

**BEFORE THE LAND USE HEARINGS EXAMINER
FOR THE CITY OF CAMAS, WASHINGTON**

Regarding an application by CK Designs, LP to divide 2.16 acres into three commercial lots and construct a convenience store/ car wash/gas station, a coffee shop, and a retail building at NW 16th Avenue and Brady Road, in the City of Camas, Washington) **FINAL ORDER ON RECONSIDERATION**
) **CUP22-02**
) **(Camas Station)**

A. SUMMARY

1. On August 25, 2022, City of Camas Hearing Examiner Joe Turner (the "examiner") issued a Final Order approving this application subject to conditions (the "Original Final Order"). Section 18.55.235 of the Camas Municipal Code (the "CMC") provides that any party may request reconsideration of the examiner's decision if they believe that the examiner's decision is "[b]ased on erroneous procedures, errors of law or fact, or the discovery of new evidence which could not be reasonably available at the public hearing..."

2. On September 8, 2022, representatives of the applicant filed a request for reconsideration of the Original Final Order.

3. Based on the findings provided or incorporated herein, the examiner grants the reconsideration request and modifies the findings and conditions set out in the Original Final Order.

B. DISCUSSION

1. CMC 18.55.235 provides:

Any party of record believing that a decision of the hearings examiner is based on erroneous procedures, errors of law or fact, or the discovery of new evidence which could not be reasonably available at the public hearing, may make a written request to the examiner, filed with the city clerk, to be accompanied by an appeal fee, for reconsideration by the examiner.

- A. Time Frame. The request for reconsideration shall be filed within fourteen calendar days of the date the decision was rendered.
- B. Content. The request for reconsideration shall contain the following:
 - 1. The case number designated by the city and the name of the applicant;
 - 2. The name and signature of each Petitioner;
 - 3. The specific aspect(s) of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error. If Petitioner wants to introduce new evidence in support of the appeal, the written appeal must explain why such evidence should be considered.
- C. The hearings examiner may, after review of the materials submitted in conjunction with the reconsideration request, and review of the open

record hearing transcript, take further action as he or she deems proper; including, but not limited to, denying the request, modifying the decision, or affirming the decision.

- D. The hearings examiner shall issue a decision on a request for reconsideration within forty-five (45) days of the filing of the request for reconsideration. When a request for reconsideration has been timely filed, any appeal to Clark County Superior Court under the Land Use Petition Act shall be filed within twenty-one (21) days after a hearings examiner issues its decision on the request for reconsideration.

2. The examiner finds that the applicant is a party of record. The applicant submitted the application and representatives of the applicant participated in review of the application, submitting oral and written testimony into the record.

3. The applicant filed the request for reconsideration on September 8, 2022, within the 14 day deadline established by CMC 18.55.235.A. The request for reconsideration includes the applicant's name, is signed by the applicant's representatives, and specifies which aspects of the decision are being appealed. Therefore the examiner finds that the request complies with the procedural requirements of CMC 18.55.235.

4. The applicant objected to condition of approval 37 of the Original Final Order.

a. That condition required that the applicant demonstrate that a minimum 60 feet of right-of-way exists along the section of NW 16th Avenue abutting the site or dedicate additional right-of-way as necessary to provide a minimum a total right-of-way width of 60 feet.

b. As the applicant notes that CMC 17.19.040(B)(1) and (2) only require that the applicant dedicate and provide "half width" right-of-way and improvements consistent with the Camas Design Standard Manual. The section of NW 16th Avenue abutting the site is classified as a two (2) lane collector or arterial, for which the Camas Design Standard Manual requires a 60-foot full width right-of-way, which equates to a 30-foot half width right-of-way.

c. The City can only require more extensive right-of-way dedication or improvements if it demonstrates that there is an essential nexus between the need for such dedication and improvements and the impacts of the proposed development and that the cost of the additional dedication and improvements is roughly proportional to the impact of the proposed development. *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141 (1987), *Dolan v. City of Tigard*, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), and RCW 82.02.020. In this case the City failed to provide any evidence of a nexus between the impacts of this development and the need for a full width right-of-way along the section of NW 16th Avenue abutting the site, or that the cost of a full-width right-of-way is roughly proportional to the impact of the proposed development. Therefore, the City failed to meet its burden of proof that more than half-width right-of-way and improvements are required in this case. Requiring dedication of a full-width right-of-way

along the site's NW 16th Avenue frontage was an error of law. Condition of approval 37 should be modified to require the applicant to demonstrate that a minimum 30 feet of right-of-way exists along the section of NW 16th Avenue abutting the site or dedicate additional right-of-way as necessary to provide a minimum a total right-of-way width of 30 feet.

5. In addition, the applicant points out that the Original Final Order includes an error of fact, wherein the examiner noted that the applicant will provide an eastbound left turn lane at NW Brady Road. See Sections C.6.a.v and C.6.a.vii on p. 13 of the Original Final Order. As the applicant points out, there is an existing eastbound left turn lane on NW 16th Avenue at NW Brady Road. There is no evidence of any need for a second eastbound left turn lane at this location. Therefore, the examiner finds that the findings in Sections C.6.a.v and C.6.a.vii of the Original Final Order were in error and should be modified to read as follows:

- v. Opponents argued that the hills on NW Brady Road to the north and south of NW 16th Avenue limit sight distance at the intersection of these two roadways. However, they failed to provide any evidence to support that assertion. The City recently improved this intersection, installing a traffic signal and widening NW Brady Road. The examiner must assume that the City designed the intersection to meet all applicable standards, including sight distance. The applicant will further improve this intersection, widening the pavement and constructing sidewalks and other improvements along the site's frontage on NW 16th Avenue.

...

- vii. Neighbors argued that congestion and traffic volumes on area streets will preclude left turn movements from the site onto NW 16th Avenue. However, that unsupported testimony conflicts with the traffic analysis, which determined that both driveways are projected to operate at LOS B or better during the a.m. and p.m. peak hours. Traffic volumes and congestion may cause delays, forcing drivers to wait for traffic to clear and allow access. But it will not cause the intersections to fail.

These modified findings do not alter the examiner's determination that the application does or can comply with all applicable approval criteria. As discussed in the Original Final Order, the applicant's traffic study demonstrates that additional traffic generated by this development will not exceed the capacity of area streets or otherwise create a hazard. The traffic study considered the existing eastbound left turn lane on NW 16th Avenue at NW Brady Road. Condition of approval 43 should be modified to correct this error and be consistent with these modified findings.

D. CONCLUSION AND DECISION

Based on the above findings and discussion, the examiner grants the applicant's reconsideration request and approves CUP22-02 (Camas Station) subject to the following revised conditions.

Conditions of Approval

Standard Conditions:

1. Engineering site improvement plans shall be prepared in accordance with the City of Camas Design Standards Manual (CDSM) and CMC 17.19.040.
 - a. Per CMC 17.19.040.C and a: All utilities designed to serve the development shall be placed underground. Those utilities to be located beneath paved surfaces, including all service connections, shall be installed prior to application of any surface materials.
2. The engineering site plans shall be prepared by a licensed civil engineer in Washington State and submitted to the City's Community Development Engineering Department for review and approval. Submittal requirements for first review are as follows:
 - a. Submit four (4) full size sets and one (1) half size set of plans;
 - b. One (1) hard copy of (TIR) stormwater report;
 - c. Stamped preliminary engineer's estimate.
3. Community Development (CDEV) Engineering shall collect a total 3% plan review and construction inspection (PR&CI) fee for the proposed development.
 - a. Payment of the 1 percent plan review (PR) fee shall be due prior to the start of the plan review process.
 - b. Payment of the 2 percent construction inspection (CI) fee shall be due prior to construction plan approval and release of approved plans to the applicant's consultant.
 - c. Under no circumstances will the applicant be allowed to begin construction prior to construction plan approval.
4. Installation of public improvements shall be in accordance with CMC 17.21 Procedures for Public Improvements.
5. Prior to any land-disturbing activities of an acre or more, the applicant shall submit:
 - a. A copy of the NPDES General Construction Stormwater Permit (GCSWP), which is issued by the Washington State Dept. of Ecology;

- b. A copy of the Stormwater Pollution Prevention Plan (SWPPP), which is required as a component of the NPDES GCSWP permit.
6. Prior to any land-disturbing activities of an acre or more, the applicant shall submit an Erosion Control Bond in the amount of 200% of the cost for erosion control measures, per CMC 14.06.200.
7. If any item of archaeological interest is uncovered during a permitted land-disturbing action or activity, all ground disturbing activities shall immediately cease, and the applicant shall notify the City and the Department of Archaeology and Historic Preservation (DAHP).
8. A separate new construction permit shall be required from the Fire Marshall's office. Two sets of plan specifications, and other information as may be necessary to determine compliance with fire and life safety code and standards.
9. Permit forms and submittal instructions are available online or can be picked up at the Fire Marshal's office at 605 NE 3rd Avenue.
10. Permit(s) and inspections are required by the Fire Marshal's Office for this project. Please contact the Fire Marshal's office at 360-834-6191, or rmiller@ci.cammas.wa.us for submittal information.
11. A building permit shall be required prior to commencement of construction of a structure.
12. A building permit shall not be issued prior to completion of site improvements, unless otherwise approved by the Director.
13. At the time of building permit issuance, the applicant shall pay the appropriate impact fees in accordance with the provisions of CMC 3.88.
14. Prior to final acceptance, the applicant shall remove all temporary erosion prevention and sediment control measures from the site at completion of all site improvements, which includes stabilization of all disturbed soil.
15. Prior to final acceptance, final as-built construction drawing submittals shall meet the requirements of the Camas Design Standards Manual (CDSM).
 - a. As-builts are to be submitted as PDFs and in either AutoCad or Carlson formats. The cover sheet for the as-builts is to include the originally approved and signed cover sheet.
16. Prior to final acceptance the 2-year warranty maintenance bond is to be submitted in accordance with CMC 17.21.070.A
 - a. Upon final acceptance of the development improvements a two-year (2) warranty bond commences.

17. Per CMC 17.21.070.E A letter of final acceptance will be issued once all items listed in 17.21.070.B-C.
18. Per CMC 18.18.070.B, prior to issuance of final occupancy permits, all public and private improvements shall be completed in accordance with CMC 17.21.070 Final Acceptance.
19. The applicant and/or property owners shall be responsible for maintenance of all on-site private improvements: including but not limited to the private water and fire line system; the private sanitary sewer system, including STEP tanks; the on-site stormwater system, including collection, conveyance, treatment, and detention; the parking areas; pedestrian pathways; CMU wall and retaining walls; lighting for parking lots and building exteriors; and landscaping.
20. This conditional use permit shall automatically expire two years after the date it was granted unless a building permit conforming to the plans for which the CUP was granted is within that period of time. Unless substantial construction of this site commences within two (2) years of issuance of this decision, this permit will expire.
21. The short plat shall expire if not recorded within five years of the date of preliminary short plat approval per CMC 17.09.040.

Special Conditions:

22. The applicant shall comply with the following SEPA22-07 MDNS condition, including Ecology and Clark County Transportation SEPA review comments.

“The applicant shall secure all necessary permits for emissions from the Southwest Clean Air Agency and as required by any other local, state and federal agency.”

Prior to Final Engineering Plan Approval:
Planning

23. The pedestrian crossings internal to the site shall be of a concrete or other distinct material and not striped.
24. The four-foot high CMU section of wall west of the proposed pedestrian walkway from NW 16th Avenue should be removed for vision clearance and pedestrian safety.
25. Prior to Engineering Plan approval, a final landscape plan consistent with the landscaping standards in CMC 18.13.050 shall be submitted to the city for review and approval to include the following but not limited to:

- a. Additional shrubs shall be provided at the western property line adjacent to the proposed retail building.
 - b. Additional shrubs consistent with CMC 18.13.055.B.3.b shall be provided east of the car wash and immediately south of the proposed walkway.
 - c. Parking lot planter islands shall comply with the minimum 8x8 planter area requirement and tree planter areas shall include five hundred cubic feet of soil per CMC 18.13.060.E.
 - d. Wheel stops shall be installed adjacent to planter areas per CMC 18.13.060.F.
 - e. Evergreen trees shall be provided at the bottom of the retaining wall adjacent to the coffee shop drive thru lane, or alternative barrier approved by the City that serves the same screening function.
 - f. Plants utilized shall be per the approved City's Tree list in the Camas Design Manual. For plants not on the approved City list, a characteristic card should be submitted to the City for review and approval.
 - g. The planting specifications and landscape notes in the Camas Design Manual shall be included on the final landscape plan.
 - h. Irrigation specifications in the Camas Design Manual shall be noted on the final landscape plan.
 - i. Locations and size of irrigation meters are to be shown on the final landscape plans and on the water utility plans.
26. The applicant shall take appropriate measures to ensure landscaping success for a minimum of three years after issuance of Certificate of Occupancy. If plantings fail to survive, the property owner shall promptly replace them.
27. Any existing off-site trees shall not be removed without permission of the property owner.
28. Specifications for the safety barrier along the coffee shop drive thru lane shall be submitted to the City for review and approval.
29. Windows shall be provided on the car wash and coffee shop building façades facing NW Brady Road for window transparency and pedestrian visibility. Revised elevations shall be submitted to the City for review and approval.
30. The retaining and CMU walls shall compliment the proposed buildings and specifications shall be submitted prior to receiving engineering plan approval.
31. Lighting specifications and a lighting plan shall be submitted for city review and approval.

- a. All outdoor lighting including landscaping, parking lot, building and canopy lighting shall be directed, hooded, or shielded away from surrounding properties.
- b. Lighting for signage shall be front lit if proposed.
- c. Any required street lighting shall be reviewed and approved by the City prior to final engineering plan approval.

Engineering

32. A photometrics analysis is required for NW 16th Avenue to ensure that the roadway lighting meets the requirements of the IES RP-8-21 lighting standards. The analysis is to be submitted for review and approval. Proposed and existing street light locations are to be shown on the final engineering plans. Preliminary electrical plans are to be submitted to the city for review and approval prior to submittal to Clark Public Utilities.
33. The site plans shall be revised to relocate and/or reduce the number of either the vacuum stalls or EV charging stations, at the drive access from NW 16th Avenue, to be a minimum of 40-feet from the back of sidewalk in order to meet the CDSM Table 1, Note 2 standards for off-street parking from back of sidewalk on a collector.
34. The site plans shall be revised to locate the pedestrian pathway such that pedestrians are not in conflict with vehicles pulling up alongside any of the proposed fueling pumps. Additionally, the pedestrian pathway is required to meet ADA standards from the Convenience Store ADA parking space to the ADA EV parking stall.

Roads

35. The site plans are to be submitted with following revisions:
 - a. The north curb radius at the drive access from NW Brady Road is to be increased to the minimum 35-foot curb radii with an ADA accessible curb ramp.
 - b. The south curb radius at the drive access from NW Brady Road is to be increased to a curb radius dimension, in excess of the minimum 35-foot, that will allow for ingress and egress of all vehicles entering and exiting the site without impeding on the ingress aisle or the existing left-lanes on NW Brady Road.
 - c. A new circulation plan is to be submitted with the revisions noted and is to include southbound movements onto the site from NW Brady Road.

36. The site plans are to be submitted with the following revisions:
- a. The west and east curb radii at the drive access from NW 16th Avenue is to be increased to the minimum 35-foot curb radii, with ADA accessible curb ramps on both sides.
 - b. The four (4) vacuum stalls are to meet the minimum 40-foot setback from back of sidewalk.
37. Revised site plans are to be submitted demonstrating that a minimum 30 feet of half-width right-of-way exists along the section of NW 16th Avenue abutting the site or dedicate additional right-of-way as necessary to provide a minimum half-width right-of-way width of 30-feet.
38. Signing and striping plans are to be submitted with the appropriate hardscaping (e.g. onsite concrete island), and signage denoting: 'Right-in/Right-out Only' and 'Left-Turns not Permitted'.
39. Submit revised site plans that show Phase 1 construction in include the following:
- a. Construction of the full half-width frontage improvements along NW 16th Avenue;
 - b. Construction of both drive accesses located on NW Brady Road and NW 16th Avenue;
 - c. Full width drive aisles and/or parking lot through the site from NW 16th Avenue to NW Brady Road.

Traffic and Transportation

40. The applicant is to provide a trip distribution analysis that identifies the number of PM Peak Hour trips that are distributed to City of Vancouver's proportionate share intersections: SE 192nd Avenue & SE 34th Street; and SE 192 Avenue & SR-14 Ramps.
41. The applicant shall be required to pay the proportionate share amount of \$_ to the City of Vancouver and to provide Camas staff with documentation of payment of said proportionate share amount.
42. The site plans are to be submitted with the site vision clearance/site distance triangles shown on the final engineering plans at the access locations at NW Brady Road and NW 16th Avenue.
43. Signing and striping plans are to be submitted for review and approval that address any required restriping and applicable signing on NW 16th Avenue for the proposed development.

Sanitary Sewer

44. The applicant shall submit sanitary sewer utility plans with the following revisions to the private onsite sanitary sewer system:
 - a. The STEP tanks for each future Lot 1, Lot 2, and Lot 3 are to be designed with traffic rated access lids as they are located within paved surfaces.
 - b. The applicant is responsible for sizing of the STEP tanks for future Lot 1, Lot 2, and Lot 3. Specifications, design, and calculations for sizing the STEP tanks for each of the proposed commercial buildings, are to be submitted for to the city review and approval prior to installation.
 - c. A blanket utility easement, for the sanitary sewer system, is to be provided across all future Lots for the benefit of Lot 1, Lot 2, and Lot 3.
45. A note shall be added to the engineering plans and the final plat indicating that all components of the onsite private sanitary sewer system, including the STEP tanks shall be privately owned and maintained by the property owners, with a right-of-entry granted to the city for inspection purposes.

Storm Sewer

46. A revised the final drainage analysis (TIR) is to be submitted for review and approval, with the acreage revised to match the application. Additionally, the final drainage analysis is to revise the applicable amounts of impervious surfaces and landscape areas.
 - a. Submittal of a hard copy of the final drainage analysis (TIR) is not required, however, the final drainage analysis is to be submitted in an electronic (PDF) format.
47. The applicant shall submit revised stormwater and sanitary sewer plans with the catch basins located within the trash enclosures and in the vicinity of the fueling station routed to the sanitary sewer system.
48. The final TIR is to be resubmitted with MR #9 – Operation & Maintenance section revised to reference the city’s 2022 Operation and Maintenance Manual.

Water

49. The applicant shall submit revised onsite water plans for review and approval with the following changes:
 - a. Based on the recent construction on NW Brady Road, the water service to future Lot 2 is to be served from the 12-inch water main on NW 16th Avenue. Applicant to work with staff on the location of the onsite water line during final engineering plan approval.

- b. The three domestic water meters and above-ground RPBAs, for the commercial buildings on future Lot 1, Lot 2, and Lot 3 are to be located at the public right-of-way in a location that is accessible for inspections and testing.
 - c. The irrigation meter and backflow prevention device is to be located at the public right-of-way and is to be accessible for testing and inspection.
 - d. The water utility plans and landscape plans are to include the locations and sizes of all three domestic water meters and the irrigation meter with backflow prevention devices.
50. The applicant shall submit water utility plans with the following revisions to the fire line water system:
- a. A note is to be added to the final engineering plans and to the final plat stating that “all components of the onsite private water system and fire line, including fire hydrants shall be privately owned and maintained by the property owners with right-of-entry granted to the city for inspection purposes.”
 - b. A note is to be added to the final engineering plans stating that “all private fire hydrants are to be ordered direct from the factory and factory painted powder coated red.”
 - c. Plans for the fire line are to be submitted to the Fire Marshall’s office for the NFPA24 Fire Main Underground Permit prior to any fire line installation beyond the right-of-way.

Prior to commencement of any land-disturbing activities:

- 51. The financial security for erosion and sediment control shall be submitted to Engineering.
- 52. A copy of the NPDES GCSWP and the SWPPP shall be submitted to Engineering.
- 53. Prior to any land-disturbing activities of an acre or more, the applicant shall submit an Erosion Control Bond in the amount of 200% of the cost for erosion control measures, per CMC 14.06.200.

Prior to Final Acceptance:

Planning:

- 54. Landscaping and irrigation shall be installed or bonded for prior to final acceptance.

55. All temporary erosion prevention and sediment control measures shall be removed from the site at completion of all site improvements, which includes stabilization of all disturbed soil.
56. Final as-built construction drawing submittals shall meet the requirements of the Camas Design Standards Manual (CDSM).
 - a. As-builts are to be submitted as PDFs and in either AutoCad or Carlson formats. The cover sheet for the as-builts is to include the originally approved and signed cover sheet.
57. A two-year warranty maintenance bond is to be submitted in accordance with CMC 17.21.070.A
 - a. Upon final acceptance of the development improvements a two-year (2) warranty bond commences.

Prior to Final Short Plat Approval:

58. The applicant shall be required to pay the proportionate share amount of \$_ to the City of Vancouver and to provide Camas staff with documentation of payment of said proportionate share amount.
59. The applicant is to verify that the vision clearance/site distance triangle requirements have been met.
60. A note is to be added to the plat that states: “The onsite stormwater system in its entirety; including collection, conveyance, treatment, and detention are to be privately owned and maintained by the applicant/property owners. A right-of-entry is to be granted to the city for inspection purposes.”
61. All necessary dedications and easements shall be noted on the final plat.
62. A note is to be added to the final plat that states: “A blanket access easement is to be provided across Lot 1, Lot 2, and Lot 3 for the benefit of each of the said Lots.”
63. A note is to be added to the final plat stating that all components of the onsite private sanitary sewer system, including the STEP tanks shall be privately owned and maintained by the property owners, with a right-of-entry granted to the city for inspection purposes.
64. A note is to be added to the final plat that states: “All components of the onsite private water system and fire line, including fire hydrants shall be privately owned and maintained by the property owners with right-of-entry granted to the city for inspection purposes.”

Prior to Building Permit Approval:

Planning:

65. Detailed construction plans shall be provided for any proposed signage prior to receiving a building occupancy permit. Lighting for signage shall be front lit.
66. Architectural elevations, including building materials and colors, shall be in conformance with the Design Review approval.

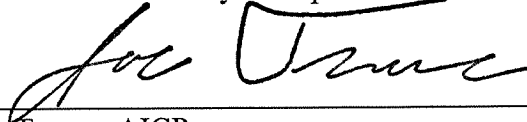
Prior to Final Occupancy:

67. The future proposed uses for the retail spaces shall include only the allowed uses in CMC 18.07.030 Table 1.

Proposed Plat Notes

1. A blanket access easement is to be provided across Lot 1, Lot 2, and Lot 3 for the benefit of each of the said Lots.
2. All components of the onsite private sanitary sewer system, including the STEP tanks shall be privately owned and maintained by the property owners, with a right-of-entry granted to the city for inspection purposes.
3. All components of the onsite private water system and fire line, including fire hydrants shall be privately owned and maintained by the property owners with right-of-entry granted to the city for inspection purposes.
4. The onsite stormwater system in its entirety; including collection, conveyance, treatment, and detention are to be privately owned and maintained by the applicant and/or property owners. A right-of-entry is to be granted to the city for inspection purposes

DATED this 14th day of September 2022.



Joe Turner, AICP
City of Camas Land Use Hearings Examiner