

## Legislation Details (With Text)

**File #:** 18-556 **Version:** 1

**Type:** Public Hearings **Status:** Failed

**In control:** City Council

**On agenda:** 12/10/2018 **Final action:** 12/10/2018

**Title:** City Council review of an appeal of the Planning Administrator's decision approving Class 3 Site Plan Review / Class 2 Driveway Approach Permit Case No. SPR-DAP18-15 for development of the Kuebler Gateway Shopping Center, including Costco, a retail fueling station, and four new retail shell buildings.

Ward(s): 4  
Councilor(s): McCoid  
Neighborhood(s): South Gateway Neighborhood Association

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Vicinity Map, 2. Planning Administrator's Decision SPR-DAP18-15, 3. Anuta Appeal Letter Dated November 7, 2018, 4. SNGA Appeal Letter dated November 7, 2018, 5. Additional Public Testimony, 6. PacTrust's Appeal Response, 7. WN2018-0617 Response from DSL, 8. Additional Public Comment received by 5:00 p.m. on 12-5-18, 9. Additional Public Comment received by 3:30 p.m. 12-10-18, 10. Additional Public Comment Received by 5:00 p.m. 12-10-18

Date	Ver.	Action By	Action	Result
12/10/2018	1	City Council	denied	Pass

**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Norman Wright, Community Development Director

**SUBJECT:**

City Council review of an appeal of the Planning Administrator's decision approving Class 3 Site Plan Review / Class 2 Driveway Approach Permit Case No. SPR-DAP18-15 for development of the Kuebler Gateway Shopping Center, including Costco, a retail fueling station, and four new retail shell buildings.

Ward(s): 4  
Councilor(s): McCoid  
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**ISSUE:**

Shall the City Council affirm, amend, or reverse the Planning Administrator's decision for Class 3 Site Plan Review and Class 2 Driveway Approach Permit Case No. SPR-DAP18-15?

## **RECOMMENDATION:**

Staff recommends that the City Council AFFIRM the October 23, 2018 Planning Administrator's Decision.

## **SUMMARY AND BACKGROUND:**

The subject property consists of approximately 24.36 acres in size and has frontage along Kuebler Boulevard SE, 27<sup>th</sup> Avenue SE, Boone Road SE and Battle Creek Road SE (Attachment 1). The Planning Administrator approved consolidated Class 3 Site Plan Review and Class 2 Driveway Approach Permit applications subject to conditions of approval (Attachment 2). Two notices of appeal were filed, the first from Karl G. Anuta on behalf of appellants Lora Meisner, William Dalton, and John D. Miller (Attachment 3), the second from the South Gateway Neighborhood Association represented by Glenn Baly, Chair (Attachment 4). Additional public testimony received after the October 23, 2018 Planning Administrator decision was issued is included (Attachment 5).

## **FACTS AND FINDINGS:**

### Procedural Findings

1. In December 2007, City Council adopted a final order affirming a Comprehensive Plan Change and Zone Change Case No. CPC/ZC06-06 for a portion of the subject property changing the Comprehensive Plan Map Designation from "Developing Residential" to "Commercial" and changing the zoning from RA (Residential Agriculture) to CR (Retail Commercial). The final order for CPC/ZC06-06 can be downloaded at the link [HERE](https://www.cityofsalem.net/Pages/planning-notice-decisions.aspx) [<https://www.cityofsalem.net/Pages/planning-notice-decisions.aspx>](https://www.cityofsalem.net/Pages/planning-notice-decisions.aspx).
2. On June 6, 2018, Class 3 Site Plan Review and Class 2 Driveway Approach Permit applications were submitted to the Planning Division. Staff notified the applicant of missing or incomplete items.
3. After receiving additional information, the applications were deemed complete for processing on September 4, 2018.
4. On October 23, 2018, the Planning Administrator issued a decision approving SPR-DAP18-15.
5. On November 7, two Notices of Appeal were filed by Karl G. Anuta and the South Gateway Neighborhood Association.
6. At the November 13, 2018 regularly scheduled meeting, the City Council voted to initiate the

review of the appeal of the Planning Administrator's decision.

7. On November 20, 2018, notice of the hearing was sent to the South Gateway Neighborhood Association and surrounding property owners pursuant to Salem Revised Code requirements. Notice of the hearing was posted on the subject property on November 27, 2018.
8. The 120-day State mandated deadline for final decision is January 2, 2019, however, on October 15, 2018 the applicant provided a 30-day time extension, extending the 120-day State mandated deadline for final decision to February 1, 2019.

## Substantive Findings

1. The applicable criteria and considerations that must be satisfied for the approval of the Class 3 Site Plan Review and Class 2 Driveway Approach Permit are included within the Salem Revised Code (SRC) Site Plan Review chapter (SRC Chapter 220), under section 220.005(f)(3), and the Driveway Approach Permit chapter (SRC Chapter 804), under section 804.025(d).

Findings addressing the applicable approval criteria for the proposed Class 3 Site Plan Review and Class 2 Driveway Approach Permit are included in the October 23, 2018 decision, which is included as Attachment 2 to this report and incorporated by reference. PacTrust has submitted a response to the appeal which can be found in Attachment 6.

2. Objections raised by the appellants are summarized below.
  - a. The Size, Scale, and Uses of the Development are Not Permitted.

**Staff Response:** The appellants state that only a shopping center of the type represented by Pacific Realty in 2006 can be approved for the subject property. Specifically, that the proposed use is contrary to conditions of approval from CPC/ZC06-06, including Condition 14 which states that the subject property shall be developed with a retail shopping center.

SRC Chapter 111 defines shopping center as follows:

*A group of businesses falling primarily under the retail sales and service use category that form a centralized unit and that have a joint parking area available for use by patrons of any single business.*

Not all businesses within a shopping center are required to fall under the retail sales and service use category, so long as the businesses primarily fall under the retail sales and service category. In addition to Costco, which is classified as a retail sales use, the applicant is proposing to develop four new retail shell buildings. While the tenants have not been determined at this time, future uses for these buildings will likely be retail sales, eating and drinking establishments, or personal services uses, all uses that fall under the retail sales and service category.

The proposed fueling station is classified as a motor vehicle services use, which is not included in the retail sales and service use category, however, the fueling station does not represent the primary group of businesses proposed in the application either in terms of the amount of site area devoted to the activity, relative number of employees, relative amount of trips or sales. The proposed development is consistent with the definition of shopping center found in SRC Chapter 111.

The proposed gasoline service station (motor vehicle services use) is allowed as an outright permitted use in the CR (Retail Commercial) zone per Table 522-1. Further, there are no conditions from CPC/ZC06-06 that prohibit a motor vehicle services use from being developed on the subject property.

The appellants state that Costco should be classified as a wholesale warehouse. Wholesale sales uses are characterized as follows:

*General wholesaling is characterized by sales of physical products primarily to customers other than the general public, including retailers, other wholesalers, and industrial, commercial, institutional, farm, or business users. The general public rarely comes to the site.*

Other than referencing the business name as "Costco Wholesale" the appellant does not describe why the wholesale sales use category is a better classification for Costco than retail sales. Retail sales uses are characterized as follows:

*Retail sales is characterized by the sale, lease, or rental of products directly to final consumers, but may include the sale, lease, or rental of products to contractors. Visits by customers are generally not scheduled. Stores are typically open to the general public.*

Costco defines itself as membership warehouse club. While it's true that the store is not open to the general public, only to members, visits by members are frequent and are generally not scheduled and typically involve the sale of products directly to final consumers, consistent with the characteristics of a retail sales use. Further, the number of vehicle trips generated by Costco is similar to other businesses in the retail sales category, rather than the significantly lower number of trips associated with a wholesale sales use.

b. Traffic Impact.

**Staff Response:** The three documents submitted by Kittelson and Associates for the proposed Kuebler Gateway Shopping Center (May 13, 2018 "Traffic Impact Analysis (TIA)", the August 9, 2018 "Response to City and ODOT Review Comments" and the September 17, 2018 "Response to ODOT Additional Review Comments") have been reviewed by both City and ODOT staff and adequately addresses our transportation related concerns.

The TIA was scoped to analyze the same intersections that were evaluated for the original 2006 Comprehensive Plan Change and Zone Change for this property, however the City did not require the Saturday peak hour analysis because the weekday PM traffic that occurs between 4 PM and 6 PM is the most critical.

The trip generation and distribution assumptions contained in the TIA meet the City requirements. The data used (trip generation and pass-by trips) is Costco specific, and is better than the national average of "Discount Club" from the Institute of Transportation Engineers (ITE) Trip Generation Manual. The Costco data includes fueling station traffic and provides a more realistic estimate of traffic and operations. The TIA also included and analyzed information available about "in-process" development. The modest background growth for one year provides an increase to the overall background traffic to account for any additional traffic that may be occurring elsewhere.

As part of the analysis, Kittelson collected additional area-specific data to verify some of the assumptions used in the analysis. This includes the actual saturation flow rate on Kuebler Boulevard, and the right-turn-on-red traffic volume at the southbound I-5 ramp terminal. They also collected data at the southbound ramp terminal to show ODOT that traffic volumes in Salem are highest during the school year, so an ODOT seasonal adjustment is not justified.

The TIA analysis includes all of the improvements required by the original 2006 PacTrust CPC/ZC that will be constructed before this development opens, including the right-turn-only driveway from Kuebler Boulevard and a new traffic signal at the intersection of Battle Creek Road SE and Boone Road SE. These improvements and their proposed lane configurations adequately mitigate the traffic impacts from this development and the analysis shows they meet the City of Salem and ODOT mobility standards for the proposed year of opening. City staff concurs with the analysis and its conclusions.

c. Tree Preservation.

**Staff Response:** The appellants state that the significant trees located on the property should be preserved because the applicant has not demonstrated that removal is necessary for the construction of these facilities.

The existing conditions plan indicates that there are eight significant trees on the subject property; each of the significant trees is designated for removal. Pursuant to SRC 808.030(a)(2)(L), a tree and vegetation removal permit is not required for the removal of significant trees when the removal is necessary in connection with construction of a commercial or industrial facility. The applicant has provided a response indicating that the exception found in SRC 808.030(a)(2)(L) is applicable to the proposed development.

The grove of significant trees is located on the southern portion of the subject

property; the proposed site layout places the proposed building footprint for Costco in conflict with the grove of significant trees, requiring all of the trees to be removed. The applicant indicates that several factors were taken into consideration in the layout of the site, including impacts on the residential neighborhood from activities on site, parking lot circulation and truck deliveries to the site, and the location of the fuel station.

The applicant states that the proposed layout best minimizes potential impacts to the residential neighborhood south of Boone Road by utilizing the building itself to screen and buffer on-site activities.

SRC 808.030(a)(2)(L) requires the applicant to demonstrate that the removal of a significant tree is necessary in connection with construction of a commercial or industrial facility. The applicant's site plan and statement addressing SRC 808.030(a)(2)(L) demonstrates a need for removal of significant trees in connection with the proposed commercial development, and therefore, the exception found in SRC 808.030(a)(2)(L) has been met.

d. Air Quality.

**Staff Response:** The appellants state that the proposed activities associated with development of the property, including parking areas, traffic volume, and fuel pumping will significantly degrade air quality.

The City of Salem does not regulate vehicle emissions, and does not currently have any adopted air quality emissions standards for local businesses and/or parking facilities. Development and operation of all facilities on the subject property will be required to comply with all applicable Oregon Department of Environmental Quality rules and regulations regarding emissions.

e. Water Quality.

**Staff Response:** Grading and construction activities within wetlands are regulated by the Oregon Department of State Lands (DSL) and US Army Corps of Engineers. State and Federal wetland laws are also administered by the DSL and Army Corps, and potential impacts to jurisdictional wetlands are addressed through application and enforcement of appropriate mitigation measures. Notice of the proposed development was provided to DSL.

On October 30, 2018, a response was received from DSL indicating that stormwater drainage ponds built as part of Authorization 49112 are not jurisdictional per the State of Oregon and that previously mapped wetland and waterway features are no longer present on the site and have been mitigated for (Attachment 7).

The portion of the subject property within Kuebler Gateway Subdivision is subject to the stormwater management plan adopted under SRC 71.180(c) that was submitted

and approved with SUB14-01. New stormwater requirements in SRC Chapter 71 and Public Works Design Standards (PWDS) became effective January 1, 2014. The proposed subdivision was submitted prior to the effective date of the new requirements. As specified in SRC 71.080(c), because the applicant submitted a stormwater management plan as a part of the subdivision application prior to the effective date of the new ordinance, future Site Plan Review applications shall comply with the applicant's stormwater management plan instead of the stormwater requirements that became effective January 1, 2014. The applicant's engineer for the portion of the subject property within the Kuebler Gateway Subdivision indicated that the future development will comply with the previously submitted stormwater management plan.

As conditioned, the portion of the subject property outside the Kuebler Gateway Subdivision shall be designed and constructed to current water quality and flow control standards as found in SRC Chapter 71 and 2014 Public Works Design Standards (PWDS). The applicant's engineer for the portion of the subject property outside the Kuebler Gateway Subdivision submitted a statement demonstrating compliance with Stormwater PWDS Appendix 004-E(4)(b) and SRC Chapter 71. The preliminary stormwater design demonstrates the use of green stormwater infrastructure to the maximum extent feasible.

## **ALTERNATIVES**

3. The City Council may affirm, amend, or reverse the decision of the Planning Administrator for Class 3 Site Plan Review and Class 2 Driveway Approach Permit Case No. SPR-DAP18-15.
  - a. **AFFIRM** the decision;
  - b. **MODIFY** the decision; or
  - c. **REVERSE** the decision

## **RECOMMENDATION**

4. Based on the facts and findings within the October 23, 2018 decision, staff recommends that the City Council find that the proposed Class 3 Site Plan Review satisfies the applicable approval criteria of SRC Chapter 220, and find that the proposed Class 2 Driveway Approach Permit satisfies the applicable approval criteria of SRC Chapter 804, for Case No. SPR-DAP18-15, and AFFIRM the decision of the Planning Administrator.

Aaron Panko  
Planner III

### Attachments:

1. Vicinity Map
2. Planning Administrator's Decision SPR-DAP 18-15

3. Anuta Appeal Letter dated November 7, 2018
4. SGNA Appeal Letter dated November 7, 2018
5. Additional Public Testimony
6. PacTrust's Appeal Response
7. WN2018-0617 Response from DSL