicable balancing competing design requirements and site restraints.

Section 4.171 Protection of Natural Features and Other Resources

- B16. **Review Criterion:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.

Finding: This criterion is satisfied.

Explanation of Finding: None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

Landscaping

Subsection 4.176 (.02) B. Landscape Standards and Compliance with Code

- B17. **Review Criterion:** “All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length”

Finding: This criterion is satisfied.

Explanation of Finding: No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent

- B18. **Review Criteria:** “The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees.”

Finding: These criteria are satisfied.

Explanation of Finding: The applicant’s sheet L2.0 of Exhibit B2 shows a variety of plant materials and placement consistent with the general landscape standard.

Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials

- B19. **Review Criteria:** “Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General

Development Review Board Panel „A’ Staff Report January 6, 2014

Exhibit A1

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

DB13-0046, DB13-0047, DB13-0048

Page 35 of 50

Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

- a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.
- b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet."

Finding: These criteria are satisfied.

Explanation of Finding: The planting plan, sheet L2.0 of Exhibit B2, shows landscaping meeting the requirements of this subsection.

Subsection 4.176 (.03) Landscape Area and Locations

- B20. **Review Criteria:** "Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable."

Finding: These criteria are satisfied.

Explanation of Finding: Consistent with the proposed revised Stage II Final Plan for the site, the proposed design of the site provides for more than the required amount of landscaping and landscaping in at least three separate and distinct areas, including the area along SW 95th Avenue and SW Boones Ferry Road. See Finding A51 of Request A. The planting plans, sheet L2.0 of Exhibit B2, show landscape placed in areas that will define, soften, and screen the appearance of buildings and off-street parking areas.

Subsection 4.176 (.04) Buffering and Screening

- B21. **Review Criteria:** "Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.

C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.

D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.

E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.

F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval."

Finding: These criteria are satisfied.

Explanation of Finding: The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.

Subsection 4.176 (.06) A. Plant Materials-Shrubs and Groundcover

B22. **Review Criteria:** This subsection establishes plant material and planting requirements for shrubs and ground cover.

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 5.

Explanation of Finding: The condition of approval requires that the detailed requirements of this subsection are met.

Subsection 4.176 (.06) B. Plant Materials-Trees

B23. **Review Criteria:** This subsection establishes plant material requirements for trees.

Finding: These criteria are satisfied.

Explanation of Finding: The plants material requirements for trees will be met as follows:

- The applicant's planting plan, sheet L2.0 of Exhibit B2, shows all trees as B&B (Balled and Burlapped)
- Landscaping is being required to meet ANSI standards.
- The applicant's planting plan lists tree sizes required by code.

Subsection 4.176 (.06) D. Plant Materials-Street Trees

B24. **Review Criteria:** This subsection establishes plant material requirements for street trees.

Finding: These criteria are satisfied.

Explanation of Finding: As shown in their planting plan, sheet L2.0 of Exhibit B2, the applicant proposes Bowhall Maple street trees (*Acer rubrum* "Bowhall"). The proposed trees are a cultivar of *Acer rubrum*, which is listed as a satisfactory street tree in this subsection. The trees are proposed to be planted at 3" caliper, the required size for arterial streets.

Subsection 4.176 (.06) E. Types of Plant Species

B25. **Review Criteria:** This subsection discusses use of existing landscaping or native vegetation, selection of plant materials, and prohibited plant materials.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information showing the proposed landscape design meets the standards of this subsection. See sheet L2.0 of Exhibit B2.

Subsection 4.176 (.06) G. Exceeding Plant Material Standards

B26. **Review Criterion:** "Landscape materials that exceed the minimum standards of this Section are encouraged, provided that height and vision clearance requirements are met."

Finding: This criterion is satisfied.

Explanation of Finding: The selected landscape materials do not violate any height or visions clearance requirements.

Subsection 4.176 (.07) Installation and Maintenance of Landscaping

B27. **Review Criteria:** This subsection establishes installation and maintenance standards for landscaping.

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 6.

Explanation of Finding: The installation and maintenance standards are or will be met as follows:

- Plant materials are required to be installed to current industry standards and be properly staked to ensure survival
- Plants that die are required to be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City.
- Sheet L1.0 of Exhibit B2 shows a permanent built-in irrigation system with an automatic controller satisfying the related standards of this subsection.

Subsection 4.176 (.09) Landscape Plans

B28. **Review Criterion:** "Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated."

Finding: This criterion is satisfied.

Explanation of Finding: Sheets L1.0 and L2.0, of Exhibit B2 provide the required information.

Subsection 4.176 (.10) Completion of Landscaping

B29. **Review Criterion:** "The installation of plant materials may be deferred for a period of time specified by the Board or Planning Director acting on an application, in order to avoid hot summer or cold winter periods, or in response to water shortages. In these cases, a temporary permit shall be issued, following the same procedures specified in subsection (.07)(C)(3), above, regarding temporary irrigation systems. No final Certificate of Occupancy shall be granted until an adequate bond or other security is posted for the completion of the landscaping, and the City is given written authorization to enter the property and install the required landscaping, in the event that the required landscaping has not been installed. The form of such written authorization shall be submitted to the City Attorney for review."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has not requested to defer installation of plant materials.

Subsection 4.176 (.12) Mitigation and Restoration Plantings

B30. **Review Criterion:** "A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants."

Finding: This criterion is satisfied.

Explanation of Finding: Consistent with the proposed revised Stage II Final Plan, the proposed landscape design involves no removal of existing native plants requiring a mitigation plan pursuant to this subsection.

Other Standards

Section 4.179 Mixed Solid Waste and Recyclables Storage

B31. **Review Criterion:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

Finding: This criterion is satisfied.

Explanation of Finding: The design of the mixed-solid waste and recycling enclosures is not proposed to be changed by this application.

Outdoor Lighting

Section 4.199.20 Applicability of Outdoor Lighting Standards

B32. **Review Criterion:** This section states that the outdoor lighting ordinance is applicable to "Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas" and "Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas." In addition the exempt luminaires and lighting systems are listed.

Finding: This criterion is satisfied.

Explanation of Finding: Non-exempt new outdoor lighting proposed for the development site is being required to comply with the outdoor lighting ordinance.

Section 4.199.30 Outdoor Lighting Zones

B33. **Review Criterion:** "The designated Lighting Zone as indicated on the Lighting Overlay Zone Map for a commercial, industrial, multi-family or public facility parcel or project shall determine the limitations for lighting systems and fixtures as specified in this Ordinance."

Finding: This criterion is satisfied.

Explanation of Finding: The development site is within LZ 2 and the proposed outdoor lighting systems are being reviewed under the standards of this lighting zone.

Subsection 4.199.40 (.01) A. Alternative Methods of Outdoor Lighting Compliance

B34. **Review Criterion:** "All outdoor lighting shall comply with either the Prescriptive Option or the Performance Option below."

Finding: This criterion is satisfied.

Explanation of Finding: The applicant has submitted information to comply with the performance option.

Subsection 4.199.40 (.01) C. Performance Option for Outdoor Lighting Compliance

"If the lighting is to comply with the Performance Option, the proposed lighting design shall be submitted by the applicant for approval by the City meeting all of the following:" Listed 1. through 3.

Subsection 4.199.40 (.01) C. 1. Weighted Average of Direct Uplight Lumens Standard

B35. **Review Criteria:** "The weighted average percentage of direct uplight lumens shall be less than the allowed amount per Table 9."

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDB 8.

Explanation of Finding: As shown in the revised sheet SE1.0 provided with the applicant's notebook, Exhibit B1, the only luminaires that are not fully shielded are the landscape bollards. The luminaires are such that the weighted average percentage of direct uplight lumens will be less than five percent (5%). A condition of approval limits all wall mounted fixtures to down lighting.

Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines

B36. **Review Criteria:** "The maximum light level at any property line shall be less than the values in Table 9, as evidenced by a complete photometric analysis including horizontal illuminance of the site and vertical illuminance on the plane facing the site up to the mounting height of the luminaire mounted highest above grade."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet SE1.0 shows the horizontal foot candles comply with Table 9. The applicant states on page 18 of their compliance narrative, the vertical foot candles remain substantially the same as previously approved as compliant with Table 9.

Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines

B37. **Review Criteria:** "Luminaires shall not be mounted so as to permit aiming or use in any way other than the manner maintaining the shielding classification required herein:"

Finding: These criteria are satisfied.

Explanation of Finding: The mountings will be in a downward position. Condition of Approval PDB 8 helps ensure this

Subsection 4.199.40 (.01) D. Outdoor Lighting Curfew

B38. **Review Criterion:** "All prescriptive or performance based exterior lighting systems shall be controlled by automatic device(s) or system(s) that:" Listed 1. through 3.

Finding: This criterion is satisfied or will be satisfied by Condition of Approval PDB 7.

Explanation of Finding: As previously approved, Carl's Jr. is exempt from lighting curfew as a 24/7 operation. However, the coffee kiosk is not. A condition of approval requires lighting associated with this building and supporting parking shall be dimmed at 10:00 p.m. pursuant to Table 10.

Subsection 4.199.50 Submittal Requirements

B39. **Review Criteria:** "Applicants shall submit the following information as part of DRB review or administrative review of new commercial, industrial, multi-family or public facility projects:" Listed A. through F. "In addition to the above submittal requirements, Applicants using the Prescriptive Method shall submit the following information as part of the permit set plan review:

A. A site lighting plan (items 1 A - F, above) which indicates for each luminaire the 3 mounting height line to demonstrate compliance with the setback requirements. For luminaires

mounted within 3 mounting heights of the property line the compliance exception or special shielding requirements shall be clearly indicated.”

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted sufficient information to review the application.

REQUEST C: DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER

Subsection 4.031 (.01) M. and Subsection 4.156.02 (.07) and (.07) C. Review Process

- C1. **Review Criteria:** These subsections establish that Master Sign Plans are reviewed by the Development Review Board and that modifications to Master Sign Plans other than minor and major adjustments are reviewed the same as a new Master Sign Plan.

Finding: These criteria are satisfied.

Explanation of Finding: Due to the request for a waiver the request does not qualify as a minor or major adjustment and is therefore being reviewed the same as a new Master Sign Plan.

Subsection 4.156.02 (.07) A. Master Sign Plan Submission Requirements

- C2. **Review Criteria:** This subsection identifies submission requirements for Master Sign Plans

Finding: These criteria are satisfied.

Explanation of Finding: As indicated in the table below the applicant has either satisfied the submission requirements, or has been granted a waiver under Subsection 4.156.02 (.10).

Requirement	Submitted	Waiver Granted		Condition of Approval	Not Applicable	Additional findings/notes
		Info Already Available to City	Info Not Necessary for Review			
Completed Application Form	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sign Drawings or Descriptions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Documentation of Building/Tenant Space Lengths	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Drawings of Sign Placement of Building Facades	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Project Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Subsection 4.156.02 (.05) E. Class II Sign Permit Review Criteria: Generally and Site Design Review

- C3. **Review Criteria:** "Class II Sign Permits shall satisfy the sign regulations for the applicable zoning district and the Site Design Review Criteria in Sections 4.400 through 4.421," Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.
Finding: These criteria are satisfied.
Explanation of Finding: As indicated in Findings C25 through C31 these criteria are met.

Subsection 4.156.02 (.05) E. 1. Class II Sign Permit Review Criteria: Compatibility with Zone

- C4. **Review Criteria:** "The proposed signage is compatible with developments or uses permitted in the zone in terms of design, materials used, color schemes, proportionality, and location, so that it does not interfere with or detract from the visual appearance of surrounding development;" Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.
Finding: These criteria are satisfied.
Explanation of Finding: The proposed signage is typical of and compatible with development within the PDC zones. This includes a design and colors reflecting corporate identity, illuminated channel letters and logo on a raceway, freestanding cabinet signs, and individual non-illuminated letters on an architectural wall. The placement of signs on buildings is in recognizable sign bands, and proportional to the building facades. No evidence exists nor has testimony been received that the subject signs would detract from the visual appearance of the surrounding development.

Subsection 4.156.02 (.05) E. 2. Class II Sign Permit Review Criteria: Nuisance and Impact on Surrounding Properties

- C5. **Review Criteria:** "The proposed signage will not create a nuisance or result in a significant reduction in the value or usefulness of surrounding development;" Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.
Finding: These criteria are satisfied.
Explanation of Finding: There is no evidence and no testimony has been received that the subject signs would create a nuisance or negatively impact the value of surrounding properties.

Subsection 4.156.02 (.05) E. 3. Class II Sign Permit Review Criteria: Items for Special Attention

- C6. **Review Criteria:** "Special attention is paid to the interface between signs and other site elements including building architecture and landscaping, including trees." Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.
Finding: These criteria are satisfied.
Explanation of Finding: The building signs are within an architectural feature identifiable as a sign band with a buffer within the sign band around the sign, which demonstrates consideration of the interface between the signs and building architecture. No sign-tree conflicts have been noted.

Subsection 4.156.02 (.06) B. Class III Sign Permit Review Criteria

- C7. **Review Criteria:** "The review criteria for Class II Sign Permits plus waiver or variance criteria when applicable." Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

Finding: These criteria are satisfied.

Explanation of Finding: A waiver is being requested and responses to the waiver criteria have been provided.

Subsection 4.156.02 (.07) B.1. Master Sign Plan Review Criteria: Consistent and Compatible Design

- C8. **Review Criteria:** "The Master Sign Plan provides for consistent and compatible design of signs throughout the development."

Finding: These criteria are satisfied.

Explanation of Finding: The channel letter/logo design is similar to what was previously approved for the multi-tenant commercial building. The coffee kiosk signs are consistent with the design of the signs approved and installed on the Carl's Jr. building. No additional freestanding signs are proposed. Directional signs are similar in character to the Carl's Jr. directional signs and are typical of drive-thru establishments.

Subsection 4.156.02 (.07) B.2. Master Sign Plan Review Criteria: Future Needs

- C9. **Review Criteria:** "The Master Sign Plan considers future needs, including potential different configuration of tenant spaces and different sign designs, if allowed."

Finding: These criteria are satisfied.

Explanation of Finding: Staff recommends increasing the sign allowance to 25.4 square feet on each façade to allow flexibility of sign design over time within a rectangle that the proposed sign fits within.

Subsection 4.156.02 (.08) A. Sign Waiver

Subsection 4.156.02 (.08) A. Waivers in General

- C10. **Review Criteria:** "The DRB may grant waivers for sign area, sign height from ground (no waiver shall be granted to allow signs to exceed thirty-five (35) feet in height), number of signs, or use of electronic changeable copy signs in order to better implement the purpose and objectives of the sign regulations as determined by making findings that all of the following criteria are met:" Listed 1.-4. See Findings C12 through C15 below.

Finding: These criteria are satisfied.

Explanation of Finding: A waiver is being requested for sign area consistent with this subsection.

Subsection 4.156.02 (.08) A. 1. Waivers Criteria: Improved Design

- C11. **Review Criteria:** "The waiver will result in improved sign design, in regards to both aesthetics and functionality."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed coffee kiosk is a particularly long narrow building at only 12' 10" wide with a length of 35' 4". According to the table showing the sign area allowed in Subsection 4.156.08 (.02) B. 1. the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The waiver allows signs of equal size to be placed on three facades that are of a consistent size and design creating a consistent look for portions of the buildings that are otherwise architecturally similar. The applicant in their narrative requests 15.83 square feet of signage for each of three facades. Staff notes the applicant's method of measurement does not follow the measurement method prescribed in Section 4.156.03. Staff additionally notes greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Staff recommends a waiver be approved for the allowed sign area to be increased to 25.4 square feet on the 12.83 long facade.

Subsection 4.156.02 (.08) A. 2. Waivers Criteria: More Compatible and Complementary

- C12. **Review Criteria:** "The waiver will result in improved sign design, in regards to both aesthetics and functionality."

Finding: These criteria are satisfied.

Explanation of Finding: The waiver will provide for more consistent signs around the building and neighboring buildings providing for compatible and complementary design.

Subsection 4.156.02 (.08) A .3. Waivers Criteria: Impact on Public Safety

- C13. **Review Criteria:** "The waiver will result in a sign or signs that improve, or at least do not negatively impact, public safety, especially traffic safety."

Finding: These criteria are satisfied.

Explanation of Finding: If anything, the added readability of the sign facing the intersection will aid drivers in making decisions on maneuvers earlier. No negative impacts on safety have been noted.

Subsection 4.156.02 (.08) A .4. Waivers Criteria: Content Neutrality

- C14. **Review Criteria:** "Sign content is not being considered when determining whether or not to grant a waiver."

Finding: These criteria are satisfied.

Explanation of Finding: Sign content is not being considered in granting the waiver. Similar consideration on building shape would occur regardless of the tenant or message.

Section 4.156.03 Sign Measurement

Subsection 4.156.03 (.01) B. Measurement of Individual Element Signs

- C15. **Review Criteria:** "The area for signs constructed of individual elements (letters, figures, etc.) attached to a building wall or similar surface or structure shall be the summed area of up to three squares, rectangles, circles, or triangles drawn around all sign elements."

Finding: These criteria are satisfied.

Explanation of Finding: The proposed signs have not been measured consistent with this subsection. However, as recommended by Staff the proposed Master Sign Plan revision allows for the proposed signs measured according to this subsection.

Subsection 4.156.03 (.03) A.-B. Measurement of Sign Height and Length

- C16. **Review Criteria:** “Height of a sign is the vertical distance between the lowest and highest points of the sign.”

Length of a sign is the horizontal distance between the furthest left and right points of the sign.”

Finding: These criteria are satisfied.

Explanation of Finding: The proposed signs have been measured consistent with this subsection.

Subsection 4.156.08 (.01) L. Design of Sign Based on Initial Tenant Configuration and Size

- C17. **Review Criteria:** “When a sign is designed based on the number of planned tenant spaces it shall remain a legal, conforming sign regardless of the change in the number of tenants or configuration of tenant spaces.”

Finding: These criteria are satisfied.

Explanation of Finding: The master sign plan is proposed based on the number of planned tenants, and it is understood the sign plan will be valid regardless on the number of future tenants.

Subsection 4.156.08 (.02) Building Signs in the PDC, PDI, and PF Zones

Subsection 4.156.08 (.02) A. Sign Eligible Facades

- C18. **Review Criteria:** “Building signs are allowed on a facade of a tenant space or single tenant building when one or more of the following criteria are met:

1. The facade has one or more entrances open to the general public;
2. The facade faces a lot line with frontage on a street or private drive with a cross section similar to a public street, and no other buildings on the same lot obstruct the view of the building facade from the street or private drive; or
3. The facade is adjacent to the primary parking area for the building or tenant.”

Finding: These criteria are satisfied.

Explanation of Finding: All facades of the proposed coffee kiosk are sign eligible. The north, east, and west face lot lines with frontages of public streets. The south facade faces the primary parking area.

Subsection 4.156.08 (.02) B. Building Sign Area Allowed

- C19. **Review Criteria:** This subsection includes a table identifying the sign area allowed for facades based on the linear length of the façade. Exception are listed 2. through 5.

Finding: These criteria are satisfied.

Explanation of Finding: There are no changes to the previously approved sign allowance for the Carl's Jr. building. The following are the allowances for the proposed coffee kiosk.

Coffee Kiosk				
Façade	Linear Length	Sign Area Allowed	Proposed Max	Staff Recommendation
North	12.83 feet	12.83 sf	15.86 sf	25.4 sf
East	34.33 feet	34.33 sf	15.86 sf	25.4 sf
South	12.83 feet	12.83 sf	0 sf	0 sf
West	34.33 feet	34.33 sf	15.86 sf	25.4 sf

The proposed coffee kiosk in a particularly long narrow building at only 12' 10" wide with a length of 35' 4". According to the table showing the sign area allowed in Subsection 4.156.08 (.02) B. 1. the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The applicant in their narrative requests 15.83 square feet of signage for each of three facades, which includes a waiver to increase the sign area on the north facade. Staff notes the applicant's method of measurement does not follow the measurement method prescribed in Section 4.156.03. Staff additionally notes greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Staff recommends the DRB approve 25.4 square feet on the east, west, and north facades. See also Finding C11 regarding waiver request.

Subsection 4.156.08 (.02) B. 6. Calculating Linear Length to Determine Sign Area Allowed.

- C20. **Review Criteria:** "For facades of a single tenant building the length the facade measured at the building line, except as noted in a. and b. below. For multi-tenant buildings the width of the façade of the tenant space shall be measured from the centerline of the party walls or the outer extent of the exterior wall at the building line, as applicable, except as noted in a. and b. below. Applicants shall provide the dimensions needed to calculate the length. Each tenant space or single occupant building shall not be considered to have more than five (5) total facades."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has supplied the required measurements used to determine linear lengths according to this subsection.

Subsection 4.156.08 (.02) C. Building Sign Length Allowed

- C21. **Review Criterion:** "The length of individual tenant signs shall not exceed seventy-five (75) percent of the length of the facade of the tenant space."

Finding: This criterion is satisfied.

Explanation of Finding: None of the proposed sign bands exceed seventy-five (75) percent of the length of the façade.

Subsection 4.156.08 (.02) D. Building Sign Height Allowed

- C22. **Review Criteria:** “The height of building signs shall be within a definable sign band, fascia, or architectural feature and allow a definable space between the sign and the top and bottom of the sign band, fascia, or architectural feature.”

Finding: These criteria are satisfied.

Explanation of Finding: All of the proposed sign bands are within a definable architectural feature and have a definable space between the sign and the top and bottom of the architectural feature.

Subsection 4.156.08 (.02) E. Building Sign Types Allowed

- C23. **Review Criterion:** “Types of signs permitted on buildings include wall flat, fascia, projecting, blade, marquee and awning signs. Roof-top signs are prohibited.”

Finding: This criterion is satisfied.

Explanation of Finding: All the proposed buildings signs are wall flat, which is an allowable type.

Subsection 4.156.08 (.03) A. Additional Signs: Directional Signs

- C24. **Review Criteria:** “Notwithstanding the signs allowed based on the site in (.01) and (.02) above, the following signs may be permitted, subject to standards and conditions in this Code:” “In addition to exempt directional signs allowed under Subsection 4.156.05 (.02) C. freestanding or ground mounted directional signs six (6) square feet or less in area and four (4) feet or less in height:

1. The signs shall be designed to match or complement the architectural design of buildings on the site;
2. The signs shall only be placed at the intersection of internal circulation drives; and
3. No more than one (1) sign shall be placed per intersection corner with no more than two (2) signs per intersection.”

Finding: These criteria are satisfied or will be satisfied by Condition of Approval PDC 3.

Explanation of Finding: Two (2) illuminated double faced directional signs are proposed as part of the Master Sign Plan. The signs are shown in the applicant’s sign section of their notebook, Exhibit B1. Exhibit B1 shows the signs slightly larger than 6 square feet. A condition of approval requires they be limited to six (6) square feet. The signs are shown at 4’ tall. The signs match the design of other signs on the property and complement the architecture of the building similarly. The signs are placed at the intersection of internal circulation drives, and only one sign is placed per intersection.

Site Design Review

Subsections 4.400 (.01) and 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.

- C25. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the

desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor."

Finding: These criteria are satisfied.

Explanation of Finding:

Excessive Uniformity: The sign plan allows for a variety of sign shapes, fonts, and colors chosen by different tenants so as to avoid excessive uniformity.

Inappropriate or Poor Design of Signs: Signs are typical of the type of development proposed found to be appropriate throughout the City. As issuance of the Class I Sign Permits consistent with the Master Sign Plan the City will ensure quality design of signs.

Lack of Proper Attention to Site Development: The appropriate professional services have been used to design the site incorporating unique features of the site including site size and shape, and available access, demonstrating appropriate attention being given to site development and sign placement.

Lack of Proper Attention to Landscaping: Landscaping around the monument sign and freestanding sign is consistent with other landscaping on the property and is of an acceptable quality and design.

Subsections 4.400 (.02) and 4.421 (.03) Purposes of Objectives of Site Design Review

- C26. **Review Criteria:** "The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards." "The City Council declares that the purposes and objectives of site development requirements and the site design review procedure are to:" Listed A through J. including D. which reads "Conserve the City's natural beauty and visual character and charm by assuring that structures, signs and other improvements are properly related to their sites, and to surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to exterior appearances of structures, signs and other improvements;"

Finding: These criteria are satisfied.

Explanation of Finding: It is staff's professional opinion that the signs comply with the purposes and objectives of site design review, especially objective D. which specifically mentions signs. The proposed signs are of a scale and design appropriately related to the subject site and the appropriate amount of attention has been given to visual appearance.

Subsection 4.421 (.01) Site Design Review-Design Standards

- C27. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Only F. is applicable to this application, which reads, "Advertising Features. In addition to the requirements of the City's sign regulations, the following criteria should be included: the size, location, design, color, texture, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties."

Finding: These criteria are satisfied.

Explanation of Finding: There is no indication that the size, location, design, color, texture, lighting or material of the proposed signs would detract from the design of the building and the surrounding properties.

Subsection 4.421 (.02) Applicability of Design Standards to Signs

- C28. **Review Criteria:** “The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures.”

Finding: These criteria are satisfied.

Explanation of Finding: Design standards have been applied to exterior signs, as applicable, see Finding C27 above.

Subsection 4.421 (.05) Site Design Review-Conditions of Approval

- C29. **Review Criterion:** “The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code.”

Finding: This criterion is satisfied.

Explanation of Finding: No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

Subsection 4.421 (.06) Color or Materials Requirements

- C30. **Review Criterion:** “The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City.”

Finding: This criterion is satisfied.

Explanation of Finding: Staff does not recommend any additional requirements for materials or colors for the proposed signs.

Section 4.440 Site Design Review-Procedures

- C31. **Review Criteria:** “A prospective applicant for a building or other permit who is subject to site design review shall submit to the Planning Department, in addition to the requirements of Section 4.035, the following:” Listed A through F.

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has submitted a sign plan as required by this section.

**EXHIBIT C1
PLANNING DIVISION
STAFF REPORT**

BOONES FERRY POINTE – HUMAN BEAN COFFEE KIOSK

**DEVELOPMENT REVIEW BOARD PANEL ‘___’
QUASI JUDICIAL HEARING**

Public Hearing Date:

Date of Report:

Application Numbers:

Request A: DB13-0046

Request B: DB13-0047

Request C: DB13-0048

Property

Owners/Applicants:

PD = Planning Division conditions

BD – Building Division Conditions

PF = Engineering Conditions.

NR = Natural Resources Conditions

TR = SMART/Transit Conditions

FD = Tualatin Valley Fire and Rescue Conditions



City of Wilsonville

EXHIBIT C1 DB13-0046 et seq

Specific Comments:	
PF 1.	Engineering Public Facilities Conditions of Approval (PF conditions) for DB12-0074 and DB12-0075 remain in effect for this project except as further modified below.
PF 2.	At the request of Staff, DKS Associates completed a Trip Generation memo dated September 5, 2013 revising a previously completed Carl's Jr. Traffic Impact Study that was completed in May 2012. The proposed use is expected to generate 13 fewer new primary trips than the previously approved use. The project is hereby limited to no more than the following impacts.
	Estimated New PM Peak Hour Trips 117
PF 3.	Stormwater detention and storm water quality for this site will be handled via the stormwater facility constructed with the Boones Ferry Pointe project.
PF 4.	The project shall connect to the existing Storm lateral constructed with the Boones Ferry Pointe project.
PF 5.	The project shall connect to the existing Sanitary Sewer stub constructed with the Boones Ferry Pointe project.
PF 6.	The project shall connect to the existing Water service constructed with the Boones Ferry Pointe. project.

Development Review Template

DATE: 12/12/13
TO: DAN PAULY AICP, ASSOCIATE PLANNER
FROM: DON WALTERS
SUBJECT: DEVELOPMENT REVIEW # DB13-46, -47, -48

WORK DESCRIPTION: NEW HUMAN BEAN DRIVE/WALK-UP COFFEE KIOSK

Building Division Conditions:

BD 1. ACCESSIBLE. At least one of the walk-up service windows shall be accessible.



City of Wilsonville
EXHIBIT C2 DB13-0046 et seq



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

January 3, 2014

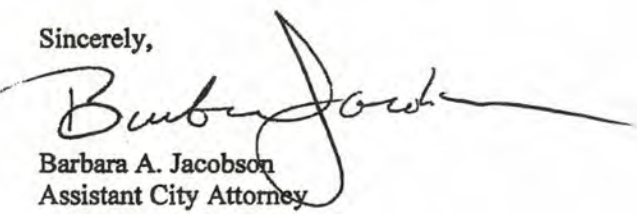
Alec J. Laidlaw
Laidlaw & Laidlaw
21590 Willamette Dr
West Linn OR 97068

Re: The Human Bean Coffee Store

Dear Mr. Laidlaw:

The City is in receipt of your letter dated January 3, 2014. Although we appreciate knowing that the dispute exists, it has no bearing on the application made by the property owner to the Wilsonville Development Review Board, which will be considered as scheduled. I trust that if you and your client believe that approval of the application, if granted, will violate a contractual agreement and cause your client harm, you will seek the proper legal recourse with the Washington County Circuit Court before which this matter is being heard, as and when needed to protect your client's interests.

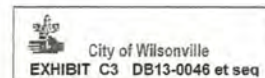
Sincerely,



Barbara A. Jacobson
Assistant City Attorney

baj:tec

cc: Wallace W. Lien
Daniel Pauly



"Serving The Community With Pride"

Pauly, Daniel

From: Terra Burns <Terra@laidlawandlaidlaw.com>
Sent: Friday, January 03, 2014 1:55 PM
To: Pauly, Daniel
Cc: Alec Laidlaw; wallace.lien@lienlaw.com; garrylapoint@gmail.com; gl@eoni.com
Subject: Development Review Board Public Hearing- The Human Bean
Attachments: Ltr to DRB re Devco public hearing submittal 2014.01.03.pdf; ORCP 21 Motions 2013.12.27.pdf; Dec of Garry LaPoint in Support 2013.12.30.pdf; UTCR 5.010 CERT OF COMPLAINEE 2013.12.27.pdf

Hello Mr. Pauly—

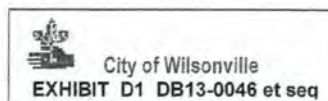
Attached please find the letter and referenced pleadings regarding the Public Hearing set for January 13, 2014 regarding The Human Bean.

Thank you,
Terra Jane Burns
Paralegal

Laidlaw & Laidlaw, PC
21590 Willamette Drive
West Linn, Oregon 97068
Tel. 503.305.6894
Fax. 888.287.4840
www.laidlawandlaidlaw.com
Terra@laidlawandlaidlaw.com

Terra Burns is not an attorney and not licensed to practice law. She does not intend to give legal advice to anyone, and no information in this email should be construed as such.

CONFIDENTIALITY STATEMENT: This electronic message contains information that may be confidential or privileged. The information contained herein is intended solely for the use of the people named above. If you are not the intended recipient of this message, you are hereby advised that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please notify me immediately by telephone at (503) 305-6894 or by e-mail reply, and delete this message.





January 3, 2014

BY EMAIL (pauly@ci.wilsonville.or.us) AND U.S. MAIL

Daniel Pauly
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070

Re: *The Human Bean Coffee Store*

Our Client: LaPoint Business Group, LLC; Garry LaPoint
Case No.: Washington County Circuit Court – C138125CV

Dear Mr. Pauly:

This firm, along with the law firm of Wallace W. Lien, P.C., represents LaPoint Business Group, LLC. LaPoint Business Group, LLC, is the owner of the adjoining parcel of property, and of the Chevron Fuel Station/Fountain Mart Convenience Store situated thereon.

As you may be aware, there is an action currently pending in Washington County Circuit Court (Case No. C138125CV), between LaPoint Business Group, LLC, and Wilsonville Devco, LLC, ("owner/applicant"). Enclosed herein for your and the Panel's review is a copy of a Motion that was filed yesterday against owner/applicant's complaint. Please note that a full and complete copy of owner/applicant's complaint, filed on December 16, 2013, is marked and attached as Exhibit A to our clients' Motion.

There is a dispute between the parties as to the breadth and scope of a restrictive covenant affecting owner/applicant's property. It is LaPoint Business Group, LLC's, position that the restrictive covenant prohibits the construction of the Human Bean Coffee Store. Owner/applicant believes otherwise.

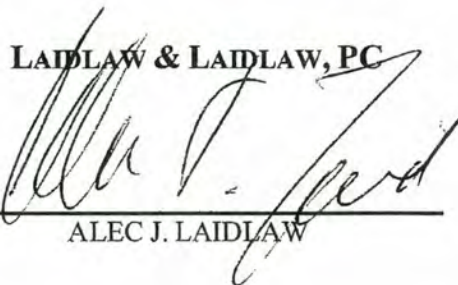
The case pending in Washington County is less than one month old. LaPoint Business Group, LLC, anticipates that this matter will not be resolved without amendment to the pleadings, significant discovery, and perhaps even a trial on the merits. As such, it is LaPoint Business Group, LLC's, position that any consideration of the change proposed by owner/applicant is premature. LaPoint Business Group, LLC, respectfully requests that this matter be setover for further consideration for at least 90 days.

Mr. Lien and/or I plan on appearing at the hearing set for Monday, January 13, 2014. In the meantime, please direct all inquiries regarding this matter to me, at 503.305.6894, or Mr. Lien,

at: Wallace W. Lien PC, 1775 32nd Place NE, Ste. A, Salem, OR 97301; Phone: 503.585.0105;
Fax: 503.585.0106; Email: wallace.lien@lienlaw.com. Thank you.

Sincerely,

LIDLAW & LIDLAW, PC



A handwritten signature in black ink, appearing to read 'Alec J. Laidlaw', is written over a horizontal line.

ALEC J. LAIDLAW

Enclosures: Defendant's ORCP 21 Motions (w/ exhibits)

Cc: Wallace W. Lien

LaPoint Business Group, LLC

Garry LaPoint

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON
6

7 WILSONVILLE DEVCO, LLC, and NW
8 COFFEE GROUP, LLC,

9 Plaintiffs,

10 v.

11 LAPOINT BUSINESS GROUP, LLC and
12 GARRY LAPOINT,

13 Defendant
14

) Case No. C138125CV
)
)

) **DEFENDANTS' ORCP 21 MOTIONS**
)

) **Oral Argument Requested**
)
)

15 Defendants LaPoint Business Group, LLC, and Garry LaPoint (collectively
16 "Defendants") move the Court for an Order dismissing Plaintiffs Wilsonville Devco, LLC and
17 NW Coffee Group, LLC's (collectively "Plaintiffs") Complaint in that it fails to state ultimate
18 facts sufficient to constitute a claim against Garry LaPoint, pursuant to ORCP 21A(8).

19 Alternatively, and without waiving the above motion, LaPoint Business Group, LLC, moves the
20 court for an Order striking Plaintiffs' Complaint, pursuant to ORCP 21E.

21 Official court reporting services are not requested. The estimated time for hearing is 30
22 minutes.

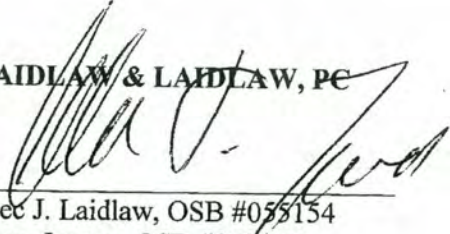
23 Defendants' motions are supported by the attached Memorandum, the Exhibits,
24 Defendant's counsel's UTCR 5.010 Certificate of Compliance, and the records and file herein.
25 The portions of the Complaint to be stricken is shown in parentheses, as required by UTCR
26 5.020, is marked as Exhibit A, is attached hereto, and incorporated herein.

Page 1 – DEFENDANTS' ORCP 21 MOTIONS

LAILAW & LAILAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840
58 of 92

1
2 Dated: December 30, 2013
3

LAIDLAW & LAIDLAW, PC


Alec J. Laidlaw, OSB #055154
Jason Janzen, OSB #063790
Attorneys for Defendants
alec@laidlawandlaidlaw.com

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Page 2 – DEFENDANTS’ ORCP 21 MOTIONS

LAIDLAW & LAIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840
59 of 92

1 **MEMORANDUM**

2 **Legal Argument**

3 1. Plaintiffs' Complaint Should Be Dismissed As To Defendant Garry LaPoint Because It
4 Fails To State Ultimate Facts Sufficient To Constitute A Claim For Relief.

5 ORCP 21 A(8) provides for a motion to dismiss for "failure to state ultimate facts
6 sufficient to constitute a claim." To survive a motion for failure to state facts constituting a
7 claim for relief, a complaint must include some allegation of material fact regarding each and
8 every material element of the claim. *Suess Builders v. City of Beaverton*, 294 Or 254, 656 P2d
9 306 (1982).

10 The debts, obligations and liabilities of a limited liability company, whether arising in
11 contract, tort or otherwise, are solely the debts, obligations and liabilities of the limited liability
12 company. ORS 63.165(1). A member or a manager of an LLC is not personally liable for any
13 debt, obligation, or liability of the LLC merely by reason of being a member, a manager, or both.
14 *Id.*

15 Defendant LaPoint Business Group, LLC ("LaPoint Business Group") is a Limited
16 Liability Company, duly organized under the laws of the state of Oregon. A copy of the
17 Business Entity Data, from the Oregon Secretary of State's website, is marked as Exhibit B,
18 attached hereto, and incorporated herein. LaPoint Business Group is the sole owner of the
19 property benefitted by the Restrictive Covenant at issue in this matter. A copy of the deed to the
20 benefitted property is marked as Exhibit C, attached hereto, and incorporated herein.

21 At all times relevant, Defendant Garry LaPoint ("LaPoint") was a member of, and
22 registered agent for, LaPoint Business Group. He holds no interest in the befitted property in his
23 *personal capacity*. On these issues there is no factual dispute¹.

24
25 ¹ See *Complaint for Declaratory Relief*, page 1, line 26 ("Garry LaPoint is a member of and the registered agent for
26 LaPoint, LLC"); page 2, line 22 ("[t]he Restrictive Covenant benefits a neighboring parcel owned by LaPoint, LLC").

1 The Complaint contains no ultimate facts which could be construed as sufficiently stating
2 a claim against Defendant LaPoint, in his personal capacity. The Court should therefore dismiss
3 any claim(s) against Defendant LaPoint personally.
4

5 2. Paragraphs 16 Through 21 of The Complaint Are Frivolous And Should Be Stricken.

6 In pertinent part, ORCP 21E provides that the Court may order stricken any frivolous or
7 irrelevant pleading. A frivolous plea, while true in its allegations, is completely insufficient in
8 substance. *Andrysek v. Andrysek*, 280 Or 61 (1977). A frivolous plea has been characterized as
9 not raising any issue in the proceeding. *Kashmir Corp. v. Nelson*, 37 Or App 887 (1978).

10 There is no dispute that a controversy exists between Plaintiffs and Defendant LaPoint
11 Business Group as to the scope and construction of the Restrictive Covenant. Paragraphs 1
12 through 15, and 23 through 27 allege as much.

13 Paragraphs 16 through 22 do not raise any issues in this matter. They are repetitive to
14 Plaintiffs' sole claim for relief: that a dispute exists, between owners of adjoining parcels of real
15 property, as to the breadth and scope of a Restrictive Covenant, which benefits one parcel, and
16 burdens the other.

17 Paragraphs 16 through 22 add nothing to the Complaint, save for volume of text. They
18 should therefore be stricken.

19 **Conclusion**

20 Defendant LaPoint's only connection to this matter is his status as a member and
21 registered agent of LaPoint Business Group. Plaintiffs' Complaint states no ultimate facts
22 sufficient to constitute a claim against Defendant LaPoint. Plaintiffs' claim against Defendant
23 LaPoint therefore fails as a matter of law.

24 //

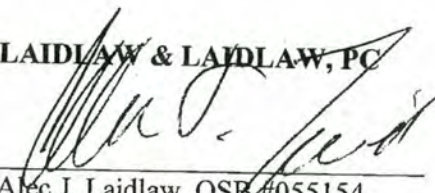
25 //

26 //

1 Alternatively, and without waiving the foregoing motion to dismiss, the Court should
2 strike paragraphs 16 through 21 of the Complaint in that they are frivolous and raise no issues in
3 this case.

4
5 Dated: December 30, 2013

LAIDLAW & LAIDLAW, PC



Alec J. Laidlaw, OSB #055154
Jason Janzen, OSB #063790
Attorneys for Defendants
alec@laidlawandlaidlaw.com

COPY

COPY
2009 SEP 15 10:09

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

WILSONVILLE DEVCO, LLC, and NW
COFFEE GROUP, LLC,

Plaintiffs,

v.

LAPOINT BUSINESS GROUP, LLC; and
GARRY LAPOINT,

Defendants.

Case No. ~~0132601 CV~~ C/381250

COMPLAINT FOR DECLARATORY
RELIEF (ORS 28.010 *ET SEQ.*)

CASE NOT SUBJECT TO MANDATORY
ARBITRATION

Plaintiffs Wilsonville Devco, LLC ("Wilsonville Devco") and NW Coffee Group, LLC
("NW Coffee"), allege as follows:

Parties

1.

Plaintiff Wilsonville Devco is a limited liability company incorporated in the state of
Oregon.

2.

Plaintiff NW Coffee is a limited liability company incorporated in the state of Oregon.

3.

Defendant LaPoint Business Group, LLC ("LaPoint, LLC") is a limited liability company
incorporated in the state of Oregon.

4.

Defendant Garry LaPoint is an individual residing, upon information and belief, in the
state of Oregon. Garry LaPoint is a member of and the registered agent for LaPoint, LLC.

Page 1 - COMPLAINT FOR DECLARATORY RELIEF

HOLLAND & KNIGHT LLP
111 S.W. Fifth Avenue
2300 U.S. Bancorp Tower
Portland, Oregon 97204
Telephone: 503.243.2300

#26839050 v1

COPY

EXHIBIT

A

PAGE

1

Facts

5.

Wilsonville Devco owns a parcel of land in the City of Wilsonville, County of Washington, and state of Oregon (the "Property"). The Property's legal description is fully set forth in Exhibit A, which is incorporated here by reference.

6.

The Property is subject to a restrictive covenant recorded in the Washington County property records on March 10, 2005 under recording number 2005-025345 (the "Restrictive Covenant"). The Restrictive Covenant provides that the Property

... shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

The Restrictive Covenant is fully set forth in Exhibit B, which is incorporated here by reference.

7.

The Restrictive Covenant was executed on or about March 8, 2005 by South Sea, LLC. The Restrictive Covenant states that it is binding upon South Sea, LLC, its successors and assigns forever.

8.

On or about May 24, 2012, Wilsonville Devco purchased the Property from South Sea, LLC. Wilsonville Devco is the current owner of the Property.

9.

The Restrictive Covenant benefits a neighboring parcel owned by LaPoint, LLC. LaPoint, LLC and Garry LaPoint operate a Chevron gasoline station and Fountain Mart convenience store on the benefitted parcel.

///

///

1

10.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Wilsonville Devco and NW Coffee have begun the process of constructing The Human Bean coffee restaurant on the Property. The Human Bean coffee restaurant is a drive-through coffee shop that primarily sells different kinds of coffee drinks, as well as tea, frozen drinks, and bottled water.

11.

Wilsonville Devco has fully negotiated the terms of a build to suit lease agreement with NW Coffee. The build to suit lease agreement contemplates that Wilsonville Devco will construct and NW Coffee will operate The Human Bean coffee restaurant upon a portion of the Property.

12.

NW Coffee has fully negotiated a franchise agreement under which NW Coffee will operate The Human Bean coffee restaurant on the Property.

13.

Wilsonville Devco has completed and submitted its project submittal for construction of The Human Bean coffee restaurant on the Property to the City of Wilsonville. The submittal is complete and is scheduled for public hearing on January 13, 2014.

14.

Wilsonville Devco has expended approximately \$80,000 to date in site work improvements in preparation for construction of The Human Bean coffee restaurant on the Property. The project is expected to be complete and the restaurant open in April 2014.

15.

LaPoint, LLC and Garry LaPoint have asserted that the development and operation of The Human Bean coffee restaurant on the Property is prohibited by the Restrictive Covenant.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

16.

(On or about November 19, 2013, Garry LaPoint's counsel sent a letter to Josh Veentjer, who is Wilsonville Devco's managing member, asserting that the development and operation of The Human Bean coffee restaurant violates the Restrictive Covenant (the "November 19, 2013 Letter"). The November 19, 2013 Letter is fully set forth in Exhibit C, which is incorporated here by reference.)

17.

(The November 19, 2013 Letter asserted that the Restrictive Covenant prohibits the Property from being used to sell any products normally sold in a convenience store, including coffee.)

18.

(The November 19, 2013 Letter demanded that Wilsonville Devco "immediately CEASE and DESIST all activities relative to the siting and construction of The Human Bean facility on [the Property]."

19.

(On or about November 27, 2013, Wilsonville Devco's counsel sent a letter to Garry LaPoint's counsel explaining that under Oregon law, the Restrictive Covenant's language does not bar development and operation of The Human Bean coffee restaurant on the Property. Wilsonville Devco's counsel's November 27, 2013 letter is fully set forth in Exhibit D, which is incorporated here by reference.)

20.

(On or about December 10, 2013, Wilsonville Devco's counsel sent an email to Garry LaPoint's counsel again explaining that the Restrictive Covenant does not bar development and operation of The Human Bean coffee restaurant on the Property. Wilsonville Devco's counsel's December 10, 2013 email is fully set forth in Exhibit E, which is incorporated here by reference.)

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

21.

(On or about December 10, 2013, Garry LaPoint's counsel sent an email responding to
Wilsonville Devco's counsel and stating his client's intention to enforce the Restrictive Covenant
in court. Garry LaPoint's counsel's December 10, 2013 email is fully set forth in Exhibit F, which
is incorporated here by reference.)

Claim for Declaratory Relief

22.

Plaintiffs incorporate by reference and reallege paragraphs 1-21 above.

23.

Wilsonville Devco and NW Coffee claim that the Restrictive Covenant does not prevent
development and operation of The Human Bean coffee restaurant on the Property.

24.

LaPoint, LLC and Garry LaPoint claim that the Restrictive Covenant prevents
development and operation of The Human Bean coffee restaurant on the Property.

25.

Development of The Human Bean coffee restaurant on the Property is underway. The
agreements necessary to develop and operate The Human Bean coffee restaurant on the Property
have been fully negotiated. The necessary approval process with the City of Wilsonville is also
near completion. Preliminary site work improvements are also ongoing.

26.

The dispute between Plaintiffs and Defendants regarding the effect of the Restrictive
Covenant upon development and operation of The Human Bean coffee restaurant on the Property
is an actual and substantial controversy between parties with adverse interests, and arises from
present facts. The dispute is accordingly appropriate for judicial disposition and resolution by
binding decree.

///

27.

The Court is specifically authorized under Oregon law to declare the parties' rights, status, and other legal relations under the Restrictive Covenant. ORS 28.020 provides, in part:

Any person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under any such . . . contract . . . and obtain a declaration of rights status or other legal relations thereunder.

WHEREFORE, Plaintiffs Wilsonville Devco and NW Coffee request the following relief:

1. Judgment declaring that the Restrictive Covenant does not prohibit the development or operation of The Human Bean coffee restaurant on the Property;
2. Plaintiffs' costs and disbursements incurred in this action; and
3. Any other relief that the Court deems just and proper.

DATED this 16th day of December, 2013.

HOLLAND & KNIGHT LLP

By:


Louis A. Santiago, OSB # 783610
E-mail: louis.santiago@hklaw.com
Garrett S. Garfield, OSB # 093634
E-mail: garrett.garfield@hklaw.com
111 SW Fifth Avenue
2300 U.S. Bancorp Tower
Portland, Oregon 97204
Telephone: 503.243.2300
Fax: 503.241.8014

Attorneys for Plaintiffs Wilsonville Devco, LLC and NW Coffee Group, LLC

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027726, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'10", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.03 feet to a point on the Westerly line of Doones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records,

#25841631 v1

EXHIBIT A
Page 1 of 1

EXHIBIT A
PAGE 1

Washington County, Oregon 2005-025345
03/10/2005 03:14:18 PM
0-458 Order Book A DUVOX
\$26.40 \$6.00 \$11.00 - Total = \$43.40



0073W070700500253450040018

I, Jerry M. LaPoint, Director of Assessment and Taxation
and Washington County Clerk for Washington County,
Oregon, do hereby certify that the within instrument of
writing was prepared and recorded in the book of
records of said county.



AFTER RECORDING MAIL TO:

Name Garry M. LaPoint
Address 10618 Crosby Road NE
City/State Woodburn, OR 97071

Document Title(s) (for transactions contained therein):
1. Restrictive Covenant

20
1-6
37

FATCO NO: NCS-M4677-OR

Title Data, Inc. CH P0810563 WN 2005025345.001

EXHIBIT B
Page 1 of 4

EXHIBIT
PAGE

A
8



RESTRICTIVE COVENANT

FOR GOOD AND VALUABLE CONSIDERATION, the undersigned, hereby creates and imposes upon the real property described in Exhibit A attached hereto and by this reference made a part hereof, to be binding upon itself, its successors and assigns forever, the following restriction on use of the property:

The property described in Exhibit A attached hereto and by this reference, incorporated herein, shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

IN WITNESS WHEREOF, the undersigned, being the owner of the real property described above, has executed this restrictive covenant on the 8th day of March, 2005.

SOUTH SEA, LLC, an Oregon Limited Liability Company

BY George F. Brice III
George F. Brice III, Member

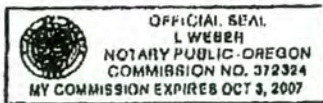
BY Zsuzsanna Brice
Zsuzsanna Brice, Member

STATE OF OREGON

County of Multnomah

ss

Before me, a notary public in and for the State of Oregon, personally appeared George F. Brice, III and Zsuzsanna Brice and acknowledged the foregoing to be their voluntary act and deed.



[Signature]
Notary Public for Oregon
My commission expires: 12/31/07

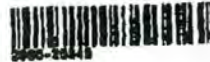


EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North $00^{\circ}09'24''$ East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 341.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of $49^{\circ}50'12''$, a chord bearing of North $25^{\circ}04'30''$ East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of $33^{\circ}01'29''$, a chord bearing South $71^{\circ}56'03''$ East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of $35^{\circ}01'29''$, a chord bearing of South $43^{\circ}49'18''$ East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North $63^{\circ}41'28''$ East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of $02^{\circ}56'25''$, a chord bearing of South $27^{\circ}46'44''$ East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South $15^{\circ}09'35''$ West, a distance of 83.41 feet; thence South $38^{\circ}02'13''$ East, a distance of 120.44 feet; thence South $57^{\circ}57'47''$ West, a distance of 55.00 feet; thence South $20^{\circ}29'49''$ West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South $89^{\circ}38'33''$ West, a distance of 97.95 feet, more or less, to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to Exxon Wilsonville, LLC, an Oregon limited liability company, by instrument recorded June 19, 2000 as Fee No. 2000-48397 and being more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Title Data, Inc. CH FOR10583 W# 2005025346.003

EXHIBIT B
Page 3 of 4

EXHIBIT A
PAGE 10



Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet; thence South 20°29'49" West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North 00°09'24" East parallel to said East line, 6.00 feet to the true point of beginning.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

WALLACE W. LIEN

A PROFESSIONAL CORPORATION



Wallace W. Lien

Attorney at Law

Contact by e-mail at
walloce.lien@lienlaw.com

November 19, 2013

Mr. Josh Veenjer
President
Pacific Development Ventures
P. O. Box 6437
La Quinta, CA 92248

By Certified Mail No. 7012 1010 0000 0856 6155
Return Receipt Requested
Copy by Regular Mail

Re: Wilsonville Proposed Human Bean Coffee Shop

Dear Mr. Veenjer:

Please be advised that I represent Garry LaPoint, and his Chevron station and Fountain Mart. Mr. LaPoint has been advised that it is your intention to construct a Human Bean Coffee Shop with drive through, which would serve all kinds of coffee drinks, fountain drinks, bottled water, frozen drinks, fruit and baked goods among other convenience food products.

You should be advised that when Mr. LaPoint sold your property to George Brice (South Sea LLC) a Restrictive Covenant was imposed on the property you now own that strictly prohibits your property from being used for the sale of any products that would normally occur in a convenience store business. All of the products that are proposed to be sold at this Human Bean location are products that are currently for sale in Mr. LaPoint's Fountain Mart.

This Restrictive Covenant was recorded as Document No. 2005-025345, on March 12, 2005, and it binds successors to Brice/South Sea, such as yourself. Documents related to the creation of the Restrictive Covenant clearly show the intent was to prohibit anything that competes with my client's Fountain Mart. My client believes strongly that your proposed Human Bean facility will be in direct competition with his Fountain Mart, and therefore is prohibited by the Restrictive Covenant.

You should immediately CEASE and DESIST all activities relative to the siting and construction of the Human Bean facility on the property subject to the above-referenced Restrictive Covenant. This must include the immediate withdrawal of any permit applications with the City of Wilsonville.

This is a serious matter for my client, as a large portion of the revenue for the Fountain Mart comes from the sale of products your proposed Human Bean would be offering. In the event you do not CEASE and DESIST, and provide evidence to my office by the close of business on November 29, 2013 that you have done so, I will assume that you intend to violate the Restrictive Covenant, and I will file a Complaint in Clackamas County Circuit Court to obtain an injunction to enforce the prohibitions in the covenant.

1775 32nd Place NE, Suite A • Salem, Oregon 97301-8774

(503) 585-0105 office • (503) 585-0106 fax

Web site at <http://www.lienlaw.com>

EXHIBIT C
Page 1 of 2

EXHIBIT A
PAGE 12

Mr. Josh Veenjer

November 19, 2013

Page 2

If you are represented by legal counsel, please refer this letter to your attorney and have that attorney contact me with any questions.

Otherwise, I will expect to hear from you by November 29, 2013, that you have taken all steps necessary to come into compliance with the Restrictive Covenant.

Yours truly,

WALLACE W. LIEN, P.C.

/s/ Wallace W. Lien

By: Wallace W. Lien

cc: Garry LaPoint
Daniel Pauly, City of Wilsonville ✓
Josh Veenjer (Copy by Regular Mail)

EXHIBIT C
Page 2 of 2

EXHIBIT A
PAGE 13

Holland & Knight

111 S.W. Fifth Avenue, 2300th St. Barclay Tower Portland, OR 97204 : TEL 503.243.2000 : F 503.241.4374
Holland & Knight LLP : www.hk-law.com

November 27, 2013

GEORGE J. GREGORES
503.243.5879
george.gregores@hkllw.com

Wallace.lien@lienlaw.com

Wallace W. Lien
Attorney at Law
1773 32nd Place SE, Suite A
Salem, Oregon 97301-8774

Re: Our Client: Wilsonville Devco, LLC

Dear Mr. Lien:

This firm represents Wilsonville Devco, LLC, the owner of the real property and improvements located adjacent to Mr. LaPoint's Chevron gas station and Fountain Mart in Wilsonville, Oregon. I am in receipt of your November 19, 2013 letter directed to Josh Veentjer of Pacific Development Ventures in which you reference the Restrictive Covenant recorded as Document No. 2005-025345 against the Wilsonville Devco property. You contend in your letter to Mr. Veentjer that operation of a Human Bean Coffee restaurant on the Wilsonville Devco property is prohibited by the Restrictive Covenant. We believe that you have engaged in a tortured analysis to reach this conclusion, and in connection therewith, seek to expand the scope of the restriction well beyond the clear text of the provision.

You state in the second paragraph of your November 19 letter that the Restrictive Covenant strictly prohibits the Wilsonville Devco property "from being used for the sale of any products that would normally occur in a convenience store business." The Restrictive Covenant prohibits "the operation of a convenience store business" only, not the sale of products that are sold in a convenience store as you suggest. The only way to construe the Restrictive Covenant as you contend would require reading into the provision language that simply does not exist in the recorded document, something a court will not do. There is no ambiguity in the text of the covenant, the language is clear. In the case of a restrictive covenant, the appropriate maxim of construction provides that the covenant is to be construed strictly against the restriction. Unless the use complained of is plainly within the provisions of the covenant, it will not be restrained. Yogman v. Parrot, 325 Or 358 (1997). In analyzing contractual language, a court is "to ascertain and declare what is, in terms or in substance, contained therein, not to omit what has been inserted."

The dictionary definition of "convenience store" is a small retail store that stocks a range of everyday items such as groceries, toiletries, alcoholic and soft drinks, tobacco products,

EXHIBIT D
Page 1 of 2

November 27, 2013

Page 2

newspapers and sometimes gasoline. The fact that a few of the products sold in your client's convenience store will also be sold in the Human Bean Coffee restaurant doesn't fall within the prohibition of the Restrictive Covenant. The operation of a Human Bean Coffee restaurant is not the "operation of a convenience store business."

Our client intends to proceed with the leasing of the property to the operator of the Human Bean Coffee restaurant and respectfully rejects your request that it cease and desist all activities in that regard. With respect to your threat of litigation, please be advised that we have been instructed to vigorously defend any claims that you bring on behalf of your client under the Restrictive Covenant. In that regard, given the clear and unambiguous language of the Restrictive Covenant and the law applicable to it, we would view the filing of any claim as spurious and will respond appropriately.

If you have any questions or wish to discuss this matter further, please advise.

Very truly yours,

HOLLAND & KNIGHT LLP

George J. Oregores

#26639028 v1

EXHIBIT D
Page 2 of 2

EXHIBIT A
PAGE 15

Gregores, George J (POR - X55879)

To: wallace.lilen@lilenlaw.com
Cc: josh@pdvco.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lilen: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulla & Arlas Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an Injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

George Gregores, Esq. (Portland & Knight)
Partner
2100 NE Portland Street, Suite 1115, Portland, Oregon 97232
Phone: 503-243-5800 | Fax: 503-243-5810
ggregores@gregoreslaw.com | www.ggregoreslaw.com

EXHIBIT E
Page 1 of 1

EXHIBIT A
PAGE 16

Gregores, George J (POR - X55879)

From: Wallace Lien (WLIen@lienlaw.com)
Sent: Tuesday, December 10, 2013 2:30 PM
To: Gregores, George J (POR - X55879)
Cc: Wallace Lien
Subject: RE: Our Client: Wilsonville Devco, LLC

It is our intention to enforce the covenant in court. Are you authorized to accept service?

Wallace W. Lien
Wallace W. Lien, P.C.
1775 32nd Place NE, Suite A
Salem, OR 97301-8774
phone: 503-585-0105 ext. 311
fax: 503-585-0106
<http://www.lienlaw.com>

CONFIDENTIALITY NOTICE:

If you have received this communication in error, please notify me immediately. This message is intended only for the use of the person or firm to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is prohibited.

From: George.Gregores@hklaw.com [mailto:George.Gregores@hklaw.com]
Sent: Tuesday, December 10, 2013 2:25 PM
To: Wallace Lien
Cc: josh@pdvco.com; louis.santilago@hklaw.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lien: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulla & Arias Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an Injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

EXHIBIT F
Page 1 of 1

Gregores, George J (POR - X55879)

From: Wallace Lien [W.Lien@lienlaw.com]
Sent: Tuesday, December 10, 2013 2:30 PM
To: Gregores, George J (POR - X55879)
Co: Wallace Lien
Subject: RE: Our Client: Wilsonville Devco, LLC

It is our intention to enforce the covenant in court. Are you authorized to accept service?

Wallace W. Lien
Wallace W. Lien, P.C.
1775 32nd Place NE, Suite A
Salem, OR 97301-8774
phone: 503-585-0106 ext. 311
fax: 503-585-0108
<http://www.lienlaw.com>

CONFIDENTIALITY NOTICE:

If you have received this communication in error, please notify me immediately. This message is intended only for the use of the person or firm to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is prohibited.

From: George.Gregores@hklaw.com [<mailto:George.Gregores@hklaw.com>]
Sent: Tuesday, December 10, 2013 2:25 PM
To: Wallace Lien
Cc: josh@pdvco.com; louis.santlago@hklaw.com
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lien: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawaid v. Murgulla & Arias Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an Injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

EXHIBIT F
Page 1 of 1

HOME

OREGON SECRETARY OF STATE
Corporation Division

business information center **business name search** oregon business guide
 referral list business registry/renewal forms/fees notary public
 uniform commercial code uniform commercial code search documents & data services

Business Name Search

[New Search](#) [Printer Friendly](#)

Business Entity Data

01-02-2014

11:57

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
628887-80	DLIC	ACT	OREGON	04-16-1998	04-16-2014	
Entity Name	LAPOINT BUSINESS GROUP, LLC					
Foreign Name						

[New Search](#) [Printer Friendly](#)

Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS		
Addr 1	25410 SW 95TH			
Addr 2				
CSZ	WILSONVILLE	OR	97070	Country UNITED STATES OF AMERICA

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	04-16-1998	Resign Date	
Name	GARRY	L	LAPOINT			
Addr 1	850 LAWSON AVE					
Addr 2						
CSZ	WOODBURN	OR	97071	Country	UNITED STATES OF AMERICA	

Type	MAL	MAILING ADDRESS		
Addr 1	10618 CROSBY RD			
Addr 2				
CSZ	WOODBURN	OR	97071	Country UNITED STATES OF AMERICA

Type	MEM	MEMBER		Resign Date	
Name	KATHERINE	M	LAPOINT		
Addr 1	10618 CROSBY RD				
Addr 2					
CSZ	WOODBURN	OR	97071	Country	UNITED STATES OF AMERICA

Type	MEM	MEMBER			Resign Date	
Name	GARRY	L	LAPOINT			
Addr 1	10618 CROSBY RD					
Addr 2						
CSZ	WOODBURN	OR	97071		Country	UNITED STATES OF AMERICA

New Search Printer Friendly Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
LAPOINT BUSINESS GROUP, LLC	EN	CUR	04-16-1998	

Please read before ordering Copies.

New Search Printer Friendly Summary History



Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	AMENDED ANNUAL REPORT	03-15-2013		FI		
	AMENDED ANNUAL REPORT	03-07-2012		FI		
	ANNUAL REPORT PAYMENT	03-04-2011		SYS		
	ANNUAL REPORT PAYMENT	03-05-2010	03-04-2010	SYS		
	ANNUAL REPORT PAYMENT	03-23-2009		SYS		
	ANNUAL REPORT PAYMENT	03-19-2008		SYS		
	ANNUAL REPORT PAYMENT	03-08-2007		SYS		
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	05-10-2006		FI		
	ANNUAL REPORT PAYMENT	05-04-2006	05-03-2006	SYS		
	NOTICE LATE ANNUAL	04-21-2006		SYS		
	ANNUAL REPORT PAYMENT	03-11-2005		SYS		

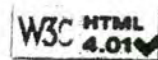
EXHIBIT B
PAGE 2

1/2/2014 11:57 AM

	ANNUAL REPORT PAYMENT	04-28-2004		SYS		
	NOTICE LATE ANNUAL	04-23-2004		SYS		
	ANNUAL REPORT PAYMENT	04-17-2003		SYS		
	ANNUAL REPORT PAYMENT	04-12-2002		SYS		
	ANNUAL REPORT PAYMENT	04-19-2001		SYS		
	STRAIGHT RENEWAL	04-14-2000		FI		
	AMENDED RENEWAL	04-14-1999		FI		
	NEW FILING	04-16-1998		FI		

[About Us](#) | [Announcements](#) | [Laws & Rules](#) | [Feedback](#)
[Policy](#) | [SOS Home](#) | [Oregon Blue Book](#) | [Oregon.gov](#)

For comments or suggestions regarding the operation of this site,
please contact : corporation.division@state.or.us



© 2014 Oregon Secretary of State. All Rights Reserved.

EXHIBIT B
PAGE 3

25
11/08/2005
11/08/2005

Washington County, Oregon 2005-140371
11/08/2005 10:44:58 AM
D-DBB Cnt=1 SIn=7 K GRUNEWALD
\$25.00 \$8.00 \$11.00 - Total = \$42.00

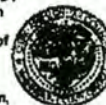
RECORD AND RETURN TO:

Garry and Kathy LaPoint
LaPoint Business Group, LLC
10618 Crosby Rd. NE
Woodburn, OR 97071



00864899200501403710050051

I, Jerry Hanson, Director of Assessment and Taxation
and Ex-Officio County Clerk for Washington County,
Oregon, do hereby certify that the within instrument of
writing was received and recorded in the book of
records of said county.



Jerry Hanson
Jerry R. Hanson, Director of Assessment and Taxation,
Ex-Officio County Clerk

**UNTIL A CHANGE IS REQUESTED ALL TAX
STATEMENTS SHALL BE SENT TO:**

No Change

BARGAIN AND SALE DEED

Exxon of Wilsonville, LLC, an Oregon limited liability company, Grantor, conveys to LaPoint Business Group, LLC, an Oregon limited liability company, Grantee, the following real property situated in Washington County, Oregon and described on the attached Exhibit "A."

The true consideration for this conveyance is \$0.00. However, the actual consideration consists of other value given which is the whole consideration.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Dated this 4 day of November, 2005.

EXXON OF WILSONVILLE, LLC

BY: Garry L. LaPoint, Member

BY: Katherine M. LaPoint, Member

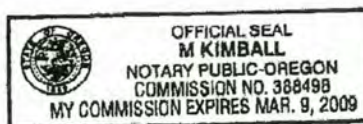
PDX 1349506v1 0-0
Portland



STATE OF OREGON)
County of Multnomah) ss.

This instrument was acknowledged before me on this 4 day of November, 2005, by Garry L. LaPoint, as a member of Exxon of Wilsonville, LLC..

M Kimball
Notary Public for Oregon
My Commission Expires: 3/9/09



STATE OF OREGON)
County of Multnomah) ss.

This instrument was acknowledged before me on this 4 day of November, 2005, by Katherine M. LaPoint, as a member of Exxon of Wilsonville, LLC.

M Kimball
Notary Public for Oregon
My Commission Expires: 3/9/09

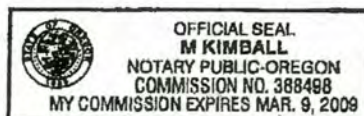




EXHIBIT A

PARCEL I:

A parcel of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the South line of said lot, a distance of 391.33 feet to the East line of Parcel I in Deed from John Q. Hammons, to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North $00^{\circ}09'24''$ East, along said "ODOT" Deed, a distance of 359.27 feet; thence continuing along said "ODOT" Deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of $062^{\circ}51'50''$, a chord bearing of North $31^{\circ}35'19''$ East, a chord length of 133.67 feet to the intersection with the South line of SW Commerce Circle as dedicated in the plat of EDWARDS BUSINESS INDUSTRIAL PARK; thence non-tangent North $70^{\circ}34'24''$ East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius 25.00 feet, arc length of 32.72 feet, central angle of $074^{\circ}59'06''$, a chord bearing of South $71^{\circ}56'03''$ East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of $000^{\circ}41'10''$, a chord bearing of South $24^{\circ}13'24''$ East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 595.65 feet, arc length of 85.44 feet, central angle of $008^{\circ}13'06''$, a chord bearing of South $25^{\circ}08'24''$ East, and a chord length of 85.36 feet to Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South $15^{\circ}09'35''$ West, a distance of 83.41 feet, South $38^{\circ}02'13''$ East, a distance of 200.44 feet, North $46^{\circ}33'47''$ East, a distance of 48.10 feet, South $40^{\circ}56'40''$ East, a distance of 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of $00^{\circ}21'11''$, a chord bearing of South $38^{\circ}36'45''$ East, and a chord length of 17.49 feet to a point 100.00 feet North of, when measured at right angle to, the South line of said Lot 7; thence continuing along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of $00^{\circ}58'46''$, a chord bearing of South $37^{\circ}56'47''$ East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of $030^{\circ}31'07''$, a chord bearing of South $00^{\circ}03'01''$ West, and a chord length of 61.56 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South $89^{\circ}38'33''$ West, along the



South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 347.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Prairie Corp., an Oregon corporation, by instrument recorded July 19, 2000 as Fee No. 2000-48398, more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line



of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

FURTHER EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

PARCEL II:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet; thence South 20°29'49" West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North 00°09'24" East parallel to said East line, 6.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

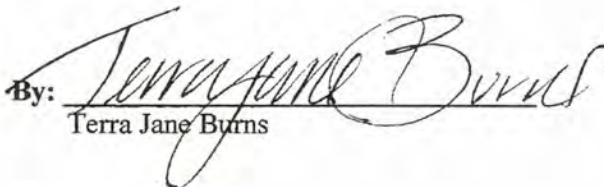
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 2, 2014, I served the foregoing *Defendants' ORCP 21*
3 *Motions, Declaration of Garry L. LaPoint in Support of Defendants' ORCP 21 Motions, and*
4 *Defendants' Counsel's Certificate of Compliance (UTCR 5.010)* on the following Parties by
5 mailing a true copy thereof, via first class mail, postage prepaid, to them at the following
6 address:

7
8 Garrett S. Garfield
9 Holland & Knight LLP
10 111 SW 5th Avenue, Ste. 2300
11 Portland, OR 97204
12 *Counsel for Plaintiff*

11 Wallace W. Lien
12 Wallace W. Lien, P.C.
13 1775 32nd Place NE, Suite A
14 Salem, OR 97301
15 *Co-Counsel for Defendant*

15 **LIDLAW & LIDLAW, PC**

16
17 By: 
18 Terra Jane Burns

26 CERTIFICATE OF SERVICE

LIDLAW & LIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 503.267.4840

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON
6

7 WILSONVILLE DEVCO, LLC, and NW) Case No. C138125CV
8 COFFEE GROUP, LLC,)
9 Plaintiffs,) **DECLARATION OF GARRY L. LAPOINT**
10 v.) **IN SUPPORT OF DEFENDANTS' ORCP**
11 LAPOINT BUSINESS GROUP, LLC and) **21 MOTIONS**
12 GARRY LAPOINT,)
13 Defendant)

14
15 I, Garry L. LaPoint, hereby declare and state, as follows:

16 1. I am at least 18 years of age and am competent to make this declaration. Each of the
17 facts set forth herein are based on my personal knowledge, except those facts set forth on
18 information and belief. As to those facts, I am informed and believe them to be true.

19 2. I make this declaration in support of Defendants' ORCP 21 Motions, filed concurrently
20 herewith.

21 3. At all times material, I have been a member of, and registered agent for, LaPoint
22 Business Group, LLC, an Oregon Limited Liability Company. A copy of LaPoint Business
23 Group, LLC's, Business Entity Data form, taken from the Oregon Secretary of State's website, is
24 marked as Exhibit B and attached to Defendants' ORCP 21 Motions.

25 4. A copy of the last vesting deed to the real property benefitted by the Restrictive Covenant
26 – 25410 SW 95th Avenue Wilsonville, Oregon ("the benefitted parcel") – is marked as Exhibit C

Page 1 – DECLARATION OF GARRY L. LAPOINT IN SUPPORT OF DEFENDANTS' ORCP 21
MOTIONS

LAIDLAW & LAIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840

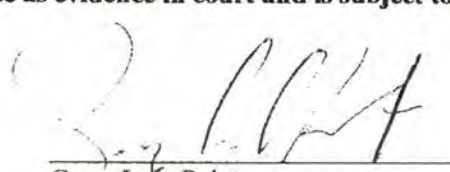
1 and attached to Defendants' ORCP 21 Motions.

2 5. LaPoint Business Group, LLC, is the sole owner of the benefitted parcel. I am a member
3 and of, and registered agent for, LaPoint Business Group, LLC. I hold no interest in and to the
4 benefitted parcel in my personal capacity.

5 6. I am informed and believe that Plaintiffs' complaint seeks a declaratory judgment against
6 me, in my personal capacity. I hold no interest in or to the benefitted parcel in my personal
7 capacity. I respectfully request, that the Court dismiss me from Plaintiffs' Complaint For
8 Declaratory Relief.

9
10 **I hereby declare that the above statement is true to the best of my knowledge and**
11 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**
12 **for perjury.**

13 Dated: December 30, 2013

14 
Garry L. LaPoint

15
16
17
18
19
20
21
22
23
24
25
26
Page 2 – DECLARATION OF GARRY L. LAPOINT IN SUPPORT OF DEFENDANTS' ORCP 21
MOTIONS

LAILAW & LAILAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON

6 WILSONVILLE DEVCO, LLC, and NW
7 COFFEE GROUP, LLC,

8 Plaintiffs,

9 v.

10 LAPOINT BUSINESS GROUP, LLC and
11 GARRY LAPOINT,

12 Defendant

) Case No. C138125CV
)
)
)

) **DEFENDANTS' COUNSEL'S**
) **CERTIFICATE OF COMPLIANCE**
) **(UTC R 5.010)**
)
)
)

13
14 I, Alec J. Laidlaw, attorney for Defendants in the above captioned matter, hereby certify
15 as follows:

16 1. On December 27, 2013, I telephoned Plaintiffs' counsel to confer on the issues raised in
17 Defendants' ORCP 21 Motions, filed concurrently herewith. Despite the good-faith efforts of
18 counsel, the parties were not able to agree on the issues set forth in the accompanying ORCP 21
19 Motions.

20 I hereby declare that the above statement is true to the best of my knowledge and
21 belief, and that I understand it is made for use as evidence in court and is subject to penalty
22 for perjury.

23 Dated: December 30, 2013

24 LAIDLAW & LAIDLAW, PC

25 Alec J. Laidlaw, OSB #055134

26 Jason Janzen, OSB #063790

Attorneys for Defendants

alec@laidlawandlaidlaw.com

Page 1 - DEFENDANTS' COUNSEL'S CERTIFICATE OF COMPLIANCE (UTC R 5.010)

LAIDLAW & LAIDLAW, P.C.
21590 Willamette Drive
West Linn, Oregon 97068
Telephone: 503.305.6894
Facsimile: 888.287.4840
92 of 92

EXHIBIT 1

PLANNING DIVISION MEMORANDUM

February 10, 2014

To: Development Review Board Panel A

From: Daniel Pauly AICP, Associate Planner

Re: The Human Bean Update and Recommend Staff Report Changes for DB13-0046 et. seq.

A number of materials have been submitted during the open record period and in response and rebuttal to those submittals. This memo covers two topics in these materials, the additional a.m. peak traffic study and internal site circulation, including delivery traffic. This memo will be Exhibit A4.

An a.m. peak traffic study has been completed by DKS and included in Exhibit B6, applicants open record submittal. The report concludes "there are no operating concerns at the study intersections or project driveway during the a.m. peak hour."

Internal site circulation and parking for larger vehicles including delivery trucks remains a discussion point. As far as vehicle circulation, the applicant has proposed additional striping and site directional signage to aid circulation. Exhibit E of Exhibit B6 shows delivery truck circulation using LaPoint's property for ingress circulation, but parking on the Wilsonville Devco property to avoid conflicts with fuel delivery. However, there remains disagreement among the property owners whether the current easements and agreement allow such circulation. The easement disagreement will need to be resolved privately by the parties. In Exhibit B8 Wilsonville Devco shows a workable Human Bean delivery truck circulation in the case that it is determined they are unable to use LaPoint's property. The scope of the current review is limited to the Human Bean and Carl's Jr deliveries and site circulation are out of that scope.

Staff recommends the DRB amend the staff report findings related to circulation as follows. Changes are in ***bold italic underline text***:

Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas

A31. **Review Criteria:** "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

Finding: These criteria are satisfied.

Explanation of Finding: Sheet DD5 "Proposed Truck Turning Movements" of Exhibit B2 of DB12-0074 through 0076 demonstrates sufficient access and maneuvering areas for delivery trucks, both for the Chevron fuel and Carl's Jr. and the coffee kiosk. Staff notes fuel off-loading, and restaurant **and** other commercial delivery parking are in the same area

of the site separating these operations from the general employee and customer parking and pedestrian areas. The access and maneuvering areas for passenger vehicle parking areas appears sufficient providing adequate space for two-way travel. As shown in Exhibits B6 and B7 additional pavement markings and signs are being added to aid in vehicle circulation. The applicant states in their compliance narrative in their notebook, Exhibit B1, that "care has been given to the extent practicable to separate vehicle and pedestrian traffic." Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic. Staff notes disagreement exists between LaPoint and Wilsonville Devco concerning the extent of the easement that would allow deliveries trucks to access the Wilsonville Devco site via LaPoint's property as shown on Exhibit E of Exhibit B6. Exhibit B8 shows an alternative for larger trucks delivering to the Human Bean in the case that private resolution of the easement disagreement does not allow the trucks to maneuver on LaPoint's property. Exhibit B8 shows adequate truck access and circulation to the Human Bean portion of the site. For a development of the proposed size Wilsonville Development Code does not require a separate loading/delivery area, and therefore as is typical of fast food and coffee kiosk type uses in general, the deliveries by necessity happen in the customer/employee parking and circulation areas.

Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation

- A34. **Review Criteria:** "Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking."

Finding: These criteria are satisfied.

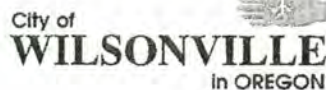
Explanation of Finding: The proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses as well as the existing Chevron and Holiday Inn share a common driveway off 95th Avenue and their access and parking areas are interconnected. Joint use of many the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations, and direct vehicle and pedestrian paths between destinations with limited choke points. To the extent practicable parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron a direct pedestrian path is provided to the coffee kiosk. Multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site. As shown in Exhibits B6 and B7 additional signs and pavement markings have been added to further aid in directing circulation thus aiding efficiency.

Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards

- B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

Finding: These criteria are satisfied.

Explanation of Finding: The applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the applicant's notebook, Exhibit B1. Staff notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met. Among the design standards is a requirement that special attention be paid to general circulation and parking areas that are safe and convenient. As shown by the number of added signs and markings, as well as specific drawings for different truck circulation scenarios (see Exhibits B6, B7, and B8), the applicant has demonstrate special attention has been given to site circulation and safe and convenient parking areas.



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

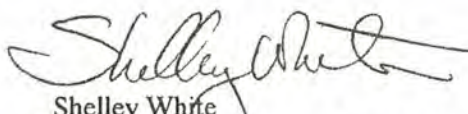
VIA: Certified Mail, Return Receipt Requested

February 13, 2014

Josh Veentjer
Wilsonville Devco LLC
P.O. Box 6437
La Quinta, CA 92248

Re: Case File DB13-0046 et seq

The Development Review Board's Decision and Resolution No. 270 are attached, denying your request for a Stage II Final Plan revision, Site Design Review, and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk. Thank you.


Shelley White
Planning Administrative Assistant

CC: Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects
Tom Berg
Garry LaPoint
Jason LaPoint
Steve Pfeiffer – Perkins Coie

CC via e-mail: Wallace W. Lien
George Gregory



"Serving The Community With Pride"

EXHIBIT 3

February 13, 2014

DEVELOPMENT REVIEW BOARD PANEL A

NOTICE OF DECISION

Project Name: Boones Ferry Pointe – The Human Bean Drive-Up Coffee Kiosk

Case File Nos.: DB13-0046 – Stage II Final Plan revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan revision and Sign Waiver

Applicant/Owner: Josh Veentjer – Wilsonville Devco LLC

**Authorized
Representatives:** Ben Altman – SFA Design Group
Craig Anderson – CB Anderson Architects

Property Description: Tax Lots 302, Section 2DB; T3S R1W; Washington County;
Wilsonville, Oregon

Location: Corner of 95th Avenue and Boones Ferry Road

On February 10, 2014, at the meeting of the Development Review Board the following action was taken on the above-referenced proposed development applications:

Denied

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022(.02)*.

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this **13th day of February 2014** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022(.09)*

Written decision is attached

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960

Attachments: DRB Resolution No. 270, Copy of proposed DRB Resolution No. 268 which was rejected.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 270**

A RESOLUTION REJECTING PROPOSED RESOLUTION NO. 268 AND DENYING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits, exhibits, and staff report were duly considered by the Development Review Board Panel A at a scheduled meetings conducted on January 13 and February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

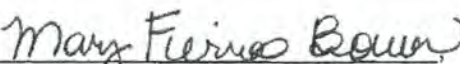
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject, and


WHEREAS citing concerns about on site traffic circulation, congestion and safety in general and referring specifically to Wilsonville City Code Section 4.400.02 and 4.421 C, the Development Review Board moved, seconded and passed a motion, by a vote of 4 to 1, rejecting proposed Resolution No. 268, and by reference the staff report dated January 6, 2014, finding that the Application did not satisfy Wilsonville Code requirements pertaining to safety and circulation.

NOW, THEREFORE, BE IT RESOLVED THAT THE City of Wilsonville Development Review Board does hereby reject proposed Resolution No. 268, thereby denying the above described Application for reasons stated herein and with more particularity in the record of decision.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10th day of February, 2014 and filed with the Planning Administrative Assistant on February 13, 2014. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022(.09) unless appealed per WC Sec 4.022(.02) or called up for review by the council in accordance with WC Sec 4.022(.03).


Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:


Shelley White, Planning Administrative Assistant

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 268**

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95TH AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.068 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13th day of January, 2014 and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.02)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

Mary Fierros Bower Chair, Panel A
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant

King, Sandy

From: Jacobson, Barbara
Sent: Friday, February 28, 2014 3:32 PM
To: King, Sandy
Cc: Pauly, Daniel; Neamtzu, Chris; Kohlhoff, Mike
Subject: FW: Objection to the Appeal - WILSONVILLE DEVCO, LLC
Attachments: Objection to Appeal - Final.pdf; Wallace W Lien.vcf

Sandy, please add to the record for the hearing. Mike, I am assuming they would take this up first on the date of the public hearing, correct?

Barbara A. Jacobson
Assistant City Attorney
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville OR 97070
503-570-1509
503-682-1015 fax
jacobson@ci.wilsonville.or.us

*Rec'd 2/28/14
Acc.*

Disclosure: Messages to and from this email address may be subject to the Oregon Public Records Law.

The information contained in this email transmission is confidential and is intended only for the use of the individual or entity intended to receive it. This message may contain information protected by the attorney-client privilege. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this email transmission in error, please immediately notify the sender by return email and delete the original email.

Circular 230 Disclaimer: If any portion of this communication is interpreted as providing federal tax advice, Treasury Regulations require that we inform you that we neither intended nor wrote this communication for you to use in avoiding federal tax penalties that the IRS may attempt to impose and that you may not use it for such purpose.

From: Wallace Lien [<mailto:WLIen@lienlaw.com>]
Sent: Friday, February 28, 2014 3:20 PM
To: Pauly, Daniel; Jacobson, Barbara
Cc: Wallace Lien; SPfeiffer@perkinscoie.com
Subject: Objection to the Appeal - WILSONVILLE DEVCO, LLC

Dan and Barbara

Attached please find my client's objection to the Appeal filed by the Applicant. Please place this Objection before the City Council and include it in the official record of the land use proceedings in this case.

Thank you for your cooperation.

Wally Lien

Wallace W. Lien
Wallace W. Lien, P.C.
3265 Liberty Road So.
Salem, OR 97302
phone: 503-585-0105 ext. 311

fax: 503-585-0106
<http://www.lienlaw.com>

CONFIDENTIALITY NOTICE:

If you have received this communication in error, please notify me immediately. This message is intended only for the use of the person or firm to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is prohibited.

BEFORE THE CITY COUNCIL

FOR THE

CITY OF WILSONVILLE

In the Matter of the Application for)	
a Stage II Final Plan Revision,)	
Site Design Review and Master Sign	)	Case Nos.
Plan Revision and Sign Waiver of:	)	DB13-0046 (Stage II Final Plan Revision)
	)	DB13-0047 (Site Plan Review)
WILSONVILLE DEVCO, LLC	)	DB13-0048 (Master Sign Plan Revision and
	)	Sign Waiver)
On property addressed as)	
25250 SW 95 th Avenue and identified as)	
TL 302, Section 2DB, Township 3 South,	)	OBJECTION TO APPEAL
Range 1 West, Willamette Meridian,)	
City of Wilsonville, Washington County,)	
Oregon)	

COMES NOW, LaPoint Business Group, LLC, by and through its attorney, Wallace W. Lien, of Wallace W. Lien, P.C., and does hereby object to the Appeal filed by the Applicant in this case.

This objection is based on the fact that the Applicant has provided no legal basis for its appeal. The sum total of the appeal is that the Applicant disagrees with the action of the DRB. The Applicant provides no legal or factual argument for why the DRB decision is wrong. Applicant states that the "DRB misapplied and misinterpreted WDC 4.400.02 and 4.421C" but does not say how or in what manner the DRB decision "misapplied" and "misinterpreted" the approval criteria.

Further, under "Reasons for Appeal" the Applicant again simply disagrees with the DRB decision without providing any legal or factual justification for its appeal. Applicant asserts it has demonstrated adequate internal vehicle circulation, but provides no support for that position other than a staff report done before the DRB decision was made. In fact, what the DRB had in front of it when it made its decision was several video's of the on-site traffic circulation showing accidents

and chaotic vehicular movements in addition to extensive testimony about the vast problems associated with the current circulation. Adding additional traffic for a coffee kiosk would only exacerbate an already unworkable situation. The DRB, after reviewing all the evidence and the approval criteria, made a nearly unanimous decision that modification of this site plan to remove the office building and replace it with a coffee kiosk was not appropriate or in compliance with the approval criteria.

It is insufficient for an appeal to singularly rely on a staff report that was essentially rejected by the DRB based on other evidence, without providing some additional factual or legal justification for why the DRB decision was legally wrong. The fact that the Applicant disagrees with the DRB is not enough to warrant an appeal, and the appeal should be rejected as incomplete and insufficient to warrant consideration by the City Council.

Applicant has played hide and seek with the facts in this case throughout. The proposed site plan has been modified, delivery locations are moved like chess pieces, and pedestrian and bicycle access have been located and relocated as the case has progressed through the City. If the Applicant is allowed to file a generic, non-specific appeal, it will simply be another tactic to hide the ball, and spring on both the City Council, staff and my client, what the Applicant's real justification for the appeal is, if in fact there even is one. This tactic will simply lead to continuation of the hearing in order to allow all parties to properly prepare and rebut whatever the hidden rationale for this appeal is. The land use process is intended to be open and fair, and the Applicant's tactics to hide the ball should not be allowed.

The appeal should be denied as legally insufficient in not stating with any particularity why the DRB decision is incorrect. In the event the appeal is accepted a hearing scheduled, the Applicant

should be required to state in writing at least 14 days before any scheduled hearing, the reasons for the appeal with sufficient specificity so that staff and my client understand the reasons for the appeal and can be prepared to defend the actions of the DRB.

DATED this 28th day of February, 2014.

Wallace W. Lien, OSB 79-3011
Attorney for LaPoint Business Group, LLC

King, Sandy

From: LFaxon@CommNewspapers.com
Sent: Thursday, February 27, 2014 12:59 PM
To: King, Sandy
Subject: RE: Public Hearing notice

Hi Sandy,
Revision received and I've made the change!

Thank you,

Louise Faxon

Legal Advertising

Community Newspapers/Portland Tribune

6605 SE Lake Rd, Portland 97222-2161

PO Box 22109, Portland OR 97269-2109

(503) 546-0752; fax (503) 620-3433

Legals Notices are online at: <http://publicnotices.portlandtribune.com>

From: King, Sandy [mailto:king@ci.wilsonville.or.us]

Sent: Thursday, February 27, 2014 12:43 PM

To: Louise Faxon

Subject: RE: Public Hearing notice

I just now learned of one small correction – can you replace the current paragraph with this one? The one I sent to you has the wrong DRB Resolution number **it should be 270.**

REQUEST: The Applicant is appealing proposed **DRB Resolution No. 270** that rejected and denied a Stage II Final Plan revision, Site Design Review, Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk.

Thank you so much.

Sandra C. King, MMC

City Recorder

City of Wilsonville

29799 SW Town Center Loop East

Wilsonville, OR 97070

503-570-1506

PUBLIC RECORDS LAW DISCLOSURE: Messages to and from this e-mail address is a public record of the City of Wilsonville and may be subject to public disclosure. This e-mail is subject to the State Retention Schedule.

From: LFaxon@CommNewspapers.com [mailto:LFaxon@CommNewspapers.com]

Sent: Thursday, February 27, 2014 12:12 PM

To: King, Sandy

Subject: RE: Public Hearing notice

Good Morning Sandy,

Notice received. I will get this notice in the **March 5th edition** of the **Wilsonville Spokesman**. Once published, I will send affidavits of publication to your attention.

Thanks again for the "heads-up"!

Thank you,

Louise Faxon

Legal Advertising

Community Newspapers/Portland Tribune

6605 SE Lake Rd, Portland 97222-2161

PO Box 22109, Portland OR 97269-2109

(503) 546-0752; fax (503) 620-3433

Legals Notices are online at: <http://publicnotices.portlandtribune.com>

From: King, Sandy [<mailto:king@ci.wilsonville.or.us>]

Sent: Thursday, February 27, 2014 11:18 AM

To: Louise Faxon

Subject: Public Hearing notice

Importance: High

Louise;

This is the hearing notice I emailed you earlier today about. Please publish the attached public hearing notice one time in the March 5, 2014 edition of the Spokesman, and send proof of publication.

Many thanks for holding a spot for me.

Sandra C. King, MMC

City Recorder

City of Wilsonville

29799 SW Town Center Loop East

Wilsonville, OR 97070

503-570-1506

PUBLIC RECORDS LAW DISCLOSURE: Messages to and from this e-mail address is a public record of the City of Wilsonville and may be subject to public disclosure. This e-mail is subject to the State Retention Schedule.

**PUBLIC NOTICE
CITY OF WILSONVILLE**

CITY COUNCIL

NOTICE IS HEREBY GIVEN that a PUBLIC HEARING will be held by the **City Council** of the City of Wilsonville on **Monday, March 17, 2014 at 7:00 P.M.** at City Hall, at 29799 SW Town Center Loop E, Wilsonville, Oregon, or to such other place to which the Council may adjourn.

CASE FILES UNDER APPEAL: DB13-0046 Stage II Final Plan Revision
DB13-0047 Site Design Review
DB13-0048 Master Sign Plan Revision and Sign Waiver

OWNER/APPLICANT: Josh Veentjer, Wilsonville Devco LLC

**APPLICANT'S
REPRESENTATIVES:** Ben Altman, SFA Design Group
Craig Anderson, CB Anderson Architects
Steven Pfeiffer, Perkins Coie, Legal Council

LOCATION: Southeast corner of the 95th Avenue and SW Boones Ferry Road intersection Described as Tax Lot 0302, Section 2DB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, as depicted on the map below.

CONTACT: Daniel Pauly AICP, Associate Planner, at (503) 682-4960.

REQUEST: The Applicant is appealing proposed DRB Resolution No. ²⁷⁰~~268~~ that rejected and denied a Stage II Final Plan revision, Site Design Review, Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk.

SCOPE OF APPEAL: The appeal is limited to the record and additional testimony and evidence on the following issues and related development code provisions:

- On-site traffic congestion;
- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles; and
- Section 4.154, Subsections 4.155(.03)A., 4.400(.02)A., and 4.421(.01)C.

APPLICABLE CRITERIA: Planning and Land Development Ordinance: Section 4.008, Section 4.009, Section 4.010, Section 4.011, Section 4.014, Section 4.022, Section 4.031, Subsection 4.035 (.04), Subsection 4.035 (.05), Section 4.110, Section 4.116, Section 4.118, Section 4.131, Section 4.140, Section 4.154, Subsections 4.155 (.03) A., Section 4.400 (.02) A., and 4.421 (.01)C, Sections 4.156.01 through 4.156.11, Section 4.167, Section 4.171, Section 4.175, Section 4.176, Section 4.177, Section 4.179, Sections 4.199.20 through 4.199.60, Sections 4.300 through 4.320, Sections 4.400 through 4.450 as applicable.

Copies of the Planning and Land Development criteria are available from the Wilsonville Planning Division, located at 29799 SW Town Center Loop East. A complete copy of the relevant file information, including the staff report and recommendations, will be available for inspection seven days prior to the hearing. Copies may be provided at the cost of twenty-five cents per page. Copies will also be available for review at the Wilsonville Public Library.

Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting. The City will also endeavor to provide qualified sign language interpreters and/or qualified bilingual interpreters, without cost, if requested at least 48 hours prior to the meeting. To obtain such services, please call Sandy King, City Recorder at (503) 682-1011.

Inquiries pertaining to this hearing may be made to Daniel Pauly, AICP, Associate Planner at (503) 682-4960.



WILSONVILLE DEVCO, LLC (HUMAN BEAN APPEAL)

Wallace Lien
Wallace W. Lien, P.C.
3265 Liberty Road South
Salem, OR 97302
503-585-0105 ext. 311
Fax: 503-585-0106
wlien@lienlaw.com
Represents Mr. LaPoint in the appeal.

Steven Pfeiffer
Perkins Coie
1120 NW Couch St, 10th Floor
Portland, OR 97209-4128
503-727-2000
Fax: 503-727-2222
spfeiffer@perkinscoie.com
Attorney for Wilsonville Devco, LLC – Applicant (Human Bean)

John Veentjer
Wilsonville Devco, LLC
4188 SW Greenleaf Dr.
Portland OR 97221
503-201-1309
josh@pdvco.com
Owner/Applicant of Wilsonville Devco, LLC

Ben Altman
SFA Design Group
Owner/Applicant's Representative

Craig Anderson
CB Anderson Architects
Owner/Applicant's Representative

Alec Laidlaw
Laidlaw & Laidlaw, PC
21590 Willamete Drive
West Linn, OR 97068
503-305-6894
Represents Gary LaPoint in Circuit Court Case only

King, Sandy

From: Wallace Lien <WLien@lienlaw.com>
Sent: Thursday, February 27, 2014 10:27 AM
To: King, Sandy
Cc: Wallace Lien; Alec Laidlaw
Subject: FW: Appeal of DRB Decision re: Wilsonville Devco, LLC
Attachments: 3.3.14cc.docx; Wallace W Lien.vcf

Ms. King

Please be advised that I am the legal counsel for Mr. LaPoint and the Chevron Station in the above referenced matter. Mr. Laidlaw is only handling the circuit court case. Please substitute my name and address and email directory information for that of Mr. Laidlaw in all land use matters before the City.

Thank you.

Wallace W. Lien

Wallace W. Lien, P.C.
3265 Liberty Road So.
Salem, OR 97302
phone: 503-585-0105 ext. 311
fax: 503-585-0106
<http://www.lienlaw.com>

CONFIDENTIALITY NOTICE:

If you have received this communication in error, please notify me immediately. This message is intended only for the use of the person or firm to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is prohibited.

From: King, Sandy [mailto:king@ci.wilsonville.or.us]
Sent: Thursday, February 27, 2014 10:02 AM
To: Alec Laidlaw; garylalpoint@gmail.com
Cc: Kohlhoff, Mike; Edmonds, Blaise
Subject: Appeal of DRB Decision re: Wilsonville Devco, LLC

Gentlemen;

I have attached the agenda for the upcoming Wilsonville City Council meeting set for March 3, 2014. At this meeting the Council will be setting the public hearing date to hear the appeal of the DRB decision on the application made by Wilsonville Devco, LLC.

Please be advised no public testimony will be taken at this meeting. This meeting is to allow Council to set the hearing date of the appeal. I will confirm the hearing date with you.

Sandra C. King, MMC
City Recorder

King, Sandy

From: King, Sandy
Sent: Thursday, February 27, 2014 9:54 AM
To: 'spfeiffer@perkinscoie.com'; 'josh@pdvco.com'
Cc: Kohlhoff, Mike; Edmonds, Blaise
Subject: March 3, 2014 Council Meeting
Attachments: 3.3.14cc.docx

Mr. Pfeiffer;

I have attached the agenda for the upcoming Wilsonville City Council meeting set for March 3, 2014. At this meeting the Council will be setting the public hearing date to hear the appeal of the DRB decision on the application made by Wilsonville Devco, LLC.

Please be advised no public testimony will be taken at this meeting. This meeting is to allow Council to set the hearing date of the appeal. I will confirm the hearing date with you.

Sandra C. King, MMC
City Recorder
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070
503-570-1506

PUBLIC RECORDS LAW DISCLOSURE: Messages to and from this e-mail address is a public record of the City of Wilsonville and may be subject to public disclosure. This e-mail is subject to the State Retention Schedule.

King, Sandy

From: King, Sandy
Sent: Thursday, February 27, 2014 10:02 AM
To: 'alec@laidlawandlaidlaw.com'; 'garylapoint@gmail.com'
Cc: Kohlhoff, Mike; Edmonds, Blaise
Subject: Appeal of DRB Decision re: Wilsonville Devco, LLC
Attachments: 3.3.14cc.docx

Gentlemen;

I have attached the agenda for the upcoming Wilsonville City Council meeting set for March 3, 2014. At this meeting the Council will be setting the public hearing date to hear the appeal of the DRB decision on the application made by Wilsonville Devco, LLC.

Please be advised no public testimony will be taken at this meeting. This meeting is to allow Council to set the hearing date of the appeal. I will confirm the hearing date with you.

Sandra C. King, MMC
City Recorder
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070
503-570-1506

PUBLIC RECORDS LAW DISCLOSURE: Messages to and from this e-mail address is a public record of the City of Wilsonville and may be subject to public disclosure. This e-mail is subject to the State Retention Schedule.

AGENDA

**WILSONVILLE CITY COUNCIL MEETING
MARCH 3, 2014
7:00 P.M.**

**CITY HALL
29799 SW TOWN CENTER LOOP
WILSONVILLE, OREGON**

Mayor Tim Knapp

Council President Scott Starr
Councilor Susie Stevens

Councilor Richard Goddard
Councilor Julie Fitzgerald

CITY COUNCIL MISSION STATEMENT

To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

Executive Session is held in the Willamette River Room, City Hall, 2nd Floor

- | | | |
|------------------|---|-----------|
| 5:00 P.M. | EXECUTIVE SESSION | [15 min.] |
| A. | Pursuant to ORS 192.660(2)(f) Exempt Public Records
ORS 192.660(2)(h) Litigation | |
| 5:15 P.M. | REVIEW OF AGENDA | [5 min.] |
| 5:20 P.M. | COUNCILORS' CONCERNS | [5 min.] |
| 5:25 P.M. | PRE-COUNCIL WORK SESSION | |
| A. | Wayfinding Update - Neamtzu | [15 min.] |
| 6:50 P.M. | ADJOURN | |
-

CITY COUNCIL MEETING

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, March 3, 2014 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on February 25, 2014. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered therewith except where a time limit for filing has been fixed.

- | | |
|------------------|--|
| 7:00 P.M. | CALL TO ORDER |
| A. | Roll Call |
| B. | Pledge of Allegiance |
| C. | Motion to approve the following order of the agenda and to remove items from the consent agenda. |

7:05 P.M. MAYOR'S BUSINESS

- A. Upcoming Meetings

7:10 P.M. COMMUNICATIONS

- A. Robotics Team "1425 Error Code Xero Robotics" Update – Kyla Minato

7:15 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

7:20 P.M. COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

- A. Council President Starr – *(Park & Recreation Advisory Board Liaison)*
- B. Councilor Goddard – *(Library Board Liaison)*
- C. Councilor Fitzgerald – *(Development Review Panels A & B Liaison)*
- D. Councilor Stevens – *(Planning Commission; CCI; Wilsonville Seniors Liaison)*

7:35 P.M. PUBLIC HEARING

- A. **Ordinance No. 736** – 1st Reading
An Ordinance Of The City Of Wilsonville Declaring And Authorizing The Vacation Of Three (3) Portions Of SW 110th Avenue Public Street Right Of Way Between SW Mont Blanc Street And SW Tooze Road/SW Boeckman Road In Villebois Legally Described In Attachment C. (Staff – Pauly)

7:50 P.M. NEW BUSINESS

- A. Set the hearing date appeal of the denial of the Human Bean application by the Development Review Board Panel "A" for March 17, 2014. The appeal is limited to the record and additional testimony and evidence on the following issues and related development code provisions:
- On-site traffic congestion;
 - Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles; and
 - Section 4.154, Subsections 4.155(.03)A., 4.400(.02)A., and 4.421(.01)C.

8:15 P.M. CITY MANAGER'S BUSINESS

8:20 P.M. LEGAL BUSINESS

2/27/2014 10:02 AM Last Updated

8:25 P.M. ADJOURN

Time frames for agenda items are not time certain (i.e. Agenda items may be considered earlier than indicated. The Mayor will call for a majority vote of the Council before allotting more time than indicated for an agenda item.) Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting if required at least 48 hours prior to the meeting. The city will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting:-Qualified sign language interpreters for persons with speech or hearing impairments. Qualified bilingual interpreters. To obtain services, please contact the City Recorder, (503)570-1506 or king@ci.wilsonville.or.us

Perkins Coie LLP

1120 NW Couch St.
10th Floor
Portland, OR 97209

VENDOR: 221758-001
City of Wilsonville

CHECK
NO.: 10049

INVOICE DATE	INV. NO.	COMMENT	INV. AMOUNT
02/21/2014	PO100080	112634-0001 Fee to file Notice of Intent with the City of Wilsonville	800.00
TOTAL CHECK AMOUNT			\$800.00

056567781

112634-1

CALLED IN