

DEVELOPMENT REVIEW BOARD MEETING
APRIL 8, 2024
6:30 PM

Public Hearing:

1. **Resolution No. 432 - Planning Director's Referral of a Continuation of Non-Conforming Use Determination:** The Planning Director has referred Case File AR23-0031 to the Development Review Board for determination regarding the continuation of an existing Non-Conforming Use.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 432**

A RESOLUTION DENYING THE PROPOSED OCCUPANT’S (THE HOME DEPOT) PROPOSED USE AT 29400 SW TOWN CENTER LOOP WEST IS A CONTINUATION OF THE EXISTING NON-CONFORMING USE

WHEREAS, an application for Class II Administrative Review (AR23-0031), together with planning exhibits, has been submitted by Dan Zoldak of Lars Andersen & Associates, Inc. – Applicant, on behalf of David Fry of Lumberjack LP – Owner, in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code; and

WHEREAS, the subject property is located at 29400 SW Town Center Loop West on Tax Lot 220, Section 14D, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon (“the Location”); and

WHEREAS, the Planning Director referred the Class II Administrative Review (AR23-0031) to the Development Review Board as authorized in Section 4.030 of the Wilsonville Development Code; and

WHEREAS, the subject of the Class II Administrative Review is to confirm or deny that the non-conforming use currently located at the Location (the Current Occupant) and the Proposed Occupant’s (The Home Depot) proposed use at the Location constitutes a continuation of non-conforming use; and

WHEREAS, the Planning Staff has prepared the staff report on the above-captioned subject dated April 1, 2024; and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel B at a scheduled meeting conducted on April 8, 2024, at which time exhibits, together with findings and public testimony were entered into the public record; and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report; and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report attached hereto as Exhibit A1, with findings and recommendations contained therein, denying the Proposed Occupant as a continuation of the existing non-conforming use at the Location.

ADOPTED by the Development Review Board of the City of Wilsonville this 8th day of April 2024, and filed with the Planning Administrative Assistant on _____. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022 (.09)* unless appealed per *WC Sec 4.022 (.02)* or called up for review by the Council in accordance with *WC Sec 4.022 (.03)*.

Rachelle Barrett, Chair - Panel B
Wilsonville Development Review Board

Attest:

Shelley White, Planning Administrative Assistant



Exhibit A1
Staff Report
Wilsonville Planning Division
Planning Director Referral of Case File No. AR23-0031
29400 SW Town Center Loop West

Development Review Board Panel 'B'
Quasi-Judicial Public Hearing

Date of Hearing:	April 8, 2024
Date of Report:	April 1, 2024

Application Nos.: DB24-0003 Planning Director Referral of Case File No. AR23-0031 as Authorized in Section 4.030 of the Wilsonville Development Code

Request/Summary: The request before the Development Review Board is to confirm or deny that the non-conforming use currently located at 29400 SW Town Center Loop West (the "Current Occupant") and the "Proposed Occupant's" (The Home Depot) proposed use at the Location constitutes a continuation of non-conforming use.

Location: 29400 SW Town Center Loop West (the "Location"). The property is specifically known as Tax Lot 220, Section 14D, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

Owner: Lumberjack LP (Contact: David Fry)

Applicant/Authorized Representative: Lars Andersen & Associates, Inc. (Contact: Dan Zoldak)

Comprehensive Plan Designation: Town Center

Zone Map Classification: Town Center (TC); Sub-districts: Commercial-Mixed Use (C-MU), Mixed Use (MU), Main Street District (MSD)

Staff Reviewers: Cindy Luxhoj AICP, Associate Planner
Miranda Bateschell, Planning Director

Staff Recommendation: Denial of Continuation of Non-conforming Use by Proposed Occupant

Applicable Review Criteria:

Development Code:	
Section 4.001	Definitions
Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Section 4.030	Jurisdiction and Powers of Planning Director and Community Development Director
Section 4.031	Authority of the Development Review Board
Section 4.034	Application Requirements
Subsections 4.035 (.04) A. and 4.035 (.05)	Complete Submittal Requirement
Section 4.102	Official Zoning Map
Section 4.110	Zones
Section 4.132	Town Center (TC) Zone
Subsection 4.140 (.10) C.	Planned Development Regulations – Adherence to Approved Plans and Modifications Thereof
Section 4.189	Non-Conforming Uses
Other Planning Documents:	
Ordinance No. 55 Town Center Plan Previous Land Use Approvals	

Site Location:



Existing Development:



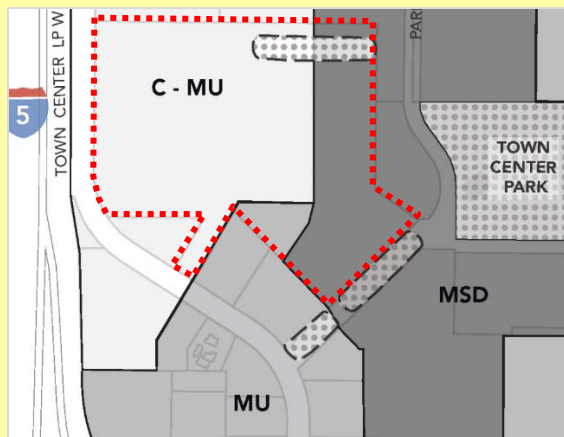
Procedural Background:

I. Town Center Zone

In 2019 the City adopted the Town Center Plan (Ordinance No. 835), a long-term, community-driven vision to transform Wilsonville's Town Center into a vibrant, walkable destination that inspires people to come together and socialize, shop, live, and work. As part of this work, a new zoning designation, the Town Center (TC) zone, and associated Development Code Section 4.132 were adopted for the entire Town Center Area to implement the Town Center Plan's recommendations. These standards support the creation of a walkable Town Center and main street, with design standards regulating building placement, building height, parking location, and drive through facilities. The plan and associated Zone Map and Development Code amendments went into effect on June 5, 2019.

After communicating with official representatives of the owner of the Location, Lumberjack LP, several times over the two-year planning process for the Town Center Plan, consistent with noticing requirements of ORS 227.186 and Subsection 4.012 (.02) of the Development Code, the City mailed the owner of the Location, notice of the Zone Map and Development Code amendments on February 7, 2019 (Exhibit A3). Lumberjack LP did not provide any testimony on the record raising objection to the Town Center Plan, Development Code Section 4.132, or the rezoning of the Location from the Planned Development Commercial-Town Center (PDC-TC) zone to the TC zone during the adoption process.

The C-MU sub-district of the TC zone applies to roughly two-thirds of the Location. Permitted uses within this sub-district include retail sales and service of retail products, under a footprint of 30,000 square feet per use, office, personal and professional services, and single-user commercial or retail, such as a grocery store or retail establishment, that may exceed 30,000 square feet if located on more than one (1) story of a multi-story building, provided the footprint of the building does not exceed 30,000 square feet.



The existing structure at the Location has a footprint of 124,215 square feet in a single story (page 174, Exhibit B1) with a partial mezzanine, which exceeds the footprint of 30,000 square feet per retail user and footprint limitation that is allowed in the TC zone. As noted below, the Location also has a structure and site conditions that do not meet the requirements of the TC zone.

II. Class I Planning Director Determination (ADMN23-0029) and Appeal (DB24-0002)

On October 30, 2023, the City received an application for Class I Review (ADMN23-0029) to confirm the status of the existing non-conforming use and structure at 29400 SW Town Center Loop West (respectively, the “Class I Review Application” and the “Location”). The Location was previously occupied by Fry’s Electronics (the “Current Occupant”), an electronics retail store and has been vacant since 2021. The City deemed the application complete on November 29, 2023 and processed the request as a Class I Planning Director Determination per Subsection 4.030 (.01) A. 7. of the Development Code. On December 28, 2023, the City’s Planning Director issued their Decision on the Class I Review Application that *“Fry’s Electronics, on the subject property at 29400 SW Town Center Loop West, is a legally established Non-Conforming Use in a Non-Conforming Structure with Non-Conforming Site Conditions in the TC zone.”*

The Applicant submitted a notice of appeal of the Planning Director’s Decision on January 10, 2024 (the “First Notice of Appeal”). Specifically, the filed appeal grounds were stated: *“An APPEAL of Planning Director Determination ADMN20-0029 [sic] determining that Fry’s Electronics is a legally established Non-Conforming Use in a Non-Conforming Structure with Non-Conforming Site Conditions at 29400 SW Town Center Loop West”*. Per Code Section 4.022 (.01), a decision of the Planning Director on issuance of any Administrative Decision may be appealed, and such appeals

must be heard by the Development Review Board (DRB) for all quasi-judicial land use matters. The matter at issue before the DRB, on de novo review, was a determination of the appropriateness of the action or interpretation of the requirements of the Code.

A public hearing before the DRB regarding the First Notice of Appeal was held on February 26, 2024. During the public hearing, the Applicant requested that the record be kept open for seven days to allow it to respond to testimony entered into the record. The DRB closed the public hearing and unanimously approved the request to keep the written record open for Resolution No. 429 until March 4, 2024, at 5:00 pm. On March 4, 2024, the Applicant filed a first written submittal, and on March 11, 2024, filed its final arguments to the record. The DRB held a special meeting on March 14, 2024, to consider all evidence timely submitted regarding Case File No. DB24-0002. Following deliberation on the matter, the DRB approved Resolution No. 429 (Exhibit A2) unanimously affirming the Planning Director's Determination of Non-Conformance (ADMN23-0029) dated December 28, 2023, determining that:

1. *There is a legally established non-conforming use at the Location; specifically, that the protected use is "a 159,400 square-foot electronics-related retail store."*
2. *There is a legally established non-conforming structure at the Location.*
3. *There are legally established non-conforming site conditions at the Location.*

The Notice of Decision for Case File No. DB24-0002 was issued on March 15, 2024.

III. Class II Planning Director Interpretation (AR23-0031)

On December 15, 2023, the City received an application for Class II Review (AR23-0031; the "Class II Review Application"). Specifically, the request is stated as: "A Class II Staff Interpretation to confirm that The Home Depot and Fry's Electronics are both warehouse retail uses" (page 1 of Exhibit B1). Further, the Applicant describes the application (also on page 1 of Exhibit B1) as "an application for a staff interpretation of the Wilsonville Development Code to confirm that The Home Depot store proposed for 29400 Town Center Loop W, Wilsonville, OR 97070 constitutes a warehouse retail use and may operate in the existing structure".¹

The City deemed the Class II Review Application complete on January 12, 2024. The City is processing the request as a Class II Planning Director Interpretation, which is the subject of the current review, per Subsection 4.030 (.01) B. 3. of the Code. Given the public comment on the Class I Review Application and that there may be interested parties who may want to participate in review of the Class II Review Application, the Planning Director chose to refer the application to the Development Review Board for a public hearing per 4.030(.01)B. The Case File No. is DB24-0003, and the public hearing is scheduled for April 8, 2024.

¹ Proposed Occupant, in its submission to the City dated March 29, 2024 (Exhibit B2), asks the DRB to recognize a non-conforming use for "commercial retail use," which is different than what is requested in its Application (Exhibit B1).

Scope of Review:

Proposed Occupant's application asks DRB to confirm Proposed Occupant's desired scope of non-conforming use (Exhibit B1). Proposed Occupant also submitted a letter to the City dated March 29, 2024 regarding "Applicant's Public Comment for AR23-0031" (Exhibit B2). In this letter Proposed Occupant invites DRB to "address" or "remedy" the flaws in DRB Resolution No. 429.

Resolution No. 429 is a City decision, and may be overturned only on appeal. There is currently an appeal pending before City Council. The issues that were resolved in Resolution No. 429 are beyond the scope of this matter. In particular, the Proposed Occupant's request for DRB to recognize a non-conforming use for "warehouse retail use" or "commercial retail use" ignores Resolution No. 429, which established the scope of the recognized non-conforming use, and is beyond the scope of this matter.

Further, Proposed Occupant has waived its right to address the issues that were addressed in Resolution No. 429 through this Class II Review Application proceeding. The City invited Proposed Occupant to withdraw its Class I application, both in writing on November 28, 2023, at the DRB hearing on February 26, 2024, and in the days following the DRB hearing on February 26, 2024 (Exhibit A7). The City offered to void and withdraw the Planning Director's determination in the Class I matter (and have the DRB not issue a decision), and make clear that the issues under review in the Class I proceeding would be addressed in the Class II proceeding. The City's goal in making this offer was to allow the City to address all issues pertinent to both the Class I and Class II proceedings in one combined proceeding. Appellant declined this offer (Exhibit A7).

Questions Presented:

Within the document titled "Applicant's Narrative and Exhibits" (Exhibit B1) Applicant states that it is requesting confirmation that The Home Depot ("Proposed Occupant") and Fry's Electronics ("Current Occupant") are both "warehouse retail uses." See pages 1, 2, and 7. Applicant also states that it is requesting confirmation that the Proposed Occupant may continue to operate at the Location.

Therefore, this decision must answer the following question:

If Proposed Occupant operates at the Location will this constitute a continuation of the non-conforming use?

The following steps will determine the answer to that question:

Step 1: What is the existing non-conforming-use?

Step 2: What is the proposed use?

Step 3: Is the proposed use a continuation of the current non-conforming use?

Based on the applicable legal standard, that the use at the Location is a legally established non-conforming use in the Town Center (TC) zone. On appeal, in Resolution No. 429 approved on March 14, 2024, the DRB determined as follows:

There is a legally established non-conforming use at the Location; specifically, that the protected use is “a 159,400 square-foot electronics-related retail store.”

The determination made by the DRB in the Notice of Decision for Case File No. DB24-0002 provided the answer to Step 1, must be adhered to, and is the basis of this Class II Review.

The applicable legal standard, relevant facts, and Planning Director’s recommendation on the Class II Review Application responding to this question are discussed in detail in the following section of this staff report.

Evidentiary Standard:

The DRB’s decision in this matter must be supported by substantial evidence in the whole record. ORS 197.835(9)(a)(C). This standard disallows LUBA from overturning a local government decision if a reasonable person could draw the same conclusion as the local government – even if a reasonable person could draw a different conclusion from the same evidence. *See Adler v. City of Portland*, 25 Or LUBA 546, 1993 WL 1473299 at *6 (1993); *Fraley*, 32 Or LUBA 27, 31-32 (1996), *aff’d*, 145 Or App 484 (1996).

Burden of Proof:

The proponent of a proposed non-conforming use, or expansion or change to a recognized non-conforming use, has the burden of proof. *See ODOT v. City of Mosier*, 36 Or LUBA 666, 671 (1999) (citing *Lane Cnty. v. Bessett*, 46 Or App 319 (1980)); *Sabin*, 20 Or LUBA 23, 30 (1990) (citing *Webber v. Clackamas Cnty.*, 42 Or App 151, *rev den*, 288 Or 81 (1979)).

In this matter, Applicant has the burden of proof, and the DRB’s decision is subject to the “substantial evidence” standard. *River City Disposal and Recycling v. City of Portland*, also a case regarding non-conforming uses, illustrates how these concepts should be applied together. In *River City Disposal and Recycling*, LUBA found that the City hearings officer’s decision satisfied the “substantial evidence” standard. *See* 35 Or LUBA 360 (1998). It was enough that the hearings officer found that evidence presented in an affidavit (aerial photographs) was not persuasive. *Id.* at 367-71. LUBA also clarified that the City of Portland was not obligated to present contrary evidence to counter the applicant’s evidence, and the “substantial evidence” standard was satisfied because the hearings officer found that the applicant failed to satisfy its burden of proof. *Id.*

Because Proposed Occupant has the burden of proof, the City may decide that not enough evidence has been provided by Proposed Occupant to satisfy its burden of proof. The City is not obligated to produce its own evidence to counter Proposed Occupant’s evidence. Further, the City may determine the credibility of evidence in the record; in particular, when conflicting evidence exists, the City may decide that some evidence is credible and persuasive, and other evidence is not.

Legal Standard Regarding Continuation of Non-conforming Uses:

1. WC 4.189 (.01)

A non-conforming use may be continued subject to the requirements of WC 4.189. *See* WC 4.189 (.01). There are no other Code provisions regulating a continuation of a non-conforming use.

2. Caselow Regarding Continuation of Non-Conforming Uses

The following sections outline the legal authorities, in Oregon, that govern whether or not a use is deemed a continuation of a non-conforming use.

a. Non-Conforming Use Defined

Generally, a non-conforming use is understood to be “one that is contrary to a land use ordinance but that nonetheless is allowed to continue because the use lawfully existed prior to the enactment of the ordinance.” *Morgan v. Jackson Cnty.*, 290 Or App 111, 114 (2018) (citing *Rogue Advocates v. Board of Comm. Of Jackson Cnty.*, 277 Or App 651, 654 (2016), *rev dismissed*, 362 Or 269, 407 (2017)); *see* Subsection 4.001 (196.) of the Development Code (defining a non-conforming use as “a legally established use, which was established prior to the adoption of the zoning use requirements for the site with which it does not conform”).

b. Non-Conforming Uses – and Expansion of Non-Conforming Uses – are Disfavored; Local Government has Broad Discretion to Resist Expansion of Non-Conforming Uses

“Nonconforming uses are not favored because, by definition, they detract from the effectiveness of a comprehensive zoning plan. . . . Accordingly, provisions for the continuation of nonconforming uses are strictly construed against continuation of the use, and, conversely, provisions for limiting nonconforming uses are liberally construed to prevent the continuation or expansion of nonconforming uses as much as possible.” *Parks v. Bd. of Cnty. Comm’rs of Tillamook Cnty.*, 11 Or App 177, 196–97 (1972) (internal citation omitted). “[T]he law of nonconforming uses is based on the concept, logical or not, that uses which contravene zoning requirements may be continued only to the extent of the least intensive variations—both in scope and location—that preexisted and have been continued after the adoption of the restrictions.” *Clackamas Cnty. v. Gay*, 133 Or App 131, 135 (1995), *rev den*, 321 Or 137 (1995), *aff’d*, 146 Or App 706 (1997).

c. Whether a Proposed Use is a Continuation or Change (of Non-Conforming Use) Depends on the Nature and Extent of the Recognized Non-Conforming Use

It is helpful to think of a proposed use to either be within or beyond the scope of a recognized non-conforming use. A use that is within the scope of a recognized non-conforming use is a “continuation” of use. A use that beyond this scope is a “change” of use. A use that is deemed too expansive to be a “continuation” of use is necessarily a “change” of use – a use must be one or the other. The following cases are helpful in illustrating the line between “continuation” and “change” of use.

The nature and extent of the lawful use in existence at the time the use became nonconforming is the reference point for determining the scope of permissible continued use. *Sabin* at 30 (citing *Polk County v. Martin*, 292 Or 69 (1981)) (emphasis added). The focus of a review of whether or not a use is continuous must focus on the actual *use* of a property during relevant times – a change in the property occupant does not, by itself, cause a legally protectable non-conforming use to be abandoned when the use that the various parties made of the property is recognized to be the same. See *Vanspeybroeck v. Tillamook Cnty. Camden Inns, LLC*, 221 Or App 677 (2008) (LUBA did not err in recognizing a continuous residential use of a property when residency changed from tenant to owner, back to tenant).

A local government that is reviewing a proposed alteration of, change to, or expansion of a recognized non-conforming use should review evidence to determine the current actual use or proposed use (as applicable), and determine whether that use is within or beyond the scope of the recognized non-conforming use. In *Larson v. City of Warrenton*, 29 Or LUBA 86, 1995 WL 1773182 (1995), the City of Warrenton determined that a company had impermissibly expanded its operations beyond activities protected in a prior administrative decision. The prior administrative decision protected the following uses on the subject property: “[s]toring and repairing marine construction equipment and [a] base of operations for [the property owner’s] construction company.” *Id.* at *1. In 1994, the property’s neighbors complained to the city about these business operations, arguing that the intensity of the use had increased. *Id.* The city evaluated various forms of evidence (testimony that log trucking began in 1993, the fact that the petitioner advertised for truck drivers in 1993, and the fact that the petitioner obtained a state license in 1992 that allowed the hauling of logs). *Id.* at *2. The city determined that the property owner was impermissibly operating beyond the scope of the non-conforming use recognized in the 1991 administrative decision, and LUBA affirmed this decision. *Id.* As LUBA has stated in another case, “[w]e believe a change in use includes adding a new use to an existing nonconforming use.” *River City Disposal and Recycling* at 373 n. 11.

In this matter, the City may determine that the Proposed Occupant’s proposed use of the Location includes uses that are beyond the scope of the recognized non-conforming use; these uses would only be permissible if the City approved a “change” of non-conforming use. This proceeding is limited to the question of whether certain uses are a “continuation” of use – a potential “change” of non-conforming use is beyond the scope of what may be addressed in this matter.

d. Local Government has Broad Discretion to Draw Distinctions Between Various Uses, and Allow Some Uses to Continue But Disallow Other Uses

A local government has broad discretion to reject an applicant’s characterization of a use, and to draw distinctions between various uses. For example, in *Fraleigh*, the applicant sought recognition of a property use involving the repair of diesel engines and tractor trailer trucks. In the local government decision at issue, the county found that a prior property owner “maintained a use significantly different in nature from the commercial vehicle repair business which the applicant seeks to verify.” *Id.* at 34. This prior property owner engaged in the structural repair of

motorhomes, campers, RVs and camp trailers. *Id.* Testimony from this prior property owner did not mention vehicular engine repair. *Id.* On appeal, LUBA rejected the applicant’s challenge to the county’s finding and decision on this point, stating, “[w]e do not agree with [applicant] that the use was not interrupted because all of the commercial operations on the subject property since [the date more restrictive zoning regulations were applied] share the same essential nature or common nucleus. . . . [The mobile home repair business] had little in common with the present primary use, the repair of diesel engines and tractor trailer trucks.” *Id.* at 35. LUBA went on to note that these two businesses used the yard in different ways – one stored lumber in the yard, and the other stored large trucks in various states of repair. *Id.*

Further, a local government may specifically allow certain uses as non-conforming, but deny others, even when all such activities are related to the same business venture. In the Clackamas County Hearings Officer’s Findings and Decision, docket no. Z1155-91-E/A², the hearings officer determined that there was a protected non-conforming use for “the storage commercial goods in the two structures in question, including the storage of cedar wood fencing materials.” Findings and Decision of the Hearings Officer at 6, Z1155-91-E/A (Feb. 11, 1994). (attached hereto as Exhibit A5). The applicant in this case had also applied for a “change” (i.e., expansion) of this recognized use for an on-site office facility for this warehousing and repackaging business. *Id.* The reasoning and legal standard used by the hearings officer relates to only counties – and not cities, but the important point is that he declined to expand the recognized non-conforming use. *Id.* The Clackamas County Hearings Officer’s decision in docket no. Z1155-91-E/A is an example of a local government deliberately and selectively recognizing some activity to be within the scope of a recognized non-conforming use – and other activity to be beyond this scope of the recognized non-conforming use – even when both activities relate to the same business venture.

Relevant Facts, Background, and Considerations:

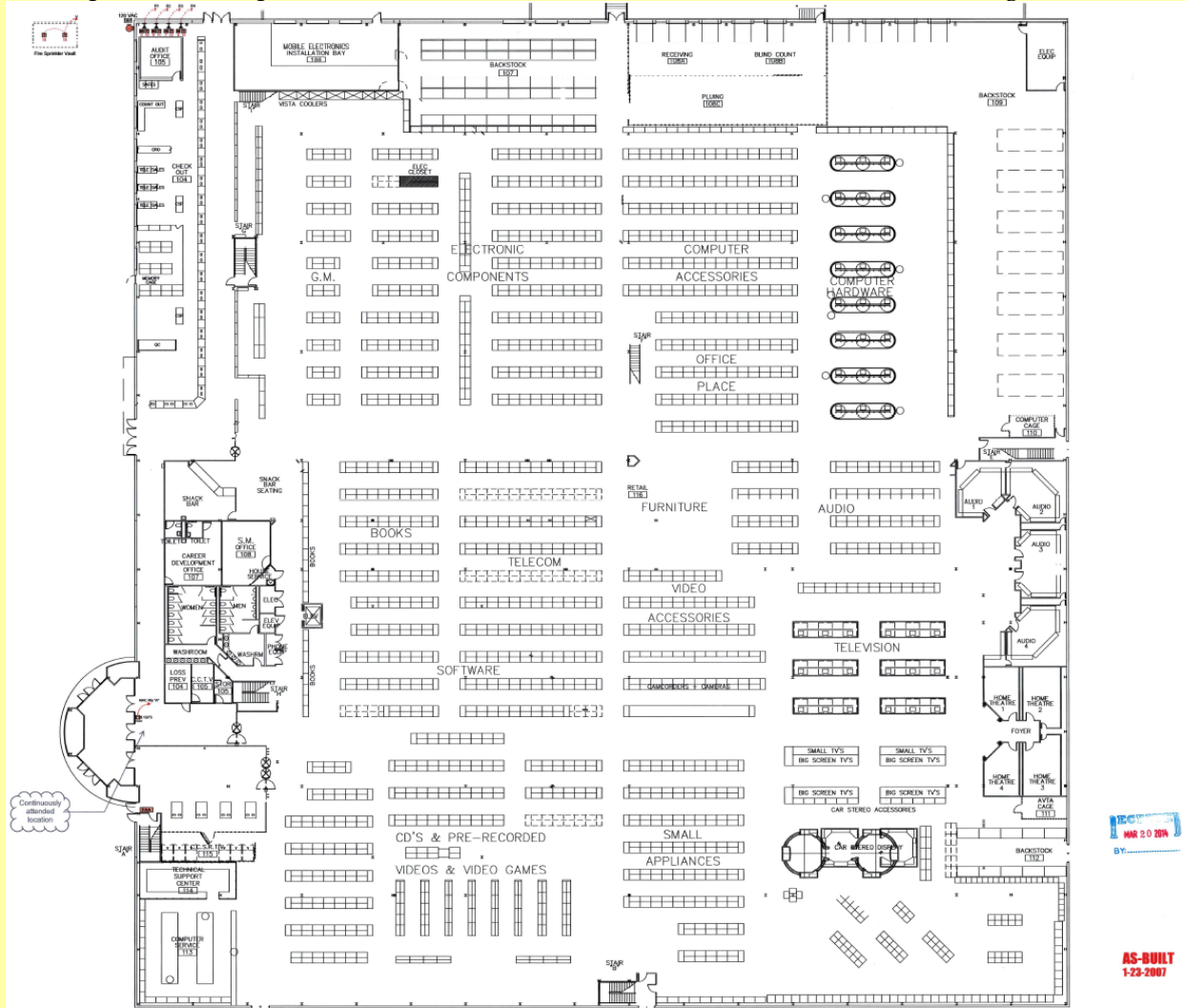
1. What is the non-conforming use?

As determined by the DRB Decision in Case File DB24-0002 (Resolution No. 429), there is a legally established non-conforming use at the Location; specifically, that the protected use is “a 159,400 square-foot electronics-related retail store” (referred to as the “Current Occupant” in this staff report).

When the TC zone regulations went into effect on June 5, 2019, the occupant of the Location was Fry’s Electronics. The application (page 3 of Exhibit B1) characterizes the Current Occupant as follows: “*Fry’s was a large electronics warehouse store that retailed software, consumer electronics, household appliances, cosmetics, tools, toys, accessories, magazines, technical books, snack foods, electronic components, and computer hardware. Fry’s also had in-store computer repair and custom computer building services, and offered technical support to customers.*”

² This Hearings Officer Decision is the remanded determination by Clackamas County following *Hendgen v. Clack. Cty.*, 115 Or App 117 (1992). *See also* 24 Or LUBA 355 (1992) (LUBA decision remanding the matter to Clackamas County following previously cited Court of Appeals opinion).

An as-built floor plan submitted by the Current Occupant to the City’s Building Division in 2014 (Exhibit A4) illustrates the store’s layout and product selection. The floor plan illustrates the sales area of computers, televisions, audio equipment, CDs and videos, computer software and hardware, small appliances and other related office and electronic components. A small snack bar and technical support and service areas were also included in the floor plan. Inventory storage components of the Current Occupant, identified as backstock, were located separate from the retail space. All components of this use were located in the interior of the building.



Fry’s Electronics As-Built, submitted in 2014. Source: City of Wilsonville Building Division

The following images, posted to the Wilsonville Fry’s Electronics Yelp page in 2019, illustrate store layout and product selection at the time the TC zone regulations went into effect.



Fry's Electronics Retail Space. Source: Yelp – Fry's Electronics, Photos (June 9, 2019), https://www.yelp.com/biz_photos/frys-electronics-wilsonville, (last visited March 20, 2024).



Fry's Electronics Retail Space. Source: Yelp – Fry's Electronics, Photos (June 9, 2019), https://www.yelp.com/biz_photos/frys-electronics-wilsonville, (last visited March 20, 2024).



Fry's Electronics Retail Space. Source: Yelp – Fry's Electronics, Photos (November 21, 2019), https://www.yelp.com/biz_photos/frys-electronics-wilsonville, (last visited March 20, 2024).



Fry's Electronics Retail Space. Source: Yelp – Fry's Electronics, Photos (November 21, 2019), https://www.yelp.com/biz_photos/frys-electronics-wilsonville, (last visited March 20, 2024).



Fry's Electronics Retail Space. Source: Yelp – Fry's Electronics, Photos (November 21, 2019), https://www.yelp.com/biz_photos/frys-electronics-wilsonville, (last visited March 20, 2024).



Fry's Electronics Backstock Area. Source: Yelp – Fry's Electronics, Photos (October 26, 2019), https://www.yelp.com/biz_photos/frys-electronics-wilsonville, (last visited March 27, 2024).

These images are generally consistent with the 2014 floor plan, illustrating that items available for sale at the Current Occupant were consistent with an electronics-related retail use, including computers, monitors, small electronics, and related accessories. Taken together, this information confirms that the store was operating in the same manner as what is shown on the 2014 floor plan at the time the TC zone regulations went into effect.

Based on the 2014 floor plan, the City concludes that the Current Occupant sold the following goods: Electronic components, computer accessories, computer hardware, computer software, office goods, telecom equipment, video accessories, audio equipment, televisions, small appliances, CD's, videos, and video games. This is consistent with the DRB Decision in Case File DB24-0002 (Resolution No. 429), that the legally established non-conforming use at the Location is "a 159,400 square-foot electronics-related retail store" (referred to as the "Current Occupant" in this staff report).

2. What is the proposed use?

The application (pages 5-6 of Exhibit B1) characterizes the Proposed Occupant at the Location as follows: *"The Home Depot, Inc. ("HD") intends to operate a store within the existing structure that was previously occupied by Fry's, and therefore seeks confirmation from the City that a warehouse retail store can continue operating at the property... HD operates home improvement warehouse stores that retail tools, construction products, appliances, and services, including transportation and equipment rentals. HD's Home Services division also offers technical expertise for home improvement projects, and both onsite and offsite install, repair, and remodel services. Although the vast majority of HD customers are private individuals, contractors and other professionals account for close to half of HD's annual sales."*⁴

While the Applicant's materials do not provide detail on how all of these activities would occur at the Location, an examination of other area Home Depot locations reveals that components of the activities, including the garden center and transportation and equipment rentals, occur on the exterior of the building. See discussion responding to the question, Is the proposed use a continuation of the current non-conforming use?, under 3. below, for additional characterization of the Proposed Occupant's activities at the Location.



Home Depot – Tigard, OR (Source: Google Maps – 3/25/2024)



Home Depot – Tigard, OR (Source: Google Maps – 3/25/2024)



Home Depot – Sherwood, OR (Source: Google Maps – 3/25/2024)



Home Depot – Sherwood, OR (Source: Google Maps – 3/25/2024)



Home Depot – Sherwood, OR (Source: Google Maps – 3/25/2024)

3. Is the proposed use a continuation of the current non-conforming use?

For a use to be deemed a continuation of a legally established non-conforming use, it must have the same nature and extent as the recognized non-conforming use. See *Sabin v. Clackamas Cnty.* In this matter, the reference point is the nature and extent of the Location as of June 5, 2019, as determined by the DRB in Case File DB24-0002 (Resolution No. 429).

The City is entitled to draw distinctions between uses. In *Fraley*, Deschutes County drew a distinction between the repair of motorhomes, campers, RV’s and camp trailers, and storage of lumber, on one hand, and the repair of diesel engines and tractor trailer trucks, on the other hand. The County took the position that not all motor vehicle repair activities are the same. In this matter the City may draw distinctions between the uses carried out by Fry’s Electronics and Applicant, just as the County did in *Fraley*.

Further, once the City draws distinctions between uses, it is entitled to determine that certain uses are beyond the scope of a recognized non-conforming use when there is no evidence of them at the relevant time – and therefore determine that there is no “continuation” with respect to those uses – just as the County did in *Hendgen*. Just as LUBA stated in *River City Disposal and Recycling v. City of Portland*, a new or additional use is a change of use rather than a continuation of use.

Based on the application materials provided by the Proposed Occupant, and an examination of how the Proposed Occupant operates locally, the City has concluded the following:

- Applicant acknowledges that the Proposed Occupant operates “home improvement warehouse stores” (page 5 of Exhibit B1).
- Applicant acknowledges that contractors and other professionals, not private individuals, account for close to half of the Proposed Occupant’s annual sales (page 6 of Exhibit B1).
- Applicant acknowledges that the Current Occupant and Proposed Occupant “carry different products” (page 6 of Exhibit B1) and includes a list of products and services provided by the Proposed Occupant, such as “tools, construction products, appliances, and services, including transportation and equipment rentals”, and “both onsite and offsite install, repair, and remodel services” (page 5 of Exhibit B1), that are not

electronics-related or included in the products and services provided by the Current Occupant.

- Applicant shows on the site plan included in its application materials activities that occur outside the structure at the Location, such as the proposed lumber pad at the back of the structure (see page 174 of Exhibit B1), or describes activities that are likely to occur outside, such as transportation and equipment rentals (see page 5 of Exhibit B1).
- Thus, Proposed Occupant is not an electronics-related retail store and contains products and activities that are different than those provided by the Current Occupant.
- Applicant has not presented any evidence to prove that Proposed Occupant's activities existed at the Location as of June 5, 2019.

In other words, the Proposed Occupant's proposed use of the Location, as described above, goes beyond a mere continuation of the non-conforming use of the Location that was recognized by the DRB. Proposed Occupant may engage in these uses at the Location only if it obtains a recognition of change of use, which is beyond the scope of what may be addressed in this matter.

Conclusory Findings:

1. Proposed Occupant's operation at the Location would not be a mere continuation of the non-conforming use previously approved by the City. Therefore, Staff recommends the DRB deny the Proposed Occupant as a continuation of non-conforming use of the Location. Staff recommendation is based on the following considerations:
 - a. The 1991 Decision and the zoning regulations in effect when the 1991 Decision was granted are irrelevant to this decision.
 - b. Proposed Occupant describes itself as a "home improvement warehouse store" (page 5 of Exhibit B1). This is not the same as an "electronics-related retail store," which is the legally established non-conforming use at the Location. Proposed Occupant's characterization of the non-conforming use approved by the City as "warehouse retail use" is incorrect and is not persuasive.
 - c. Proposed Occupant admits that its proposed use of the Location would include the sale of tools and construction products, the rental of transportation and equipment, technical expertise for home improvement projects, and both onsite and offsite installation, repair, and remodeling services (pages 5-6 of Exhibit B1). Some of Proposed Occupant's customers include contractors and professionals. These uses extend beyond the scope of the Current Occupant's actual use of the Location as of June 5, 2019.

Additional Discussion Regarding Proposed Occupant's Reliance on 1991 Decision; Planning Director's Interpretation of Ordinance No. 55:

Proposed Occupant's argument appears to rely heavily on the original land use approval in this matter, what they refer to as the "1991 Decision." Proposed Occupant states on page 6 of Exhibit B1 that it would be a use of the Location that falls within the approved 1991 Decision, and based

on its own characterization of its proposed use of the Location, it would have been allowed to operate at the Location under zoning regulations that were in effect in 1991. Proposed Occupant's understanding of the scope of the original land use approvals for the Location is incomplete.

As explained above, the only relevant point of reference when determining the scope of a non-conforming use is the nature and extent of the use of the subject property at the time the use became nonconforming. *Sabin* at 30 (emphasis added). It is clear from relevant Oregon cases that local governments, when determining the scope of a non-conforming use, consider evidence such as testimony from the property owner or neighbors. See *Larson* (considered evidence included testimony that log trucking began in 1993, the fact that the petitioner advertised for truck drivers in 1993, and the fact that the petitioner obtained a state license in 1992 that allowed the hauling of logs); *Fraley* (considered evidence included tax records, affidavits and interviews of previous site occupants, and photographic evidence); *Crook v. Curry County*, 38 Or LUBA 677 (2000) (considered evidence included photogrammetric evidence, testimony from site visitors, the age of certain building materials, and the fact that the county's assessor's office had no record of a structure on the subject site). Not one of the local jurisdictions in the many cases reviewed by the City in this matter considered either (1) what would have been allowed under a property's original zoning, or even (2) what was written in the subject property's original land use approvals when evaluating an application for recognition of a non-conforming use. Further, LUBA does not consider these factors when reviewing local jurisdictions' decisions regarding non-conforming uses. Applicant also has not cited any cases where original land use approvals served as the basis for determining a legally non-conforming use.

In summary, neither the 1991 Decision, nor the zoning regulations that were in effect in 1991, are relevant in this matter. However, for the sake of responding to Applicant's argument only, the City addresses the 1991 Decision.

Much of Wilsonville's development, including at the Location, was approved using a Planned Development review process. Planned Development generally consists of four phases of project approval – Rezoning, Stage I—Preliminary Plan, Stage II—Final Plan, and Site Design Review. Some of these phases may be combined during the land use review process, but generally the approvals move from the conceptual stage through to detailed architectural, landscape and site plan review in stages. Based upon the zoning designation of a location, Stage I plans establish “bubble diagram” level uses for development, and Stage II plans indicate the specific types and locations of all proposed uses enabling analysis of impacts of those uses for the purpose of traffic and other infrastructure impacts and concurrency evaluation.

In 1991, Capital Realty Corporation submitted an application for approval of a Stage I Master Plan Modification and Phase II Stage II Site Development Plan for the Wilsonville Town Center Master Plan area (File No. 91PC43). The application was submitted on behalf of a retail business with the anonymous name “Project Thunder”. The retail business desired to develop 14.75 acres (Phase II of the Wilsonville Town Center Master Plan) for “a 159,400 square foot electronics-related retail store”. The proposed Project Thunder Stage II Site Development Plans necessitated the requested application by Capital Realty Corporation to modify and resubmit the Stage I

Wilsonville Town Center Master Plan to reflect the expanded master plan area, reclassify overlay zones associated with Ordinance No. 55 (adopted February 9, 1976, and incorporated into the Planned Development Commercial (PDC) zone), redesign the phasing sequence, and establish approximately 5.4 acres for open space.

Specifically with regard to the Location, action in 91PC43 adjusted the Phase II area and changed the land use classification of the site to Central Commercial (CC) replacing the previous classifications of Motor Home (MH), Office Professional (OP), Service Commercial (SC), and Residential (R). As the CC use designation is the basis of the Stage I approval, approved uses for the Location were those identified as CC in the Stage I Wilsonville Town Center Master Plan as defined by Ordinance No. 55.

Description of the proposed development, Project Thunder, in the application is “a 159,400 square foot electronics-related retail store” or a “commercial retail store,” and there is no reference to “warehouse retail” use or “commercial retail center.” There is also no reference to “warehouse retail” or “commercial retail center” in the Ordinance No. 55 land use categories, also referred to as overlay zones, or in the Stage I Master Plan. While the Applicant asserts that “warehouse retail” or “commercial retail center” is the approved use and that the Current Occupant and the Proposed Occupant are the same, Project Thunder was never approved as such. The Planning Commission had the authority to make changes to the application of approved overlays consistent with Ordinance No. 55. This was done via a land use application and action, and is what was done in 91PC43 to classify the site as Central Commercial.

The Stage II Plan evaluates, among other development requirements, minimum parking space needs, which were evaluated for the Location as the sum of individual uses within the development. In the case of Project Thunder, the primary use was evaluated along with accessory components of that use, which included service, office, restaurant, and storage. Evaluation of these components of use for the purpose of determining minimum parking requirements did not change the overall Stage I Master Plan for this Location, which was Central Commercial.

Project Thunder, a commercial retail store (electronics store), was considered consistent with the CC use category when it was approved in 1991. While electronics store was not a use listed specifically in CC, modification to the Stage I Master Plan for the development was approved by the Planning Commission under the authority granted to them in Ordinance No. 55. Conversely, uses more closely associated with the Proposed Occupant were not listed in the CC use category but included in other land use categories, as follows:

- Under the Service Commercial (SC) category - Building materials, retail outlet only, and Cabinet or carpenter shop
- Under the Food and Sundries (FS) category - Hardware store

It is a well-established rule of statutory interpretation that one must not insert language that has been omitted – or omit language that has been inserted. *See* ORS 174.010.

Hypothetically speaking, before a tenant like the Proposed Occupant could have engaged in uses listed in the SC and FS categories at the Location, prior to the 2019 Town Center rezone, a Stage I Master Plan modification for the Location, approved by the Planning Commission, would have been required. Therefore, the argument that Proposed Occupant should be deemed a continuation of use of the Location not only ignores applicable case law, but also ignores the zoning in place at the time of the original land use approval as well as the scope of the land use approval itself.

In summary, neither the 1991 Decision, nor the zoning regulations that were in effect in 1991, are relevant in this matter. Applicant has not cited any legal authorities that say otherwise. Therefore, Proposed Occupant's reliance on the 1991 Decision is inappropriate and misleading. Further, to the extent that the DRB considers Proposed Occupant's argument, it should be cautious: Proposed Occupant has an incomplete understanding of the scope of the 1991 Decision, and what uses would have been allowed at the Location under the City's zoning regulations.

Additional Discussion Regarding Points Beyond the Scope of this Class II Review Application

Applicant, in both Exhibit B1 and Exhibit B2, invites DRB to revisit points that were addressed in the DRB approved Resolution No. 429 (Exhibit A2). As a reminder, the determinations made by the DRB in Resolution No. 429 must be adhered to and are the basis of this Class II Review. This Class II Review process is not an opportunity for Proposed Occupant to relitigate these determinations. However, to fully inform the DRB and respond to Proposed Occupant's written materials, the City explains below why Proposed Occupant's arguments are baseless.

Proposed Occupant's Unsubstantiated Retail Warehouse Use Characterization

Proposed Occupant characterizes the Location as an "electronics warehouse store" and "warehouse retail use" in the application materials. The City rejects this characterization for the following reasons:

- Applicant has not provided any evidence to support its characterization of the Location as of June 5, 2019.
- The 2014 floor plan and 2019 *Yelp* images confirm that the Current Occupant sold electronics, and do not support the assertion that this was a warehouse store.
- As illustrated in the 2019 *Yelp* images of Current Occupant, there was no warehouse shelving present except in the portions of the building designated as "backstock." Additionally, nothing in the images indicates that merchandise was being stocked and sold at a high volume or in bulk to the public. Furthermore, the above descriptions generally do not discuss the type of retail use or user; rather, they focus on the manner in which a retail product is displayed and sold.
- The City's Development Code does not define "warehouse retail use" or "warehouse store," nor do these terms appear in any prior land use approvals for the Location.
- Likewise, there is not a clear, commonly accepted term for "warehouse retail" or "warehouse store."

- *Cambridge Dictionary* defines “warehouse store” as “a large store that sells large quantities of products at low prices to the public.”
- *Wikipedia* defines “warehouse store” as “a food and grocery retailer that operates stores geared toward offering deeper discounted prices than a traditional supermarket. These stores offer a no-frills experience and warehouse shelving stocked well with merchandise intended to move at higher volumes.”
- *SPC Retail* defines “warehouse retail” in the following manner: “Warehouse retailers, such as Costco or Sam’s Club, are food and product retailers that offer large quantities of items at attractive discounts. These stores create a no-frills experience and instead focus on moving products in higher volumes.”
- The *Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th Edition*, which assesses trip generation rates specific to different categories of uses, including retail uses, does not specify “warehouse store” or “warehouse retail” as a specific type of retail use.

But as stated above, the scope of the non-conforming use recognized at the Location as of June 5, 2019 was stated in Resolution No. 429, and is beyond the scope of this Class II Review Application.

Hendgen Clarified: There is no “Common Nucleus” Test

Proposed Occupant attempts to use the Court of Appeals’ opinion in *Hendgen v. Clackamas County*, 115 Or App 117 (1992), to argue that “the common nucleus in activities for both [Proposed Occupant] and [Current Occupant] is commercial retail use” (pages 4-5 of Exhibit B2). This reflects a gross misreading of the Court of Appeals’ opinion in *Hendgen*.

After the Court of Appeals issued the opinion referenced above (115 Or App 117), but before the county could address the issues that were remanded, the appellant in *Hendgen* again appealed to the Court of Appeals, arguing that it was error to remand this case to the county for further proceedings because – in its reading of the Court of Appeals’ opinion – the Court of Appeals held that storage was a valid non-conforming use. *See Hendgen v. Clackamas Cnty.*, 119 Or App 55, 57 (1993). The Court of Appeals wrote:

“[Appellants] are mistaken in their understanding of what we held. We concluded that the legal *test* that the county and LUBA applied in determining whether a nonconforming use existed was too restrictive; we did not-and could not-resolve the factual question of whether the nonconforming use does exist. . . . Like us, LUBA cannot make that factual determination; it may only review the county's findings.” *Id.* at 57-58.

Under the Court of Appeals’ opinion, the City of Wilsonville is the only party that may determine whether a non-conforming use exists, and the scope of that use. Further, the Court of Appeals’ opinion cannot properly be read to announce a “common nucleus” test that binds local governments when they determine whether a non-conforming use exists, its scope. Finally, it is

important to note that *Hendgen* was based in part on an interpretation of Clackamas County's code, and using a statute that applies to only counties and not cities. Therefore, it is irrelevant to these proceedings that Clackamas County recognized a non-conforming use in *Hendgen*.

But as stated above, the scope of the non-conforming use recognized at the Location as of June 5, 2019 was stated in Resolution No. 429, and is beyond the scope of this Class II Review Application.

The City and Proposed Occupant Agree That the Identity of the Party that Engaged in the Use is Irrelevant

Proposed Occupant cites *Vanspeybroeck v. Tillamook Cnty. Camden Inns, LLC*, 221 Or App 677 (2008), to argue that a change in characteristic of a tenant – whether owner or renter – does not result in the abandonment of a non-conforming use (page 4 of Exhibit B2). The City agrees that the identity of the party that engaged in the use is irrelevant to this matter.

The City's position in this matter, which is stated in Resolution No. 429, and which is beyond the scope of this Class II Review Application, was based on an examination of the use of the subject property at the time the more restrictive zoning regulation became effective.

Neighborhood and Public Comments:

No public comments were received during the public comment period for this application. However, the applicant submitted additional information related to their application, which is included as Exhibit B2 of this staff report.

Master Exhibit List:

The following exhibits are hereby entered into the public record as confirmation of consideration of the application as submitted. The exhibit list includes exhibits for Case File No. AR23-0031 (referred by the Planning Director to the DRB as Case File No. DB24-0003).

Planning Staff Materials

- A1. Staff report and Findings (this document)
- A2. Development Review Board Resolution No. 429
- A3. Town Center Plan Adoption Notice
- A4. Fry's Electronics As-Built, submitted in 2014 (Source: City of Wilsonville Building Division)
- A5. Decision of the Hearings Officer, Z1155-91-E/A (Feb. 11, 1994)
- A6. Ordinance No. 55
- A7. Email Correspondence with Applicant regarding DRB Resolution No. 429, dated February 28, 2024
- A8. Staff's Presentation Slides for Public Hearing (to be presented at Public Hearing)

Materials from Applicant

- B1. Applicant’s Materials – Available Under Separate Cover**
Signed Application Form
Applicant’s Narrative and Exhibits Documents
- B2. Applicant’s Additional Submittal dated March 29, 2024 – Available Under Separate Cover**

Procedural Statements and Background Information:

- 1. The statutory 120-day time limit applies to this application. The City received the application on December 15, 2023, and deemed it complete on January 12, 2024. The City must render a final decision for the request, including any appeals, by May 11, 2024.
- 2. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	TC	Commercial
East:	TC	Commercial
South:	TC	Commercial
West:	Not zoned	Interstate 5 Right-of-Way

- 3. Land use actions regarding the Location:
 - 91PC43 Modified Stage I Master Plan, Phase II Stage II Site Development Plans, Amending Condition of Approval 8 of 90PC5
 - 91DR29 Site Design (Architectural, Landscaping) and Signage
 - 92DR21 Revise Condition of Approval 15 of 91DR29 regarding placement of containerized dumpsters
 - 01AR01 Minor Architectural Revisions
 - AR09-0053 Zoning Verification
 - ADMN23-0029 Class I Review of Use and Structure Conformance Status (per Section 4.030 (.01) A. 7. of Wilsonville Development Code)
 - DB24-0002 Appeal of Administrative Decision ADMN23-0029 (currently in process)
- 4. The Applicant has complied with Sections 4.008 through 4.035 pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

Findings:

NOTE: Pursuant to Section 4.014 the burden of proving that the necessary findings of fact can be made for approval of any land use or development application rests with the Applicant in the case.

General Information

Application Procedures - In General

Section 4.008

The application is being processed in accordance with the applicable general procedures of this Section.

Initiating Application

Section 4.009

The Class II Review Application has the signatures of David Fry of Lumberjack LP, owner, and Dan Zoldak of Lars Andersen & Associates, Inc., Applicant and authorized representative, has the owner's permission to submit the application on their behalf.

Pre-Application Conference

Subsection 4.010 (.02)

A pre-application conference (PA22-0004) for the subject property was held on March 24, 2022.

Lien Payment before Approval

Subsection 4.011 (.02) B.

No applicable liens exist for the subject property. The application can thus move forward.

General Submission Requirements

Subsections 4.035 (.04) A. and 4.035 (.05)

The Applicant has provided all of the applicable general submission requirements contained in this subsection.

Zoning - Generally

Section 4.110

The subject property is located in the Town Center (TC) zone, in three (3) TC sub-districts: Commercial-Mixed Use (C-MU), Main Street District (MSD), and Mixed Use (MU). Applicable zoning district and general development regulations, as appropriate, have been applied in accordance with this Section, as discussed in more detail in the Findings in this staff report.

Request A: Class II Review Request (AR23-0031)

Planned Development Regulations

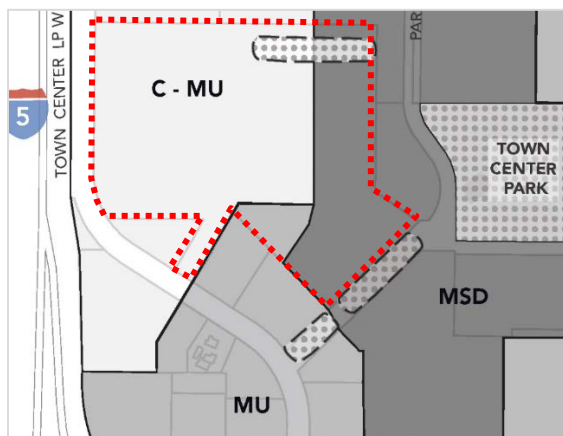
Adherence to Approved Plan and Modification Thereof
Subsections 4.140 (.10) C. and 4.030 (.01) B. 3.

- A1.** Per Subsection 4.140 (.10) C., when the zoning of land within a planned development area changes subsequent to the planned development approval, development that is consistent with the approved plans (in this case, the Stage I Master Plan approval, which applies the CC designation) is considered legal non-conforming subject to the standards of Sections 4.189 through 4.192. The zoning changed with adoption of the Town Center Plan, effective June 5, 2019, and subsequent to the approval of Case File 91PC43. Thus, development that is consistent with the approved plan, but not complying with current zoning standards (Current Occupant), shall be considered legal non-conforming and subject to the standards of Sections 4.189 thru 4.192. The Proposed Occupant is not consistent with the established non-conforming use and, therefore, is not a continuation of non-conforming use as noted in Section 4.189 (.01).

Town Center (TC) Zone

Purpose of Town Center Zone
Subsection 4.132 (.01)

- A2.** The TC Zone in which the Location is located is divided into four sub-districts that contain recommendations for building form and use to achieve the vision set forth in the Town Center Plan. The Location is located in three (3) TC sub-districts, as shown in the map below: Commercial-Mixed Use (C-MU), Main Street District (MSD), and Mixed Use (MU). There are two (2) proposed open space areas within or adjacent to the property. All adjacent property is also zoned TC.



Allowed Uses in TC Zone

Subsection 4.132 (.02) F.

- A3.** With regard to use, per Subsection 4.132 (.02) F., “retail sales and service of retail products, under a footprint of 30,000 square feet per use” is an outright allowed use in the TC zone. Although the Current Occupant at the Location is a retail store and, thus, consistent with allowed use in the TC zone, its footprint of 124,215 square feet exceeds the 30,000 square feet per use limitation of the TC zone.

Permitted and Prohibited Uses in Specific Sub-districts in TC Zone

Subsection 4.132 (.03) A. 1.

- A4.** Per Subsection 4.132 (.03) A. 1., single-user commercial or retail (e.g. grocery store or retail establishment) that exceeds 30,000 square feet if located on more than one story of a multi-story building is an additional permitted use allowed in the C-MU sub-district. The Current Occupant at the Location does not meet this additional permitted use standard due to its large format footprint of 124,215 square feet square feet in a single story, exceeding the maximum footprint of 30,000 square feet.

Other Development Standards

Non-Conforming Uses in General

Subsection 4.001 (196.) and Section 4.189

- A5.** A Non-Conforming Use is defined as “a legally established use, which was established prior to the adoption of the zoning use requirements for the site with which it does not conform” (Subsection 4.001 (196.)). The Current Occupant at the Location has a footprint of 124,215 square feet in a single story with a partial mezzanine, which exceeds the footprint of 30,000 square feet per retail user and footprint limitation that is allowed in the TC Zone. The Current Occupant is a legally established non-conforming use in the TC zone.

Non-Conforming Uses – Continuation of Use

Subsection 4.189 (.01) A.

- A6.** Per Subsection 4.189 (.01) A. of the Code, “A non-conforming use may be continued subject to the requirements of this Section”. Therefore, if another “159,400 square-foot electronics-related retail store” were to occupy the Location, this would be considered a continuation of non-conforming use at the Location. Conversely, were any other use than the protected use to occupy the Location, this would not be considered a continuation of non-conforming use. As demonstrated elsewhere in this staff report, the Proposed Occupant is not the same use as the Current Occupant at the Location. Therefore, operation of the proposed occupant at the Location is not a continuation of non-conforming use.

Non-Conforming Uses – Change of Use
Subsection 4.189 (.02) A.

- A7.** Per Subsection 4.189 (.02) A. of the Code, “A non-conforming use may not be changed unless the change or replacement is to a use that is determined by the Planning Director to be no less conforming to the regulations for the zone district in which the use is located than the existing use.” This determination is outside the scope of review of the current application.

Non-Conforming Uses – Abandoned Use
Subsection 4.189 (.03)

- A8.** Per Subsection 4.189 (.03) of the Code, “If a non-conforming use is abandoned for a period of 18 consecutive months, the use shall not be re-established without fully complying with the use requirements of the zone. Mere vacancy of a site or building while it is being marketed or other plans for its use are being readied, does not constitute abandonment. In order to be considered abandoned, a site must not be receiving City utilities and must not actively be marketed for rent, lease, or sale.” The Location has not been abandoned, as the owner has continued to pay utilities and market the site.

Non-Conforming Uses – Damage or Destruction
Subsection 4.189 (.04)

- A9.** Per Subsection 4.189 (.04) of the Code, “When a structure that is a non-conforming use or a building containing a non-conforming use is damaged by any cause, exceeding 75 percent of its replacement cost, as determined by the Building Official, the structure shall not be re-established unless the owners of that structure promptly and diligently pursue its repair or replacement. If all required building permits have not been received within 18 months of the damage or destruction, the non-conforming use shall not be re-established without meeting all of the requirements of Chapter 4.” The Location has not been damaged or destroyed.

Non-Conforming Uses – Enlargements and Moving
Subsection 4.189 (.05)

- A10.** Per Subsection 4.189 (.05) of the Code, “A non-conforming use, may be permitted to enlarge up to 20 percent in floor area on approval of a conditional use permit by the Development Review Board.” The Current Occupant/protected non-conforming use is not seeking this, and determination is outside the scope of review of the current application.

Non-Conforming Uses – Repairs
Subsection 4.189 (.06)

- A11.** Per Subsection 4.189 (.06) of the Code, “Normal maintenance of a structure containing a non-conforming use is permitted provided that any exterior additions meet the requirements of this Section.” Current Occupant may maintain and repair the structure as needed to operate its non-conforming use and is not relevant to the scope of review of the current application.

**DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 429**

A RESOLUTION AFFIRMING THE PLANNING DIRECTOR'S DETERMINATION OF NON-CONFORMANCE IN CASE FILE ADMN23-0029 AND DENYING THE APPLICANT'S APPEAL DB24-0002.

WHEREAS, an application for Class 1 Administrative Review (ADMN23-0029), together with planning exhibits, has been submitted by Dan Zoldak of Lars Andersen & Associates, Inc. – Applicant, on behalf of David Fry of Lumberjack LP – Owner, in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code; and

WHEREAS, the subject property is located at 29400 SW Town Center Loop West on Tax Lot 220, Section 14D, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon (“the Location”); and

WHEREAS, the subject of the Class 1 Administrative Review was a Planning Director’s Determination of non-conformance per Subsection 4.030 (.01) A. 7. of the Wilsonville Development Code; and

WHEREAS, the City issued the Planning Director’s Determination, on the above-captioned subject, that Fry’s Electronics is a legally established Non-Conforming Use in a Non-Conforming Structure with Non-Conforming Site Conditions in the Town Center (TC) zone, dated December 28, 2023; and

WHEREAS, within the prescribed appeal period, the Administrative Decision was appealed by Dan Zoldak of Lars Andersen & Associates, Inc. – Appellant/Applicant, dated January 10, 2024; and

WHEREAS, specifically, the filed appeal grounds were stated: “An APPEAL of Planning Director Determination ADMN20-0029 [sic] determining that Fry’s Electronics is a legally established Non-Conforming Use in a Non-Conforming Structure with Non-Conforming Site Conditions at 29400 SW Town Center Loop West”; and

WHEREAS, per Code Section 4.022 (.01), a decision by the Planning Director on issuance of an Administrative Decision may be appealed, and such appeals shall be heard by the Development Review Board for all quasi-judicial land use matters; and

WHEREAS, the matter at issue will be a determination of the appropriateness of the action or interpretation of the requirements of the Code; and

WHEREAS, the Planning Staff mailed the Notice of Public Hearing for the Appeal on February 6, 2024, in advance of the Public Hearing; and

WHEREAS, the Planning Staff has prepared the staff report on the above-captioned subject dated February 15, 2024, for consideration by the Development Review Board in hearing the appeal; and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel B at a scheduled meeting conducted on February 26, 2024, at which time exhibits, together with findings and public testimony were entered into the public record; and

RESOLUTION NO. 429

PAGE 1 OF 2



WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject; and

WHEREAS, during the February 26, 2024 public hearing, the Applicant requested that the record be kept open for seven days to allow it to respond to testimony entered into the record; and

WHEREAS, the Development Review Board Panel B closed the public hearing and unanimously approved the request to keep the record open for Resolution No. 429 until March 4, 2024 at 5:00 pm; and

WHEREAS, on March 4, 2024, the Applicant filed a first written submittal, which has been marked as Exhibit B2, forwarded by Planning Staff to the Development Review Board on March 7, 2024; and

WHEREAS, on March 11, 2024, the Applicant filed a final arguments submittal, which has been marked as Exhibit B3, forwarded by Planning Staff to the Development Review Board on March 12, 2024; and

WHEREAS, on March 14, 2024, commencing at 4:30 pm, the Development Review Board Panel B held a special meeting to consider all evidence timely submitted to, and not rejected by, the Development Review Board regarding Case File No. DB24-0002; and

WHEREAS, the Development Review Board considered all evidence placed before, and not rejected by, the Development Review Board on the record for Resolution No. 429, and, thereafter, deliberated.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby affirm the Planning Director's Determination of Non-Conformance (ADMN23-0029) dated December 28, 2023, attached hereto, with findings and recommendations contained therein, determining that:


1. There is a legally established non-conforming use at the Location; specifically, that the protected use is "a 159,400 square-foot electronics-related retail store."
2. There is a legally established non-conforming structure at the Location.
3. There are legally established non-conforming site conditions at the Location.

ADOPTED by the Development Review Board of the City of Wilsonville this 14th day of March 2024, and filed with the Planning Administrative Assistant on 3/14/24. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022 (.09) unless appealed per WC Sec 4.022 (.02) or called up for review by the Council in accordance with WC Sec 4.022 (.03).



Rachelle Barrett, Chair - Panel B
Wilsonville Development Review Board

Attest:


Mandi Simmons, Planning Administrative Assistant

**NOTICE OF LEGISLATIVE PUBLIC HEARING
BEFORE THE PLANNING COMMISSION:
TOWN CENTER PLAN
LP19-0003**



This is to notify you that the City of Wilsonville has proposed Land Use Regulations that may affect the permissible uses of your property and other properties.

(This notice required by ORS 227.186)

Planning Commission:

On **Wednesday, March 13, 2019, beginning at 6:00 p.m.**, the Wilsonville Planning Commission will hold a public hearing. The Planning Commission will consider whether to recommend adoption of the Wilsonville Town Center Plan and associated Comprehensive Plan, Zoning Map, and Development Code amendments to the City Council. No additional mailed notice will be sent to you unless you either:

- Submit testimony or sign in at the Planning Commission hearing, or
- Submit a request, in writing or by telephone, to the Planning Division.

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The hearings will take place at **Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon**. A complete copy of the relevant file information, including the staff report, findings, and recommendations, will be available for viewing seven days prior to each public hearing at Wilsonville City Hall and at the Wilsonville Public Library.

Summary of Proposal:

Adoption of the Wilsonville Town Center Plan and related amendments to the text of the Wilsonville Comprehensive Plan, the City's Zoning Map (from PDC-TC to TC), and the Wilsonville Development Code - amending text in section 4.155 (parking), deleting section 4.131.05 (PDC-TC Zone), and adding section 4.132 (Town Center Zone).

How to Comment: Oral or written testimony may be presented at the public hearing. Written comment on the proposal to be submitted into the public hearing record is welcome prior to the public hearings. To have your written comments or testimony distributed to the Planning Commission before the meeting, it must be received by 2 pm on **March 12, 2019**.

Direct such written comments or testimony to:

Miranda Bateschell, Planning Manager
29799 SW Town Center Loop East, Wilsonville, Oregon, 97070;
bateschell@ci.wilsonville.or.us, 503-570-1581

Copies of the full draft plan is available starting one week before the hearing, March 6, 2019, from the Wilsonville Planning Department at the above address and **at the project website:** <https://www.ci.wilsonville.or.us/planning/page/town-center->

Note: Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting. The City will also endeavor to provide qualified sign language interpreters and/or bilingual interpreters, without cost, if requested at least 48 hours prior to the meeting. To obtain such services, please call Tami Bergeron, Planning Administrative Assistant at (503) 682-4960.

Date of Planning Commission Meeting: **March 13, 2019**

Date Notice was posted: **February 6, 2019**



**AFFIDAVIT OF MAILING AND POSTING NOTICE OF
PUBLIC HEARING IN THE CITY OF WILSONVILLE**

STATE OF OREGON)

COUNTIES OF CLACKAMAS)
AND WASHINGTON)

CITY OF WILSONVILLE)

I, Tami Bergeron, do hereby certify that I am Administrative Assistant for the City of Wilsonville, Counties of Clackamas and Washington, State of Oregon, that the attached copy of Notice of Public Hearing is a true copy of the original notice; that on February 7, 2019, I did cause to be mailed copies of such notice of said public hearing in the exact form hereto attached to the following property owners:

MAILED TO: See Attached List of affected agencies and property owners within 250'

EMAILED TO: interested parties

Also notice was posted at the following locations:

- City Hall, 29799 SW Town Center Loop, East, Wilsonville OR 97070
- Wilsonville Community Center, 7965 SW Wilsonville Road, Wilsonville, OR 97070
- Library, 8200 SW Wilsonville Road, Wilsonville OR 97070
- City of Wilsonville Web Site
- Wilsonville Spokesman Journal

Witness my hand this 7th day of February 2019

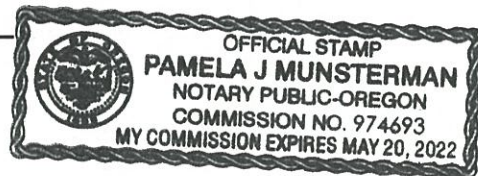


Tami Bergeron, Administrative Assistant

Acknowledged before me this 7th day of February 2019



NOTARY PUBLIC STATE OF OREGON



**NOTICE OF LEGISLATIVE PUBLIC HEARING
BEFORE THE PLANNING COMMISSION:
TOWN CENTER PLAN
LP19-0003**



This is to notify you that the City of Wilsonville has proposed Land Use Regulations that may affect the permissible uses of your property and other properties.

(This notice required by ORS 227.186)

Planning Commission:

On **Wednesday, March 13, 2019, beginning at 6:00 p.m.**, the Wilsonville Planning Commission will hold a public hearing. The Planning Commission will consider whether to recommend adoption of the Wilsonville Town Center Plan and associated Comprehensive Plan, Zoning Map, and Development Code amendments to the City Council. No additional mailed notice will be sent to you unless you either:

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Summary of Proposal:

Adoption of the Wilsonville Town Center Plan and related amendments to the text of the Wilsonville Comprehensive Plan, the City's Zoning Map (from PDC-TC to TC), and the Wilsonville Development Code - amending text in section 4.155 (parking), deleting section 4.131.05 (PDC-TC Zone), and adding section 4.132 (Town Center Zone).

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Miranda Bateschell, Planning Manager
29799 SW Town Center Loop East, Wilsonville, Oregon, 97070;
bateschell@ci.wilsonville.or.us, (503) 570-1576

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TOWN CENTER PLAN PC HEARING 250' PROPERTY OWNERS

TLID	RNO	OWNERSORT	OWNER1	OWNERADDRESS	OWNERCITY	STATE	OWNERZIP	SITESTRNO	SITEADDR	SITECITY	SITEZIP
31W14D 00230	5015369	29100 TOWN CENTER LLC	29100 SW TOWN CENTER LOOP W STE 14	WILSONVILLE	OR	97070	29100	29100 SW TOWN CENTER LOOP W STE 14	WILSONVILLE	OR	97070
31W14D 00211	811875	WILSONVILLE LLC	412 NW COUCH ST STE 201	PORTLAND	OR	97209	29991	29991 SW TOWN CENTER LOOP W	WILSONVILLE	OR	97070
31W14D 00406	811937	8755 SW CITIZENS LLC	819 SE MORRISON STE 110	PORTLAND	OR	97214	8755	8755 SW CITIZEN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00700	811991	8900 CITIZENS LLC	28521 SW 45TH DR	WILSONVILLE	OR	97070	8900	8900 SW CITIZEN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000600	808959	AUFENHIMMEL TIMOTHY A & RENEE E	29040 SW TOWN CENTER LOOP E	WILSONVILLE	OR	97070	29040	29040 SW TOWN CENTER LOOP E	WILSONVILLE	OR	97070
31W13C001200	1374123	BOWLING BLDG LLC	24495 BUTTEVILLE RD NE	AURORA	OR	97002	7965	7965 SW TENNIS WILSONVILLE	WILSONVILLE	OR	97070
31W13C00200	809021	CHRIS	19600 S MOLALLA AVE	OREGON CITY	OR	97045	29353	29353 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C003000	806346	CITY	7940 SW RACQUET CT	WILSONVILLE	OR	97070	29291	29291 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C001300	1375194	CLARK	31460 SW ISLE WAY LN	WEST Linn	OR	97068	7940	7940 SW RACQUET WILSONVILLE	WILSONVILLE	OR	97070
31W13C000300	1508551	CLARK	5232 SW BUDDINGTON ST	PORTLAND	OR	97219	7920	7920 SW COURT WILSONVILLE	WILSONVILLE	OR	97070
31W13C001800	809085	CLARK	PO BOX 214	WOODBURN	OR	97071	29222	29222 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000300	808932	CONOV	50 E NORTH TEMPLE ST 22 FLR	SALT LAKE CITY	UT	84150	29350	29350 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000400	1487625	CORNWELL FAM LTD PARTNRSHP	15545 NE ELLERS RD	AURORA	OR	97002	29781	29781 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00205	811839	D3S LLC	8855 SW CITIZENS DR	HOOPER	AL	35226	29680	29680 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00411	1646963	DUNN	901 NE GUSAN ST	WILSONVILLE	OR	97070	8855	8855 SW CITIZEN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00400	811900	EK LANDS OREGON LLC	3707 JAMES HILL CIR	HOOPER	OR	97070	29020	29020 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000700	806220	ELLIOTT & ASSOCIATES	7925 SW COURTSIDE WAY	WILSONVILLE	OR	97070	7925	7925 SW COURT WILSONVILLE	WILSONVILLE	OR	97070
31W13C000200	808923	FLECK	7960 SW RACQUET CT	WILSONVILLE	OR	97070	7960	7960 SW RACQU WILSONVILLE	WILSONVILLE	OR	97070
31W13C002000	809101	FLOOD	18187 SIENA DR	LAKE OSWEGO	OR	97034	29702	29702 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000500	1450600	FRY D	7300 SW CHILDS RD #B	TIGARD	OR	97223	29345	29345 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00206	811848	GEVUR	14108 KNAUS RD	LAKE OSWEGO	OR	97034	29950	29950 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000600	806266	GEM C	1943 SE 6TH AVE	PORTLAND	OR	97214	8275	8275 SW WILSONVILLE	WILSONVILLE	OR	97070
31W13C001300	809030	GRAY	7975 SW TENNIS CT	WILSONVILLE	OR	97070	7975	7975 SW TENNIS WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00207	811857	GREEN	8655 SW CITIZENS DR STE 201	WILSONVILLE	OR	97070	8655	8655 SW CITIZEN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00407	811948	JANRO	3102 SW RIVERFRONT TER	WILSONVILLE	OR	97070	7975	7975 SW TENNIS WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00228	819109	JAVG	30045 SW PARKWAY AVE	WILSONVILLE	OR	97070	30045	30045 SW PARK WILSONVILLE	WILSONVILLE	OR	97070
31W13C000100	808914	JONES	7923 SW COURTSIDE WAY	WILSONVILLE	OR	97070	7923	7923 SW COURT WILSONVILLE	WILSONVILLE	OR	97070
31W13C000100	806937	KAISE	500 NE MULTNOMAH AVE #100	PORTLAND	OR	97232	29174	29174 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00409	811964	OREGO	7430 SOUTH CREEK RD STE 200	SANDY	CA	95112	8815	8815 SW MAIN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00228	5015367	KC EV	600 E BROKAW RD	SAN JOSE	CA	95112	29400	29400 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00220	818949	LUBE	7945 SW RACQUET CT	WILSONVILLE	OR	97070	7945	7945 SW RACQU WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00302	809110	MILLE	PO BOX 3320	AGOURA HILLS	CA	91376	29660	29660 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000200	1595090	NILI	29751 SW TOWN CENTER LOOP W	WILSONVILLE	OR	97070	29751	29751 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000100	809012	OWENS	8075 SW SPRUCE ST	TIGARD	OR	97223	7960	7960 SW TENNIS WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00221	1606532	PARK	1780 SW ADVANCE RD	WEST LINN	OR	97068	29585	29585 SW PARK WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00001	8121277	PLUM	13829 N BUCCANEER WAY	SUN CITY	AZ	85351	29765	29765 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00223	1697667	REGAL	101 E BLOUNT AVE	KNOXVILLE	TN	37920	29300	29300 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C0001900	809094	REHDE	7970 SW RACQUET CT	WILSONVILLE	OR	97070	7970	7970 SW RACQU WILSONVILLE	WILSONVILLE	OR	97070
31W13C000400	806300	RETAL	PO BOX 130839	CARLSBAD	CA	92013	8229	8229 SW WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00500	811973	ROBER	8187 NW 98RD ST	TERREBONNE	OR	97708	29175	29175 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00104	8118602	SFP-F	PO BOX 5350	BEND	OR	97702	0	0 NO SITUS WILSONVILLE	WILSONVILLE	OR	97070
31W13C000500	806284	SHEFR	29200 SW TOWN CENTER LOOP NW	WILSONVILLE	OR	97070	29111	29111 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00100	811777	SMITH	8811 HUFF ST NE	SALEM	OR	97303	29029	29029 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000900	806211	SOLI	3660 SE 122ND AVE	PORTLAND	OR	97236	29029	29029 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000501	5022121	STORA	20255 SW AVERY CT	TUALATIN	OR	97062	29190	29190 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000700	808978	SUNKL	28896 SW CASCADE LOOP	WILSONVILLE	OR	97070	7959	7959 SW COURT WILSONVILLE	WILSONVILLE	OR	97070
31W13C001000	1404313	TOWNC	10500 NE 8TH ST STE 301	BELLEVEUE	WA	98004	29320	29320 SW PARK WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00229	5015368	US BA	2800 E LAKE ST	MINNEAPOLIS	MN	55406	29112	29112 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C001100	806248	US PO	850 CHERRY AVE FSC551	SAN BRUNO	CA	94066	29333	29333 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000700	5003162	VILLA	30050 SW TOWN CENTER LOOP W STE 20	WILSONVILLE	OR	97070	8639	8639 SW MAIN WILSONVILLE	WILSONVILLE	OR	97070
31W14D 00000	1465701	WASHI	425 PIKE ST	SEATTLE	WA	98101	29028	29028 SW TOWN WILSONVILLE	WILSONVILLE	OR	97070
31W13C000600	811982	WEAKL	PO BOX 368	WILSONVILLE	OR	97070	8840	8840 SW CITIZEN WILSONVILLE	WILSONVILLE	OR	97070

31W14D 00209	811866 WEATH	WEATHERLY PROPERTIES LLC	PO BOX 179	NEWBERG	97132	8656 8656 SW CITZER WILSONVIL	97070
31W13CD01000	809003 WIKE	WIKE JENNIFER	7930 SW TENNIS CT	WILSONVILLE	97070	7950 7930 SW TENNIS WILSONVIL	97070
31W13CD02200	809129 WILLI	WILLIAMS ALYSSA N & NICHOLAS R	7913 SW RACQUET CT	WILSONVILLE	97070	7913 7913 SW RACOU WILSONVIL	97070
31W14D 00227	5015366 WILSO	WILSONVILLE INVESTMENT PROPERTIES INC.	11086 SE OAK ST	MILWAUKIE	97267	0 NO 31JUS WILSONVIL	97070
31W14D 00107	1349801 WSW L	WSW LLC	29025 SW TOWN CENTER LOOP W	WILSONVILLE	97070	29025 29025 SW TOWN WILSONVIL	97070

Affected State or Federal Agencies, Local Governments or Special Districts

updated 9/19/17/2017
 (refer to Shelley's similar label-based document to affected agencies updated 5.6.2018.docx updates: ..\DLCD\Mail Labels for

Name	Company	Address	City	State	Zip	COMMENTS
James Clark	BPA, Realty Department	2715 Tepper Lane	Kcizer	OR	97303	*updated 3/24/2016
City Planner	Chamber of Commerce	8565 SW Salish Lane	Wilsonville	OR	97070	
Planning Director	City of Canby	PO BOX 930	Canby	OR	97013	updated 1/29/2018
Aquilia Hurd-Ravich	City of Sherwood	22560 SW Pine Street	Sherwood	OR	97140	
Mike McCallister	City of Tualatin	18880 SW Martinazzi Avenue	Tualatin	OR	97062	
Diane Taniguchi-Dennis	Clackamas Co. Transportation & Development	150 Beaver Creek Road	Oregon City	OR	97045	*updated 3/28/2016
Bobbi Burton	Clean Water Services	2550 SW Hillsboro Hwy.	Hillsboro	OR	97123	
Doug Young	Columbia Cable of Oregon	14200 SW Brigadoon Ct.	Beaverton	OR	97005	
John Lilly	Community Coordinator, Facilities Division	2575 Center Street, NE	Salem	OR	97310	
Justin Wood, Assoc. Dir. of Gov. & Builder Rel.	Department of Corrections	2575 Center Street NE	Salem	OR	97310	*updated 3/28/2016
Jon Kloof, Gov. & Political Rel. Coord.	Department of State Lands	775 Summer Street, NE	Salem	OR	97301-1279	
Paulette Copperstone	Home Builders Associations	15555 SW Bangy Road, Suite 301	Lake Oswego	OR	97035	
Brian Harper	Home Builders Associations	15555 SW Bangy Road, Suite 301	Lake Oswego	OR	97035	
Anthony Buczek	Home Builders Associations	15555 SW Bangy Road, Suite 301	Lake Oswego	OR	97035	
Nina Carlson	Home Builders Associations	15555 SW Bangy Road, Suite 301	Lake Oswego	OR	97035	
Attr: Development Review	Home Builders Associations	15555 SW Bangy Road, Suite 301	Lake Oswego	OR	97035	
District Manager	Metro	600 NE Grand Avenue	Portland	OR	97233	9/22/2017 P Copperstone requested she is point of contact for Metro
Gail Curtis	Metro	600 NE Grand Avenue	Portland	OR	97233	
Seth Bramley	Metro	600 NE Grand Avenue	Portland	OR	97233	
	NW Natural Gas	220 NW 2 nd Avenue	Portland	OR	97209	updated 1/9/2018
	ODOT Region 1	123 NW Flanders Street	Portland	OR	97209	Updated 01/2018 all others to be deleted
	ODOT Region 2A	9200 SE Lawnfield Road	Clackamas	OR	97045	cancel-mailing
	ODOT Region 1	123 NW Flanders Street	Portland	OR	97209	cancel-mailing
	ODOT Region 1	123 NW Flanders Street	Portland	OR	97209	cancel-mailing

Oregon Dept of Environ Quality	700 NE Multnomah Street, Suite 600	Portland	OR	97232	updated 1/2018
Bill Ferber, Region Manager	Oregon Water Resources Department	725 Summer Street, NE, Suite A	Salem	OR	97301
Brian Buswell	Portland General Electric	9480 SW Boeckman Road	Wilsonville	OR	97070
	Sherwood School Dist Admin Office	23295 SW Miami Street	Sherwood	OR	97140
Ben Baldwin	Tri-Met Project Planning Dept	4012 SE 17th Avenue	Portland	OR	97202
	Tualatin Valley Fire and Rescue	29875 SW Kinsman Road	Wilsonville	OR	97070
	Tualatin Valley Fire and Rescue	8445 SW Elligsen Road	Wilsonville	OR	97070
	Tualatin Valley Water District	1850 SW 170 th Ave.	Beaverton	OR	97005-4211
Frank Lonergan	United Disposal Services	10295 SW Ridder Road	Wilsonville	OR	97070
Andy Baek	Wash. County Long Range Planning	155 N. First Avenue	Hillsboro	OR	97124
Dr. Kathy Ludwig	West Linn/Wilsonville School District 3JT	22210 SW Stafford Rd.	Tualatin	OR	97062
Tim Woodley	West Linn/Wilsonville School District 3JT	22210 SW Stafford Rd.	Tualatin	OR	97062

Bergeron, Tami

From: DLCDC Plan Amendments <plan.amendments@state.or.us>
Sent: Wednesday, February 6, 2019 4:56 PM
To: Bergeron, Tami
Subject: Confirmation of PAPA Online submittal to DLCDC

Wilsonville

Your notice of a revised proposal for a change to a comprehensive plan or land use regulation has been received by the Oregon Department of Land Conservation and Development.

Local File #: LP19-0003

DLCDC File #: [002-19](#)

Original Proposal Received: 2/6/2019

Date of Revision: 2/6/2019

First Evidentiary Hearing: 3/13/2019

Final Hearing Date: 5/6/2019

Submitted by: bergeron@ci.wilsonville.or.us

If you have any questions about this notice, please reply or send an email to plan.amendments@state.or.us.

Pamplin Media Group

-Ad Proof-

This is the proof of your ad, scheduled to run on the dates indicated below. Please proofread carefully, and if changes are needed, please contact Charlotte Allsop prior to deadline at (971) 204-7706 or callsop@pamplinmedia.com.

<p>Date: 02/07/19 Account #: 108863 Reference #: Company Name: WILSONVILLE, CITY OF Contact: Address: 29799 SW TOWN CENTER LOOP E WILSONVILLE Telephone: (503) 570-1502 Fax: (503) 682-1015</p>	<p>Ad ID: 93093 Start: 02/20/19 Stop: 02/20/19 Total Cost: \$167.95 Ad Size: 9.708 Column Width: 1 Column Height: 9.708 # of Inserts: 1 Ad Class: 1202 Phone #: (971) 204-7706 Email: callsop@pamplinmedia.com</p>
<p>Run Dates: Wilsonville Spokesman 02/20/19</p>	

**NOTICE OF LEGISLATIVE PUBLIC HEARING
BEFORE THE PLANNING COMMISSION:
TOWN CENTER PLAN
LP19-0003**

Planning Commission:

On **Wednesday, March 13, 2019, beginning at 6:00 p.m.**, the Wilsonville Planning Commission will hold a public hearing regarding the **Town Center Plan (Case File LP19-0003)**. The Planning Commission will consider whether to recommend adoption of the Wilsonville Town Center Plan and associated Comprehensive Plan, Zoning Map, and Development Code amendments to the City Council. No additional mailed notice will be sent to you unless you either:

- Submit testimony or sign in at the Planning Commission hearing, or
- Submit a request, in writing or by telephone, to the Planning Division.

City Council:

The Wilsonville City Council is scheduled to hold a first-reading public hearing on the proposal on **April 15, 2019 at 7:00 p.m.** after which it may make the final decision.

The hearings will take place at **Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon**. A complete copy of the relevant file information, including the staff report, findings, and recommendations, will be available for viewing seven days prior to each public hearing at Wilsonville City Hall and at the Wilsonville Public Library.

Oregon state law ORS 227.186. The City has not determined how or if this particular proposal will reduce or otherwise impact either the value or use of properties within Wilsonville. Any changes to permitted land uses may reduce or increase property values, depending on various factors. A written notice has been mailed to potentially impacted property owners, as required by Oregon law.

Summary of Proposal: LP19-0003 Town Center Plan

Adoption of the Wilsonville Town Center Plan and related amendments to the text of the Wilsonville Comprehensive Plan, the City's Zoning Map (from PDC-TC to TC), and the Wilsonville Development Code - amending text in section 4.155 (parking), deleting section 4.131.05 (PDC-TC Zone), and adding section 4.132 (Town Center Zone).

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Miranda Bateschell, Planning Manager
29799 SW Town Center Loop East, Wilsonville,
Oregon, 97070;
bateschell@ci.wilsonville.or.us, (503) 682-4960

Copies of the full draft plan is available 7 days prior to the hearing: at the Wilsonville Planning Division, at the above address, and on at the meeting web page: www.ci.wilsonville.or.us

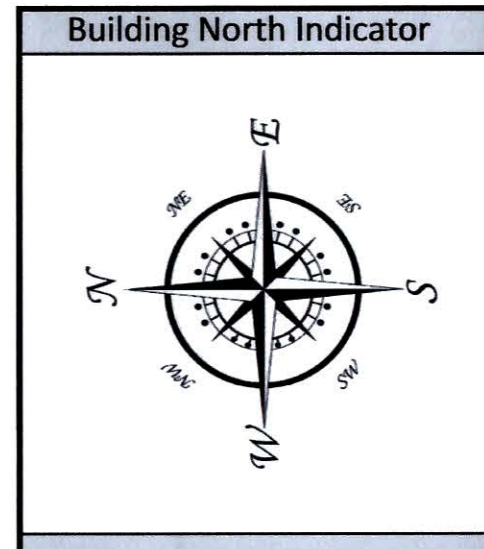
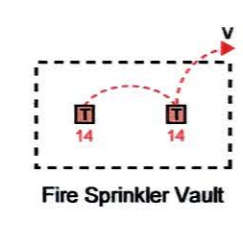
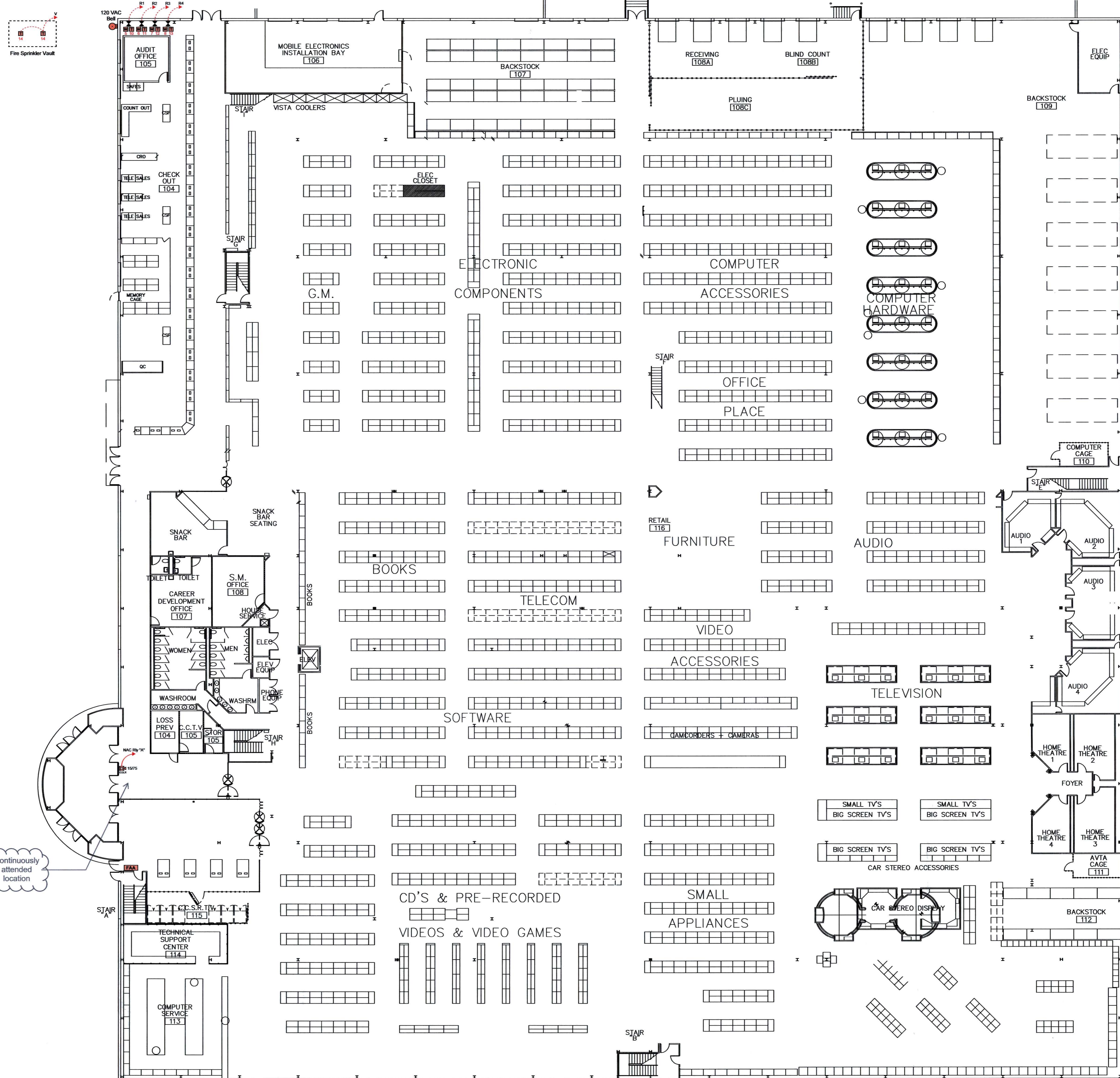
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Publish Feb. 20, 2019.

WS93093

Fire Alarm Legend		
Symbol	Device	Count
	Fire Alarm Control Panel	
	NAC Power Supply	
	Point Expander Module	
	Fire Alarm Annunciator	
Initiating Devices (# = point)		
	Waterflow Switch	
	Valve Tamper Switch	
	Fire Pull Station	
	Smoke Detector	
	Heat Detector	
NAC Devices (# = candel)		
	Horn/Strobe - wall mount	
	Strobe - wall mount	
	Horn/Strobe - ceiling	
	Strobe - ceiling	
	Sprinkler Bell (120 VAC)	
Auxiliary Outputs		
	Relay 1 -	
	Relay 2 -	

Fire Cable Legend	
Symbol	Cable
	SLC / IDC circuits for initiating devices All cables are FPLR 18 awg 4 conductor
	NAC circuits for horns/strobes All cables are FPLR 14 awg 2 conductor unless specified otherwise on drawing
	Control circuits for auxiliary devices like maglocks and door holders. All cables are FPLR 18 awg 4 conductor
	(4) hash marks indicate feed & return (two conductors out and two back)



Signing Supervisor:
Lance Sundberg
OR Lic # 1711LEA
WA Lic # SUNDBL'061KS
NICET # 136160

Design/Engineering:
LancePacific
17402 NW Reindeer Dr
Portland, OR 97229
Lance Sundberg
503-701-8447
LancePacific@gmail.com

Contractor:
STANLEY Security Solutions
15495 SW Sequoia Parkway #100
Portland, OR 97224
503-968-3300
877-899-0001
Portland Office
Monitoring

Fire Alarm System
1st Floor
Fry's Electronics
28400 SW Town Center Loop
Wilsonville, OR 97070
Store Manager: Michael Anton
503-570-6000

RECEIVED
MAR 20 2014
BY:

AS-BUILT
1-23-2007

City of Wilsonville
Exhibit A4 DB24-0003

Date: 3/13/2014
Sheet:
FA-1
Scale: 1/16" = 1'
Revision: 1.0

RICHARD F. CRIST
Land Use Hearings Officer
18734 Upper Midhill Drive
West Linn, Oregon 97068
(503) 636-9256

FINDINGS AND DECISION OF THE HEARINGS OFFICER

File No.: Z1155-91-E/A (Remand)

Applicant: Hans and Shauna Hengden, 15243 NE Countryside Drive,
Aurora, OR 97002

Appellant: Hans and Shauna Hengden

Proposal: Appeal of a Planning Division staff denial of a proposed change of use for an alleged nonconforming use. The applicant requests use of two existing structures for the storage and sale of cedar fencing materials.

Planning Division Recommendation: Denial

Staff Representative: Gary Naylor

Public Hearing on Remand: A public hearing was held at the Clackamas County Department of Transportation and Development (DTD), 902 Abernethy Road, Oregon City, Oregon on August 11, 1993, at which time testimony and other evidence was received, the record was left open for the receipt of additional written information through August 25, 1993, and the matter was continued for decision until September 8, 1993 at 9:00 a.m., at which time the matter was further continued for decision until September 15, 1993 at 9:00 a.m., at which time an oral decision was announced recognizing the existence of a protected nonconforming use for the storage of commercial goods in the two structures in question, but denying the request to alter that protected nonconforming use as requested.

Speaking in Support of Request on Remand :

1. John Shonkwiler, Attorney at Law, 5750 SW Carman Drive, Lake Oswego, OR 97035
2. Orland Ogden, 4035 SE 82nd Avenue, Portland, OR 97266
3. Robert Draper, P.O. Box 153, Aurora, OR 97002

Community Planning Organization Response: The Aurora-Butteville-Barlow CPO was timely notified of this proceeding, but did not respond.

Speaking in Opposition to Request on Remand:

1. Tom Rastetter, Attorney at Law, 294 Warner Milne Road, Oregon City, OR 97045
2. Ed Stritzke, 14850 NE Countryside Drive, Aurora, OR 97002
3. Ron Endicott, P.O. Box 772, Tualatin, OR 97062
4. Scott Megy, 15241 NE Countryside Drive, Aurora, OR 97002



FINDINGS:A. Subject Property:

1. Legal Description: Tax Lot 100, Section 36, T3S, R1W, W.M., Clackamas County, Oregon
2. Location: At the east end of Countryside Drive, Wilsonville area.
3. Zone: GAD, General Agricultural District
4. Comprehensive Plan Designation: Agriculture

B. Background: On October 8, 1991 the Planning Division staff issued its administrative decision denying this application on the basis that there was not a protected nonconforming use for commercial warehousing, and that the requested change of that alleged nonconforming use from the storage of landscaping products and some wood materials to the requested storage and sale of cedar fencing material was not permitted, and in any event, the requested change in use did not satisfy the approval criteria under ZOO 1206.06. The applicant appealed this administrative decision to the Hearings Officer.

A public hearing was held on the appeal on December 4, 1991, resulting in Findings and Decision of the Hearings Officer being entered on February 7, 1992 denying the application based on the Hearings Officer's determination that there is no protected nonconforming use for a warehousing business. (Exhibit #1R). The Findings and Decision of the Hearings Officer, dated February 7, 1992, is incorporated herein in its entirety by this reference.

The applicant appealed the Findings and Decision of the Hearings Officer to LUBA. On May 21, 1992, LUBA affirmed the County's decision that a nonconforming use for warehousing had not been established, and that any nonconforming use that had been established in the two structures was discontinued for more than 12 consecutive months and therefore lost pursuant to ZOO 1206.02. (Exhibit #2R).

LUBA's decision was appealed to the Court of Appeals of the State of Oregon. The Court of Appeals determined that, to the extent that simple storage of commercial goods was a part of any nonconforming use established on the subject property, and to the extent that such storage continued after other business operations ceased, the cessation of other on-site business activities does not constitute an abandonment of the storage use. The Court of Appeals reversed and remanded LUBA's decision. (Exhibit #3R).

On reconsideration, LUBA remanded the County's decision to determine whether a storage use of the two structures was an existing use that became a separately recognizable nonconforming use on the date of restrictive zoning, and, if so, was that nonconforming use discontinued for more than 12 months and thereby lost. (Exhibit #4R). This decision by LUBA was appealed by the

applicant to the Court of Appeals, which affirmed LUBA. (Exhibit #5R).

C. Land Use Ordinance Considerations:

1. The subject property was first zoned RA-1 on December 14, 1967. On June 18, 1979, the subject property was legislatively rezoned GAD, and has remained so zoned to this date. December 14, 1967 is the date of restrictive zoning.

2. As previously found by the Hearings Officer, and supported by substantial evidence in this record, on December 14, 1967 the property was owned by Orland and Joan Ogden. The two structures in question were utilized as part of various commercial activities, including the storage of commercial goods in conjunction with those commercial ventures.

Al Troutman purchased the property in 1969. Mr. Troutman changed the nature of the use(s) on the subject property. Between 1969 and August 31, 1989, Mr. Troutman and other operators utilized the two structures for a pellet feed business and a soil amendment business. During the period of time from 1969 through August 1, 1989, the two structures, at least in part, were utilized for the storage of raw and finished materials for these businesses.

On August 31, 1989, foreclosure proceedings were filed, Mr. Troutman filed bankruptcy proceedings, and the Trustee in Bankruptcy took possession of the property. No business activities were conducted on the property after August 31, 1989 until at least December, 1990, when the current owners, the Hengden's, entered into an agreement with J. B. Enterprises for the operation of the currently existing business for the storage and sale of cedar fencing materials. Storage of raw and/or finished materials continued in at least portions of the two structures after August 31, 1989 and until J. B. Enterprises took possession of the property in December 1991.

No zoning permits or approvals were ever obtained for the above described uses.

With regard to the above finding that the storage of raw and/or finished materials continued without interruption in at least portion of the two structures, the Hearings acknowledges that there is conflicting evidence on this issue in this record. Substantial evidence was presented to the effect that between 1973 and 1983 the larger building, Building #1, was used for the storage of onions or other agricultural products. The Hearings Officer believes that such storage of onions did occur, but that the better evidence is that there continued to be at least some storage of commercial goods in that structure during that period of time. The law does not require that a nonconforming use be lost because the level of intensity of the nonconforming use is reduced for a period of time.

3. Based on the above facts, and in consideration of the standard of review set forth by the Court of Appeals, the Hearings

Officer concludes as follows: that as of the date of restrictive zoning, a nonconforming use was established on the property which included the storage of commercial goods; that pursuant to ORS 215.130(5) and ZOO 1206.01 the established nonconforming use for the storage of commercial goods in the two structures may be continued though not in conformance with existing zoning regulations; that the nonconforming use for the storage of commercial goods has not been lost through discontinuance for more than 12 consecutive months or abandonment, as provided in ORS 215.130(7) or ZOO 1206.02; and, that there is a protected nonconforming use for the use of the two structures for the storage of commercial goods, including cedar wood fencing materials.

4. As previously found by the Hearings Officer, and affirmed on appeal by LUBA, any nonconforming use for the conduct of business activities on the subject property beyond the storage of commercial goods was discontinued for more than 12 consecutive months, at least from August 31, 1989 through September 1, 1990, and the protected status of any such use was lost as a result of discontinuance or abandonment, pursuant to ORS 215.130(7) and ZOO 1206.02.

5. The protected nonconforming use does not include the contemporaneous use of the two structures for office activities in conjunction with the storage of commercial goods or retail activities.

6. The proposed use includes office facilities and repackaging activity in conjunction with the storage of cedar wood fencing materials. Because of the above conclusions, it is necessary that the Hearings Officer consider the applicant's request for an alteration of the protected nonconforming use to permit the office facilities and repackaging activities.

7. ORS 215.130(5) and 215.130(8) grants limited authority to the County to allow changes to protected nonconforming uses. Specifically, if authorized by the County's zoning ordinances, a change may be approved which reasonably continues the protected nonconforming use, and where the change will result in no greater adverse impact to the neighborhood.

ZOO 1206.06(B) incorporates the language of ORS 215.130(5) and 215.130(8), and provides that a change in use may be approved where the proposed use will have no greater adverse impact on the neighborhood than the existing use, and is reasonably necessary to continue the use.

Findings addressing these approval standards will be discussed below.

8. The applicant must establish that the proposed use will have no greater adverse impact on the neighborhood than the existing use.

As a preliminary matter, the applicant points out that the

Hearings Officer found in his Findings and Decision of the Hearings Officer of February 7, 1992, that the proposed use would have no greater adverse impact on the neighborhood than the various commercial uses occurring on the subject property since the date of restrictive zoning. (See Exhibit #1R, Finding B(3)). The applicant argues that this finding was not appealed and constitutes the law of the case as to this question. The Hearings Officer believes that the previous finding is not the law of the case, as it did not consider the comparative impacts resulting from a comparison of the proposed use to that use which has now been determined to constitute the protected existing use. The previous finding compared the proposed use to the various commercial activities occurring on the property from 1967 on. The actual protected use, which is only the storage of commercial goods within two structures on the property, has different impacts than the former larger scale commercial endeavors on this property.

As to the merits, the only identified adverse impact is the noise and traffic impacts associated with the trucks and vehicles delivering and removing the cedar wood fencing materials, and of employees of the office facility and occasional customers. Although the area of review, the neighborhood, is not internally defined within the ZOO, the Hearings Officer concludes that those it includes those properties along and in the immediate vicinity of Countryside Drive. This area should include those properties and uses which are affected by the noise and traffic. Again, the protected, or existing use, involves merely the storage of commercial goods within the two structures. That use has necessarily involved the delivery and removal of those commercial goods over the years. The level of such traffic has varied greatly, depending on the nature of the commercial activity on the property at any given time. This record establishes that the proposed use involves approximately two trucks per day for the delivery and removal of the cedar fencing materials, as well as two to four forklifts and loaders within the structures. There are also two to three employees involved with the use. It cannot be said that the use of two trucks per day on Countryside Drive for delivery and removal of the stored goods results in adverse impacts in this neighborhood greater than those impacts previously associated with the protected use. There were more trucks and truck trips delivering and removing commercial goods at the time of restrictive zoning. The number of employees was greater at the time of restrictive zoning. Forklift and loader use is comparable to that which existed at the time of restrictive zoning. In summary, this record establishes that the adverse impact on this neighborhood from the proposed use will not be greater than that associated with the protected use.

This criterion is satisfied.

9. The applicant must establish that the proposed change in use is reasonably necessary to continue the use.

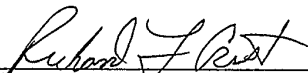
Again, the protected use is the mere storage of commercial goods. The proposed change of use includes, in addition to the

storage of cedar wood fencing materials, the maintenance of office facilities for this warehousing business and the repackaging of the material for delivery. The real question is whether it is reasonably necessary to establish office facilities in order to continue the storage activity within the two structures. The applicant has argued that economic considerations require that the entire business use be located on the subject property, because of the commercial lease expense. That argument is not persuasive. The two structures could continue to be used for the storage of commercial goods in association with a business activity operated from off the subject property. There is no reason established by this record that office facilities must be located on the property in order to continue the storage use.

This criterion is not satisfied.

DECISION: The applicant has established that there is a protected nonconforming use for the storage of commercial goods in the two structures in question, including the storage of cedar wood fencing materials. The applicant's request to change that protested use by establishing office facilities in addition to the storage of materials is denied.

Dated and Filed this 11th day of February, 1994.



Richard F. Crist
Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I did this day mail a true copy of the Findings and Decision of the Hearings Officer in File No. Z1155-91-E/A (Remand), postage prepaid, to the following persons at the address shown:

Hans Hendgen
Shauna Hendgen
15243 NE Countryside Drive
Aurora, OR 97002

John Shonkwiler
Attorney at Law
5750 SW Carman Drive
Lake Oswego, OR 97035

Orland Ogden
4035 SE 82nd Avenue
Portland, OR 97266

Robert Draper
P.O. Box 153
Aurora, OR 97002

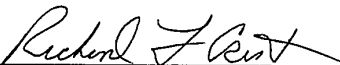
Tom Rastetter
Attorney at Law
294 Warner Milne Road
Oregon City, OR 97045

Ed Stritzke
14850 NE Countryside Road
Aurora, OR 97002

Ron Endicott
P.O. Box 772
Tualatin, OR 97062

Scott Megy
15241 NE Countryside Drive
Aurora, OR 97002

Dated this 11th day of February, 1994.


Richard F. Crist
Hearings Officer

AFFIDAVIT OF POSTING ORDINANCE NO. 55

STATE OF OREGON)
)
Counties of Clackamas)
and Washington)
)
City of Wilsonville)

I, the undersigned, City Recorder of the City of Wilsonville, State of Oregon, being first duly sworn on oath depose and say:

On Monday the 9th day of February, 1976, I caused to be posted copies of the attached Ordinance No. 55, an ordinance amending and supplementing Article V of Ordinance No. 23, "Wilsonville, Oregon, Zoning Ordinance", to add thereto Section 5.035 establishing the "City Center District" to enable reclassification of lands in conformance with the Wilsonville General Comprehensive Plan; defining permitted, accessory and conditional uses; reclassifying lands within the said district to conform to the General Comprehensive Plan; fixing an effective date; and declaring an emergency, in the following three (3) public and conspicuous places of the City, to wit:

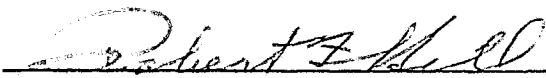
- 1) Lowries Food Market
- 2) Wilsonville Post Office
- 3) Kopper Kitchen

The notices remained posted for more than five (5) consecutive days prior to the time for final reading and passage of the Ordinance on the 17th day of February, 1976.

Dated at Wilsonville, State of Oregon, this 9th day of February, 1976


DEANNA THOM - City Recorder

Subscribed and sworn to before me this 9th day of February, 1976


NOTARY PUBLIC for OREGON

My Commission expires: 11-11-78

ORDINANCE NO. 55

AN ORDINANCE AMENDING AND SUPPLEMENTING ARTICLE V OF ORDINANCE NO. 23, "WILSONVILLE, OREGON, ZONING ORDINANCE", TO ADD THERETO SECTION 5.035 ESTABLISHING THE "CITY CENTER DISTRICT" TO ENABLE RECLASSIFICATION OF LANDS IN CONFORMANCE WITH THE WILSONVILLE GENERAL COMPREHENSIVE PLAN; DEFINING PERMITTED, ACCESSORY AND CONDITIONAL USES; RECLASSIFYING LANDS WITHIN THE SAID DISTRICT TO CONFORM TO THE GENERAL COMPREHENSIVE PLAN; FIXING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1: The City Council finds that the General Comprehensive Plan of the City, as amended at a meeting of the City Council on September 25, 1972, designates certain areas for City Center purposes, and the Council further finds that after public hearing on June 28, 1973, the Planning Commission unanimously recommended to the Council City Center Commercial Zoning designation for ten (10) parcels of land in the Northeast quadrant of the intersection of I-5 and Wilsonville Road, and the Council further finds that after public hearing on July 23, 1973, the Council by Resolution approved and adopted the recommendation of the Planning Commission.

Section 2: The Council further finds that an Ordinance conforming the zone and use designation of said lands to the Comprehensive Plan has not heretofore been adopted and that pursuant to ORS 197.175(2) (b) and decisions of the Court of Appeals and Supreme Court of Oregon, it is required that the City enact zoning ordinances to implement the Comprehensive Plan and to bring the authorized land uses into conformity with the Comprehensive Plan.

Section 3: The City Council finds that the City of Wilsonville Zoning Ordinance No. 23 does not now include provisions for a "City Center" Zone District, and it is necessary, therefore, that the text and map of the City of Wilsonville Zoning Ordinance be amended and supplemented to give effect to the Comprehensive Plan.

Section 4: The Zoning Ordinance No. 23, commonly referred to as the City of Wilsonville Zoning Ordinance, adopted by the Council on the 1st day of June, 1971, as heretofore amended, be and the same is hereby amended and supplemented to add to Article V thereof a new Section reading as follows:

"Section 5.035. CC CITY CENTER DISTRICT:

1. PURPOSE:

- A. The purpose of this zone is to permit and encourage a City Center District, adhering to planned commercial and planned development concepts, including provision for commercial services, sales of goods and wares, business and professional offices, department stores, shopping centers and other customer-oriented uses to meet the needs of the Wilsonville community as well as to meet the general shopping and service needs on an area wide basis, together with such multiple family residential facilities, open space, recreational and park areas, and public use facilities as may be approved as part of the City Center District compatible with the Comprehensive Plan of the City.

2. PRINCIPAL USES PERMITTED (As part of the City Center District):
- A. As part of planned development, all principal uses permitted outright in C-1 limited commercial district.
 - B. As part of planned development, all principal uses permitted in C-2 commercial district.
 - C. Planned commercial uses, shopping center development, including department stores and shopping centers.
 - D. Banking and investment services.
 - E. Public facilities complex, Governmental offices and facilities, hospitals, health centers and office complex for the furnishing of professional services, including but not restricted to medical, legal, architectural and engineering.
 - F. Planned multiple dwelling facilities, including motels, apartments and condominiums as may be approved by the Planning Commission.
 - H. Such other and further uses as may be approved by the Planning Commission compatible with the Comprehensive Plan.

3. RECOMMENDED USES: (As shown for the areas on the attached Zoning Diagram Exhibit "A")

CENTRAL COMMERCIAL (CC)

Typical Recommended Uses:

Department Stores
 Florist Shop
 Interior Decorating Shop
 Retail Stores
 Banks, Loan companies, other financial institutions
 Bird store, pet shop or taxidermist
 Blueprinting, photostating, other reproduction process
 Business machines, retail sales & service
 Cleaning and pressing establishments
 Commercial schools, such as business colleges, music conservatories, trade schools
 Custom tailoring, dressmaking or millinery shop
 Film Exchange
 Furniture Store
 Gunsmith or Locksmith
 Household Machines, retail sales and service
 Photographer
 Radio or Television studio
 Watch and clock repair shop

Other uses similar in character of predominantly retail or service establishments dealing directly with ultimate customers.

SERVICE COMMERCIAL (SC)

Typical Recommended Uses:

Building materials, retail outlet only
Cabinet or carpenter shop
Feed store, retail only
Fuels, solid, retail outlet only
Furniture store
Upholstering shop
Automobile Service Station
Bicycle, Motorcycle, trailer - (other than house and
truck trailers) retail sales and service, rental
Garage, parking or repair
New automobiles and trucks, if not more than 1½ tons
capacity, retail sales and service
Tire sales and service
Self-service car wash
Building contractors and related subcontractors

FOOD AND SUNDRIES (FS)

Typical Recommended Uses:

Bakery, retail
Barber shop
Beauty parlor
Bookstores
Clothes Cleaning Pick-Up Agencies
Clothes Pressing establishment
Confectionary
Custom dressmaking
Delicatessen
Drug store
Dry goods store
Florist shop
Grocers, fruit or vegetable store
Hardware store
Meat market
Notions or Variety Store
Shoe repair shop

Other uses in character of neighborhood food and services.

FAST FOOD SERVICE (FF)

Typical Recommended Uses:

Free-standing fast food take-out type restaurant, with
the uses being limited to that type of food service
establishment catering to a take-out trade.

OFFICE PROFESSIONAL (OP)

Typical Recommended Uses:

Accountants
Architects
Artists
Attorneys
Authors and writers

Dentists
Designers
Engineers
Investment Counselors
Landscape Architects
Management Consultants
Ministers
Physicians & Surgeons
Psychiatrists

OFFICES FOR GENERAL USE (OG)

Typical Recommended Uses:

Title Insurance
General Insurance
Secretarial Services
Collection Agency
Rental Agency

HIGH DENSITY APARTMENTS (APT)

Typical Recommended Uses:

Apartment, condominium townhouse, or any other multiple density housing use at 25 units per acre.

4. ACCESSORY USES PERMITTED:

- A. Any accessory use and structure not otherwise prohibited customarily accessory and incidental to any permitted principal use.
- B. Temporary buildings and uses incidental to the development of principal facilities, such temporary structures to be removed upon completion of the work or abandonment of the project.

5. CONDITIONAL USES PERMITTED:

- A. Any use compatible with the principal uses hereunder permitted which may be approved by the Planning Commission pursuant to Article VIII, Section 8.01 of the Wilsonville, Oregon Zoning Ordinance.

6. PROCEDURES, REGULATIONS AND RESTRICTIONS:

- A. The procedures, regulations and restrictions applicable to the City Center District shall conform to those set forth in Article XIII of Zoning Ordinance No. 23 as the Planning Commission may deem necessary to achieve the purposes of the zone.

7. CITY CENTER DISTRICT DESCRIBED:

- A. Pursuant to ORS 197.175(2) (b) and appellate court decisions of the State of Oregon, all those certain lands in the East Half (E-1/2) of Section 14 and the West Half (W-1/2) of Section 13, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon, more particularly described on

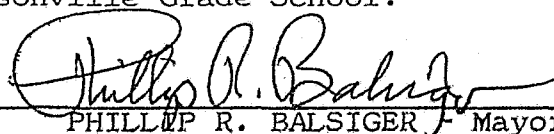
Exhibit "B" headed Description, and by this reference made a part hereof, are hereby reclassified to City Center Zone (CC) to conform to the Comprehensive Plan of the City of Wilsonville. The zone boundaries are shown on the attached "Control Map" also identified as Exhibit "C." "

The Planning Commission shall first approve all uses of property in the CITY CENTER DISTRICT, and in doing so, shall follow as closely as possible the recommended uses and types of use as specified in this Section 4 (3) and for each of the various areas in the District as shown on the attached Zoning Diagram which is marked Exhibit "A" for identification purposes and expressly made a part of this Ordinance. Any change of a recommended use or similar type of recommended use or of an approved use from one area to another in the CITY CENTER DISTRICT shall first be passed upon by the Planning Commission.

Section 5: Amendment to Zoning Map. The Zoning Map of the City of Wilsonville dated June 1, 1971, and adopted as a part of the City Zoning Ordinance No. 23 adopted on the same date, shall be and the same is hereby amended and changed so that the zone boundaries of this newly created City Center Zone (CC) shall include all of the lands as described in the attached Exhibit "B," and appropriate changes are to be made on and to said Zoning Map.

Section 6: Effective Date. Inasmuch as it is necessary for the peace, health and safety of the people of the City of Wilsonville, and to comply with statutory directives to thereby maintain the legislative integrity of the City's Comprehensive Plan and Zoning Ordinances, an emergency is hereby declared to exist, and this Ordinance shall be effective immediately upon its final reading and passage by the Council.

Passed on first reading of the Wilsonville City Council at a regular meeting of the Council on the 19th day of January, 1976, ordered posted as provided by the Wilsonville City Charter; and to come up for final reading and action of the Wilsonville City Council at a regular meeting thereof to be held on Tuesday, the 17th day of February, at the hour of 7:30 p.m. at the Wilsonville Grade School.


PHILLIP R. BALSIGER Mayor

ATTEST:


DEANNA J. THOM - City Recorder

Passes on final reading of the Wilsonville City Council at a regular meeting thereof held on this 17th day of February, 1976, by the following vote; Yeas 4. Nays 1.


PHILLIP R. BALSIGER Mayor

ATTEST:


DEANNA J. THOM - City Recorder

EXHIBIT "B"
WILSONVILLE CITY CENTER DISTRICT
Description

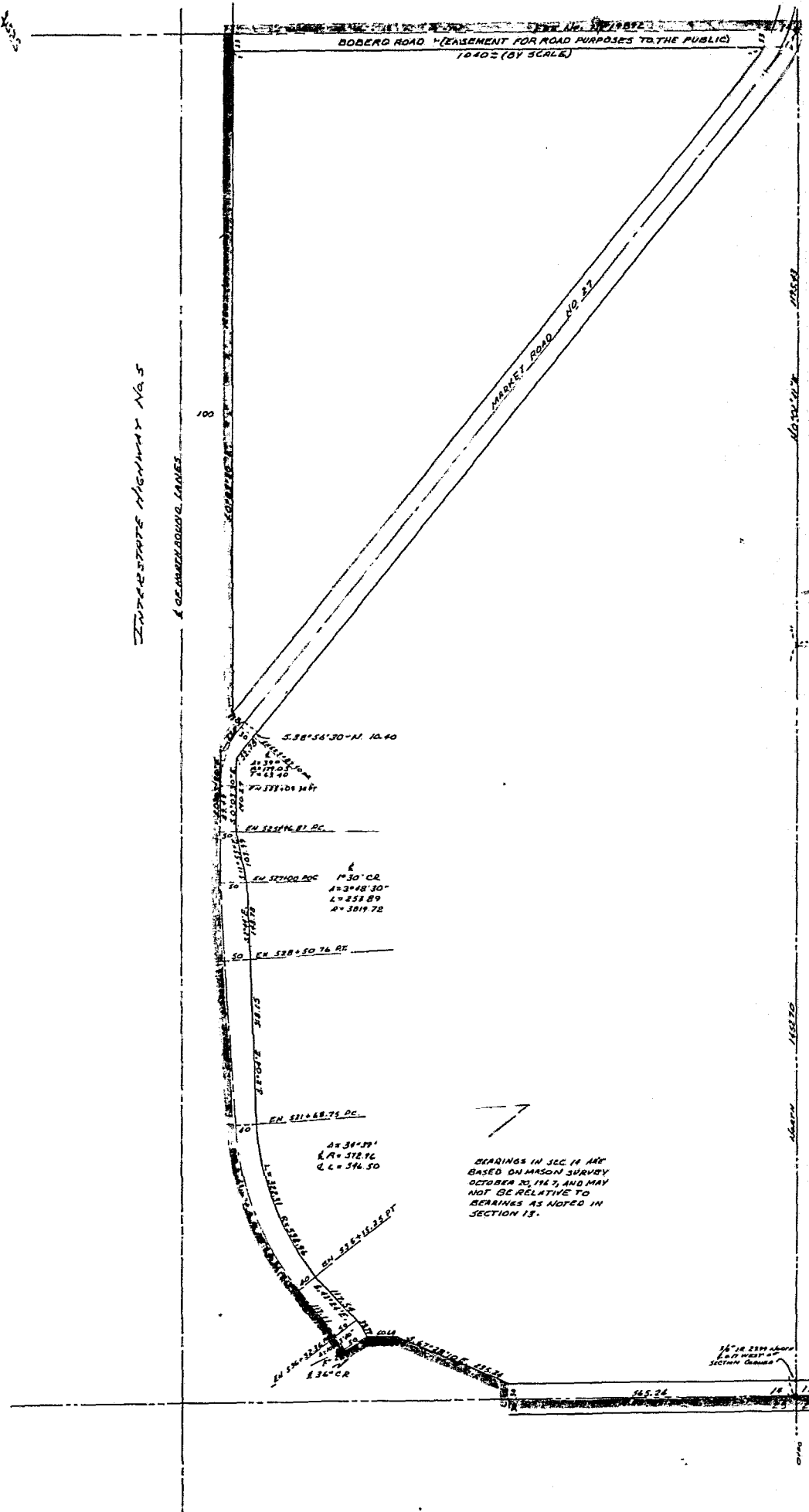
All those certain lands lying in the Southwest Quarter of Section 13 and in the Southeast Quarter of Section 14, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon, bounded and described as follows:

Bounded on the West by the East line of Highway I-5;

Bounded on the South by the South lines of Sections 13 and 14, Township 3 South, Range 1 West, Willamette Meridian;

Bounded on the East by the East line of that certain tract contracted to be conveyed by Melvin F. Stangel to Jack E. Wright, et al by instrument dated July 18, 1974 and recorded as Document No. 74-21707, Deed Records of Clackamas County, Oregon, and the said East line extended North 1200 feet from the northeast corner of said Stangel tract to a point of intersection with the North line of the Southwest Quarter of Section 13, Township 3 South, Range 1 West, Willamette Meridian;

Bounded on the North by the North line of the Southeast Quarter of Section 14 and the North line of the Southwest Quarter of Section 13, Township 3 South, Range 1 West, Willamette Meridian, said line extending from the East boundary of Highway I-5 easterly 2400 feet, more or less, to the point of intersection with the East line of the lands hereby described.

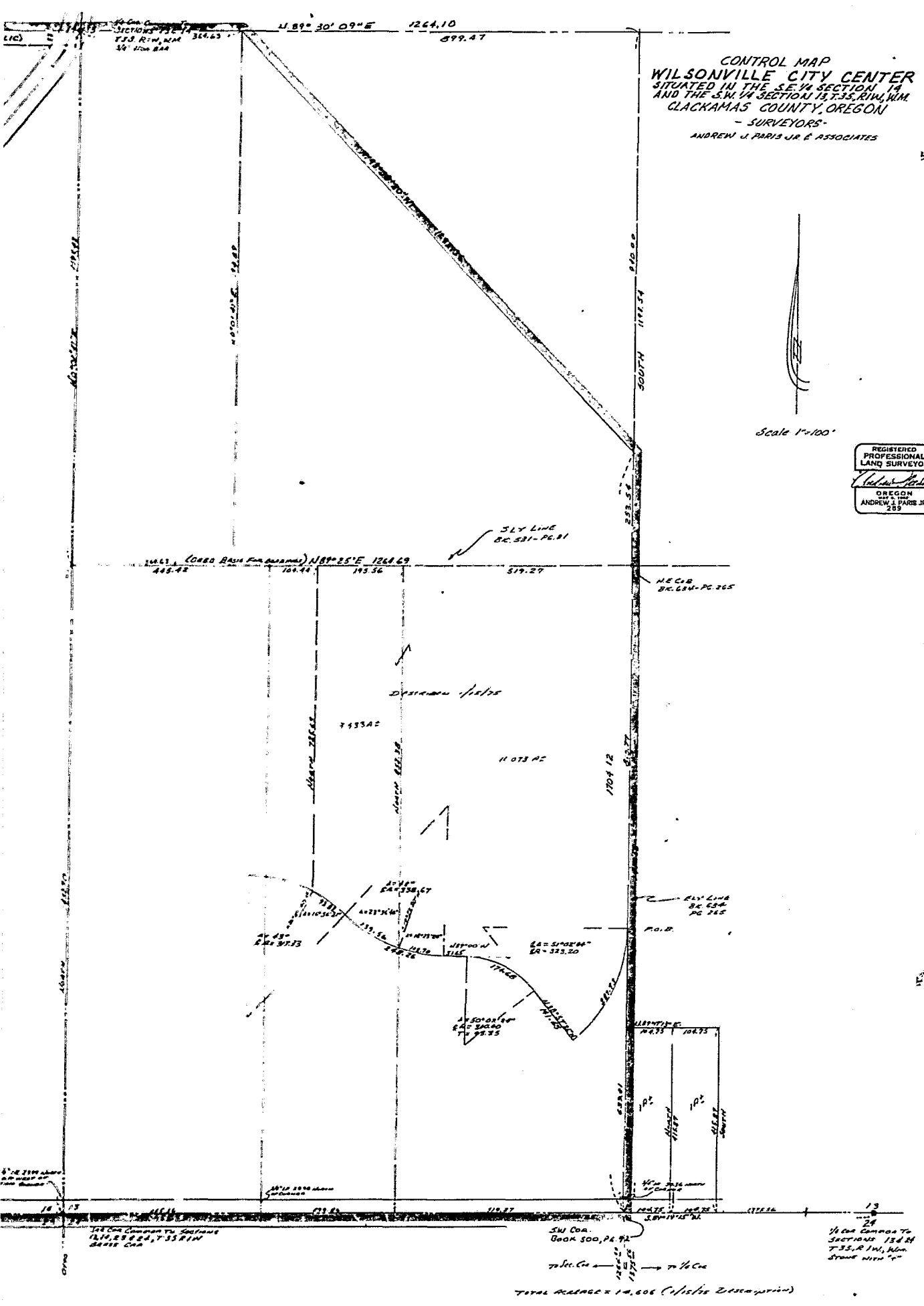


BEARINGS IN SEC. 14 ARE
BASED ON MASON SURVEY
OCTOBER 20, 1967, AND MAY
NOT BE RELATIVE TO
BEARINGS AS NOTED IN
SECTION 15.

16" x 21" sheet
1 of 2 sheets of
SECTION 14

CONTROL MAP
EXHIBIT "3"

2074



From: [Amanda Guile-Hinman](#)
To: [Katzaroff, Kenneth](#)
Cc: [Stephanie Davidson](#); [Ordon-Bakalian, Keenan](#)
Subject: RE: Home Depot/Wilsonville - Follow up on last night's DRB hearing [IMAN-PDX.FID4320120]
Date: Wednesday, February 28, 2024 10:39:05 AM
Attachments: [image001.png](#)

Hi Ken,

The City disagrees with your client's position regarding the use, based on City Code and Oregon law. The withdrawal option was discussed during the hearing with your client expressing that it could talk with the City during this 7-day period about withdrawal. Based on your email, I understand that your client is not interested in doing so.

Thanks,

Amanda Guile-Hinman
City Attorney
City of Wilsonville

503.570.1509
guile@ci.wilsonville.or.us
www.ci.wilsonville.or.us



29799 SW Town Center Loop East, Wilsonville, OR 97070

The information contained in this e-mail is confidential and may also be attorney-client privileged. This information is intended only for the use of the individual or entity to whom it is addressed. If you have received this communication and are not the intended recipient, delete this message and contact my office immediately. If the information in this email is not protected by the attorney-client privilege, it may be subject to Oregon's Public Records Laws.

From: Katzaroff, Kenneth <KKatzaroff@SCHWABE.com>
Sent: Wednesday, February 28, 2024 10:06 AM
To: Amanda Guile-Hinman <guile@ci.wilsonville.or.us>
Cc: Stephanie Davidson <s davidson@ci.wilsonville.or.us>; Ordon-Bakalian, Keenan <KOrdon-Bakalian@schwabe.com>
Subject: Re: Home Depot/Wilsonville - Follow up on last night's DRB hearing [IMAN-PDX.FID4320120]

[This email originated outside of the City of Wilsonville]



Happy to chat but I believe we already stated we are not interested in a withdrawal.

I'm happy to collaborate on what a proper class 1 decision could look like and be supported by the city and my client. Unclear why this requires us to withdraw or why that is seemingly the only option the city is willing to entertain.

Thanks,

Ken

Sent from my iPhone

On Feb 28, 2024, at 9:30 AM, Amanda Guile-Hinman <guile@ci.wilsonville.or.us> wrote:

Hi Ken,

What we are proposing with the withdrawal is that there will be no Class I decision – the DRB would accept the withdrawal and modify the Class I decision to state that there is no Class I decision. Thus, there is no need to reline the original.

A phone call may be best to clarify the withdrawal if the applicant is interested in doing so.

Thanks,

Amanda Guile-Hinman
City Attorney
City of Wilsonville

503.570.1509

guile@ci.wilsonville.or.us<<mailto:guile@ci.wilsonville.or.us>>

www.ci.wilsonville.or.us<<http://www.ci.wilsonville.or.us/>>

<image001.png>

29799 SW Town Center Loop East, Wilsonville, OR 97070

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From: Kataroff, Kenneth <KKataroff@SCHWABE.com>

Sent: Wednesday, February 28, 2024 8:59 AM

To: Stephanie Davidson <sdavidson@ci.wilsonville.or.us>; Ordon-Bakalian, Keenan <KOrdon-Bakalian@schwabe.com>

Cc: Amanda Guile-Hinman <guile@ci.wilsonville.or.us>

Subject: RE: Home Depot/Wilsonville - Follow up on last night's DRB hearing [IMAN-PDX.FID4320120]

[This email originated outside of the City of Wilsonville]

Stephanie –

Please send us a word version of the original Class 1 decision. I believe we will want to provide redlines to this if we are look at a settlement proposal.

Additionally, please be aware that as the applicant we are entitled to final legal argument under ORS 197.797(6)(e). We are not waiving that right at this time.

Ken

Kenneth Katzaroff<<https://www.schwabe.com/professional/kenneth-katzaroff/>>

<image002.png>

Shareholder

D: (206) 405-1985<<tel:206-405-1985>>

kkatzaroff@schwabe.com<<mailto:kkatzaroff@schwabe.com>>

<<https://www.schwabe.com/>>

<image003.png>

From: Stephanie Davidson

<sdavidson@ci.wilsonville.or.us<<mailto:sdavidson@ci.wilsonville.or.us>>>

Sent: Tuesday, February 27, 2024 12:20 PM

To: Katzaroff, Kenneth

<KKatzaroff@SCHWABE.com<<mailto:KKatzaroff@SCHWABE.com>>>; Ordon-Bakalian,

Keenan <KOrdon-Bakalian@schwabe.com<<mailto:KOrdon-Bakalian@schwabe.com>>>

Cc: Amanda Guile-Hinman <guile@ci.wilsonville.or.us<<mailto:guile@ci.wilsonville.or.us>>>

Subject: Home Depot/Wilsonville - Follow up on last night's DRB hearing

Ken and Keenan,

Good afternoon – we want to check in with you to follow up on last night’s DRB hearing. I’m resending the materials that Amanda sent to you, Ken, last Friday at 4:05pm. I believe Keenan and Amanda discussed exploring a withdrawal of the Class I application last night. We are open to considering proposed revisions to the attached Resolution no. 429. Keenan said last night that your client feels compelled to pursue an appeal of the Planning Director’s letter decision on the Class I application because it addresses scope and extent of the non-conforming use; We are hoping that item number three under “NOW, THEREFORE, BE IT RESOLVED...” regarding the modification of the Planning Director’s letter decision addresses that concern. But like I said – we are open to a conversation about this. If the applicant’s concern is regarding preserving argument about how the current use is classified, we can add language to the withdrawal form signed by both parties that the Class II review will encompass the following questions and that Applicant preserves its right to challenge the City’s determinations as to the following questions: (1) what is the non-conforming use; (2) what is the proposed use; and (3) is the proposed use a continuation of use? Since determination of continuation of use requires an understanding of current and proposed uses, all three questions are relevant to the Class II review. Last night a DRB member asked about

the distinction between the Class I process and Class II process, and staff believe that the conversation will be less awkward if the DRB is able to handle all aspects of this application through the Class II process, rather than handling some parts of it through the Class I process, and having to reject evidence from the record that relates to the Class II process.

Just to confirm what was done last night: The public hearing was closed, but the record will remain open until March 4, 2024 at 5:00pm PT pursuant to ORS 197.797(6)(c). We will confirm the date of the DRB's reconvened meeting as soon as we can.

I look forward to your feedback.

Stephanie

Stephanie Davidson
Assistant City Attorney
City of Wilsonville

503.570.1561

sdavidson@ci.wilsonville.or.us<mailto:sdavidson@ci.wilsonville.or.us>

www.ci.wilsonville.or.us<http://www.ci.wilsonville.or.us/>

<image001.png>

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