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November 7, 2018

**VIA ELECTRONIC COPY - APanko@cityofsalem.net
AND HAND DELIVERY**

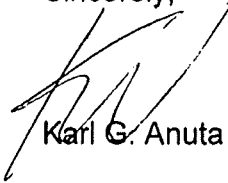
Aaron Panko, Planner III
City of Salem
Planning Division
555 Liberty St. SE, RM 305
Salem, OR 97301

Re: Notice of Appeal of Decision No. SPR-DAP18-15 for 2500-2600 Block of
Boone Rd SE (Costco)

Dear Mr. Panko:

Enclosed with the paper copy of this letter are duplicate copies of a Notice of Appeal of the referenced decision, and a check for \$250. I am also sending you a courtesy copy of the same packet by email.

Sincerely,



Karl G. Anuta

KGA/ev
cc: Client



LAND USE APPEAL APPLICATION

NOV - 7 2018

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

COMMUNITY DEVELOPMENT

SPR-DAP18-15

OCTOBER 23, 2018

Case # Being Appealed

Decision Date

2500-2600 Block of Boone Road SE - 97306

Address of Subject Property

See attached document with Appellants' signatures and contact information.

Appellants Mailing Address with zip code

Appellant's E-mail Address

Day-time Phone / Cell Phone

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

Karl G. Anuta

735 SW First Avenue, 2nd Floor, Portland, OR 97204

Name

Mailing Address with ZIP Code

kga@integra.net

(503) 827-0320

E-Mail Address

Day-time Phone / Cell Phone

2. **SIGNATURES OF ALL APPELLANTS -SEE ATTACHED DOCUMENT WITH SIGNATURES**

Signature: _____ Date: _____

Printed Name: _____ Signature: _____

_____ Date: _____

Printed Name: _____

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

FOR STAFF USE ONLY

Received By: Brandon Pike

Date: Nov 7, 2018

Receipt No: _____

Appeal Deadline: Nov 7, 2018

Case Manager: Aaron Panko

Roster of Appellants

1. Name: Lora Meisner

Address: 1347 Spyglass Court SE,
Salem, OR 97306

Email: LMGB@Earthlink.net

Telephone: (503) 586-6176

Signature: Lora Meisner

Date: 11/6/18

2. Name: William Dalton

Address: 6619 Huntington Circle SE,
Salem, OR 97306

Email: daltfam@comcast.net

Telephone: (503) 371-4174

Signature: William Dalton

Date: 11/6/18

3. Name: John D. Miller

Address: 4985 Battlecreek Road SE,
Salem, OR 97302

Email: john@wildwoodco.com

Telephone: (503) 585-8789

Signature: John D Miller

Date: 11/5/18

Appellants' Statement of Standing and Summary of Appeal Issues

**Salem Costco - Class 3 Site Plan Review/Class 2 Driveway
Approach Permit,
Case No. SPR-DAP18-15,
Decision Date October 23, 2018**

STANDING

Appellants Lora Meisner and William Dalton have standing to appeal this permit approval under SRC 300.520(f)(2) because they submitted comments during the public comment period for the public hearing to consider the application held on September 19th, 2018. Appellant John D. Miller has standing under the same SRC provision because he owns property nearby and is entitled to receive, and has received, Notice of the decision.

SUMMARY OF REASONS FOR APPEAL

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

This property was rezoned for a Community Retail Shopping Center, **not** for a big box retail warehouse and massive fueling depot. Only a shopping center of the type represented by Pacific Realty in 2006, and as described and approved in the Conditions in CPC/ZC06-06 can now be approved.

The prior approval Conditions on the property are, pursuant to SRC 300.820(b), treated as a part of the UDC. As a part of the UDC, those Conditions constitute approval criteria that must be met - per SRC 220.005(f)(3)(A).

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

The current approval is also contrary to the prior procedural and substantive findings made to support the prior Zone change and Comprehensive Plan Amendment for this site. In granting a Rezone, the City Council specifically relied upon applicant's affirmative representations about what would or would not be proposed for the site.

Those included representations that no gas station/fueling depot would be proposed and that a big box store such as a Wal-Mart would not be proposed. Having previously represented to the City that the Rezone would **not** result in construction of or involve a big box retail warehouse and/or fueling station, the Applicant should be equitably and legally estopped from now pursuing such a use on the property.

The fueling depot is scaled far beyond the accepted definition of "gasoline service station" and should be classed as an Industrial facility as defined in the Comprehensive Plan and should only be permitted in Industrial Commercial (IC) zoning. "Gasoline stations" are specifically excepted by the SRC from being part of retail shopping center sites, under SRC 400.045(b)(3)(A).

Costco bills itself as a wholesale warehouse. Accordingly it should be classed as such. Wholesaling uses are prohibited in CR zones, per SRC 522.005(a)(Table 522-1). So approval was contrary to the UDC.

Warehousing is only allowed as a Conditional use in such zones. *Id.* As a result, this application requires a variance and zone change and should be considered as a Type III, rather than Type II procedure under SRC 300.100 (Table 300-2) and SRC 245.005(b). A variance under SRC Chapter 245 and a conditional use permit under SRC 240.005/ and or a zone change under SRC 256.005 are necessary for this project as proposed.

The staff reports and approvals for this application all refer to a Community Shopping and Service Center. That is not what is proposed, which renders all of the assumptions and approvals made invalid.

The approval is also contrary to the applicable Neighborhood Plan. The Liberty-Boone Neighborhood Plan (now incorporated into the South Gateway Neighborhood) was adopted by the City pursuant to Ordinance

No.90-83. The Goals and Policies of that Plan “are intended to provide direction for future decisions affecting [the] Neighborhood.” (Plan at p.2, §3) One of the Commercial General Policies that is expressly stated in the Plan is that:

“19. Commercial uses will be compatible with surrounding properties and will not interfere with the safe movement of pedestrian and vehicular traffic along major streets.” (Plan at p.6)

As outlined in this Summary, the proposal is not compatible, and it will likely interfere with safe movement in the neighborhood. The project will also not be consistent with many of the Transportation Policies in the Plan. (Plan at p.8) The facilities and infrastructure to accommodate this development are simply not sufficient, because of the inappropriate scale of the proposal.

Since a Type II application and procedure was used, instead of the appropriate Type III requirements, SRC 300.510 and SRC 300.610 were violated. Since the conditions of approval fail to adequately protect the public and adjacent property owners from the adverse effects of the development, SRC 300.820 was also violated, and the approval was not consistent with the requirements of the UDC.

The failure to adequately consider this proposal violates multiple SRC sections. Since the approval does not meet all the standards of the UDC, approval criteria SRC 220.005(f)(3)(A) was not met.

2. Traffic Impact

The Traffic Impact Analysis (TIA) used to approve this permit is inadequate. It does not maintain or provide for the safe, orderly and efficient movement of traffic and it does not adequately mitigate negative impacts on the transportation system.

The TIA methodology and assumptions are flawed, and it does not consider the traffic impacts of other development already approved or under way in the traffic impact areas. A partial list of some of the many inaccuracies, inadequacies and omissions in the TIA – which was relied upon by the Staff for its approval of this application - is attached to and incorporated into this appeal summary.

Failure to adequately evaluate traffic impacts violates SRC 803.015; SRC 803.035; and SRC 200.055, and as such it does not meet the approval criteria in SRC 220.005(f)(3)(B). For the reasons outlined in the attached list, and this summary, the proposed project driveways also do not meet the approval criteria in SRC 804.025(d). One or more of those driveways, in combination with the projects other traffic impacts, would create traffic hazards and/or interfere with safe turning movements and access. In addition, one or more of those driveways, in combination with the projects other traffic impacts, would result in significant adverse impacts to the streets and neighborhoods in the vicinity.

3. Tree Preservation

The approval and conditions do not adequately protect the Oregon White Oak trees on the site, which are significant and qualify for listing as heritage trees. Those trees should be preserved.

The applicant did not cite any circumstances making tree removal necessary for this development. The applicant rejected any alternative that preserved all, most, or even some of these trees. This is contrary to the spirit and intent of SRC 808.001.

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

4. Air Quality

The proposed large parking areas, traffic volume, and fuel pumping, and truck traffic to support a warehouse scale facility will significantly degrade air quality, especially in the immediate area. These impacts were not adequately considered in issuing an approval.

These impacts are integrally related to the flawed TIA, as they are and indirect impacts of the excessive traffic that will impair the safety of the neighborhood. They are also indirect impacts from a use which is much larger than the Retail Shopping Center that was approved for this site, and

as such these excessive air quality impacts constitute failure to meet an approval criteria, either under the UDC, or SRC 220.005(f)(3)(B), or both.

5. Water Quality

It does not appear that there is evidence that the applicant has complied with the wetland and stormwater quality requirements. The applicant's stormwater report contains a page that shows a stream and wetland on the site. See, DOWL Preliminary Drainage Report, 4/23/18 – Technical Appendix - Hydrologic Soil Group Map (PDF p.22). Appellant have also located a DSL approved Delineation Map that shows a stream and wetland on site.

The Staff decision indicates that work was done on the wetlands on site under Corps permit #NWP-2012-48. Appellants have been advised that there was also a wetland fill permit issued by DSL, that allowed the applicant to bury the stream and fill wetlands.

However, none of the materials related to any DSL or Corps permits for this property were made available on-line at the City Website. The Staff decision also claims that a Notice was sent to DSL as required by SRC 809.025, but there is no evidence of that in the materials made available to the Appellants on the City Website.

Thus, it is not clear whether the SRC 220.005(e)(2) requirements, and the UDC Chapter 809 requirements have been met on this project.

6. Other Issues

Appellants have learned that there are documents that relate to this project, that were **not** made publicly available on the City Website at: <https://www.cityofsalem.net/Pages/planning-notice-decisions.aspx>. The public was likely misled by the statement on the Website, into thinking that **all** documents that related to this project were made available. This raises substantive and procedural due process concerns.

Since the complete file, including planning staff documents and materials submitted by parties other than the applicant is not available to the public at the Web portal, appellants have not yet had access to all relevant

documents for review before the appeal deadline. Consequently, it is entirely possible that more appeal issues may come to light once appellants have had the opportunity to review the complete file. Appellants reserve the right to amend this appeal should that be the case.

PRELIMINARY LIST OF FLAWS IN APPLICANT'S TIA

The traffic impacts from this project would be untenable for this neighborhood and overwhelm the roads that serve it, as well as the surrounding neighborhoods, and even perhaps I-5. The proposal is not going to provide safe, orderly and efficient traffic. It will instead likely create significant traffic impacts, both nearby and likely even on I-5. The proposal does not adequately mitigate the negative impacts that the project will likely create.

The Traffic Impacts Analysis (TIA) submitted by the applicant is badly flawed. The input from ODOT and other members of the public, demonstrates that. The Staff decision did not directly, and/or adequately address the concerns raised in comments. The issues so far identified as being outstanding, and not meeting the "safe, orderly and efficient" traffic approval criteria are:

- The operation of the study intersections and the ability to meet ODOT and City of Salem mobility standards cannot be verified, due to a number of omissions or errors in the TIA's dated May 31, 2018 and August 9, 2018.
- According to the TIA, the Kuebler Boulevard/Battle Creek Road intersection currently operates at a v/c ratio of 0.85 and is approaching Salem's v/c ratio standard of 0.90 in the weekday PM peak hour. With the approval of the development, the intersection would operate at a v/c ratio of 0.90 (May 31, 2018 TIA, Figure 11).
- According to the TIA, the I-5 SB/Kuebler Boulevard intersection will operate at a v/c ratio of 0.85 during the weekday PM peak hour with the approval of the development. The ODOT mobility standard is a v/c ratio of 0.85 (May 31, 2018 TIA, Figure 11).
- Table 7 of the TIA reports the left turn and right turn queue lengths for each intersection, however the table is missing the queue lengths for the through movements at each intersection. Some of the missing queue lengths exceed capacity such as westbound and eastbound through

movements at the intersection of Kuebler/Battle Creek. The eastbound through movement 95th percentile queue length is 727 feet and the westbound through movement queue length is 947 feet.

- The TIA reports Intersection #1 (Kuebler/Battle Creek), southbound through movement at the 95th percentile queue length (374 feet). This queue length will likely result in blocking the southbound left turn movement from entering the left turn bay at the signal.
- The TIA assumes that 42% of southbound right turns at the I-5 SB/Kuebler Boulevard intersection are made on red signal indication (May 31, 2018 TIA, pg 4). This assumption is not based on any submitted evidence and varies from the default right turn on red assumptions according to industry standard.
- The TIA provides little evidence regarding the derivation of the trip generation figures. City Rules Section 6.33 requires trip generation to be based on the Institute of Transportation Engineers Trip Generation Manual. The TIA refers to an abundance of information from other Costco locations but provides none of that data that supports the use of an alternative trip generation or pass-by rate (May 31, 2018 TIA, pg 19; August 9, 2018 TIA, pg 2). City standards don't allow for a derivation from the ITE Trip Generation Manual and states that "[f]or land uses not listed in the ITE Trip Generation Manual, studies for similar development in similar regions may be used upon approval by the City Traffic Engineer." We have seen no such approval and the ITE Trip Generation Manual provides data for the proposed uses, so no such approval should be authorized.
- The TIA illustrates that 40% of site generated traffic travels to/from intersections to the west (August 9, 2018 TIA, Figure 8). Kuebler Boulevard/Stroh Lane intersection will see an increase of 418 trips in weekday PM peak hour. City of Salem threshold for study area is an increase in trips of 50 in a peak hour (See, Section 6.33). There are likely several intersections along Kuebler Boulevard and Commercial Street that were omitted from the TIA and are required to be analyzed per the clear and objective city standard.

- The TIA fails to analyze the weekday AM peak hour. The City requires analysis of AM period (Rule 6.33). Costco gas stations are typically open in AM peak hour.
- According to ITE Trip Generation Manual, 30 fueling positions would generate 308 trips in the weekday AM peak hour likely distributing at least 50 trips through several intersections. Costco gas stations appear to generate far more traffic than typical gas stations. The 21,000 square feet of retail will likely be open during the weekday AM peak hours. There is also likely Costco activity during this time period.
- The TIA may fail to base background growth and trip distribution on Mid-Willamette Valley Council of Governments (MWVCOG) travel demand model as required (Salem Administrative Rules 6.33). The TIA relies on 1% growth rate citing this "is a similar approach to other traffic studies completed in the area" (May 31, 2018 TIA, pg 12). Additionally, the trip distribution "was based on historical Salem Costco sales data and examination of site access, parking layout and site circulation." There is no mention that trips were distributed based upon the travel demand model as required. There is also no information provided about how the trip distribution figures were determined, nor to our knowledge was the "historical Salem Costco sales data" presented for review.
- Weekday PM peak counts are required to be taken between 3 PM and 6 PM (Rule 6.33), but they appear to have been only taken between 4 PM and 6 PM (May 31, 2018 TIA, Appendix A).
- Salem requires horizon year analysis periods of year of opening for development "allowed under existing zoning" and "year of opening each phase" for "multi-phased development" (Salem Administrative Rules 6.33). The TIA indicates that the year of opening for the proposed development is 2019. For such a large project, it would seem highly unlikely to actually attain a year of opening in 2019.
- Additionally, this project is proposed to be constructed as a multi-phased development. However, no schedule has been provided in the TIA. The May 31, 2018 TIA states that "[t]he proposed Costco will include a warehouse and fuel station with four islands and the potential to add a

fifth island in the future (30 fueling positions).” Due to the lack of detail in the trip generation estimates, it is unclear whether the trip generation presented includes four islands or five islands. Nor is it clear how many island fueling positions are even proposed at this time, versus in the future. Additionally, the site plan illustrates a certain amount of retail as a “future phase.” Again, there are no specifics about what will be constructed by 2019, versus some other time unknown time period, so the proper horizon year cannot be determined from the TIA.

- Kuebler Boulevard is classified as a Parkway (May 31, 2018 TIA, pg 6, Table 2). Section 804.040 of the SRC states that “[d]riveway approaches onto a parkway shall be no less than one mile from the nearest driveway approach or street intersection, measured from centerline to centerline.” The access would be just 660 feet east of the Kuebler Boulevard/Battle Creek Road intersection and approximately 1290 feet west of the Kuebler Boulevard/27th Avenue intersection. This criterion cannot be met.
- The code further states that “[t]he standards set forth in this section cannot be varied or adjusted.” A Kuebler access cannot meet the standard. The TIA and site plan need to be updated to reflect no access to Kuebler Boulevard.
- It is not clear if all five of the fueling positions will be for cars, or if commercial truck fueling is also contemplated. This needs to be clarified in a revised TIA, as it effects the numbers presented in the TIA.
- Clarity is needed regarding the various improvements that will be constructed by others or by PacTrust. Are these improvements required to be in place prior to the opening of this development?
- Additionally, should this development be required to complete the improvements if others do not complete the improvements prior to occupancy of this development? Have the improvements been designed and are they each financially guaranteed?
- The TIA suffers badly from omitting the additional traffic likely to be generated from other development in the works nearby. These include

Kuebler Cascade View, Kuebler Station, Strong Rd. at 27th Street Subdivision, and the Amazon Distribution Facility. When the TIA is redone, these impacts should be included.

- The TIA provides no analysis of queuing associated with the gas station. The Tigard Costco has had to make modifications to their on-site queue storage due to heavy demand. It is quite possible that proposed fueling depot queuing could extend into primary entrance from 27th Avenue.
- The intersection of Battle Creek Road/Boone Road crash rate is ranked higher than other comparative intersections. This intersection is proposed to be signalized. However, further investigation is needed to evaluate other alternative solutions to mitigate for this higher than usual crash rate. While a signal might address certain type of crashes, it may increase other types of crashes.
- The TIA relies on an ideal saturation flow rate of 1,900 vehicles per hour of green per lane for all intersections and lanes. The City requires that "ideal saturation flow rates greater than 1,800 vehicles per hour should not be used unless a separate flow rate analysis has been completed." A separate analysis was completed, but only for a very limited number of intersections and movements. Some of the most congested movements were analyzed and determined that the use of 1,900 vehicles per hour per lane was appropriate for most of the movements that were studied. In all, the study evaluated two intersections and a total of three intersection approaches in the weekday PM peak hour only. The TIA currently analyzes the impacts at nine intersections and 31 different approaches in two different time periods. While 1,900 vehicles per hour per lane may be appropriate at the most congested approaches, there is no evidence that supports the use of an ideal saturation flow rate at the remaining 28 intersection approaches. Considering the impacts of both the weekday PM and Saturday peak hours, a total of 59 approaches were not studied.
- Additionally, as described before, the need for a weekday AM peak hour analysis was ignored. The southbound left turn at the I-5 SB/Kuebler Boulevard intersection was observed to have a saturation flow rate of 1224 vehicles per hour per lane, but was not adjusted to 1800 vehicles per hour per lane.

- As already noted, Kuebler Boulevard is classified as a “parkway.” Approximately 1,200 feet of the site's Kuebler Boulevard frontage appear to have been constructed without compliance with the City of Salem's Transportation System Plan which requires a seven foot wide planter strip between the curb and sidewalk. No planter strip has been constructed and the sidewalk has been constructed in the incorrect location. Additionally, a 16 foot wide center landscaped median is required, but has not been constructed along any of the Kuebler Boulevard site frontage.
- 27th Avenue, Boone Road and Battle Creek Road are all classified as “collectors.” Most of the site's 27th Avenue frontage that will be constructed is not illustrated to include a planter strip, also not in compliance with the City TSP. Approximately 960 feet of the site's Boone Road frontage has been constructed without a planter strip. The site plan illustrates that the remainder of the approximately 1,600 foot site frontage along Boone Road will also not be constructed in compliance with the City TSP. The approximately 430 foot long Battle Creek Road site frontage has not been constructed with a landscape strip.
- During weekday PM peak hour, the northbound right turn movement queue length at the Kuebler Boulevard/27th Avenue intersection is anticipated to be 325 feet, extending into the roundabout at 27th Avenue/Costco site access (August 9, 2018 TIA, pg 9, Table G) with the approval of the development. This is likely not an appropriate place for a roundabout.
- During the weekday PM peak hour, the westbound through movement queue length at the Kuebler Boulevard/27th Avenue intersection is anticipated to be 500 feet, blocking the westbound left turn lane if this development is approved. (August 9, 2018 TIA, pg 9, Table G) That is not a safe, orderly or efficient situation, and it creates too many negative unmitigated impacts.
- The TIA states that “[a]ll of the intersections with changes included optimized signal timings given the significant changes planned at these

intersections” (May 31, 2018 TIA, pg 13). Apparently, no signal timing changes were made to the other intersections. The intersections along Kuebler Boulevard operate in coordination with the other signalized intersections. In order to depict realistic operations, the applicant should be required to analyze those other intersections as well with revised signal timing. The City should review the proposed signal timing to ensure that what is proposed would be acceptable. The proposed signal timing should be required to be implemented by the applicant.

- Much of the queuing analysis was prepared using Synchro, which is a macroscopic model. This methodology is appropriate for isolated intersections that are uncongested. In order to capture realistic queue lengths and spillover effects in an urban setting such the case in the study area, a microscopic simulation model such as SimTraffic should be utilized to report the queue lengths for closely spaced intersections such are many of the intersections in the study area.
- The intersection of I-5 SB/Kuebler Boulevard and Kuebler Boulevard/27th Avenue have apparently been analyzed incorrectly. Exhibit 1 of the August 9, 2018 TIA illustrates channelized southbound dual right turn lanes turning into three westbound through lanes on Kuebler Boulevard that extend all the way to the Kuebler
- Boulevard/27th Avenue intersection. The dual southbound lanes are not channelized behind an island nor are there three westbound lanes on Kuebler Boulevard.
- Bicycles are not mentioned in the TIA, but are a significant transportation consideration, as reflected in Chapter 7 of the Transportation Section of the Salem Comprehensive Plan. The intersection of Kuebler Blvd. and Boone Rd. SE is currently identified with a “caution” rating by the bicycle suitability map, and the Boone-Reed blind curve may be as well.
- Pass-by trips were calculated at 34% in the TIA, but a “general retail” benchmark was used, rather than the “discounted grocery” estimation, which is 21%. The assessment should be redone using this assumption, since it is closer to the Costco business model.

- All ten involved intersections should be evaluated for seasonal adjustments and reassessed in the TIA. Only I-5 southbound at Keubler Blvd. was evaluated in June to validate the December count.
- Since Keubler Blvd. is under ODOT jurisdiction up to 27th street, ODOT Development Review Guidelines of a 15 year horizon should be evaluated, ie, from 2020 to 2035, or further out, depending on when a credible start date can be established.
- The TIA coverage area needs to be expanded to include collector and arterial streets important to auto and bike traffic that will see increased traffic resulting from the proposed development. Battle Creek Rd. north of Kuebler Blvd. to Pringle Rd. and Reed Rd; Battle Creek Rd. south from Kuebler Blvd. to at least to the planned Fabry Rd. extension from Reed Lane; Boone Rd. west of Battle Creek Rd. including Reed Lane to Fabry Rd.; Barnes Ave. and Baxter Rd. west to Commercial Street. Battle Creek Rd./Kuebler Blvd. intersection was not included in the TIA simulation based queuing analysis; nor was the Battle Creek Rd./Boone Rd. intersection. These should all be evaluated in an updated TIA that should include specific improvement data for each impacted street.