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**VIA EMAIL**

Ms. Johanna Hastay  
Senior Planner  
City of Lake Oswego Planning & Building Services Department  
380 A Avenue  
P.O. Box 369  
Lake Oswego, OR 97034

**Re: Comments on Public Review Draft of the Boones Ferry Road Nonconformities Code Amendments (LU 17-0028)**

Dear Ms. Hastay:

As you know, our firm represents Cain Petroleum (“Cain”). Cain owns a fuel station on Boones Ferry Road (the “Property”). This letter responds to the Public Review Draft of the Boones Ferry Road Nonconformities Code Amendments (LU 17-0028) (the “PRD”).

Cain expects that the City of Lake Oswego’s (“City”) planned improvements to Boones Ferry Road (“BFR Project”) will require it to relocate a propane tank on its Property in order to ensure adequate separation between the propane tank and vehicles on Boones Ferry Road. This relocation will cause the loss of two (2) parking spaces on the Property, rendering the fuel station a nonconforming development.

Cain notes that one purpose of the Boones Ferry Road Nonconformities Code Amendments is to ensure that properties that lose area or parking as a result of the BFR Project will receive a “credit” in the amount of such lost area or parking toward meeting the minimum landscaping or parking requirements of the City code. The City intends for the credit to apply based on clear and objective standards, without an expiration date, and to new construction as well as the expansion of existing construction.

Cain further notes that the Property is not among the eight (8) properties for which the PRD’s amendment of LOC 50.05.007.3.c.ii. includes a draft site plan, meaning the PRD’s amendment of LOC 50.05.007.3.c.ii. will not apply to the Property. Although Cain was initially concerned that the Property was not among the eight (8) properties to which the PRD amendment of LOC 50.05.007.3.c.ii. would apply, the City has informed Cain that it intends the PRD amendment of LOC 50.05.007.3.c.ii. will only to apply to, and thus the City has prepared site plans only for, those eight (8) properties whose owners the City has collaborated with to plan for replacement parking. Furthermore, the City has informed Cain that the PRD amendment of LOC

50.05.007.6.c.vi., as further discussed below, will provide a “credit” toward the minimum parking standard for the parking the Property stands to lose because the BFR Project will force Cain to relocate a propane fuel tank, as described above. Based on and relying on this information, Cain has no further comment on the PRD amendment of LOC 50.05.007.3.c.ii.

The rest of Cain’s comments on the PRD are shown below. Cain recommends the following amendments of the PRD to ensure that it achieves the City’s goals for the Boones Ferry Road Nonconformities Code Amendments.

**1. The PRD’s amendment of LOC 50.05.007.6.c.vi. should explicitly apply to parking the BFR Project directly and indirectly “eliminates.”**

The existing version of LOC 50.05.007.6.c.vi. authorizes, “for building expansions within five years,” a credit toward meeting the parking standard in the amount of any parking that the BFR Project “eliminates.” The PRD’s amendment of LOC 50.05.007.6.c.vi. removes the temporal and “building expansions” limitations on the applicability of the parking credit, but otherwise makes no changes to it.

It is unclear what the existing LOC 50.05.007.6.c.vi. means by “eliminates parking.” The PRD amendment of LOC 50.05.007.6.c.vi. does not clarify this ambiguity. It is possible to read “eliminates parking” to mean “directly eliminates parking,” meaning the City directly acquires (by condemnation or purchase) property used as parking space. It is also possible to read “eliminates parking” to mean “directly or indirectly eliminates parking,” meaning, more broadly, the City’s acquisition of property *causes* a loss of parking space. The latter would include a situation in which the City, by acquiring a portion of property, forces the property owner to rearrange the remainder of the property in a way that results in a loss of parking. This is the situation Cain (and possibly other property owners whom the BFR Project affects) faces. However, because it is unclear what LOC 50.05.007.6.c.vi. means by “eliminates parking,” it is also unclear whether the provision would allow the Property to credit toward the minimum parking standard the parking spaces the BFR Project will cause it to lose.

To ensure the LOC protects all properties that the BFR Project will cause to lose parking spaces, LOC 50.05.007.6.c.vi. should apply “if the loss of property causes the elimination of parking” rather than “if the loss of property eliminates parking.”

**2. The City should amend Policy 9.4 of the Lake Grove Village Center Plan.**

The PRD claims that one goal of the Lake Grove Village Center (“LGVC”) Plan is to “ensure no net loss of parking as a result of [the BFR Project.]” To support this contention, the PRD cites Goal 9, Policy 9.4 of the LGVC Plan. However, the PRD mischaracterizes Goal 9, Policy 9.4 of the LGVC Plan.

In fact, Goal 9, Policy 9.4 of the LGVC Plan commits the City to “ensure no net loss of parking facilities within the Lake Grove Village Center when making *access* modifications to Boones Ferry Road” (emphasis added). Thus, Goal 9, Policy 9.4 of the LGVC Plan currently applies only when the City makes “access” modifications for the BFR Project.

To ensure that Goal 9, Policy 9.4 of the LGVC Plan applies in the way the City intends it to, the City should amend it to remove the limiting word “access,” such that it applies to all modifications the City makes as part of the BFR Project.

**3. The PRD does not include drafts of the “frontage plans” referenced by LOC 50.05.007.6.e.i., and therefore it is not possible to make informed comment on the PRD amendment of LOC 50.05.007.6.e.i.**

The existing version of LOC 50.05.007.6.e.i. allows properties to apply, “for building expansions . . . within five years,” a credit toward meeting the landscaping standard equal to the square footage of any property the City purchases or condemns for the BFR Project. The PRD amendment of LOC 50.05.007.6.e.i. removes the temporal and “building expansions” limitations on the applicability of the credit. Furthermore, the PRD amendment of LOC 50.05.007.6.e.i. defines the “square footage of the lost property” as that “shown [on] the frontage plans approved by City Council per Ordinance No. \_\_\_\_\_.”<sup>1</sup> However, the PRD does not include drafts of any such “frontage plans.”

As discussed above, the PRD includes eight (8) “site plans,” but it does not include the “frontage plans” that the PRD amendment of LOC 50.05.007.6.e.i. references, and which are necessary to evaluate and comment on the amendment.

To allow informed evaluation and commentary on LOC 50.05.007.6.e.i., the City should publicly provide drafts of the “frontage plans” that the PRD amendment of LOC 50.05.007.6.e.i. references.

**4. The PRD amendment of LOC 50.07.003.13.a.ii.(8). should include a corresponding amendment of LOC 50.07.003.13.a.i.**

The PRD amendment of LOC 50.07.003.13.a.ii.(8). adds as a “ministerial development type” development that is “designed to address impacts of a transportation project” when such development is “associated” with “construction or alteration of public transportation or utility facilities” and “abut[s] the public right-of-way.” LOC 50.07.003.13.a.i. defines “ministerial development” as:

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<sup>1</sup> The PRD provides only this blank space in lieu of the actual ordinance number.

**“[A] development which requires a permit or review from the City where the decision:**

**(1) Is made pursuant to land use standards which do not require interpretation or the exercise of policy or legal judgment;**

**(2) Approves or denies a building permit issued under clear and objective land use standards; or**

**(3) Determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the Comprehensive Plan and land use regulations.”**

The development type that the PRD amendment of LOC 50.07.003.13.a.ii.(8). adds as a “ministerial development type” is broad and may encompass developments that do not meet LOC 50.07.003.13.a.i.’s definition of “ministerial development.” That is, some developments designed to mitigate the impacts of a transportation project, which are associated with construction or alteration of public transportation/utility facilities, and which abut the public right-of-way, may nonetheless fail to satisfy the definition of “ministerial development” under LOC 50.07.003.13.a.i.(1)-(3). This would create an internal inconsistency in the LOC, whereby development not “ministerial” under LOC 50.07.003.13.a.i. is nevertheless designated a “ministerial development type” under LOC 50.07.003.13.a.ii.(8).

To avoid internal inconsistency in the LOC, the PRD amendment of LOC 50.07.003.13.a.ii.(8). should include an amendment of LOC 50.07.003.13.a.i., which amendment should add to the definition of “ministerial development” a subsection (4), which should read: “Is one of the ‘ministerial development types’ described in LOC 50.07.003.13.a.ii., below.”

We look forward to continuing to work with the City as this process moves forward, and thank you again for your hard work and for the opportunity to participate in the process.

Very truly yours,



Michael C. Robinson

MCR:rsr