



August 5, 2022

VIA ELECTRONIC MAIL: LHollenbeck@cityofcamas.us

City of Camas Hearings Examiner
c/o Lauren Hollenbeck, Senior Planner
Community Development | Planning Division
616 NE 4th Avenue
Camas, WA 98607

RE: Applicant's Rebuttal Response Letter
Camas Station (NW Corner of NW 16th Avenue & NW Brady Road)
Your File No: CUP 22-02
Our File No: 12652-30423

Dear Honorable Hearings Examiner:

Our office represents the applicant and property owner, CK Designs, L.P., a California limited partnership (the "**Applicant**"), of the above referenced property in its request for a conditional use permit for its proposed development (the "**Proposed Development**"). Please accept this letter into the record as Applicant's rebuttal response to the additional public and City of Camas ("**City**") comments that have been entered into the record since the July 27, 2022, hearing date.

Opponents to the Proposed Development have raised arguments that the Proposed Development does not satisfy the applicable approval criteria. While it is Applicant's burden to demonstrate compliance with the criteria set forth in the Camas Municipal Code (CMC), the Applicant's burden is to provide substantial evidence in the record that demonstrates it satisfies the approval criteria, not irrefutable proof that the Proposed Development will not have any impact on the surrounding area. While Applicant has already demonstrated compliance with the approval criteria through the materials submitted by Applicant's

Park Place, Suite 200
250 Church Street SE
Salem, Oregon 97301

Post Office Box 470
Salem, Oregon 97308

tel 503.399.1070
fax 503.371.2927

www.sglaw.com

August 5, 2022
City of Camas Hearings Examiner
Page 2

experts as part of its application materials and as confirmed by City Staff in its Staff Report, the Applicant would like to respond to the issues raised by the opposition regarding the approval criteria set forth in CMC 18.43.050.

While many of the opponents did not specifically identify this criterion as the applicable approval criterion, they believed the Applicant did not satisfy, Applicant surmises that the opposition raised zeroes in on five (5) primary concerns regarding the Proposed Development, which are further outlined below, each subsection being in bold, and Applicant's response being in plain text below that.

1. ENVIRONMENTAL IMPACTS

Applicant has identified three primary concerns raised by the opposition in regard to the environmental impact of the Proposed Development: (1) impact on water and soil quality in the event of a leak from underground tanks; (2) impact on wildlife in the area; and overwhelmingly, (3) the impact on air quality:

The opposition raised concerns regarding possible leaks in the underground storage tanks associated with the proposed fueling station. The installation of these tanks is highly regulated at both the federal and state level, with localized authority given to agencies that oversee water and soil contamination. The Applicant will be required to comply with these regulations and would additionally be required to clean up any contamination that occurs due to a leak. These protections ensure that fuel stations are operated in a manner that protects adjacent properties and communities from adverse effects. The mitigation measures identified in the SEPA MDNS, as defined below, will ensure that the proposed use is developed and maintained in a manner consistent with the applicable rules and regulations. The presence of underground tanks and potential for leakage does not render the proposed use incompatible with this area.

One opponent raised a concern that the Proposed Development will have an adverse impact on the surrounding wildlife, including classifications of wildlife not included in the SEPA checklist. The SEPA checklist does not include an exhaustive list of wildlife in the area, so the species identified by the opposition were not selected by the Applicant. However, the Proposed Development is an urban use in an urban area. Gas stations and drive thrus are anticipated uses in these areas and the protection of urban wildlife is not identified as an applicable approval criterion beyond the clean air and water regulations that apply to the Proposed Development. As addressed in detail below, Applicant has complied with the SEPA review process as required. Additional mitigation measures associated with the protection of wildlife was not identified as a requirement by the appropriate regulating agencies.

The opposition raises concerns about the impact of the additional vehicles on the air quality in the surrounding area, especially as it relates to the children accessing the neighborhood schools. The opposition provided several articles regarding the effects of air pollution on student health, several of which were focused on air quality adjacent to gas stations. Applicant was not able to access all of the studies provided by the opposition, however, of the studies Applicant was able to access, the studies appear to be generalized studies regarding air quality, none of which are particularized to the area and none of which directly address whether the SEPA process that the City requires would address the concerns identified in these studies. Applicant, on the other hand, provided information regarding this particular Proposed Development to the appropriate agencies responsible for reviewing and regulating

August 5, 2022
City of Camas Hearings Examiner
Page 3

the environmental impact of the Proposed Development. The applicable agencies agreed that air and water quality would not be adversely impacted by the Proposed Development, provided it complies with the mitigation measures identified in the SEPA Mitigated Determination of Non Significance (“**SEPA MDNS**”). The comments provided by the associated agencies do not raise concerns regarding the air quality in the surrounding area. Further, the Applicant provided particularized evidence that the Proposed Development will not adversely impact the air quality in the surrounding area and the City does not regulate the spacing of gas stations from schools.

As stated in the Staff Report, the Applicant received a SEPA MDNS. These types of determinations require public process and the opposition that appeared at the land use hearing had notice and an opportunity to comment on the proposal at that time. The City reviewed the Applicant’s SEPA Checklist and determined that when mitigated in the manner set forth in the SEPA MDNS, as conditioned, the mitigation would prevent a significant adverse impact. This determination is final and objecting to the SEPA MDNS is an impermissible collateral attack.

In addition to the SEPA MDNS, the Applicant has provided evidence into the record from Clint Lamoreaux, with Southwest Clean Air Agency, confirming the Proposed Development will not impact air quality in the vicinity of a fuel facility. Applicant’s development will be in conformance with the identified rules and regulations. This testimony, provided by an expert in the field, is more persuasive than generalized studies related to air quality provided by the opposition. The opposition’s generalized, anecdotal evidence should not be given the same weight as the particularized, expert testimony and SEPA MDNS that Applicant has provided. Applicant has provided sufficient evidence in the record that the Proposed Development will not negatively impact the air quality in the vicinity.

2. IMPACTS ON CHARACTER OF NEIGHBORHOOD

Many opponents testified that the Proposed Development would impact “property values” and the “character of the neighborhood.” Perceived decreases in property value and preferences regarding the types of development occurring in the neighborhood are not the type of impacts CMC 18.43.050(A) is designed to prevent.

Many of the opponents acknowledged that the property is zoned for commercial use but objected to the proposed use due to their preferences for other types of development in the area. The Proposed Development is a conditional use in the zone, permitted upon demonstration that the Proposed Development will not adversely impact the surrounding area. This criterion is focused on negative impacts associated with items such as air quality, storm water runoff, hazardous waste, noise pollution, or light pollution. These are all the types of adjacent impacts that the Applicant must demonstrate the Proposed Development will not have on the adjacent properties. Applicant has provided evidence in the record demonstrating that the Proposed Development will not have negative environmental impacts that will not be mitigated by various elements of the Proposed Development. Applicant has also addressed in its design review application that specific elements of the Proposed Development will help reduce potential impacts on adjacent properties. For example, Applicant is proposing landscaping and retaining walls which will shield the surrounding properties from headlights, the Applicant is including murals on the sides of the carwash, and the Applicant will be using gabled roofs in its designs, helping the Proposed Development blend into the surrounding area. These mitigation measures together with the design standards which the

August 5, 2022
City of Camas Hearings Examiner
Page 4

City requires for development of this type on the subject property are the only elements of neighborhood compatibility regulated by the City.

A related objection raised by the opposition is that there are other uses that would better fit into the neighborhood, some opponents going as far as to list the preferred uses for the property. There are no applicable approval criteria requiring an applicant to demonstrate that a proposed use on a property is the best use for that property or that the neighborhood wants or needs a specific type of use. What is required is a demonstration that the proposed use is not materially detrimental to an area. Dissatisfaction of neighboring users or property owners does not rise to the level of “material detriment.”

Applicant has demonstrated that it satisfies the applicable approval criteria, including the applicable design standards, and therefore the Proposed Development will be consistent with the properties and improvements in the vicinity.

3. CRIME AND ILLEGAL ALCOHOL SALES

The opposition provided studies and testimony regarding the risk of crime, including robbery and the sale of illegal substances to minors, stating that these crimes are disproportionately associated with the proposed use, particularly the convenience store element. These studies are again generalized studies and articles, many of which rely on data that was not gathered in the vicinity of the proposed use. There is no evidence in the record that local convenience stores and fuel stations in similarly situated areas represent the same type of risks. The land use process is not designed to address the potential for individuals to engage in illegal behavior and speculations about these behaviors is not relevant to this proceeding. Concerns regarding what types of uses are permitted in specific areas is part of the broader comprehensive planning process, not individualized development applications and the Hearing Examiner should not consider this testimony in determining whether the Applicant has satisfied the applicable approval criteria.

4. TRAFFIC IMPACTS

Opponents argued that increased traffic will be detrimental to the welfare of students attending the adjacent schools. There are elements of this argument that are best addressed in response to criterion 18.43.050(C), which focuses on traffic compatibility, however, as many opponents identified, this is a public welfare issue, yet Applicant feels obligated to provide a response under this section as well. Applicant understands that the opposition is concerned about the degree of traffic that will be generated by the proposed use. However, the Applicant has demonstrated through the traffic study that the impact of the Proposed Development on the adjacent traffic system will not cause an adverse impact, as the majority of the traffic in the vicinity will be classified as “pass-by” trips. The majority of the comments provided focus on the proximity of the Proposed Development to the neighborhood schools. However, while the intersection the opposition identified as the main area of concern was not part of the study area, pursuant to standard methodology used in establishing the study area, the impact of these schools on the system traffic is captured in the Traffic Study provided by Applicant’s Traffic Engineer, which is further addressed in a rebuttal memorandum prepared by Applicant’s Traffic Engineer. Applicant’s Traffic Engineer has addressed safety and sight distances in its response, which will not be restated here, but the Applicant has provided expert testimony in the record that the Proposed Development will not have an

August 5, 2022
City of Camas Hearings Examiner
Page 5

impact beyond other commercial developments that are outright permitted in the zone. This expert analysis is more persuasive and should be given more weight than anecdotal evidence based on user experiences during drop off and pickup.

5. CONFORMANCE WITH THE COMPREHENSIVE PLAN POLICIES

Applicant is not requesting a change in the zoning or the comprehensive plan for the property. Further, the majority of the opposition focuses on the purpose and intent statements associated with the zoning of the property, which is not at question here, as the focus of the criterion they are raising is on comprehensive plan policies and goals. See CMC 18.43.050(D).

The Proposed Development is a conditional use in the zone, meaning that the Applicant is required to demonstrate compliance with the general development standards, development standards attributed to the property's zone, and additional conditional use approval criteria, which Applicant has done. The opposition has not demonstrated or raised any arguments related to Applicant's demonstration that it meets the applicable development standards.

However, arguments from the opposition stating that the Proposed Development does not conform to the comprehensive plan policies because it is not an outright permitted use in the zone is an erroneous interpretation of the requirements for a conditional use permit. As City Staff identifies in its Staff Report, the purpose and intent of the commercial zoning designation is to provide for a diverse use of economic opportunities in the area, including the ability of an applicant to demonstrate via the conditional use process that a particular type of development that is not an outright permitted use would comply with this policy by providing needed goods or services.

As identified in Applicant's Traffic Study, the proposed use is focused on providing goods and services to drivers that pass by the property. By allowing this type of use, there will be a greater range of diversity of goods and services in this area, serving users that drive by this location often due to regular commuting routes, dropping children off at the associated schools, or due to other routine trips associated within the area. Staff identified the Grass Valley area in its findings because it is an identified employment hub for residents of this area, meaning that it would be a likely driver of the type of trips that would generate the type of drive by trips the Proposed Development is designed to serve.

Diversification of goods and services located along routes that have higher street classifications, like those adjacent to the Proposed Development, allows for an overall reduction in trips and congestion by allowing for members of the communities to access the goods and services needed in the most efficient manner possible, thereby reducing the types of inefficiencies that can be created when users go out of their routine traffic patterns to access those goods and services. Several opponents identified gas stations that were "not that far" out of the way as a reason that this Proposed Development does not conform to the neighborhood's needs, but fail to appreciate that properly planned cities with a diverse range of goods and services spread throughout the community can lead to the types of outcomes they want for their own neighborhood, namely, less congestion along roadways, more energy efficiency in terms of more consolidated trips, and better environmental outcomes.

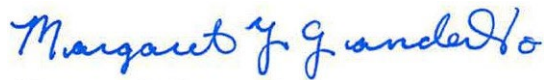
In this way, the Proposed Development provides services and goods that are not available in this area, supporting the applicable comprehensive plan policies. Applicant has demonstrated through its

August 5, 2022
City of Camas Hearings Examiner
Page 6

application materials that the Proposed Development complies with the applicable design standards and that as proposed, the development will add to the diversity of economic development in the area, offering employment opportunities, maintaining commercial lands for commercial use, and conforming to the applicable design standards. The Proposed Development is consistent with the goals and policies expressed in the comprehensive plan.

The Applicant has carried its burden in demonstrating compliance with all of the applicable approval criteria and respectfully requests that the Hearings Examiner approve the Application subject to those conditions identified in the amended Staff Report.

Sincerely,



MARGARET Y. GANDER-VO
margaret@sglaw.com
Voice Message #374

MYG:hst
Enclosures
cc: Client
Camas Project Team