



**STAFF REPORT JANUARY 9, 2018  
PRELIMINARY FINDINGS AND CONCLUSIONS  
REGARDING THE APPEAL OF  
THE FOURTH AMENDMENT OF SITE PLAN REVIEW #SP-14-02  
TILLAMOOK, OREGON**

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**HEARING DATE:** January 16, 2018, 7:15 p.m.

**SECTION I. APPEAL SUMMARY**

**OWNER/APPLICANT/APPELLANT:** Keith Lawhorn, 1863 North Main Avenue, Tillamook, OR 97141.

**APPELLANT'S AGENT:** Paul Meadowbrook, 913 1<sup>st</sup> Ave. E., Albany, OR 97321

**APPEAL:** The Planning Commission's Final Order for the 4<sup>th</sup> Amendment of Site Plan Review #SP-14-02, with affiliated Administrative Review for the placement of trash containers, was mailed on November 27th, 2017, and a timely appeal with required fee was filed on December 5th, 2017 (see **Exhibit A**, the appellant's statements of concern).

*§153.076 (2) (A) requires that "The appellant must be an interested party who has participated either orally or in writing in previous Planning Commission proceedings pertaining to the decision under appeal. The appeal (with appropriate fee) must be made within ten (10) days of the written notice of decision of the Planning Commission, in writing to the Tillamook City Council".*

**LOCATION:** The Subway/Lotza Pasta property. All other locational data is the same as on the original application and four subsequent amendments. Staff reports for all of the previous are on file and available for inspection.

**PARTIES NOTIFIED:** Notice of this Appeal was mailed to all parties with standing, having testified at the Planning Commission, on December 20, 2017 (see **Exhibit B**).

**COMMENTS RECEIVED:** No comments, other than those of the appellant (detailed in **Exhibit A**), have been received on the date of this staff report as a result of the recent notice mailing.

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## APPEAL REVIEW PROCESS:

Appeals of Planning Commission decisions are guided by the following code section:

*§153.076 (2) (B) City Council–Land Use Hearings Procedures.*

*1) It shall be the duty of the City Council, upon receiving an application of Appeal of a Decision by the Planning Commission, to receive and examine available information, including Planning Commission transcripts per §153.004, and conduct a hearing on behalf of the applicant or other interested party. Individual Council Members may tour the site at any time prior to the Council rendering its decision, and must disclose ex parte contact, but there is no requirement that Council Members do so. The Mayor may call a special City Council Meeting to tour the site should he/she determine a unique need exists due to site characteristics or complexity of proposed development. A written decision will be rendered within thirty (30) days of the hearing and will be considered final. In no case, however, shall this decision and preparation of written findings extend beyond 120 days from the date of initial submittal of a complete application (ORS 227.178).*

The 4<sup>th</sup> Amendment application was determined to be complete on September 19, 2017 with Mr. Lawhorn's confirmation of his request; therefore, under a strict interpretation that disregards the fact that there was a request from the appellant for a subsequent administrative amendment, the 120 days concludes on January 17, 2018. To err on the safe side, it would be best for the Council to conclude its decision after the hearing on the 16<sup>th</sup> and direct staff to prepare the written findings for the Mayor's signature on the 17<sup>th</sup>. Should you need more time, staff would recommend that you make a finding that the application for the administrative amendment constituted a new revised application with a new timeline.

*2) The City Council shall review only the record of the prior proceeding(s), and may ask for clarification or additional information from the participating parties as it relates to the record. Full disclosure of both parties must be made at the Planning Commission level and additional issues of evidence or fact shall not be accepted nor considered, nor added to the record.*

No new information or evidence may be presented or considered at the hearing or the subsequent decision. Only arguments related to information already in the record are allowed.

*3) The City Council shall establish and issue rules of procedures and standards for the conduct of hearings.*

The Mayor has discretion as to the conduct of the hearing subject to the code requirements above.

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4) *The City Council may affirm, rescind, or amend the action of the Planning Commission and may grant approval subject to conditions necessary to carry out the Comprehensive Plan and the Zoning Ordinance. The City Council may also remand the matter back to the Planning Commission for additional information subject to the agreement of the applicant to extend the 120-day review period.*

Unless the applicant/appellant waives the 120-day rule, or the Council makes finding regarding a new application start date, a decision must be rendered immediately after the hearing; there is no option to remand to the Planning Commission.

5) *The City Council shall make and enter findings from the record and conclusions thereof which support its decision; and the findings and conclusions shall set forth and demonstrate the manner in which the decision shall be carried out, as well as the implementation of the goals and objectives of the Comprehensive Plan, the Zoning Ordinance, and other official policies and objectives of the City.*

Just as the Planning Commission, and staff, did before in their review, the City Council must review the appeal against the Tillamook City Code of Ordinances, Title XV, §153.073 (8). Staff Review of those criteria, as accepted by the Planning Commission, is presented below in Section III.

## **SECTION II. APPEAL ISSUES:**

*According to §153.076 (2)(A) Appeal to City Council, “All appeals shall be made in writing, based on a specific issue about the criteria and/or standards raised during the Planning Commission Hearing, dated and signed by the appellant.”* Mr. Lawhorn has appealed all five conditions of the 4<sup>th</sup> Amendment Final Order (see **Exhibit C**) listed below; presumably with the intention that none of them should be applied, although he is not clear as to his requested remediation. Neither he, nor his agent, has provided specific findings as to how the conditions do not comply with the criteria contained in §153.073 (8).

### **Planning Commission/Administrative Review Conditions from Exhibit C:**

1. *The second aspect of the 4<sup>th</sup> amendment to reduce the landscaping along the 101 frontage to allow for two additional parking spaces was rejected by the Planning Commission in order to meet the intent of all four Site Plan Review objectives. The Third amendment highway frontage landscape shall be preserved to the greatest extent possible by eliminating parking space #1 and reintroducing landscaping between the catch basin and the terminus of the sign peninsula, and a peninsula of landscaping covering the north end of the property extending from the frontage to a north/south line from terminus of parking space #6 (see attached diagram). Attractive raised containers that will provide adequate plant viability may be used in locations where removal of*

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*asphalt is not practicable. The triangular landscaping in front of the diagonal parking spaces shall cover all of the triangular area two feet beyond the wheel stop in front of each diagonal space.*

- 2. The administrative review of the applicant's post-approval dumpster proposal confirms its relocation on the east end of the subject property, but requires that the enclosure be canted so that its rear screen wall aligns with the outer curb line of one additional diagonal parking space past space #15. This will conform with the exiting traffic flow lines and allow the sanitary service to easily collect the trash on a flow-through basis. This will also eliminate the need for parking space #1 indicated on the applicant's post-approval site plan submittal and enable the landscaping described above to be implemented. Within four months of amendment effectiveness, a screened dumpster/trash proposal shall be submitted for Staff and City Sanitary approval and installed within two months after that approval is granted.*
- 3. In order to fully utilize the new exit easement, clean-up onsite traffic pattern confusion, and increase safety at the intersection of Larsen and Highway 101,*
  - eliminate the exit arrow at the southwest corner of the property where cars tend to stack, along with the westbound arrows along the north property line,*
  - install a "Turn Right to Exit" sign at the 45-degree terminus of the drive, and*
  - apply a curbing barrier along the east side of the subject property so that the inbound drive-through traffic is distinctly separated from the outbound traffic and the neighbor's inbound lane to the east.*
- 4. Within four months of amendment effectiveness, a bicycle shelter shall be proposed for Staff approval and installed within two months after that approval is granted.*
- 5. The applicant shall be responsible for the installation of the landscaping as indicated on the site plan and modified by this approval, within 6 months of effectiveness of this amendment. Ongoing maintenance and viability of all landscaping shall be required and shall survive the completion of all other conditions.*

In addition to the statement that all conditions are appealed, Mr. Lawhorn contends that the landscaping he proposed in the easement on parking stall #6 as part of his 4<sup>th</sup> amendment application (see **Exhibit D**) is essential for his customers' safety, yet the additional landscaping that the 4<sup>th</sup> amendment Final Order requires in that stall would not be allowed by that easement and may make him susceptible to legal action from the beneficiary of that easement. He has also questioned why Bike Shelter requirements have not been imposed on other developments, why the curbing was applied to his property line to separate traffic flows, and why he must install additional landscaping when he already exceeds the percentage landscaping requirements in our code.

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### **SECTION III. OVERVIEW OF PROCESS AND ADOPTED ANALYSIS OF APPLICABLE CRITERIA**

The fourth amendment request was the result of the resolution of a civil dispute that originally, during a previous appeal, had engendered a Planning Commission requirement for a barricade along property lines. Once he had reached agreement with one of his neighbors, Mr. Lawhorn filed an amendment application that advanced the following changes:

- 1) The civil dispute between the applicant and neighbor was resolved through an agreement that provides an access easement benefitting the applicant that is illustrated on the proposed Site Plan dated 9-13-17. In order to utilize this new easement, part of the Planning Commission's Third Addendum condition requiring a removable barricade "...off the end of the trash screen to prevent east bound traffic from encroaching onto adjacent Tax Lot 101..." was proposed to be removed, along with the 180-degree turn arrow as well. Mr. Lawhorn stated that within the settlement agreement is a requirement that directional turning arrows be established in the north east corner of the property directing traffic from the property to turn to the south while exiting the property onto the new easement established in the settlement, and that the settlement of the lawsuit also requires that all barriers be removed including those on the north property line, which include removing the remainder of the Planning Commission's Third Addendum condition requiring a removable barricade "... along the applicant's north property line...".
- 2) The landscaping along the 101 frontage was proposed to be reduced to allow for two additional parking spaces. The overall number of parking spaces, even though rearranged, is still fifteen.
- 3) The ADA parking space in front of the Subway was requested to be moved to the first two spaces along the north side of the building.
- 4) The bike rack was proposed to move from the front to installed locations on both the north side of the building and the south side of the building. The outdoor seating will remain on the southwest patio.
- 5) Landscaping was reconfigured to be slotted into the parking triangles related to the parking spaces and access ways.
- 6) The dumpster and affiliated landscape area were proposed to be removed to an offsite parcel also under the ownership of the applicant (tax lot 102, assessor's map page 1S 9 19C). Trash was to be moved to and from that parcel from the restaurants on the subject property using the public right-of-way.
- 7) The double ramp on the south side of the building was proposed to be a single ramp providing nonpublic access and emergency exit sloping down to the east only.

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The following findings regarding the criteria identified in §153.073 (8) of the City Code of Ordinances were recommended in the Staff Report to the Planning Commission (see **Exhibit E**), which were delivered to the applicant/appellant seven days prior to the October 5<sup>th</sup> hearing so that he could respond to the proposed conditions. The implications of staff's recommendations were presented in redlines on his site plan. He presented no specific opposition at the hearing, only questions about certain aspects. After taking testimony at the hearing, which largely focused on the location of the trash containers, the Planning Commission adopted the staff findings and a set of initial conditions (see **Exhibit F**).

Subsequent to the Planning Commission's decision, the applicant/appellant proposed another amendment to relocate the trash containers back onto the subject property and, in the spirit of expediting resolution, the Planning Commission agreed to allow an administrative review of that amendment and an affiliated amendment of their conditions (see **Exhibit G**). The following findings were also utilized as a basis for the administrative review and therefore serve as a basis for both.

**§153.073 –Subsection 8, Site Plan Review Criteria.**

A. All of the objectives listed under Subsection 2, Site Development Objectives, have been satisfied.

Objective A. Encourage originality, flexibility and innovation in site planning and development, including the architecture, landscaping and graphic design of development. Recognizing that there are a lot of constraints to working two businesses onto such a small parcel, and that this amendment resolves a number of them, there is still a considerable amount of traffic pattern confusion on and off site. Vehicles are moving in multiple cross patterns, such the westbound along the north property line when there is no entry for such vehicles anymore and only an eastbound exit provided by the new easement. Also, at the corner of Larsen Road and Highway 101 there is an exit indicated right at the corner where cars from multiple properties stack waiting to turn. With a new exit provided by the easement, the corner exit should be removed for safety's sake and this made into an entry only.

This amendment also proposes to remove a substantial amount of the Planning Commission's requirement for highway frontage landscaping. The external aesthetics of the site, with all of its automotive access requirements, benefit greatly from this frontage landscaping by separating the asphalt and the building from passing motorists and giving it a more spacious feel. The frontage landscaping in the 3<sup>rd</sup> Amendment should be retained. The parking space proposed to be gained can be located to the rear next to where the trash receptacle is proposed.

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**Objective B.** Discourage monotonous, drab, unsightly, dreary and inharmonious design. The Planning Commission finds that the same landscape findings as described above can be applied here to provide a pleasing blend of function with visual appeal.

**Objective C.** Conserve the City's natural beauty and visual character and charm by insuring structure signs, and other improvements are properly related to their sites, and to surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to exterior appearances of structures, signs and other improvements. The Planning Commission finds that the same findings as described above can be applied here. With the level lot, there are no natural terrain elements to protect.

**Objective D.** Protect and enhance the City's appeal to tourists and visitors, and thus support business and industry and promote the desirability of investment and occupancy in business, commercial and industrial properties. The Planning Commission finds that the same findings as described above can be applied here to enhance the city's appeal to tourists and visitors by presenting a welcoming, comfortable curbside view.

Depending on the application of the conditions regarding landscaping, parking, and traffic pattern described below, the Planning Commission finds that Site Development Objectives 1A – D can be met and satisfied.

- B. All negative environmental and historical impacts have been mitigated. There are no environmental or historical resource impacts created by the proposed modifications.
- C. All development, parking, signage, and utility standards have been met. Staff has reviewed the code and found all standards have been clearly met, with the exception of the following which may require some Planning Commission discretion:

### **§153.054 - Off-Street Parking and Loading**

Subsection 13. Bicycle Parking Requirements. One (1) bicycle parking space is required for every ten (10) vehicular parking spaces. The spaces shall be located with respect to both the Street and the building entrance, sheltered, and visible from street sidewalks.

Subsection (C) requires that they be sheltered, but there is no indication of what type of shelter is provided.

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After reviewing and making specific satisfaction findings and conditions, related to bicycle parking, the Planning Commission finds that this criterion related to standards has been satisfied.

- D. There is adequate public utility capacity available. Adequate public utility capacity exists at the site. The Planning Commission finds that this criterion has been satisfied.

#### **SECTION IV. STAFF RESPONSE TO APPELLANT'S ISSUES AND CONTENTIONS:**

While the appellant has enumerated several concerns in his written appeal, **Exhibit A**, he has not presented any correlation or analysis of the Applicable Criteria or why the conditions that he has appealed do not comply with them; therefore, it is difficult to critique the merit of his arguments.

The rationale of the Planning Commission's decision, and the subsequent administrative decision, appear sound, with an eye toward safety & aesthetics, and based upon the criteria and standards found in the code. The Bike Shelter requirements are codified and have been imposed on other developments where applicable, such as Javadi Dental and Dutch Brothers, so they are not being applied selectively. There are no percentage landscaping requirements in our code for parcels of less than one acre in size; instead the quantity and quality of landscaping is predicated upon the objectives referenced by the criteria contained in §153.073 (8) and that is what the Planning Commission used.

The Planning Commission actually utilized Mr. Lawhorn's previous proposal approved as the 3<sup>rd</sup> amendment (see **Exhibit D**) as the basis for their evaluation of the optimal frontage landscaping that would satisfy required objectives. He contends that frontage landscaping in the northerly easement is essential for his customers' safety, yet not allowed by that same easement--the reasoning behind these two arguments conflict with each other. Staff has requested clarification as to how an easement whose purpose is to allow for maintenance of buildings on his neighbor's property somehow precludes landscaping where there is no building to be reached; however, Mr. Lawhorn has not provided such.

Staff would recommend that, in preparation for the hearing, you compare the fourth amendment to Site Plan Approval SP-14-02 (Site Plan handdated 9-13-17) to the Planning Commission's Third Addendum (both in **Exhibit D**). A site visit to see the lay of the land would also be very helpful (this will have to be declared as ex parte contact at the beginning of the hearing, but that is not detrimental). The recording of the Planning Commission hearing is also available for your consideration.

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**SECTION V. CONCLUSION AND RECOMMENDATIONS**

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Should the Council conclude that the criteria found in §153.073 (8) of the City Code of Ordinances are satisfied, or can be made to be satisfied with additional modifications, City Staff recommends upholding the Planning Commission’s approval of the proposed 4<sup>th</sup> amendment of Site Plan Review #SP-14-02, with the affiliated Administrative amendment. The Council should conclude its decision after the hearing on the 16<sup>th</sup> and direct staff to prepare the written findings for the Mayor’s signature on the 17<sup>th</sup>.