

FOR MEETING OF: DECEMBER 21, 2021

CASE NO: CPC-ZC21-04

AGENDA ITEM: 5.1

TO: PLANNING COMMISSION

**FROM: LISA ANDERSON-OGILVIE, AICP, DEPUTY COMMUNITY DEVELOPMENT
DIRECTOR AND PLANNING ADMINISTRATOR**

DATE: DECEMBER 21, 2021

**SUBJECT: SUPPLEMENTAL STAFF REPORT FOR COMPREHENSIVE PLAN CHANGE /
ZONE CHANGE NO. 21-04; 2900 BLOCK OF KUEBLER BLVD SE (AMANDA
APPLICATION NO. 21-115803-ZO; 21-115805-ZO)**

BACKGROUND

On November 2, 2021, the Planning Commission held a public hearing and received testimony for consolidated Comprehensive Plan Map Amendment and Zone Change Case No. 21-04. The staff report made available on October 26, 2021 recommended denial of the application.

On November 2, 2021, the Planning Commission continued the public hearing to November 16, 2021. At the November 16, 2021 hearing staff and the applicant requested the Planning Commission continue the public hearing until December 21, 2021 to resolve concerns with the Transportation Planning Rule Analysis (TPR). The Planning Commission granted the continuance to December 21, 2021.

SUPPLEMENTAL FINDINGS

Public Comments

After the staff report was written and made available, comments were received from Mosaic Development Services (applicant). These comments are summarized below and followed by staff responses.

1. *Equally or Better Suited Designation.* A demonstration that the proposed designation is equally or better suited for the property than the existing designation.

The Planning Commission asked for more information regarding factors taken into consideration for what is 'equally or better' related to the above decision criterion.

Staff Response: Staff reviews many factors when considering the criterion above. Starting with the Salem Area Comprehensive Plan policies for guidance and recent documents accepted by City Council. Those documents are the Housing Needs Analysis and the Economic Opportunities Analysis. Determining what is equally or better suited includes consideration of a requested zone that would meet a deficiency that the City has identified in the Comprehensive Plan, supporting documents and studies. The staff report dated November 2, 2021 on Page 7 responds to the deficiency of commercial lands and multi-family lands

There are several Comprehensive Plan policies, which are addressed in the above referenced staff report, addressing location of commercial properties such as being located on major arterials, creating complete neighborhoods, including clustering of residential and

commercial uses. Creating complete neighborhoods is one way to reduce reducing vehicle trips that contribute to climate change, as discussed in the City's draft Climate Action Plan.

Other considerations are physical factors, such as topography or other physical features of the subject property. Staff took into consideration the site characteristic, including the property abutting the I-5 interchange which could make it incompatible with residential development.

2. Our Salem

The applicant provided findings that the City of Salem is proposing the subject property be zone CR (Retail Commercial) as part of 'Salem Futures'. The applicant contends that the Comprehensive Plan project intends to change the zoning to the same zoning as the applicant is proposing.

Staff Response: The current project to update the Salem Area Comprehensive Plan is called 'Our Salem', which was initiated on December 6, 2021 for changes. A previous update to the Salem Area Comprehensive Plan in the 1990s, 'Salem Futures' was never adopted.

The current project, 'Our Salem', updates to the Comprehensive Plan or changes to the Comprehensive Plan Map would not occur until late 2021 after public hearings and approval by the City Council. The 'Our Salem' proposed Comprehensive designation is Commercial, as shown in Attachment A. The corresponding zoning proposed by the 'Our Salem' project is CO (Commercial Office), as shown in Attachment A.

The largest difference between the applicant's proposal of CR (Retail Commercial) and the Our Salem proposed CO (Commercial Office), is the amount of retail sales allowed. The applicant's proposed zone allows all types of retail sales, where the Commercial Office zone only allows newsstands, caterers and retail sales of agricultural products with a 1,000 square footage building limit. The zone proposed by 'Our Salem' generally allows office and professional services, along with a mix of housing and limited retail and personal services, where the applicant's proposal allows a wide array of retail sales and office uses.

3. Other Potential Zoning Designation

When meeting with the applicant to discuss the issues with the Transportation Planning Rule Analysis, staff suggested proposing a different zone that would have less of an impact. Discussions ranged between Commercial Office (CO), Mixed Use zones and multiple family residential zones. Even designating portions of the property to a zone with a lower traffic impact was suggested. The suggestion was an attempt to limit the amount of business that were automobile ordinated, which in turn would reduce or alter the peak traffic period. Retail sales peak during the weekends; Commercial Office uses peak during the week.

The applicant declined to revise their proposal based on their analysis of proposed Commercial Office zoning, which they stated would generate similar level of trips as the CR zone. The applicant's analysis of worst-case scenario under CO zoning used several multi-

level (up to eight stories) office buildings and while this is a worst-case scenario under the CO zone, it may not be realistic in Salem's market. Additionally, office uses do not have the same peak level of traffic as retail, which is one of the reasons staff proposed CO zoning in 'Our Salem.' Staff does not agree that the CO Zone would provide the same amount of automobile generation as CR, that the peak of the businesses would be similar to the CR zone or that the market would support 24-acres of eight story office buildings.

4. Salem Area Transportation System (TSP) Plan – Policies

Staff Response: The transportation system in the area of the proposed Comprehensive Plan change is designed to support the current comprehensive plan designation of RA. The system is not designed to support traffic demand that would be generated by the Commercial/Retail zoning district. For this reason, the proposed Comprehensive Plan/Zone Change is not consistent with the Salem Transportation System Plan, Comprehensive Transportation Policy 6. Any change needs to be found consistent with the Policies of the Salem Area Comprehensive Plan.

Access is proposed to load onto 27th Street SE, which is designated as a collector street in the Salem TSP. The design range for a collector street is for daily traffic volumes between 1,600 and 10,000 vehicle trips (Street System Element, Table 3-1). This site alone is projected to generate 20,000 vehicle trips. This level of traffic is not consistent with the collector street designation.

The mitigation proposed creates additional barriers for pedestrian travel at the intersection of 27th and Kuebler by introducing double turn lanes, resulting in a collector street cross section that requires pedestrians to cross seven lanes of travel. This design is contrary to the Salem Transportation System Plan, Street System Element, Policy 2.2, Multimodal Intersection Design, that promotes safe and accessible crossings for pedestrians. In addition, the design introduces additional conflict points for bicycles navigating 27th Street between Boone Road SE and Kuebler Boulevard SE. For these reasons, the proposed design is inconsistent with Policy 2.2.

Traffic impacts created by new development must be mitigated per Salem Transportation System Plan, Street System Element, Policy 2.5, Capacity Efficient Design and Level of Service (LOS) Standards. The requirements for a traffic impact or Transportation Planning Rule (TPR) analysis are adopted in Street System Element, Policy 5.1, Traffic Impact Analysis Requirements, which references the criteria established in the City of Salem Street Design Standards. The findings represented in the TPR analysis result in levels of congestion and delay that do not meet the established thresholds.

Constructing a collector street with seven lanes at the intersection with Kuebler is not consistent with the street design standard for a collector street, which calls for one travel lane in each direction (Salem Transportation System Plan, Street System Element, Figure 3-2). Creating a seven-lane cross section is not sensitive to the livability of the surrounding neighborhood that uses this roadway to access the network of arterial streets and is therefore inconsistent with Salem Transportation System Plan, Street System Element, Policy 2.8.

5. Transportation Rule Analysis

a. Traffic Counts timing

- The applicant provided findings that the Public Works Design Standard (PWDS) is not applicable to the Comprehensive Plan Change and Zone Change application, since the PWDS are not codified as part of the Salem Revised Code, the standards cannot directly apply.

Staff Response: City Council adopted the Salem Transportation System Plan (TSP). Policy 5.1 of the TSP Street System Element establishes the requirements for an analysis and references the street design standard. Traffic counts are a key element of any traffic study, providing information about existing traffic operations. City Design Standards call for traffic counts to be two years old or newer, so they represent current traffic situations. The counts utilized in the Applicant's analysis are older than two years. Additionally, commercial retail traffic peaks occur on the weekends, which was not studied in the traffic study. Based on the poor intersection operations during the weekdays for Costco and the proposed shopping center development, it is very likely the intersections will fail during the weekends and during holiday times.

The applicant contests that the City Council superseded the PWDS by approving the Site Plan Review for Costco with associated Traffic Impact Analysis.

Staff Response: City Council can make individual decisions as they deem appropriate; the proposed application is a separate site and is required to follow Public Works Design Standards, Salem Revised Code and all other applicable laws and regulations. The Traffic Impact Analysis that was submitted for the Costco site in 2018 was not required as part of Site Plan Review but was provided by the applicant to evaluate their previously required mitigation. A Site Plan Review application is not what is currently before the Planning Commission.

- The applicant's finding state that the construction of Costco is not a 'Disruptive Event' and that the city is delaying development for an indefinite time period. Therefore, applying an unlawful moratorium.

Staff Response: The opening of Costco is not a 'Disruptive Event', but when Costco begins operation in March 2022, there will be significant traffic changes in the area. The proposed application indicates that the site will share a main access with Costco through a round-about on 27th Street. The applicant has not provided adequate evidence that Costco and the proposed development under a commercial retail zone will not overload the round-about with traffic during peaks times and cause it and the adjacent intersections to fail. The request to change the Comprehensive Plan to 'Commercial' does not meet the criterion.

- The applicant's findings state that the traffic counts provided were derived from May-June 2019 and therefore taken during the two-year window outlined in the PWDS.

Staff Response: The two-year window for a traffic count was determined to be measured from the date the application was deemed complete to the date of the counts. This two-year window is not met. However, the biggest issue with the counts is that they do not include Costco traffic. The applicant's traffic study uses estimated Costco traffic to build its case for approval. Costco is not a typical commercial retail use, generating high traffic volumes. Staff is not convinced the *estimated* traffic is sufficient given that the applicant's traffic study shows very long vehicle queues and delays. A variation in as little as one percent from the actual traffic to estimated traffic will result in failure of the streets and intersections.

b. Goal 12 – Transportation Planning and Mitigation

The applicant's findings state that the application of PWDS isn't relevant to the approval criteria and that the applicant is not required to *fully mitigate* the intersections, as stated in the Staff Report. The applicant contests that the proposed improvements by the applicant will meet OAR 660-012-0060(2)(d) and leave the transportation system in a better state than it is today.

Staff Response: OAR 660-012-0060(2)(d) states, "Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation of the performance of the facility by the time of the development through one or a combination of transportation improvements or measures." Staff is only requiring the applicant mitigate their projected traffic impacts, as required under the OARs. The zone change and the proposed mitigation will not, contrary to the applicant's statement, make the transportation system better. Current zoning would allow a development that generates 2,280 trips. The requested zoning could generate almost 10 times the amount of traffic; 20,240 trips. The City's Design Standards state that delay at an intersection signal should be less than 80 seconds; the applicant's materials show many of the vehicle movements will be greater than 80 seconds which does not support acceptable intersection operations, sometimes as long as 5 minutes to get through the light.

There are many factors why Staff does not support the zone change including site limitations forcing most site traffic to one access on 27th Street; the large amount of traffic generated by the proposed zone change; timing of the peak traffic volumes occurring with the adjacent Costco whose traffic is also focused on 27th Street, the long delays at the intersection signal, long vehicle queues, concerns that weekend traffic will create greater impacts, and the issue that the intersections in the area are already failing.

c. Constitutional Takings

The applicant provides findings that the City, by refusing to allow the applicant to develop, is extracting improvements through conditions of approval that are unconstitutional.

Staff Response: In order for an exaction to meet the constitutional requirements there must be an "essential nexus" for the stated purpose of the exaction (Nollan v. California

Coastal Com., 483 US 825, 836-838, 107 S Ct 3141, 97 L Ed2d 677 (1987)) and there must be “an individual determination that the required dedication is related both in nature and extent to the impact of the proposed development.”(Dolan v. City of Tigard, 512 US 374, 391, 114 S Ct 2309, 129 L Ed2d 304 (1994)).

The zone change, as currently proposed, will generate 12,000 new trips for a traffic system already over-burdened by development in the area. Staff has identified four intersections that will be adversely impacted if the Developer is allowed to move forward with the proposed zone change:

- a. Kuebler Boulevard SE @ Battle Creek Road SE
- b. Kuebler Boulevard SE @ 27th Avenue SE
- c. Kuebler Boulevard SE @ Southbound Interstate 5 ramp
- d. Kuebler Boulevard SE @ 36th Avenue SE

The proposed changes as identified by the applicant’s December 10, 2021, letter to Ms. Dias are specifically tailored to the impacts the proposed zone change will have on the affected intersections. Although the proposed changes do not adequately resolve the issue of wait times at the intersections, they do provide additional capacity and refined management of traffic in an effort to mitigate those direct impacts. Therefore, the modifications meet both nexus and proportionality requirements of *Nollan* and *Dolan*.

Applicant has not met its burden under SRC 265.005(e)(1)(F) in that they have not established that the significant effects can be adequately addressed through the measures associated with, or conditions imposed on zone change. Applicant has provided counts that are too old as provided by Public Works Design Standards 6.33(f)(3) in that they are older than two years when measured from the date of completion of the application. On that basis alone the Commission could deny the Application. However, even if the traffic counts provided by the applicant are applied, they are insufficient to carry the burden of proof to show that the mitigation offered by the Applicant is adequate. The evidence is not persuasive because of the changed circumstances associated with the passage of time, the pandemic, and the opening of the Costco in the near vicinity of the subject property have made prediction of the actual traffic impacts too uncertain. The narrow tolerances associated with the traffic facilities in the area mean that if the estimates are off by even a small percent, the mitigation proposed will not be adequate to handle the additional traffic and the facilities will fail, both to the detriment of the Applicant and the surrounding property owners. Couple the uncertainty surrounding the state of traffic in the vicinity with the long wait times at lights that can be anticipated; the result is an area traffic system that will be prone to congestion and failure.

6. Applicant Additional Written Testimony

On December 10, 2021, the applicant submitted two documents with additional testimony. The applicant submitted a letter from DKS Associates and Kellington Law Group, PC.

In response to the applicant’s submittal, Staff reviewed the Transportation Planning Rule Analysis and expressed some concerns. Staff and DKS met to discuss the concerns regarding the Transportation Planning Rule Analysis. DKS submitted a response to issues

raised to those concerns; staff disagrees with DKS on the following. The bulleted items were concerns raised to the applicant prior to meeting to discuss, the *italicized* is the applicant's response submitted into the record.

- Staff raised concerns that the proposed mitigation is for double left turn lanes and double right turn lanes for northbound 27th at Kuebler. It is unclear how the lanes would function, specifically how cars would safely maneuver out of the round-about and the site driveway.
- *DKS provided an attachment to their letter with a conceptual design layout and cost estimation showing the segment of 27th Street between Kuebler Blvd and the site access round-about for the proposed mitigation.*

Staff Response: Upon review, there are concerns with lane widths for the right turn lanes which seem to be narrower than standard. Based on the applicant's analysis, the 300-foot queuing of left turning vehicles will place the last vehicle in the pedestrian crosswalk marking, meaning that any vehicles trying to get to the through or right-turn lanes will be within the round-about. This may block other traffic using the round-about, causing it to fail during peak times.

- Staff raised concerns regarding the queuing analysis and the lack of available storage for the developments queuing lengths. This will back traffic into the round-about and could cause the round-about to fail. Failure of the roundabout will stop traffic in both directions traveling on 27th Street.
- *DKS responded that the TPR analysis shows that the proposal will not result in an increase in queue lengths compared to current zoning and that specific design details, such as storage lengths, should be based on queueing analysis conducted for a specific development plan in a Traffic Impact Analysis (TIA), not a TPR analysis based on hypothetical worst-case development.*

Staff Response: The queue lengths are close to backing into the round-about; staff believes that it will likely happen during holidays and on busier shopping times of the year. This traffic will likely cause failure at the intersections and round-about. Failure means traffic will back into the round-about blocking vehicles from being able to move within the round-about, which is unacceptable.

- The analysis focuses on weekday queuing needs but commercial developments have higher weekend traffic generation. The application lacks analysis of the effect on queuing and signal operations on 27th Street.

DKS responded that the TPR criteria for a comprehensive plan change is strictly based on the planning horizon and analysis period in the City's Transportation System Plan (TSP), which is the weekday PM peak hour. The City Public Works Standards are consistent with the TPR and require "Traffic counts shall be collected on a Tuesday, Wednesday, or Thursday that is not a City, State, or Federal holiday, when K-12 school is in session." The applicant states that the TPR study adequately addresses these criteria by analyzing and mitigating for the weekday PM peak hour traffic operations.

Weekend traffic analysis would have no influence on TPR findings. Furthermore, any weekend traffic analysis conducted at this point would need to rely on outdated historical traffic counts from 2017, which would introduce additional uncertainty into the analysis. The applicant also notes that, as part of the development review process, the developer will be responsible for mitigating any operations deficiencies at the site access and along the project frontage based on a Traffic Impact Analysis (TIA). The City's concerns regarding weekend operations at the roundabout and along 27th Avenue can be addressed by requiring weekend analysis as part of the TIA.

Staff Response: Generally, the Public Works Design Standard requires weekday traffic analysis because that is the highest traffic volumes on the surrounding roadways. However, for retail, the highest traffic generation is on the weekend. Since the applicant is requesting a change to the Comprehensive Plan to 'Commercial', and the development sharing the same round-about is also commercial (Costco), and most of the traffic is focused on one roadway, studying weekend traffic operations is essential to determining whether the traffic facilities will function properly, Staff is concerned that the round-about and the Kuebler/27th Street intersection will not operate within City standards and result in excessive congestion.

- Staff raised concerns that the study did not consider lane utilization factors when determining queuing.

DKS responded that the Synchro software provides default factors for lane utilization that are based on the number of lanes and downstream traffic volume distribution and do not assume equal distribution among multiple lanes. Therefore, lane utilization factors were applied in the analysis.

Staff Response: The Synchro software considers full accessibility to the lanes. This may not be possible with some of the long queue lengths. This means more vehicles may be in a lane than anticipated by the model. This could result in even longer queues. The concern is that long queues back traffic into the round-about and then prohibit all movements within the round-about.

- Staff raised concerns about the study not showing westbound left turn queues from Kuebler to 27th Street. The study shows 900 left turn movements, which is a very high amount from a double turn lane.

DKS responded that the vehicle queuing analysis shows an average 95th percentile queue length of 600 feet. This would require extending the westbound left turn lanes another 175 feet into the existing taper on Kuebler Boulevard. The turn lane storage needs will be re-evaluated as part of the TIA submitted at the time of development review to ensure the proposed improvements accommodate anticipated queue lengths.

Staff Response: This amount of traffic results in greater delays (up to five minutes) for vehicles being able to make this turn, which does not meet City standards (delays less than 80 seconds). The proposed change to the Comprehensive Plan requires the applicant have the burden of proof to show the transportation system is not adversely impacted by the change.

- Staff raised concerns regarding the age of the counts and the uniqueness of the Costco development and that there is a high likelihood that the estimates may not represent actual traffic generation and distribution on the area roadways and intersections. This study builds on assumptions from a previous TIA (Costco); the poor operation of the intersections and access constraints to this site, shown in the TIA to operate beyond capacity, raises more questions about the accuracy of the study.

DKS responded that they have had many discussions with City staff have discussed this issue at length. City staff agree that DKS completed the TPR analysis using best practices and the best data that is available at this time, however, the City staff continue to have concerns with the inherent level of uncertainty of the results, but changes to the technical analysis or assumptions will not change the level of uncertainty. The only way to reduce the level of uncertainty in the TPR findings is to completely re-do the TPR study in mid to late 2022, after Costco has been open for a period of time, which is not a practical or reasonable request of the developer.

Staff Response: The burden of proof is on the applicant. The use of old counts and Costco assumptions does not alleviate staff concerns that the area intersections will not operate acceptably with the proposed Comprehensive Plan Change or Zone Change. Staff is not telling the applicant that they cannot submit an application or have it reviewed prior to Costco being completed. Instead, we are stating our concerns with the study itself and with the potential results for the streets and intersections in the area if the Comprehensive Plan map change request is approved.

- Staff raised concerns regarding the intersection capacity analysis, which shows shorter signal cycle time on Battle Creek/Boone Intersection in the future. Because this intersection is so close to Kuebler, timing used in the analysis needs to be coordinated to with surrounding intersections to minimize queuing impacts to each intersection. The applicant needs to show how the intersections will function as coordinated.

DKS responded that they updated the signal timing at the Battle Creek Rd/Boone Rd intersection to be coordinated with the signal at Battle Creek Rd/Kuebler Blvd, providing a 130 second cycle length. There was a slight improvement in the volume to capacity ratio and delay at the intersection due to the signal timing adjustments. The intersection continues to meet the City's Level of Service standard.

Staff Response: This data has not been provided to Staff for review and therefore, we cannot verify if this issue has been addressed.

- Staff raised concerns that the intersection of 27th/Kuebler, westbound left turning movement has delay of 278 seconds, northbound left turning movement has delay 294 seconds.

DKS responded with proposals such as double left round-about design and a vehicle queuing analysis which shows an average 95th percentile queue length of 600 feet. This would require extending the westbound lane turn lanes another 175 feet into the existing taper on Kuebler Boulevard.

Staff Response: The applicant's analysis shows a five-minute delay at the intersection; the City standards have a maximum 80 second delay. This does not represent an acceptable signal operation.

RECOMMENDATION:

Staff recommends that the Planning Commission close the Public Hearing and leave the record open. The record would be open for any public comments or response to the dates listed below:

- Record open for any new written testimony until December 28, 2021 at 5:00 p.m.
- Record open for rebuttal for all parties until January 4, 2021 at 5:00 p.m.
- Record open for the applicant's final written rebuttal until January 11, 2021 at 5:00 p.m.

The Planning Commission would set deliberations for January 11, 2021 at 5:30 p.m.

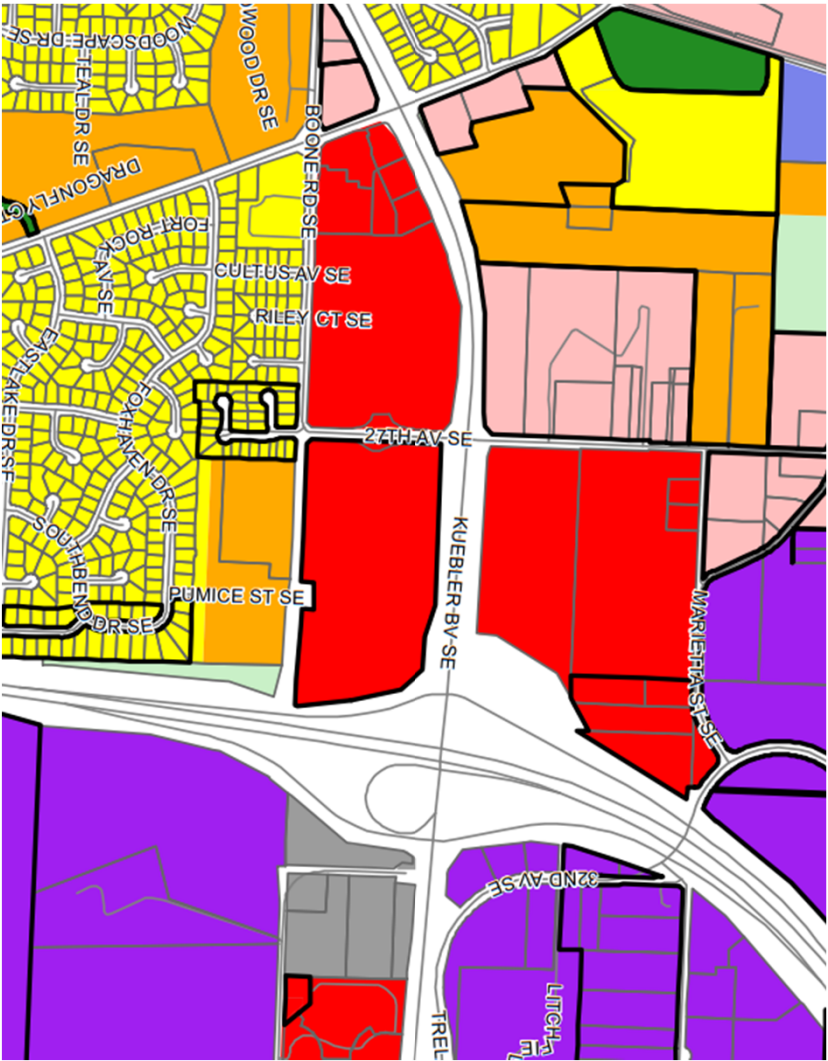
Alternative Option:

Adopt the facts and findings of the staff report and supplemental staff report and **DENY** Comprehensive Plan Map Change & Zone Change, Case No. 21.04.

Attachments: A. Our Salem Proposed Map
 B. DKS Associates Letter, dated
 C. Kellington Law Group, PC Letter, dated





















Prepared by Olivia Dias, Current Planning Manager

Comprehensive Plan Designation Proposed by Our Salem

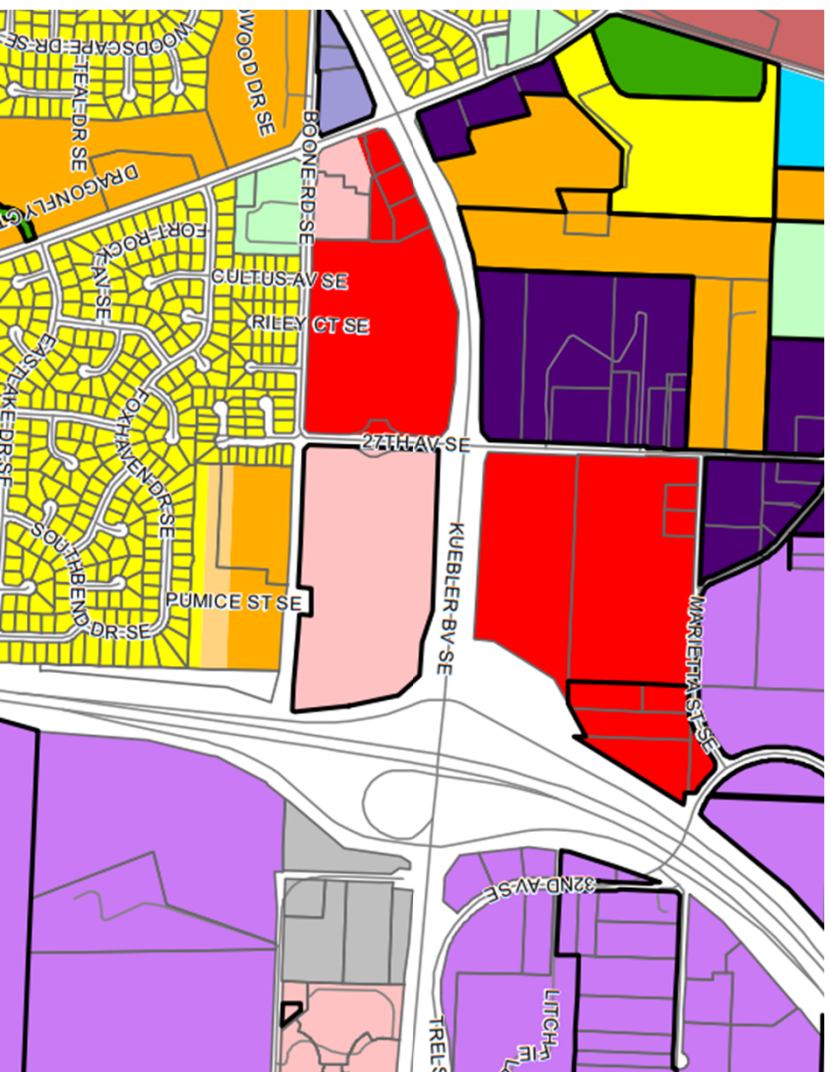


Key

Proposed Salem Comprehensive Plan Designation

	CB - Central Business District		EC - Employment Center
	COM - Commercial		FRM - Farm Resource Management
	CS - Community Service		IC - Industrial Commercial
	CSA - Community Service Airport		IND - Industrial
	CSC - Community Service Cemetery		MF - Multi-Family Residential
	CSE - Community Service Education		MU - Mixed Use
	CSG - Community Service Government		POS - Parks - Open Space - Outdoor Recreation
	CSH - Community Service Hospital		ROM - River Oriented Mixed Use
	CSS - Community Service Sewage and Solid Waste		SF - Single Family Residential
	DR - Developing Residential		Proposed Comprehensive Plan Change Areas

Zoning Proposed by Our Salem



Key

Proposed Salem Zoning Designation

CB - Central Business District	PA - Public Amusement
CG - General Commercial	PC - Public/Private Cemetery
CO - Commercial Office	PE - Public/Private Education
CR - Retail Commercial	PH - Public Health
EC - Employment Center	PM - Capitol Mall
EFU - Exclusive Farm Use	PS - Public Service
ESMU - Edgewater/Second Street Mixed-Use Corridor	RA - Residential Agriculture
FMU - Fairview Mixed-Use	RM1 - Multiple Family Residential 1
IBC - Industrial Business Campus	RM2 - Multiple Family Residential 2
IC - Industrial Commercial	RM3 - Multiple Family Residential 3
IG - General Industrial	RS - Single Family Residential
IP - Industrial Park	SMMU - South Waterfront Mixed-Use
MU-I - Mixed Use-I	WSCB - West Salem Central Business District
MU-II - Mixed Use-II	
MU-III - Mixed Use-III	
MU-R - Mixed Use - Riverfront	
NH - Neighborhood Hub	
	Proposed Zoning Change Areas



DECEMBER 10, 2021

TO: OLIVIA DIAS, CITY OF SALEM PLANNING DIVISION

SUBJECT: RESPONSE TO CITY OF SALEM COMMENTS: BOONE ROAD COMMERCIAL TPR ANALYSIS (ROUND 2)

INTRODUCTION

DKS Associates prepared a Transportation Planning Rule (TPR) analysis for a proposed commercial development on a parcel bounded by Kuebler Boulevard, Boone Road, 27th Avenue, and I-5 in Salem, Oregon. The TPR Transportation Study was submitted to the City on August 20, 2021. On September 10, 2021, the City of Salem issued a notice of incomplete letter for the proposed Comprehensive Plan Map Change and Zone Change (AMANDA 21-115803-ZO NS 21-115805-ZO).

While the land use application has since been deemed complete, this letter addresses the following traffic-related concerns raised by City staff in a list provided to DKS on November 19th, 2021. DKS met with City Public Works staff on November 30th, 2021, to review the technical analysis and discuss each of the following items in detail. The City comments and DKS responses are provided below.

1. The City did not scope the project for this TIA; the City has concerns with the distribution of traffic.

DKS: DKS did scope the study intersections for TPR analysis on this property back in 2017. In subsequent attempts to scope the study, public works staff indicated they would not support a traffic study being completed. The study area is consistent with other TIA and TPR studies completed for developments in the immediate vicinity. The trip distribution used in the TPR analysis was based on the SKATS 2043 travel demand model and existing traffic patterns, and is consistent with other traffic studies for nearby developments. The City staff was in agreeance with these sources.

2. Proposed mitigation is for double left turn lanes and double right turn lanes for NB 27th at Kuebler. Need to show how that would be designed. It is unclear how the lanes would function coming off round-about and the site driveway.

DKS: Refer to Attachment A for a conceptual design layout showing the segment of 27th Street between Kuebler Blvd and the site access roundabout for the proposed mitigation. An updated cost estimate for the project is also provided in the attachment.

3. Provide preliminary design layouts for all mitigation outlined in TIA to ensure the cost estimates are valid. Designs should include identifying potential for private property impacts and geometric design problems.

DKS: Additional details for cost estimates and redline design layouts are provided in Attachment A.

4. Queuing analysis show lack of available storage for project queuing lengths. This will back traffic into the round-about and could cause the round-about to fail. Failure of the round-about will stop both directions of travel on 27th.

DKS: The TPR study shows that the proposal will not result in an increase in queue lengths compared to current zoning. Specific design details, such as storage lengths, should be based on queueing analysis conducted for a specific development plan in a Traffic Impact Analysis (TIA), not a TPR analysis based on hypothetical worst-case development.

5. The TIA focuses on weekday queuing needs. Commercial developments have higher weekend traffic generation. How will that affect queuing and signal operations on 27th?

DKS: The TPR criteria for a comprehensive plan change is strictly based on the planning horizon and analysis period in the City's Transportation System Plan (TSP), which is the weekday PM peak hour. The City Public Works Standards are consistent with the TPR and require "Traffic counts shall be collected on a Tuesday, Wednesday, or Thursday that is not a City, State, or Federal holiday, when K-12 school is in session." The TPR study adequately addresses these criteria by analyzing and mitigating for the weekday PM peak hour traffic operations. Weekend traffic analysis would have no influence on TPR findings. Furthermore, any weekend traffic analysis conducted at this point would need to rely on outdated historical traffic counts from 2017, which would introduce additional uncertainty into the analysis. It is important to note that, as part of the development review process, the developer will be responsible for mitigating any operations deficiencies at the site access and along the project frontage based on a Traffic Impact Analysis (TIA). The City's concerns regarding weekend operations at the roundabout and along 27th Avenue can be addressed by requiring weekend analysis as part of the TIA.

6. Did the study consider lane utilization factors when determining queuing?

DKS: The Synchro software provides default factors for lane utilization that are based on the number of lanes and downstream traffic volume distribution and do not assume equal distribution among multiple lanes. Therefore, lane utilization factors were applied in the analysis.

7. Proposal to add a second lane to the round-about. There is not enough weaving distance for the various movements, especially since the queues extend beyond the available lane lengths.

DKS: See the concept design in Attachment A. Two northbound lanes are provided as vehicles exit the roundabout. Guide signage on-site directing vehicles to select the desired lane prior to entering the roundabout will limit weaving within this segment.

8. Staff would like the intersection operation calculations to take into account the operation of other signals in the area, considering traffic progression and coordination between nearby intersections.

DKS: Signal coordination data (offsets, cycle lengths, phase splits, etc) was acquired from ODOT and City of Salem staff and incorporated into the intersection operations for this study.

9. Study does not show westbound left turn queues from Kuebler to 27th. 900 left turns are a very high amount from a double turn lane. Will left-turning vehicle back into through lanes?

DKS: The vehicle queuing analysis shows an average 95th percentile queue length of 600 feet. This would require extending the WBL turn lanes another 175 feet into the existing taper on Kuebler Boulevard. The turn lane storage needs will be re-evaluated as part of the TIA submitted at the time of development review to ensure the proposed improvements accommodate anticipated queue lengths.

10. The proposed configuration of westbound double left as 'protected permitted' is not appropriate for high-speed traffic.

This has been corrected to Protected only for the dual WBL at 27th Avenue.

11. While the TIA was done using best engineering practices, given the age of the counts and the uniqueness of the Costco development there is a high likelihood that the estimates may not represent actual traffic generation and distribution on the area roadways and intersections. Since this study builds on assumptions from a previous TIA (Costco) the poor operation of the intersections and access constraints to this site, shown in the TIA to operate beyond capacity, raises more questions about the accuracy of the study.

DKS and City staff have discussed this issue at length. City staff agree that DKS completed the TPR analysis using best practices and the best data that is available at this time. City staff continue to have concerns with the inherent level of uncertainty of the results, but changes to the technical analysis or assumptions will not change the level of uncertainty. The only way to reduce the level of uncertainty in the TPR findings is to completely re-do the TPR study in mid to late 2022, after Costco has been open for a period of time, which is not a practical or reasonable request of the developer.

12. Intersection capacity analysis shows future (2035) shorter signal cycle time on Battle Creek/Boone. Because this intersection is so close to Kuebler, timing used in the analysis needs to be coordinated to minimize queuing impacts to each intersection. Need to show how the intersections will function as coordinated.

DKS has updated the signal timing at the Battle Creek Rd/Boone Rd intersection to be coordinated with the signal at Battle Creek Rd/Kuebler Blvd (130 second cycle length). There was a slight improvement in v/c ratio and delay at the intersection due to the signal timing adjustments. The intersection continues to meet the City's LOS standard.

13. 27th/Kuebler – WB left has delay of 278 seconds, NB left turn has delay 294 seconds. How is site traffic going to weave over to left turn lane with projected amount of queue, demand and delay?

DKS: See responses to #4, #7, and #9.

14. Site is proposed to generate over 20,240 (total trips generated minus internal trips) trips all focused on a collector street; 27th Street. 11,966 trips are new to the area with 8,274 trips (pass-by trips) being diverted from the area. The site has no access to the north (Kuebler), east (I-5), and very little to the south (Boone which is a local street). All site traffic is focused on 27th. TIA shows very little traffic using Boone. Is that reasonable given congestion on 27th access?

DKS: The access to this parcel is limited and any development will primarily generate traffic onto 27th Avenue. The assumed distribution of trips is based on current and future estimates of travel patterns (see DKS response to #1). Over time, drivers will find the path of least resistance and will likely alter their travel patterns based on congestion levels. However, at this time, the assumed trip generation is a reasonable estimate of site generated traffic patterns.

15. Traffic volumes on Figure 3 don't match with Table 8.

DKS: This has been discussed with City Staff. The turning volumes in Figure 3 match the total trip generation in Table 8; the summary of Primary and Pass-by trips shown in the table near the bottom of Figure 3 is incorrect. A revised version of Figure 3 is in Attachment B.

16. Study is supposed to study the year of opening (2023?) and the end of the City's Transportation System Plan which is 2035. The TIA does the latter but not the former.

DKS: A TIA for development review would typically include a year of opening analysis. However, for a TPR-only evaluation, only analysis of the long-term planning horizon is required. At this stage, we only have a hypothetical reasonable worst-case development scenario and applying a "year of opening" would be arbitrary. Additionally, any year of opening operations results would be anecdotal as they have no implication on TPR-required mitigations. As discussed previously, once the applicant has a detailed development plan, a TIA will be prepared that provides year of opening transportation analysis. However, at this

point, before the appropriate plan designation and zoning is in place, it is not possible to know the details of a development plan or a year of opening.

17. The requested commercial retail (CR) zoning will have the same peak traffic times as that of the Costco site. CO zoning would generally have peak traffic at different times thus reducing the high traffic demand on 27th and on the area intersections. Staff may be more supportive of a redistribution of zoning types. Zoning such as Commercial Office (CO), Multi-Family, Residential and/or Mixed-Use may reduce the peak traffic times in relation to Commercial Retail (CR).

DKS: An alternate zoning that compliments or offsets the adjacent Costco property was discussed by DKS and the City. City staff indicated that a lower level of development intensity (such as mixed zoning) would be favorable in general, but any associated analysis completed at this time would include the same level of uncertainty (see comment and response #11), such that City Staff will not fully support any application on this property at this time.

18. Why are there no weekend intersection analysis? While weekday tends to be the highest traffic on the roadways, weekend trip generation is highest from retail. Since most of this site traffic is concentrated onto one roadway (27th) as is the Costco traffic, weekend analysis should be done.

DKS: See DKS response to Comment #5.

19. Proposing to fund a proportionate share of the costs (\$1.75 million) to mitigate Kuebler/Battle Creek, Kuebler/27th, Kuebler/I-5 SB ramps, Kuebler/36th. Only proposing to fully fund additional right turn lane at their site access to the roundabout on 27th. Providing proportionate share does not fully mitigate their impacts which is required by TPR. Their proposal is to fund a small portion of the \$5.25 million estimated to actually make these improvements. It is unknown how or when the City would have funding to construct their mitigation requirements.

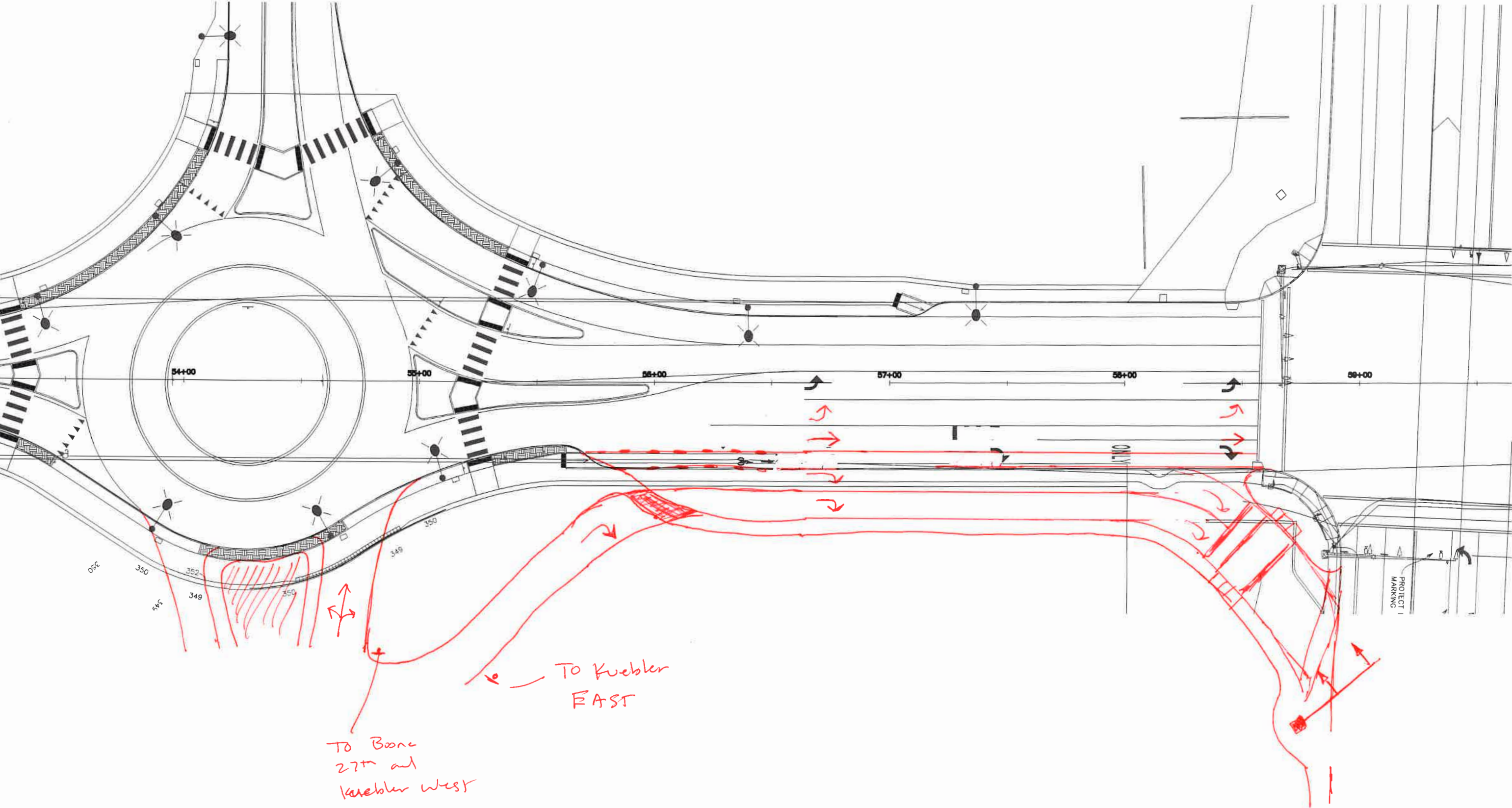
DKS: The developer is proposing to construct the full mitigations at Kuebler Blvd/Battle Creek Road, Kuebler Blvd/27th Ave, and 27th Ave/Site Access (roundabout), in addition to providing a proportionate share (cash contribution) of the costs of the improvements at Kuebler Blvd/36th Ave. The total investment the developer is currently offering is approximately \$3.6M, which is more than double their proportionate share.

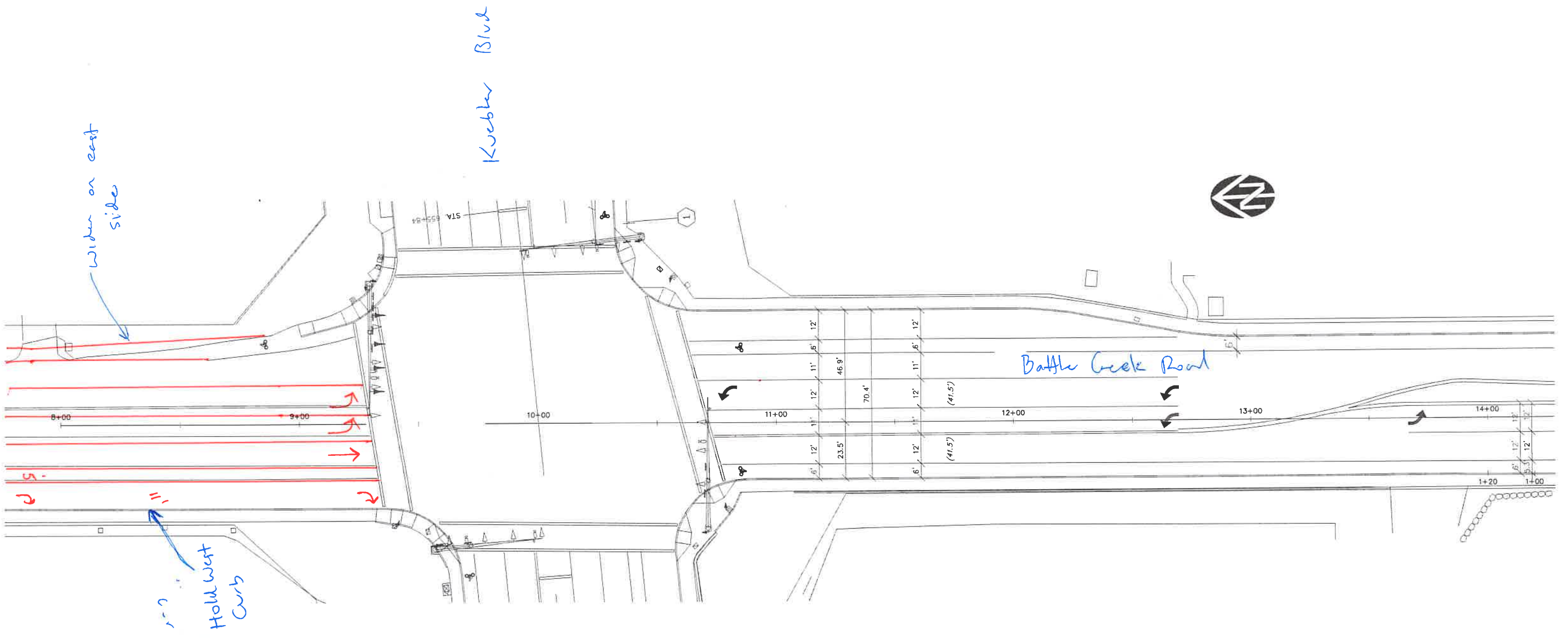
Attachments

- A. Concept Design Layout & Cost Estimate for 27th Avenue between Kuebler Blvd and Site Access
- B. Revised Figure 3 (Trip Generation & Distribution)



Note: Scale is 1" = 40'





Wider on east side

Kuebler Blvd

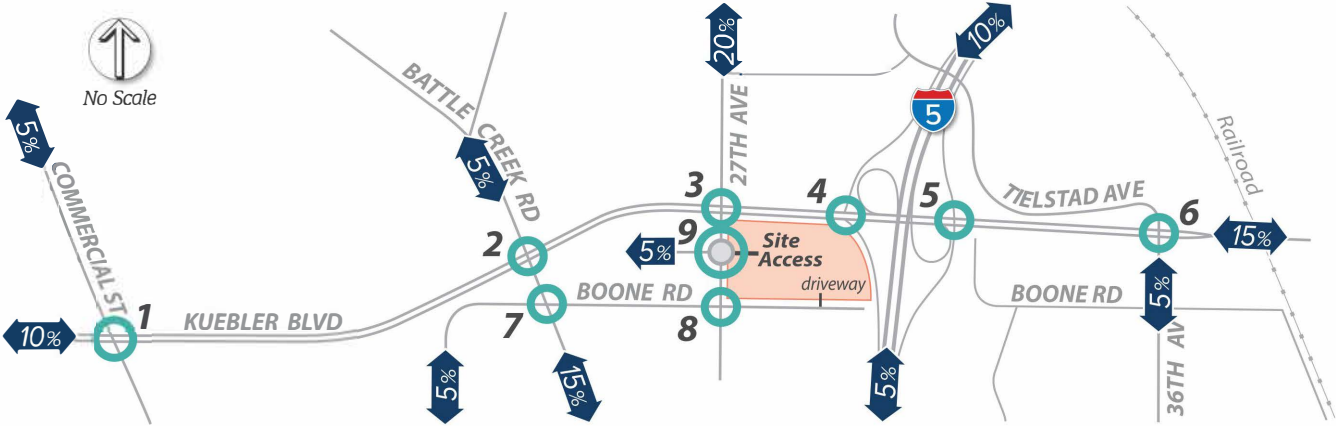
Battle Creek Road

Hold West Curb

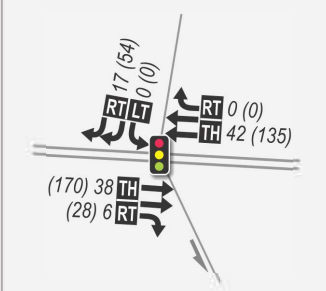
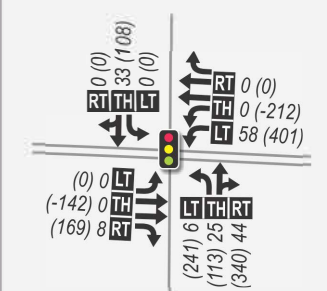
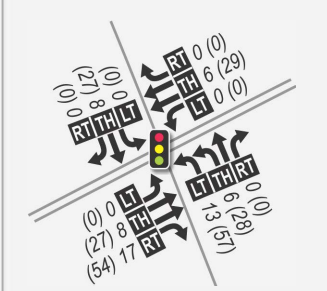
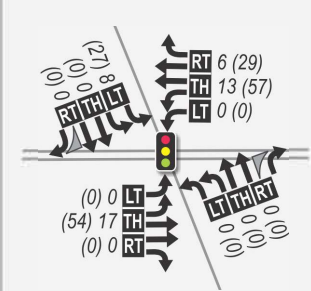


Planning Level Engineers Estimate

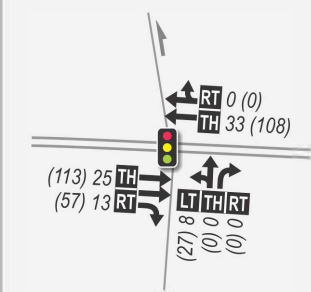
Item No.	Description	Estimated Quantity	Unit	Unit Price	Lump Sum Value
<u>Kuebler & Battle Creek - Install Second SBL</u>					
1.	Excavation & Demolition	ALL	L.S.	Lump Sum	\$250,000.00
2.	Baseroack, Paving & Concrete	ALL	L.S.	Lump Sum	\$500,000.00
3.	Retaining Walls	ALL	L.S.	Lump Sum	\$350,000.00
4.	Stormwater Improvements	ALL	L.S.	Lump Sum	\$100,000.00
Subtotal					\$1,200,000.00
<u>Kuebler Blvd & 27th - Dual NBR & NBL and Update Phasing</u>					
1.	Excavation & Demolition	ALL	L.S.	Lump Sum	\$200,000.00
2.	New ADA Ramps	ALL	L.S.	Lump Sum	\$35,000.00
3.	Baseroack, Paving & Concrete	ALL	L.S.	Lump Sum	\$800,000.00
4.	Retaining Walls	ALL	L.S.	Lump Sum	\$190,000.00
5.	Stormwater Improvements	ALL	L.S.	Lump Sum	\$175,000.00
6.	New Traffic Signal & Phasing	ALL	L.S.	Lump Sum	\$300,000.00
Subtotal					\$1,700,000.00
<u>Kuebler Blvd & 36th - Separate WBR Lane</u>					
1.	Excavation & Demolition	ALL	L.S.	Lump Sum	\$70,000.00
2.	New ADA Ramps	ALL	L.S.	Lump Sum	\$15,000.00
3.	Baseroack, Paving & Concrete	ALL	L.S.	Lump Sum	\$130,000.00
4.	Retaining Walls	ALL	L.S.	Lump Sum	\$60,000.00
5.	Guardrail	ALL	L.S.	Lump Sum	\$25,000.00
6.	Relocate Traffic Signal	ALL	L.S.	Lump Sum	\$200,000.00
Subtotal					\$500,000.00
<u>27th Ave & Site Access - Add WBR Lane to Roundabout</u>					
1.	Excavation & Demolition	ALL	L.S.	Lump Sum	\$150,000.00
2.	New ADA Ramps	ALL	L.S.	Lump Sum	\$35,000.00
3.	Baseroack, Paving & Concrete	ALL	L.S.	Lump Sum	\$365,000.00
4.	Retaining Walls	ALL	L.S.	Lump Sum	\$50,000.00
Subtotal					\$600,000.00
<u>Mitigation Cost Estimate</u>					
Kuebler & Battle Creek - Install Second SBL					\$1,200,000.00
Kuebler Blvd & 27th - Dual NBR & NBL and Update Phasing					\$1,700,000.00
Kuebler Blvd & 36th - Separate WBR Lane					\$500,000.00
27th Ave & Site Access - Add WBR Lane to Roundabout					\$600,000.00
TOTAL					\$4,000,000.00



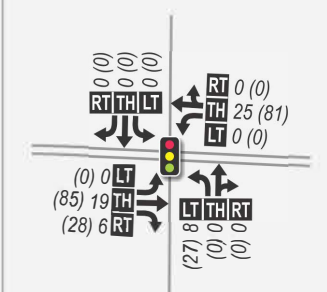
1. Kuebler Blvd. @ Commercial St. **2. Kuebler Blvd. @ Battle Creek Rd.** **3. Kuebler Blvd. @ 27th Ave.** **4. Kuebler Blvd. @ I-5 SB Ramps**



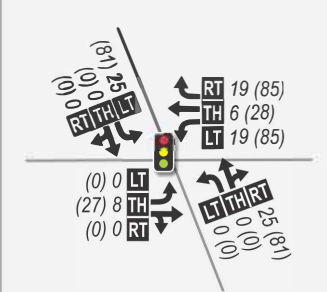
5. Kuebler Blvd. @ I-5 NB Ramps



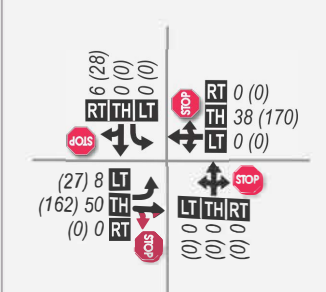
6. Kuebler Blvd. @ 36th Ave.



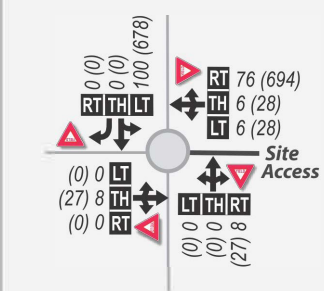
7. Battle Creek Rd. @ Boone Rd.



8. 27th Ave. @ Boone Rd.



9. Site Access @ 27th Ave. (Roundabout)



Current Zoning Trip Generation:

166 In | 126 Out

Proposed Zoning Trip Generation:

Primary 540 In | 566 Out
Pass-By 354 In | 354 Out

Study Intersection 0% Trip Distribution

Generated Trips

000 Current Zoning
(000) Proposed Zoning

← Lane Configuration
Volume Turn Movement
LT TH RT Left-Thru-Right

STOP Stop Sign
Yield Sign
Traffic Signal



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December 10, 2021

Via Electronic Mail
City of Salem Planning Commission
C/O Olivia Dias, Current Planning Manager
City of Salem Community Development
555 Liberty ST SE
Salem OR 97301

RE: MINOR COMPREHENSIVE PLAN MAP AMENDMENT & ZONE CHANGE CASE NO. CPC-ZC21-04; FOR PROPERTY LOCATED AT 2900 BLOCK OF KUEBLER BLVD SE (AMANDA APPLICATION NO. 21-115803-ZO; 21-115805-ZO)

Dear Members of the Planning Commission:

This firm, together with Mark Shipman, represents the applicant for the above captioned matter. Please include this letter in the record of that matter. This letter is designed to update you on progress to date, current events and to answer questions that came up at the planning commission's November 2, 2021 hearing. We appreciate your patience in allowing us to work with city staff to understand and address their concerns. The applicant has also met with SGNA in an effort to understand and address their concerns.

City Concerns

The applicant appreciates the time taken by city staff to work through issues and identify areas of agreement and disagreement. As you know, planning staff found that the application met all relevant approval standards other than those related to Oregon's Transportation Planning Rule (TPR), which essentially requires that the applicant demonstrate that with the proposed plan amendment and zone change in place, the functional classification and performance of relevant transportation facilities will be no worse at the end of the 20-year planning horizon, than they would have been without the proposal. After meeting with staff, it became clear that there are several issues regarding transportation/traffic that are not in serious dispute:

- With the applicant's proposed transportation improvements, all relevant transportation facilities will function at the same LOS and v/c than they would function without the proposal. In some cases, they will function better. The one exception is Kuebler and 36th. That facility fails at the end of the planning horizon with or without the proposal and the ultimate solution (providing additional capacity for Kuebler Boulevard through traffic) requires a significant improvement to, or new bridge over, Mill Creek, which is the downstream bottleneck. The only reasonable mitigation at the intersection of Kuebler and 36th

is the installation of a westbound right-turn lane, and the developer has agreed to pay a proportionate share of that improvement.

- ODOT agrees that the DKS transportation/traffic analyses are sound, based upon best practices and ODOT does not ask for any additional mitigation than proposed.
- The methodologies, sources, data collection and analyses performed by DKS are appropriate, based upon best practices and the city Public Works Standards. In other words, there is no claim that DKS' work is the result of funny business.
- The City public works standards do not contemplate or allow weekend traffic hours to be used in the analysis, providing:

(1). Traffic counts shall be collected for both the AM (6:00-9:00 AM) and the PM (3:00-6:00 PM) peak.

(2). Traffic counts shall be collected on a Tuesday, Wednesday, or Thursday that is not a city, state or federal holiday, when K-12 school is in session.

- A trip count taken by the applicant in October, showed that there are fewer trips on the affected intersections on the Kuebler system, than estimated in the DKS counts and reports in the record. Because the October 2021 counts are so much lower, if the October 2021 count were used, the applicant could not be required to improve the intersection at Battle Creek and Kuebler, as they are offering to do in this proceeding.
- The applicant is willing to stick with their pre-pandemic counts and construct the Battle Creek / Kuebler intersection improvement already promised, regardless of the bullet above.
- The applicant's proposed transportation improvements are double their proportionate share.
- The city will be changing the plan designation and zone of the subject property to something economically beneficial - while the property was slated for CR (what the applicant seeks) under "Salem Futures," since the application was submitted, it is now apparently slated for CO under "Our Salem."
- The traffic associated with CO planning and zoning does not result in the relevant transportation facilities faring any better than they do under the proposed CR planning and zoning.
- The city has the chance to have necessary improvements at the relevant intersection performed at the developer's expense, rather than the city's if the

proposal is approved. If the developer is denied, the city will be required to establish transportation system adequacy for the uses permitted in the CO zone.

- The applicant answered all of public works' questions about the traffic analysis and the proposed mitigation improvements and provided requested schematics to show the applicant's work.
- The city council approved the Costco counts finding them accurate and credible, 29 times in the Costco approval. No one doubts that the Costco counts are accurate or credible.
- When Costco initially opens in March or April of 2022 and for some period of months after, traffic to the Costco site will be unusually high. This is always the case with the opening of a new store.
- Taking counts when Costco opens and for some number of months thereafter is inconsistent with best practices, because the counts during that initial period are well-known to be irregular (akin to holiday counts) and not be reflective of normal operations.
- If the applicant were required to wait to submit its application until after Costco counts can reasonably be taken to be reliable, the applicant would be delayed somewhere between nine-months to a year from now.

There should be no area of disagreement, that:

- There are significant costs to carry the subject property, making it reasonably important to the applicant to get a positive revenue stream from developing the property, as soon as possible.
- The area of Salem where the subject property is located has a shortage of commercial facilities to serve the population there.
- State law (ORS 197.520) provides that "no city" is allowed to "adopt a moratorium" on "land development" without first holding a hearing about imposing a moratorium and writing findings that justify it. The justification has to explain that there is a real problem, that (1) the city's regulations are inadequate to prevent the harm, (2) is the moratorium is limited so residential and commercial development is not "unreasonably restricted by the adoption of the moratorium." (3) alternatives to the moratorium are "unsatisfactory", (4) the harm caused by the moratorium, including shifting needed commercial and residential development to other jurisdictions, is outweighed by the harm of not imposing the moratorium, and (5) that the city has the resources to solve the problem within 120 days of the moratorium being declared. ORS 197.520(3)(a)

and (4). One six-month extension can be granted on findings that the city is making progressive on solving the problem causing the problem.

- The demand that the developer wait a year for Costco normative counts is a moratorium without bothering to follow the state law requirements for doing so.

The only area of disagreement is that the city wants the applicant to wait until after Costco opens sometime in March or perhaps April, which in order to get normative counts means no counts can be taken for somewhere between 9 months to a year from now and the applicant simply cannot do that.

SGNA

The applicant very much appreciated the chance to work with SGNA on this application. It appears that SGNA's concerns are they do not want another "big box" (i.e. store larger than 70,000 sq ft) in the area and had concerns about drive-through windows. The applicant does not intend a "big box" that SGNA worries about so that concern may be resolvable if we can otherwise come up with a global resolution. However, the drive-through window concern will be hard to accommodate given the new COVID world where consumers expect to drive through stores/pharmacies/banks/restaurants rather than doing pretty much anything in-person. The applicant hopes to continue to dialogue with SGNA and gain their support.

Issues Raised at the Nov 2 Hearing

There was concern about whether the applicant met the "better than or equal to" standard for a plan amendment. The easy answer is that the applicant need not meet the "better than or equal to" standard. SRC 64.025(e)(2)(A) requires that the Minor Plan Amendment be justified based on the existence of one of the following:

- (i) Alteration in Circumstances;
- (ii) Equally or Better Suited Designation; or
- (iii) Conflict between the Comp Plan Map Designation and the Zoning Designation.

See pg. 6 of the Staff Report.

The applicant explained in its application materials, and staff agreed, that the request met both (i) and (ii). See pg. 7 of the Staff Report. There is no dispute that there has been an alteration in circumstances in the area and so regardless of the (ii) standard, the applicant meets at least one of those standards - clearly (i).

There was a concern about climate change. There is no approval standard that makes climate change relevant to this application and, as a technical matter, approval or denial is supposed to be based upon the standards and criteria in the city's code. ORS 227.173(1). However, the applicant understands this issue is important and points out here that there should

be no dispute that there is a serious unmet need for commercial uses (retail, office) in this part of the city. There is also a significant amount of housing in this area. In the absence of places where people can walk or drive less to get the goods and services that they need, such as by approval of the proposal, they will be forced to drive greater distances to get what they need. Part of the solution to climate change is providing goods and services in proximity to the people who need them.

With respect to traffic, DKS submitted a supplemental memorandum with supporting attachments today that responds to specific city concerns that were raised in an email memorandum that framed our post-hearing discussions with staff. It answers the specific staff questions that were presented.

Conclusion

It is our sincere hope that you will agree that the applicant has demonstrated that the proposal meets all relevant approval standards. So far as we know, we have done so. The only outstanding issue is whether the applicant should be denied because they must wait to submit their application until such time as Costco opens and traffic therefrom normalizes. However, it is respectfully submitted that denial on that basis is not allowed under either the city code or state law. And, in fact and as a matter of law, there really should be no dispute on that point. Approval is the appropriate course and the city can be confident that approval of the project means that relevant transportation facilities will function no worse than they would without the proposal and in some cases better; the city will get a pleasant commercial center that is needed for this part of the city; and critical transportation infrastructure that is needed regardless will be paid for by the developer, rather than the city. Thank you for your consideration.

Very truly yours,



Wendie L. Kellington

WLK:wlk

CC: Client
Mark Shipman, Esq.
Lacy Brown, DKS