



LAND USE APPEAL APPLICATION

NOV - 7 2018

COMMUNITY DEVELOPMENT

1. **GENERAL DATA REQUIRED** *[to be completed by the appellant]*

SPR-DAP18-15

10/23/2018

Case # Being Appealed

Decision Date

2500-2600 Boone Road SE, Salem, OR 97306

Address of Subject Property

South Gateway Neighborhood Association, 1347 Spyglass Court, SE, Salem OR 97306

Appellants Mailing Address with zip code

glennbaly12345@gmail.com

503-586-6177

Appellant's E-mail Address

Day-time Phone / Cell Phone

Appellant's Representative or Professional to be contacted regarding matters on this application, if other than appellant listed above:

Glenn Baly, Chair

1347 Spyglass Court SE, Salem, OR, 97306

Name

Mailing Address with ZIP Code

glennbaly12345@gmail.com

503-586-5177

E-Mail Address

Day-time Phone / Cell Phone

2. **SIGNATURES OF ALL APPELLANTS**

Signature: Glenn Baly Date: 11/6/2018

Printed Name: Glenn Baly

Signature: _____ Date: _____

Printed Name: _____

3. **REASON FOR APPEAL** Attach a letter, briefly summarizing the reason for the Appeal. Describe how the proposal does not meet the applicable criteria as well as verification establishing the appellants standing to appeal the decision as provided under SRC 300.1010

FOR STAFF USE ONLY

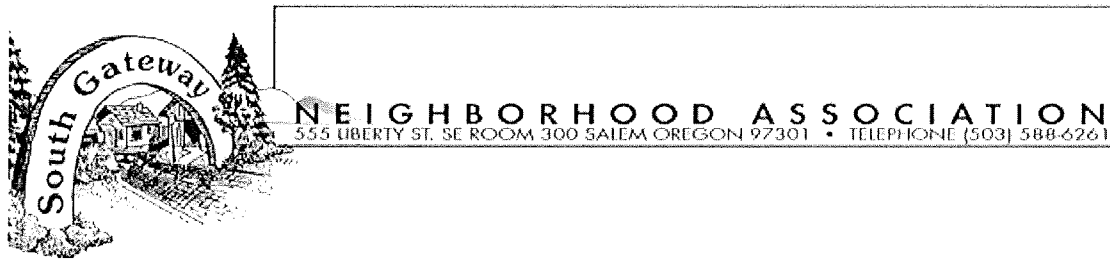
Received By: Brandon Pike

Date: Nov 7, 2018

Receipt No: _____

Appeal Deadline: Nov 7, 2018

Case Manager: Aaron Panko



November 4, 2018

City of Salem Planning Division
Room 305
555 Liberty Street SE
Salem, OR 973

The South Gateway Neighborhood Association Standing and Summary of Appeal Issues for:

Salem Costco – Class 3 Site Plan Review/Class 2 Driveway Approach Permit

Case No. SPR-DAP18-15

Decision Date October 23, 2018

Standing

The South Gateway Neighborhood Association has standing to appeal this permit under SRC 300.520(f)(2) because it submitted public comments on the proposal and is the City-certified neighborhood association for the area where the subject property is located.

Reasons for Appeal

1. Size, Scale and Uses of the Development are not Permitted

This property was rezoned for a Community Retail Shopping Center, not for a big box retail warehouse and fueling depot. Only a shopping center of the type represented by Pacific Realty in 2006, and as described and approved in the Conditions in CPC/ZC06-06 can now be approved. The prior approval Conditions on the property are, pursuant to SRC 300.820(b), treated as a part of the UDC. As a part of the UDC, those Conditions constitute approval criteria that must be met - per SRC 220.005(f)(3)(A).

The current permit is contrary to those prior binding Conditions, including but not limited to Condition #14 (which stated that the rezoned property “shall” be used for a “retail shopping center.”). The current proposal exceeds what the SRC defines to be a “shopping center” under SRC 111.001 – as it includes uses (such as a fueling depot) not allowed in the “retail sales and service use category” as that term is defined in the SRC.

The current approval is also contrary to the prior procedural and substantive findings made to support the prior Zone change and Comprehensive Plan Amendment for this site. In granting a Rezone, the City Council specifically relied upon applicant's affirmative representations about what would or would not be proposed for the site. Those included representations that no gas station/fueling depot would be proposed and that a big box store such as a Wal-Mart would not be proposed. Having previously represented to the City that the Rezone would not result in construction of or involve a big box retail warehouse and/or fueling station, the Applicant should be stopped from now pursuing such a use on the property. The fueling depot is scaled far beyond the accepted definition of "gasoline service station" and should be classed as an Industrial facility as defined in the Comprehensive Plan and should only be permitted in Industrial Commercial (IC) zoning. "Gasoline stations" are specifically excepted by the SRC from being part of retail shopping center sites, under SRCv400.045(b)(3) (A). Costco bills itself as a wholesale warehouse and wholesaling uses are prohibited in CR zones, per SRC 22.005(a)(Table 522-1). So approval was contrary to the UDC. Warehousing is only allowed as a Conditional use in such zones. As a result, this application requires a variance and zone change and should be considered as a Type III, rather than Type II procedure under SRC 300.100 (Table 300-2) and SRC 245.005(b). A variance under SRC Chapter 245 and a conditional use permit under SRC 240.005/ and or a zone change under SRC 256.005 are necessary for this project as proposed.

2. Traffic Issues

The Traffic Impact Analysis (TIA) used to approve this permit is inadequate and fails to meet the requirement of a safe, orderly and efficient transportation system as required under SRC 220.005(f)(3)(B). The TIA methodology and assumptions are flawed and don't consider traffic impacts of other developments already approved or under way in the traffic impact areas. A preliminary list of flaws with the TIA is attached.

3. Tree Preservation

The approval and conditions do not adequately protect the Oregon White Oak trees on the site, which are significant and qualify for listing as heritage trees. The applicant did not cite any circumstances making tree removal necessary for this development. The applicant rejected any alternative that preserved all, most, or even some of these trees. This is contrary to the spirit and intent of SRC 808.001.

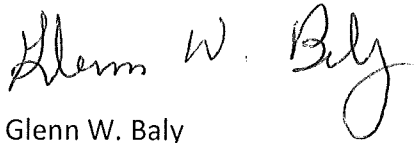
These trees should have been protected and should have been designated heritage and significant trees under SRC 808.010 and SRC 808.015. No permit should have issued under SRC 808.025 or removal allowed without a permit under SRC 808.030(2)(L), because removal was not proven to be necessary for the construction of these facilities.

4. Stormwater

As a "large" project, the proposed development is required to utilize surface stormwater detention and filtration, including runoff from the roof as specified on the drawings submitted with the recent subdivision actions. It appears that the current proposal may be violating State, Federal and City requirements relating to these important elements. Limited calculations based on total detention indicate that the project can meet a 5-year storm of 1.5 inches in 24 hours, but not the required 10-year storm standard or contain a 24-hour, 100-year storm as is being claimed.

Please contact me if you have questions or need more information. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink that reads "Glenn W. Baly". The signature is fluid and cursive, with the first name "Glenn" being the most prominent.

Glenn W. Baly

Chair

South Gateway Neighborhood Association

glennbaly12345@gmail.com

CC: City of Salem Mayor Chuck Bennett and City Council Members

Preliminary List of Flaws in Applicant's TIA

a) Trip Generation & Coverage

- The TIA provides little evidence regarding the derivation of the trip generation figures that were used in establishing trip generation. Applicant merely refers to an internal database, but provides no data for verification such as trip generation figures for the existing Salem Costco. City of Salem Administrative Rules Section 6.33 requires trip generation to be based on the Institute of Transportation Engineers Trip Generation Manual. The TIA refers to an abundance of information from other Costco locations but provides none of that data that supports the use of an alternative trip generation or pass-by rate (May 31, 2018 TIA, pg. 19; August 9, 2018 TIA, pg. 2). City standards don't allow for a derivation from the ITE Trip Generation Manual and states that "[f]or land uses not listed in the ITE Trip Generation Manual, studies for similar development in similar regions may be used upon approval by the City Traffic Engineer." Certainly, the Trip Generation Manual provides data for the proposed uses.
- The TIA estimates 7,210 new daily trips. A review of five other traffic impact analyses for Costcos in Oregon, Washington and California (see attached) found that this is less than all but one of the traffic impact analyses. The Central Point, Oregon Costco TIA estimated 10,670 new daily trips even though it services a smaller population area than the proposed Kuebler Gateway Shopping Center Costco.
- The TIA assumed a 34% pass-by trips based on a general retail category in the Institute of Transportation Engineers Trip Generation Manual. The discounted supermarket category pass-by trips category, which aligns closer to a Costco Wholesale, is 21%. The project TIA should be recalculated using the discounted supermarket pass-by assumption. The applicant says that the 34% pass-by rate is based on their Costco traffic database, but fails to provide specific data for review or provide data from the current Salem Costco that supports a 34% rate.
- Kittleson recently collected June traffic counts to validate the December count for one intersection (I-5 southbound at Kuebler Blvd.) to fulfill the ODOT recommended seasonal adjustment pointed out in review comments. Nine of the ten intersections in the TIA, including the intersection of Battle Creek Rd and Kuebler Blvd at mobility target ($v/c=0.90$) with the assumed higher saturation rate (1900), still have not been reassessed using the ODOT recommended seasonable adjustment. City staff provide no justification for why the applicant was not required to provide seasonally adjusted traffic counts for these intersections.
- The TIA does not include traffic resulting from all potential development affecting the project area, including:

- o CPC-ZC-UGA18-02 (Kuebler Cascade View)
- o CPC-ZC16-01 (Kuebler Station)
- o Strong Rd at 27th St Subdivision
- o Amazon Distribution Facility (opening in 2019)

These projects, individually and cumulatively, will have significant impact on area traffic volumes and should be included in the TIA since they weren't addressed in the property zone change in 2006.

City staff state that only "proposed development that has been permitted and is reasonably expected to be operational at the time the proposed development opens" were required for the application, but fails to address why the Amazon Distribution Facility was not included even though it is expected to open in 2019. It is also our contention that staff should have required all proposed development, not just those expected to open in 2019, due to the cumulative impact of the proposed development in the area.

- The TIA's coverage area should have included Battle Creek to the north of Kuebler (Pringle Rd/Reed Rd; Battle Creek south all the way from Kuebler to at least the planned Fabry Road extension from Reed Lane to Battle Creek; and west of Battle Creek Road on Boone Road around the curve to Reed Lane and west on Barnes and Baxter to Commercial Street. Probably even further south on Reed Lane to Mildred Road. All these streets are collectors/arterials and are critical parts of both the street and bike route networks and would be affected by the increased traffic resulting from the project. City staff provide no justification for why these intersections were not included in the TIA coverage area.

- Salem requires horizon year analysis periods of year of opening for development "allowed under existing zoning" and "year of opening each phase" for "multi-phased development" (Salem Administrative Rules 6.33). The TIA indicates that the year of opening for the proposed development is 2019. For such a large project, it would seem difficult to attain a year of opening in 2019. Additionally, this project is proposed to be constructed as a multi-phased development although no schedule has been provided in the TIA. The May 31, 2018 TIA states that "[t]he proposed Costco will include a warehouse and fuel station with four islands and the potential to add a fifth island in the future (30 fueling positions)." Due to the lack of detail in the trip generation estimates, it's unclear whether the trip generation presented includes four islands or five islands nor how many islands fueling positions are even proposed at this time versus the future. Additionally, the site plan illustrates a certain amount of retail as a "future phase." Again, there are no specifics about what will be constructed by 2019 versus some other time unknown time period. No timeline is provided in the development application, TIA or Decision justifying that the project will be completed in 2019 justifying that the 2019 horizon year.

b) Traffic Flow & Management

- The TIA assumes that 42% of southbound right turns at the I-5 Southbound/Kuebler Boulevard intersection are made on red signal indication (May 31, 2018 TIA, pg. 4). This assumption is not based on any submitted evidence and varies from the default right turn on red assumptions according to industry standard. Applicant stated that counts and video observation led to the 42% right-turn-on-red, but failed to provide any supporting data.
- The TIA relies on an ideal saturation flow rate of 1,900 vehicles per hour of green per lane for all intersections and lanes. The City requires that "ideal saturation flow rates greater than 1,800 vehicles per hour should not be used unless a separate flow rate analysis has been completed." A separate analysis was completed for a very limited number of intersections and movements. Some of the most congested movements were analyzed and determined that the use of 1,900 vehicles per hour per lane was appropriate for most of the movements that were studied. In all, the study evaluated two intersections and a total of three intersection approaches in the weekday PM peak hour only. The TIA currently analyzes the impacts at nine intersections and 31 different approaches in two different time periods. While 1,900 vehicles per hour per lane may be appropriate at the most congested approaches, there is no evidence that supports the use of an ideal saturation flow rate at the remaining 28 intersection approaches. Considering the impacts of both the weekday PM and Saturday peak hours, a total of 59 approaches were not studied. Additionally, as described before, the need for a weekday AM peak hour analysis was ignored. The southbound left turn at the I-5 SB/Kuebler Boulevard intersection was observed to have a saturation flow rate of 1224 vehicles per hour per lane, but was not adjusted to 1800 vehicles per hour per lane.

The City decision provides no justification for why the applicant was allowed to apply a limited flow rate analysis to the remaining intersections.

- During the weekday PM peak hour, the westbound through movement queue length at the Kuebler Boulevard/27th Avenue intersection is anticipated to be 500 feet, blocking the westbound left turn lane (August 9, 2018 TIA, pg. 9, Table G) with the approval of the development.
- During weekday PM peak hour, the northbound right turn movement queue length at the Kuebler Boulevard/27th Avenue intersection is anticipated to be 325 feet, extending into the roundabout at 27th Avenue/Costco site access (August 9, 2018 TIA, pg. 9, Table G) with the approval of the development.

- The TIA states that “[a]ll of the intersections with changes included optimized signal timings given the significant changes planned at these intersections” (May 31, 2018 TIA, pg. 13). Apparently, no signal timing changes were made to the other intersections. The intersections along Kuebler Boulevard operate in coordination with the other signalized intersections. In order to depict realistic operations, the applicant should be required to analyze those other intersections as well with revised signal timing. The city should review the proposed signal timing to ensure that what is proposed would be acceptable. The proposed signal timing should be required to be implemented by the applicant.

- Only three intersections were evaluated using a simulation-based queuing analysis. The more critical intersection of question: Battle Creek Rd/Kuebler Blvd, and Battle Creek Rd/Boone Rd were simply not reported and omitted. This information should have been provided especially when the re-calculated trip generation for the proposed retail pads were projected to be higher than the original estimation using the fitted curve methodology. In order to capture realistic queue lengths and spillover effects in an urban setting such the case in the study area, a microscopic simulation model such as SimTraffic should be utilized to report the queue lengths for closely spaced intersections such are many of the intersections in the study area.

Concern not address by applicant or City Staff in Decision

- The intersection of I-5 Southbound/Kuebler Boulevard and Kuebler Boulevard/27th Avenue have apparently been analyzed incorrectly. Exhibit 1 of the August 9, 2018 TIA illustrates channelized southbound dual right turn lanes turning into three westbound through lanes on Kuebler Boulevard that extend all the way to the Kuebler Boulevard/27th Avenue intersection. The dual southbound lanes are not channelized behind an island nor are there three westbound lanes on Kuebler Boulevard. Additionally, the channelized right turn lane at the I-5 Southbound/Kuebler Boulevard intersection should have been modeled as a yield control not a free movement. Concern not addressed by applicant or City staff in Decision.

- During total traffic 2019 – PM condition, the northbound right turn movement queue length (306ft) for the intersection of 27th St and Kuebler Blvd exceed the available storage (290ft) when utilizing the ODOT calibration (preferred simulation parameters).

- During total traffic 2019 – PM condition, the westbound through movement queue length (490ft) is anticipated to cause significant blocking for movement attempting to occupy the storage lane to make a westbound left turn at the intersection of 27th St and Kuebler Blvd.

- The intersection of Battle Creek Road/Boone Road crash rate is ranked higher than other comparative intersections. This intersection is proposed to be signalized, however further investigation is needed to evaluate other alternative solution to mitigate for this higher than usual crash rate. While a signal might address certain type of crashes, it may increase other

types of crashes (May 31, 2018 TIA, pg. 6). Concern not addressed by applicant or City staff in Decision.

- The TIA provides no analysis of queuing associated with the gas station. The Tigard Costco has had to make modifications to their on-site queue storage due to heavy demand. It is possible that gas station queuing could extend into primary entrance from 27th Avenue. Concern not addressed by applicant or City staff in Decision.