

**PLANNING COMMISSION  
FINDINGS OF FACT  
APPEAL AP22-003**

**APPEAL:** An appeal of Zoning Permit #ZP21-068 authorizing the construction of the “loop roads” east of Laurel Lane consisting of Yates Lane and Devin Loop.

---

**APPLICANT/OWNER:** City of Boardman  
Post Office Box 229  
Boardman, Oregon 97818

**APPELLANT:** 1<sup>st</sup> John 2:17 and Jonathan Tallman  
706 Mount Hood Avenue  
Boardman, Oregon 97818

Represented by:  
Wendie Kellington  
Kellington Law Group  
Post Office Box 159  
Lake Oswego, Oregon 97034

**PROPERTY DESCRIPTION:** Adjacent to and serving Tax Lots 3100, 3204, 3209, 3206, and 3201 of Assessor’s Map 4N 25 10 and Tax Lots 400 and 403 of Assessor’s Map 4N 25 11.

**ZONING OF THE AREA:** Commercial/Service Center

**PROPERTY LOCATION:** South of Interstate 84 and east of Laurel Lane.

**I. GENERAL INFORMATION:** 1<sup>st</sup> John 2:17 and Jonathan Tallman have appealed Zoning Permit #ZP21-068 which was initiated on November 16, 2021, to authorize the installation of the loop roads as envisioned in the Port of Morrow (POM) Interchange Area Management Plan (IAMP). Attached to this Findings of Fact is their Land Use Application, associated narrative outlining the issues that they are raising on appeal, and an Exhibit 1 that consists of the Notice of Decision and Findings of Fact completed by the Planning Official in the matter of Zoning Permit #ZP21-068.

As background to Zoning Permit #ZP21-068 the City of Boardman in cooperation with Morrow County and the Port of Morrow adopted the POM IAMP in 2012. The IAMP identified the need to address impacts to Laurel Lane when traffic increased to certain thresholds. It proposed loop roads to be installed south of the interchange to address increased traffic that would develop within the area zoned for commercial development. In 2020 the City of Boardman initiated the process to develop those loop roads to determine final design constraints based on the built environment and proposed development of a transmission line. Right-of-Way was obtained from landowners on the east side of Laurel Lane in 2021 and the project was designed and bid.

- II. **APPROVAL CRITERIA:** The appeal has been filed under the City of Boardman Development Code (“BDC”) Chapter 4 Applications and Review Procedures 4.1 Types of Applications and Review Procedures 4.1.400 Type II Procedure (Administrative) G Appeal. The Development Code directs the process by which an appeal hearing shall be noticed, conducted, and any decision is rendered. These findings will address the issues that have been raised by the appellant.

**Issues Raised on Appeal**

**The City erred by not mailing notice of the application to 1<sup>st</sup> John or Jonathan Tallman...**

The Planning Official treated the issuance of the Zoning Approval and Zoning Permit #ZP21-068 as a Type I Decision not requiring notice of the application or the decision. After further conversation with legal counsel, it was determined that a Notice of Decision should be accomplished and mailed to all landowners within 250 feet. That was accomplished on April 4, 2022. Pursuant to BDC 4.1.500.E.6, the decision became final when mailed. For purposes of appellants’ right to receive notice of the application pursuant to BDC 4.1.400.C.1., under State law they are required to show that the failure to receive the notice “prejudiced the substantial rights of the petitioner”. ORS 197.835(9)(a)(B). Further, they received the Notice of Decision that was mailed out on April 4, and are participating in this hearing before the Planning Commission. Finally, the Planning Commission’s decision is appealable to the City Council under BDC 4.1.400.G.6, with “the same notification and hearing procedures as for the Planning Commission hearing.” Accordingly, the appellants have not established that not receiving notice of the application prejudiced their substantial rights and the City has multiple opportunities to “cure” any notice deficiencies.

**The City failed to mail the Notice of Decision within five days after the Decision was signed...**

See above. The Notice of Decision was mailed on April 4, 2022, at which time the decision became final “for purposes of appeal” under BDC 4.1.400.F.

**The City erred in granting “zoning approval” for the entire Loop Road within the POM Interchange area...**

The Zoning Approval application form that was completed in November 2021 anticipated that the complete loop road system, including the roads to the west of Laurel Lane, would be part of the development. That changed over time as the City was not successful in obtaining the necessary right-of-way from Tallman, which required modifying the request for improvements to only be developed on the east side of Laurel Lane. While the Zoning Approval form does list all of the subject properties as originally envisioned, the Findings of Fact for the Zoning Approval and Zoning Permit #ZP21-068 clearly identifies in the Planning Official Decision on page 4 of 4 that the installations will be in the southeast quadrant of the interchange. No development was authorized in the southwest quadrant.

**The City erred in accepting the application and making a decision on the merits because the application did not contain the signed, written authorization of 1<sup>st</sup> John...**

The approval does not authorize any development on property owned by 1<sup>st</sup> John. Accordingly, no authorization by 1<sup>st</sup> John is required to process the application.

**The Decision errs in failing to address *all* relevant approval criteria and standards and is not based upon relevant approval criteria and standards...**

The Boardman Development Code (BCD) in Table 2.2.110A and in Table 2.2.200B identifies Transportation Facilities and Improvements to be allowed and further states under e.2. *Projects*

*identified in the adopted Transportation System Plan not requiring future land use review and approval.* The “loop roads” are identified in the POM IAMP which is a part of the City’s TSP and accordingly, contrary to appellants’ assertions to the contrary, do not require future land use review and approval.

**The Decision errs in approving the proposal without undertaking Site Design Review...**

Site Design Review is a process to review a development which is defined in the BDC as “all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, grading, and areas devoted to exterior display, storage, or activities. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or landscapes.” This is in contrast to the definition for street/road which is “a public or private way for travel by vehicles, bicycles and pedestrians, that meets the City standards in Chapter 3.4, Section 100” or the definition for right-of-way which is “land that is owned in fee simple by the public, usually for transportation facilities.” The BDC at 3.4.100 Transportation Standards states that “no development shall occur unless the development has frontage or approved access to a public street” making a clear distinction between roads and streets and development. Development would trigger a Site Design Review. Development of a street would not. Construction of public facilities, including streets, is subject to review and approval under BDC 3.4.700, in accordance with standards provided in BDC 3.4.100.

**The Decision errs in not finding compliance with BDC 3.4.100...**

The POM IAMP anticipates that the creation of right-of-way for and the improvement of the “loop roads” would be accomplished by developers at the time of development. In 2019 conversations between the City, Morrow County, the Port of Morrow, the Oregon Department of Transportation, and landowners in the vicinity of the “loop roads” determined that it was time to begin development. While not anticipated or required by the IAMP City staff committed to facilitating the acquisition of right-of-way and completing improvement of that right-of-way. Since then, work has continued with the City successfully acquiring right-of-way east of Laurel Lane and a small portion of right-of-way on the west side not owned by Tallman. BDC 3.4.100.C authorizes the City to “approve the creation of a street by acceptance of a deed, provided that the street is deemed essential by the City Council for the purpose of implementing the Transportation System Plan, and the deeded right-of-way conforms to the standards of this Code.” The right-of-way acquired is 60-feet in width, meeting the requirement of the POM IAMP for a collector and the BDC standard for a neighborhood collector. The City is purposefully not improving the street to the full standards identified in the BDC leaving those future improvements to be the responsibility of development along the roads being installed to the east of Laurel Lane. Those additional improvements that will be required at the time of development include curb, sidewalk, access cuts, and other associated street improvements. A four-foot-wide paved walking and bicycle path is included in the pavement width to support limited multi-path utilization. The improvement standard for the street can be found in the City of Boardman Public Works Standards adopting in March 2021.

III.      **LEGAL NOTICE PUBLISHED:**                      April 22, 2022    East Oregonian

IV.      **PROPERTY OWNERS NOTIFIED:**    April 22, 2022

V. **AGENCIES NOTIFIED:** Tamra Mabbott, Morrow County Planning Director; Eric Imes, Morrow County Public Works Director; Teresa Penninger and Rich Lani, Oregon Department of Transportation.

VI. **HEARING DATE:** May 18, 2022 Boardman City Hall

VII. **PLANNING OFFICIAL RECOMMENDATION:** The Planning Official recommends that the Planning Commission uphold the Planning Official decision and approve Zoning Permit ZP21-068.

---

Jacob Cain, Chair  
Planning Commission

Date

**ATTACHMENTS:**

Appellants Submittal with attachments



## City of Boardman Land Use Application

Office Use Only:

File No. AP22-003

Date Received 4-12-22

Decision Type Type III / Appeal

Appellants: 1st John 2:17, LLC and Jonathan Tallman

Phone: (208) 570-7589

Address: 706 Mount Hood Ave. City: Boardman State: OR Zip: 97818

Appellants' Agent: Wendie L. Kellington, Kellington Law Group PC Phone: (503) 636-0069

Address: P.O. Box 159 City: Lake Oswego State: OR Zip: 97034

Appeal to the Planning Commission pursuant to the Notice of Decision that was mailed on April 4, 2022 and under BDC 4.1.400(G) of a decision made on March 11, 2022 without a hearing by the City Planning Official granting "Zoning Approval" of "Zoning Permit" ZP21-068, which approves the construction of a "Loop Road" within the I-84/Laurel Lane Interchange area on multiple tax lots zoned Commercial/Service Center. The appealed decision is attached as Exhibit 1. A supplemental Notice of Appeal Narrative is also attached to this form.

Estimated Construction Cost Evaluation: \$ \_\_\_\_\_

Total Square Footage: \_\_\_\_\_

Requested Action: (Please circle one)

Zone Change

Variance

Conditional Use Permit

Property Line Adjustment

Partition

Subdivision

Preliminary Plat

Other: Land Use Appeal

The following material and supplemental information must be submitted with this application as a requirement for submittal to the Planning Commission:

- ☐ Plans and specifications, drawn to scale, showing the actual shape, setbacks and dimensions of the property to be used, together with a plot plan and vicinity map of the subject property.
- ☐ The size and location of the property, buildings, other structures; and use of buildings or structures, existing and proposed.
- ☐ Plot plan indicating all on/off-site improvements, including streets, fire hydrants, water and sewer facilities, etc.

I acknowledge that I am familiar with the standards and limitations set forth by the City of Boardman Zoning Ordinance, and that additional information and materials may be required. I fully intend to comply with plans and specifications submitted with this application. I do hereby certify that the above information is correct and understand that issuance of a permit based on this application will not excuse me from complying with the effective Ordinances and Resolutions of the City of Boardman and Statutes of Oregon, despite any errors on the party of the issuing authority in checking this application.

Signed: Jonathan Tallman  
(Appellant)

Signed: Jonathan Tallman  
(Appellant)

Printed: Jonathan Tallman, Managing Member 1st John 2:17, LLC  
(Appellant)

Printed: Jonathan Tallman, individually  
(Appellant)

**If this application is not signed by the property owner, a letter authorizing signature by the applicant must be attached.**

Staff Comments:

Recommended Action: \_\_\_\_\_

Decision: Approved Not Approved

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Title: \_\_\_\_\_



Notice of Appeal to the Planning Commission Pursuant to the Notice of Decision and Under BDC 4.1.400(G) of a Decision Made Without a Hearing on March 11, 2022 by the City Planning Official Granting “Zoning Approval,, of “Zoning Permit,, #ZP21-068: Loop Road Improvements

Decision Local File No: ZP21-068  
Appealed: Applicant: City of Boardman  
Location: Multiple Tax Lots of Assessor’s Maps 4N 25E 10 and 4N 25E 11, Within I-84/Laurel Lane Interchange Area (a.k.a Port of Morrow (POM) Interchange Area) and zoned Commercial/Service Center Subdistrict  
Date of Decision: March 11, 2022  
Date Notice of Decision Mailed: April 4, 2022

Appeal Date: April 12, 2022

Appellants: 1st John 2:17, LLC  
Jonathan Tallman  
706 Mount Hood Ave.  
Boardman, OR 97818  
(208) 570-7589  
[jonathan@tallman.cx](mailto:jonathan@tallman.cx)

Appellants’ Representative: Wendie Kellington  
Kellington Law Group, PC  
P.O. Box 159  
Lake Oswego, OR 97034  
(503) 636-0069  
[wk@klgpc.com](mailto:wk@klgpc.com)

**I. Introduction**

Appeal to the Planning Commission pursuant to the Notice of Decision and under BDC 4.1.400(G) of a decision made without a hearing on March 11, 2022 by the City Planning Official granting “Zoning Approval,, of “Zoning Permit,, #ZP21-068, which approves construction of a Loop Road within the I-84/Laurel Lane Interchange area (a.k.a. Port of Morrow (POM) Interchange area) on multiple tax lots zoned Commercial/Service Center, including on tax lots 3302, 3207 and 3205 of Assessor’s Map 4N 25E 10, which are owned by Appellants 1st John 2:17, LLC (“1st John,,) and its managing member, Jonathan Tallman, (collectively, “Tallmans,,). Exhibit 1 (Decision), p. 6. Notice of the Decision was mailed on April 4, 2022. Exhibit 1, p. 1.

Appellants 1st John and Jonathan Tallman have also filed a precautionary LUBA appeal of the challenged Decision in the event that a local appeal is unavailable. ORS 197.830(3); *Warf v. Coos County*, 42 Or LUBA 84 (2002) (when it is not clear how or where an appeal is supposed to be filed, the only “safe course of action,, is to appeal to all possible review bodies).

It is unclear what process the City followed in making the challenged Decision. BDC Table 4.1.200 does not identify the type of development decision/permit by type of decision-making procedure that applies to “Zoning Approval,, of “Zoning Permits,,. The Notice of Decision states that the Decision may be appealed to the Planning Commission within 21 days of the date the Notice of Decision was mailed, which suggests that the City believes the Decision to be a “Type II,, administrative decision. *See* BDC 4.1.400(G) (providing for appeals of Type II decisions to the Planning Commission that must be filed within 21 days of date Notice of Decision is mailed). Accordingly, this appeal is filed under the procedures in BDC 4.1.400(G).

## **II. Appeal Under BDC 4.1.400(G) of a Type II Administrative Decision**

### **A. Timely Filing of Appeal**

Under BDC 4.1.400(G)(2)(b), a Notice of Appeal of a Type II administrative decision must be filed with the City Manager within 21 days of the date the Notice of Decision was mailed. The Notice of Decision was mailed on April 4, 2022. This Notice of Appeal is filed within 21 days of that date.

We note that BDC 4.1.400(E)(1) requires the notice of a Type II decision to be sent by mail within five days after the Decision is signed by the City Manager to “all owners \* \* \* of record of the site which is the subject of the application,,. 1st John, of which Jonathan Tallman is the managing member, is the owner of record of tax lots 3302, 3205 and 3207, which are listed as properties that are the subject of the application on the “Zoning Approval,, decision signed and approved by the Planning Official on March 11, 2022. Exhibit 1, p. 6. Notice of the Decision was not mailed within the 5-day time frame required by BDC 4.1.400(E)(1), but rather was mailed on April 4, 2022. Exhibit 1, p. 1.

### **B. Decision Being Appealed – BDC 4.1.300(G)(2)(c)(1)**

The decision being appealed is a decision made without a hearing on March 11, 2022 by the City Planning Official granting “Zoning Approval,, of “Zoning Permit,, #ZP21-068, which approves construction of a Loop Road within the I-84/Laurel Lane Interchange area (a.k.a. POM Interchange area) on multiple tax lots zoned Commercial/Service Center. Notice of the Decision was mailed on April 4, 2022.

### **C. Statement of Standing to Appeal – BDC 4.1.400(G)(2)(c)(2)**

Appellant 1st John 2:17, LLC (“1st John,,) is the owner of tax lots 3302, 3207 and 3205 of Assessor’s Map 4N 25E 10, which property is subject to the Decision (*see* Exhibit 1, p. 6) and so has standing to appeal the Decision on that basis alone. 1st John also has standing to appeal the Decision under BDC 4.1.400(G)(1)(b) because it was mailed written notice of the Decision.

Appellant Jonathan Tallman also has standing to appeal as he is the managing member of 1st John; 1st John is a closely held family company and Tallman cares deeply about land use actions in the vicinity that may adversely affect the family property.

D. Specific Issues Raised on Appeal – BDC 4.1.400(G)(2)(c)(3)

- The City erred by not mailing notice of the application to 1st John or Jonathan Tallman before it made the Decision as required by BDC 4.1.400(C)(1)(a) (providing that before making a decision, the City shall mail notice of the application to all property owners of record within 250 ft of the site subject to the application). This failure not only violated the City's code but is also contrary to the purpose of the City's notice procedure which is "to give nearby property owners and other interested people the opportunity to submit written comments about the application,, before a decision is made and "to invite people to participate early in the decision-making process., BDC 4.1.400(C)(2). Under BDC 4.1.400(C)(3), notice was required to do the following:

- "a. Provide a 20-day period for submitting written comments before a decision is made;
- "b. List the relevant approval criteria by name and number of code sections;
- "c. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
- "d. Include the name and telephone number of a contact person regarding the Administrative Decision;
- "e. Identify the specific permits or approvals requested;
- "f. Describe the street address or other easily understandable reference to the location of the site;
- "g. State that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
- "h. State that all evidence relied upon by the City Manager or his/her designee to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the City;
- "i. State that after the comment period closes, the City Manager or designee shall issue a Type II Administrative Decision. The decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice;
- "j. Contain the following notice: 'Notice to mortgagee, lienholder, vendor, or seller: The City of Boardman Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.',,



The City's failure to conform to the notice requirements prejudiced Appellants' substantial rights by denying them a full and fair opportunity to present their case – a substantial right.

- The City failed to mail the Notice of Decision within five days after the Decision was signed on March 11, 2022, as required by BDC 4.1.400(E)(1). Notice of the Decision was not mailed until April 4, 2022. Exhibit 1, p. 1.
- The City erred in granting “zoning approval,, for the entire Loop Road within the POM Interchange area, south of I-84 and both east and west of Laurel Lane, under BDC Table 2.2.200B(2)(e)(2), which allows the installation of transportation facilities and improvements **“within the existing right-of-way”**. The Decision approves development of the Loop Road on Appellants' property, tax lots 3302, 3207 and 3205 of Assessor's Map 4N 25E 10 (Exhibit 1, p. 6), over which there is no “existing right-of-way,,.

Although portions of the Decision purport to only approve *construction* of the Loop Road adjacent to and serving tax lots south of I-84 and *east* of Laurel Lane (*see* Exhibit 1, p. 2, Property Description and Location), and identifies the approved improvements as those outlined in the Port of Morrow Interchange Area Management Plan (IAMP) in the “Southeast quadrant,, of the POM Interchange area (*see* Exhibit 1, p. 2, POM IAMP), other portions of the challenged Decision make reasonably clear that the Loop Road is approved and will be consistent with the IAMP at Figure 7-2 and Table 7-1, which describe and show the entirety of the Loop Road and are not confined to any particular portion. Moreover, the Decision grants “Zoning Approval,, of the Loop Road on Appellants' property, tax lots 3302, 3207 and 3205 (*see* Exhibit 1, p. 6), which is *west* of Laurel Lane and in the *southwest* quadrant of the POM Interchange Area. The Decision also adopts the improvements depicted in the City engineer's “Loop Road Improvements 2021 Sheet 2,, (Exhibit 1, p. 7) and in the POM IAMP Figure 7-2 (Exhibit 1, p. 8), both of which describe the entire Loop Road both east *and west* of Laurel Lane. The Decision errs in approving the Loop Road on Appellants' property over which there is no existing right-of-way.

- The City erred in accepting the application and making a decision on the merits because the application did not contain the signed, written authorization of 1st John, the property owner of record of tax lots 3302, 3207 and 3205, as required by BDC 4.1.700(D)(3)(a)(3). The City is not the owner of any deeded right-of-way over 1st John's property, nor is it the holder any other kind of ownership interest of record in 1st John's property. Accordingly, 1st John's signed, written authorization as the property owner of record was required for the City to accept and process the application. Under BDC 4.1.700(D)(3)(a), this failure required the City to reject the application and immediately return it to the applicant.
- The Decision errs in failing to address all relevant approval criteria and standards and is not based upon relevant approval criteria and standards, as required by BDC 4.1.400(D). As explained below, the proposal is subject to Site Design Review under BDC 4.2.200(A), which requires findings of compliance with the design standards and public

improvement requirements in BDC Chapter 3 – Public Facilities Standards. As explained in greater detail below, the Decision errs by not finding compliance with any of these standards.

- The Decision errs in approving the proposal without undertaking Site Design Review. The proposal is subject to Site Design Review under BDC 4.2.200(A), which applies to “all developments,, except those specifically listed under BDC 4.2.200(B). The Loop Road is clearly “development,, which the City code defines as “[a]ll improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, grading, and areas devoted to exterior display, storage, or activities. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or landscapes,, BDC Chapter 1.2 (Emphasis added). The proposal is not a type of development exempt from Site Design Review that is specifically listed under BDC 4.2.200(B).

Site Design Review ensures compliance with not only the basic development standards of the applicable zone, but also with the more detailed design standards and public improvement requirements in BDC chapters 2 and 3. BDC 4.2.200(A). Specifically, the review authority is required to make findings that the application complies with the design standards in BDC Chapter 3 – Public Facilities Standards. As explained in greater detail below, the Decision errs by not finding compliance with any of the standards in BDC Chapter 3.

- The Decision errs in not finding compliance with BDC 3.4.100 – Transportation Standards. Specifically, BDC 3.4.100(C) requires that rights-of-way for streets be created by the City’s “acceptance of a deed, provided that the street is deemed essential by the City Council for the purpose of implementing the Transportation System Plan, and the deeded right-of-way conforms to the standards of [the BDC],, Here, there is no deeded right-of-way over the Tallmans’ property for the Loop Road.

BDC 3.4.100(E) requires findings that the location, width and grade of all streets conform to the TSP. It is impossible to ascertain from the Decision or the application whether the approved Loop Road meets these standards. Since the City is the applicant, it carries the burden of proof. *Strawn v. City of Albany*, 20 Or LUBA 344, 350 (1990). The City does not carry its burden of proof by ignoring standards as is apparently the case here.

BDC 3.4.100(F) requires findings that street rights-of-way and improvements conform to the widths in BDC Table 3.4.100. The Decision states that the Loop Road will be designed to “collector,, standards, but does not identify what type of “collector,, the Loop Road is. The City’s TSP has two different classifications for “collectors,, – “minor collectors,, and “neighborhood collectors,, – each with their own standards. The TSP states that all collector facilities in the TSP are considered to be minor collectors. TSP, p. 6. The City’s code provides that “minor collectors,, require a minimum right-of-way width of 68 feet and a minimum roadway width of 47 feet and “neighborhood collectors,, require a minimum right-of-way width of 60 feet and a minimum roadway width of 38 feet:

Table 3.4.100 F. Street Widths		
Type of Street	Minimum Right of Way	Minimum Roadway
Local Street (Optional/Conditional)	56 feet	23 feet
Local Street	60 feet	34 feet
Neighborhood Collector	60 feet	38 feet
Minor Collector	68 feet	47 feet
New Arterial	80 feet	49 feet
East Columbia, Wilson Road and South Main Street Arterial	80 feet	49 feet
North Main Street Arterial	60 feet	48 feet

*Source: Boardman TSP, 2001*

Consistent with the City's code, the City's TSP provides that neighborhood collectors will have a right-of-way requirement of 60 feet. TSP, p. 13. Confusingly, the City's code is inconsistent with the TSP, which states that minor collectors will have a right-of-way requirement of 70 feet. TSP, p. 10. It is impossible to ascertain whether the approved Loop Road meets these standards. Since the City is the applicant, it carries the burden of proof, and the City does not carry its burden of proof by ignoring these standards as it has apparently done here.

BDC 3.4.100(G) provides standards for traffic signals and traffic calming features. It is impossible to ascertain whether the approved Loop Road meets these standards. Since the City is the applicant, it carries the burden of proof, and the City does not carry its burden of proof by ignoring these standards as it has apparently done here.

BDC 3.4.100(I) provides standards for street alignment and connections. Since the City is the applicant, it carries the burden of proof, and the City does not carry its burden of proof by ignoring these standards as it has apparently done here.

BDC 3.4.100(J) provides that sidewalks, planter strips and bicycle lanes shall be installed in conformance with the standards in Table 3.4.100, applicable provisions of the TSP, the Comprehensive Plan, and adopted street plans. The TSP provides the following design standards for the City's different roadway classifications:

**TABLE 7  
STREET DESIGN STANDARDS**

Classification	Cross Section	ROW	Turn Lanes	Travel Lanes	Bike Lane	Side-walks	On-Street Parking	Landscape Strip
Arterial – Main Street	2 lanes	60-80 feet	12 feet	12 feet	No	10 feet	No	12 feet
Arterial – City Developed Alternative	2 lanes	80 feet	Yes(a)	14 feet	8 feet(a)	10 feet	No	No
Downtown Collector	2 lanes	60-80 feet	No	11-12 foot	5-6 feet	6-9 feet	7 feet	4-5 feet (b)
Collector – City Developed Alternative	2 lanes	75 feet	Yes(a)	12 feet	8 feet (a)	5 feet	7 feet	No
Local Street – Option 1	2 lanes	60 feet	No	10 feet	No	6 feet	8 feet	5 feet (c)
Local Street – Option 2	2 lanes	60 feet	No	9 feet	No	6 feet	7 feet	6.5 feet (c)
Alleys	1-2 lane	20 feet	No	15-20'	No	No	No	No
Multi-Use Path	--	8-10 feet	No	No	8-10 feet	8-10 feet	No	No

The TSP provides that for minor collectors, sidewalks and bike lanes will not be required where a multi-use path is available, that optional landscape strips and on-street parking may be required at the discretion of the City, and that a minimum 10-ft. landscape strip will be required on one side of the road in conjunction with each multi-use path. TSP, p. 10. And provides that for neighborhood collectors, no bike lanes will be required, but landscape strips and on-street parking will be required at the discretion of the City. TSP, p. 13. The TSP also encourages the installation of sidewalks on collector streets: “Sidewalks should be included in any full reconstruction of arterials or collectors.,, (TSP, p. 20); “As properties develop/redevelop at urban densities in Boardman, the city should consider replacing the multi-use paths with sidewalks on all streets and bicycle lanes on arterial and collector streets.,, (TSP, p. 22); “Provision of sidewalks along both sides of key collector and local roads not specifically identified in this plan are also encouraged.,, (TSP, p. 22). It is impossible to ascertain whether the approved Loop Road meets any of these standards. Since the City is the applicant, it carries the burden of proof, and the City does not carry its burden of proof by ignoring standards as is apparently the case here.

BDC 3.4.100(K) provides standards for intersection angles. It is impossible to ascertain whether the approved Loop Road meets these standards. Since the City is the applicant, it carries the burden of proof, and the City does not carry its burden of proof by ignoring these standards.

BDC 3.4.100(N) provides standards for grades and curves. It is impossible to ascertain whether the approved Loop Road meets these standards. Since the City is the applicant, it carries the burden of proof, and the City does not carry its burden of proof by ignoring these standards.

BDC 3.4.100(O) provides standards for curbs, curb cuts, ramps and driveway approaches. It is impossible to ascertain whether the approved Loop Road meets these standards.

Since the City is the applicant, it carries the burden of proof, and the City does not carry its burden of proof by ignoring these standards.

BDC 3.4.100(X) provides that streetlights shall be installed in accordance with City standards which provide for streetlight installation at 300-ft. intervals. It is impossible to ascertain whether the approved Loop Road meets these standards. Since the City is the applicant, it carries the burden of proof, and the City does not carry its burden of proof by ignoring these standards.

BDC 3.4.100(Y) provides standards for street cross-sections. It is impossible to ascertain whether the approved Loop Road meets these standards. Since the City is the applicant, it carries the burden of proof, and the City does not carry its burden of proof by ignoring these standards.

The Decision errs by not finding compliance with any of the above standards, as required by Site Design Review.

E. Appeal Issues Raised During Comment Period – BDC 4.1.400(G)(2)(c)(4)

The City cannot deny the appeal on the basis that Appellants did not raise appeal issues during the comment period, because no comment period was provided. As explained in the previous section, the City failed to provide notice of the application to Appellants as required by BDC 4.1.400(C)(1)(a), and consequently failed to provide a 20-day period for submitting comments before the Decision was made as required by BDC 4.1.400(C)(3). There was no way for Appellants to know that an application had been submitted. Accordingly, Appellants did not have the opportunity to submit written comments on the application before the Decision was made. The City may not deny the appeal on this basis.

F. Filing Fee – BDC 4.1.400(G)(2)(c)(5)

Appellants provide an appeal filing fee of \$250 with the submittal of this appeal. ORS 227.175(10)(b).





## City of Boardman

200 City Center Circle  
P.O. Box 229  
Boardman, OR 97818  
Phone: (541) 481-9252  
Fax: (541) 481-3244  
TTY Relay 711  
[www.cityofboardman.com](http://www.cityofboardman.com)

### NOTICE OF DECISION

April 4, 2022

On March 11, 2022, the Planning Official did APPROVE Zoning Permit #ZP21-068 approving the installation of a roadway on property recently dedicated for roadway purposes within Assessor's Map 4N 25E 10 and 4N 25 11 in an area zoned Commercial/Service Center Subdistrict. Attached to this Notice of Decision are the Findings of Fact and Zoning Approval in this matter.


If you do not agree with this decision appeal can be made to the City of Boardman Planning Commission within 21 days of this Notice of Decision or April 25, 2022, based on the Boardman Development Code.

Cordially,



Carla McLane  
Planning Official

I hereby certify that I mailed this Notice of Decision to those entitled to receive it on Monday, April 4, 2022, by first class mail.

  
Jenn Rollins  
City Recorder

4/4/2022  
Date



**FINDINGS OF FACT  
ZONING APPROVAL  
ZONING PERMIT #ZP21-068**

**REQUEST:** To approve the installation of infrastructure and pavement on right-of-way obtained by the City of Boardman as generally depicted in the Port of Morrow Interchange Area Management Plan (IAMP) and in the Laurel Land and Loop Road Improvements 2021 design documents.

**APPLICANT/OWNER:** City of Boardman  
Post Office Box 229  
Boardman, Oregon 97818

**PROPERTY DESCRIPTION:** Adjacent to and serving Tax Lots 3100, 3204, 3209, 3206, and 3201 of Assessor's Map 4N 25 10 and Tax Lots 400 and 403 of Assessor's Map 4N 25 11.

**ZONING OF THE AREA:** Commercial/Service Center

**PROPERTY LOCATION:** South of Interstate 84 and east of Laurel Lane.

- I. **GENERAL INFORMATION:** The City of Boardman in cooperation with Morrow County and the Port of Morrow adopted the Port of Morrow (POM) Interchange Area Management Plan (IAMP) in 2012. The IAMP identified the need to address impacts to Laurel Lane when traffic increased to certain thresholds. It proposed loop roads to be installed south of the interchange to address increased traffic that would develop within the area zoned for commercial development. In 2020 the City of Boardman initiated the process to develop those loop roads to determine final design constraints based on the built environment and proposed development of a transmission line. Right-of-Way was obtained from landowners on the east side of Laurel Lane in 2021 and the project was designed and bid. This Findings of Fact addresses the concept found in the POM IAMP and the criteria in the Commercial/Service Center zone.
- II. **APPROVAL CRITERIA:** The application has been filed under the City of Boardman Development Code Chapter 2 Commercial District 2.2.200 Service Center Sub District and the Port of Morrow IAMP.

**Port of Morrow Interchange Area Management Plan:**

The Port of Morrow IAMP Section 7 outlines the proposed improvements to the area south of the Interchange in Figure 7-2 and Table 7-1 (see attached). Specifically, this action implements several long-term improvement actions in the Southeast quadrant from Table 7-1 identified as D.

- Construct a new collector street connection to Yates Lane that would access Laurel Lane just north of the existing BPA transmission easement.
- Restrict the Laurel Lane/Yates Lane intersection to right-in/right-out access only.

Both the Figure and Table are attached. The Planning Official finds that the proposed action is consistent with the intent and fulfills the objectives of the POM IAMP.

Chapter 2 Commercial District 2.2.200 Service Center Sub District Table 2.2.200B:

Table 2.2.200B Land Uses and Building Types Permitted in the Service Center Sub District		
<b>1. Residential:</b> a. One caretaker unit shall be permitted for each development, subject to the standard in Section 2.2.200D. b. RV Parks (CU) <b>2. Public and Institutional:</b> a. Government facilities (e.g. public safety, utilities, school district bus facilities, public works yards, transit and transportation and similar facilities) where the public is generally not received. b. Private utilities (e.g. natural gas, electricity, telephone, cable and similar facilities) c. Water supply and treatment facility (CU) d. Sewage disposal and treatment facility (CU)	e. Transportation Facilities and Improvements. 1. Normal operation, maintenance; 2. Installation of improvements within the existing right-of-way; 3. Projects identified in the adopted Transportation System Plan not requiring future land use review and approval; 4. Landscaping as part of a transportation facility; 5. Emergency Measures; 6. Street or road construction as part of an approved subdivision or partition; 7. Transportation projects that are not designated improvements in the Transportation System Plan ** (CU); and 3. Transportation projects that are not designed and constructed as part of an approved subdivision or partition** (CU)	<b>4. Commercial:</b> a. Retail store, office or service establishment b. Commercial / industrial full service trucking and automotive facilities, to include automobile service stations and vehicle refueling. c. Commercial residential use, to include tourist or travelers' accommodations. d. Commercial amusement or recreation establishment. <b>5. Industrial:</b> a. Manufacturing or warehousing. <b>5. Agricultural:</b> a. Farming excluding commercial livestock feedlot, livestock sales yard hog farms and mink farms. b. Agriculturally-oriented commercial use.(CU) <b>6. Services:</b> a. Kennel or animal hospital. <b>5. Wireless Communication Equipment</b> - subject to the standards in Chapter 3.6.200.

Table 2.2.200B Land Uses and Building Types Permitted in the Service Center Sub District allow Transportation Facilities and Improvements of which the proposed loop roads are an "Installation of improvements within the existing right-of-way." The right-of-way was obtained through work with the effected landowners and is documented in the following Dedication Deeds: 2021-49923, 2021-49924, 2010-49925, 2021-49926, 2021-49927, 2021-49928, 2021-50319, 2021-50320, and Partition Plat 2021-26 recorded as 2021-49929. The Planning Official finds that the proposed use is allowed as a Transportation Facility and Improvement in an existing right-of-way.

#### 2.2.120 Building Setbacks

In the Commercial District, buildings are placed to encourage pedestrian traffic. The setback standards are to encourage public spaces between sidewalks and buildings. The standards are also to encourage the formation of solid blocks of commercial and retail use to encourage a walkable commercial area.

Building setbacks are measured from the respective property line to the nearest vertical wall or foundation line, whichever is closer, of any building or structure. Setbacks for porches are measured from the edge of the deck or porch to the property line. The setback standards, as listed, apply to primary structures and accessory structures. The standards may be modified only by approval of a Variance, in accordance with Chapter 5.1.

...

#### 2.2.130 Lot Coverage

- A. Lot Coverage. There is no maximum lot coverage requirement, except that compliance with other sections of the zoning codes may preclude full (100%) lot coverage for some land uses. Lot coverage in the Service Center and Tourist Commercial Sub District is limited to 85%.

#### 2.2.140 Building Height

All buildings in the Commercial District shall comply with the following building height standards. The standards are intended to allow for development of appropriately scaled buildings.

...

#### 2.2.150 Design Standards

- A. Purpose and Applicability. The Commercial District design standards are intended to provide similar and human scale design, while affording flexibility to use a variety of building styles. Conditional Use approval is required for those uses listed as a Conditional Use in Table 2.2.110.A. Residential development shall follow standards for residential development contained in Chapter 2.1. This section applies to all of the following types of buildings:

...

The Commercial District does provide for setbacks, lot coverage, building height, and various design standards that would be applicable to buildings. The proposed improvement does not include a building or other installation that could be considered a structure subject to those standards. The Planning Official finds that those standards are not applicable.





## ZONING APPROVAL

City of Boardman  
Community Development Dept.  
P.O. Box 229  
Boardman Oregon 97818  
(541) 481-9252

File Number 2P21-068 Date Received 11-16-21 Date Completed 3/11/2022 Fee N/C

Applicant / Contractor: Name(s) City of Boardman

Mailing Address P.O. Box 229 Boardman, OR 97818

Phone 541-481-9252 E-mail address \_\_\_\_\_

Legal Owner (if different from applicant): ADJACENT

Name(s) Yates Living Trust, Fletcher Hobbs, Devin Oil,

Address Ed + Frances Glenn, 1st John 2:17, LLC, City of Boardman

## Property Description:

Township 4N Range 25 Section 10 Tax Lot 3204, 3201, 3204, 3209, 3302, 3207, 3205

Physical Address \_\_\_\_\_

Subdivision/Partition \_\_\_\_\_ Parcel Zoning Service Center

Proposed Set Backs: Lot Width \_\_\_\_\_ ft. Lot Depth \_\_\_\_\_ ft.

Front \_\_\_\_\_ ft. Side \_\_\_\_\_ ft. Side \_\_\_\_\_ ft. Rear \_\_\_\_\_ ft.

Proposed Structures: 1. Roadway Sq Ft \_\_\_\_\_ Baths \_\_\_\_\_  
2. \_\_\_\_\_ Sq Ft \_\_\_\_\_ Baths \_\_\_\_\_  
3. \_\_\_\_\_ Sq Ft \_\_\_\_\_ Baths \_\_\_\_\_

**Plot Plan:** Attach a plot plan showing where on the lot the structures will be located. Identify setbacks, existing structures, location of access, septic system, drain field, and well if applicable. The drawing does not need to be to scale.

**Certification:** I, the undersigned, acknowledge I agree to the standards and limitations set forth by the Boardman Development Code. I propose to meet all standards set forth by the Boardman Development Code and any applicable State and Federal regulations. I certify that the statements and information provided with this application are true and correct to the best of my knowledge.

Signed: [Signature]  
(Applicant / Contractor)

[Signature]  
(Legal Owner)

Printed: Kevin S. Kennedy  
(Applicant / Contractor)

\_\_\_\_\_  
(Legal Owner)

If this application is not signed by the property owner, a letter authorizing signature by the applicant must be attached.

Planning Approval Signature [Signature] Date 3/11/2022

Unobstructed string line on side yards required. \_\_\_\_\_



APR CONTROL POINTS			
NO.	NORTHING	EASTING	ELEVATION
22	793054.522	6412324.459	547.950
23	793117.116	6415494.457	536.262
24	793089.220	6415501.530	536.550
25	793053.227	6415501.530	535.801
26	793050.042	6414781.234	536.357
27	793071.626	6415367.125	535.426
28	793046.516	6412352.232	542.550
29	793046.516	6412352.232	541.641
30	793020.529	6412352.232	541.650
31	793020.529	6412352.232	541.650
32	793020.529	6412352.232	541.650
33	793020.529	6412352.232	541.650
34	793020.529	6412352.232	541.650
35	793020.529	6412352.232	541.650
36	793020.529	6412352.232	541.650
37	793020.529	6412352.232	541.650
38	793020.529	6412352.232	541.650
39	793020.529	6412352.232	541.650
40	793020.529	6412352.232	541.650
41	793020.529	6412352.232	541.650
42	793020.529	6412352.232	541.650
43	793020.529	6412352.232	541.650
44	793020.529	6412352.232	541.650
45	793020.529	6412352.232	541.650
46	793020.529	6412352.232	541.650
47	793020.529	6412352.232	541.650
48	793020.529	6412352.232	541.650
49	793020.529	6412352.232	541.650
50	793020.529	6412352.232	541.650
51	793020.529	6412352.232	541.650
52	793020.529	6412352.232	541.650
53	793020.529	6412352.232	541.650
54	793020.529	6412352.232	541.650
55	793020.529	6412352.232	541.650
56	793020.529	6412352.232	541.650
57	793020.529	6412352.232	541.650
58	793020.529	6412352.232	541.650
59	793020.529	6412352.232	541.650
60	793020.529	6412352.232	541.650
61	793020.529	6412352.232	541.650
62	793020.529	6412352.232	541.650
63	793020.529	6412352.232	541.650
64	793020.529	6412352.232	541.650
65	793020.529	6412352.232	541.650
66	793020.529	6412352.232	541.650
67	793020.529	6412352.232	541.650
68	793020.529	6412352.232	541.650
69	793020.529	6412352.232	541.650
70	793020.529	6412352.232	541.650
71	793020.529	6412352.232	541.650
72	793020.529	6412352.232	541.650
73	793020.529	6412352.232	541.650
74	793020.529	6412352.232	541.650
75	793020.529	6412352.232	541.650
76	793020.529	6412352.232	541.650
77	793020.529	6412352.232	541.650
78	793020.529	6412352.232	541.650
79	793020.529	6412352.232	541.650
80	793020.529	6412352.232	541.650
81	793020.529	6412352.232	541.650
82	793020.529	6412352.232	541.650
83	793020.529	6412352.232	541.650
84	793020.529	6412352.232	541.650
85	793020.529	6412352.232	541.650
86	793020.529	6412352.232	541.650
87	793020.529	6412352.232	541.650

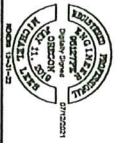
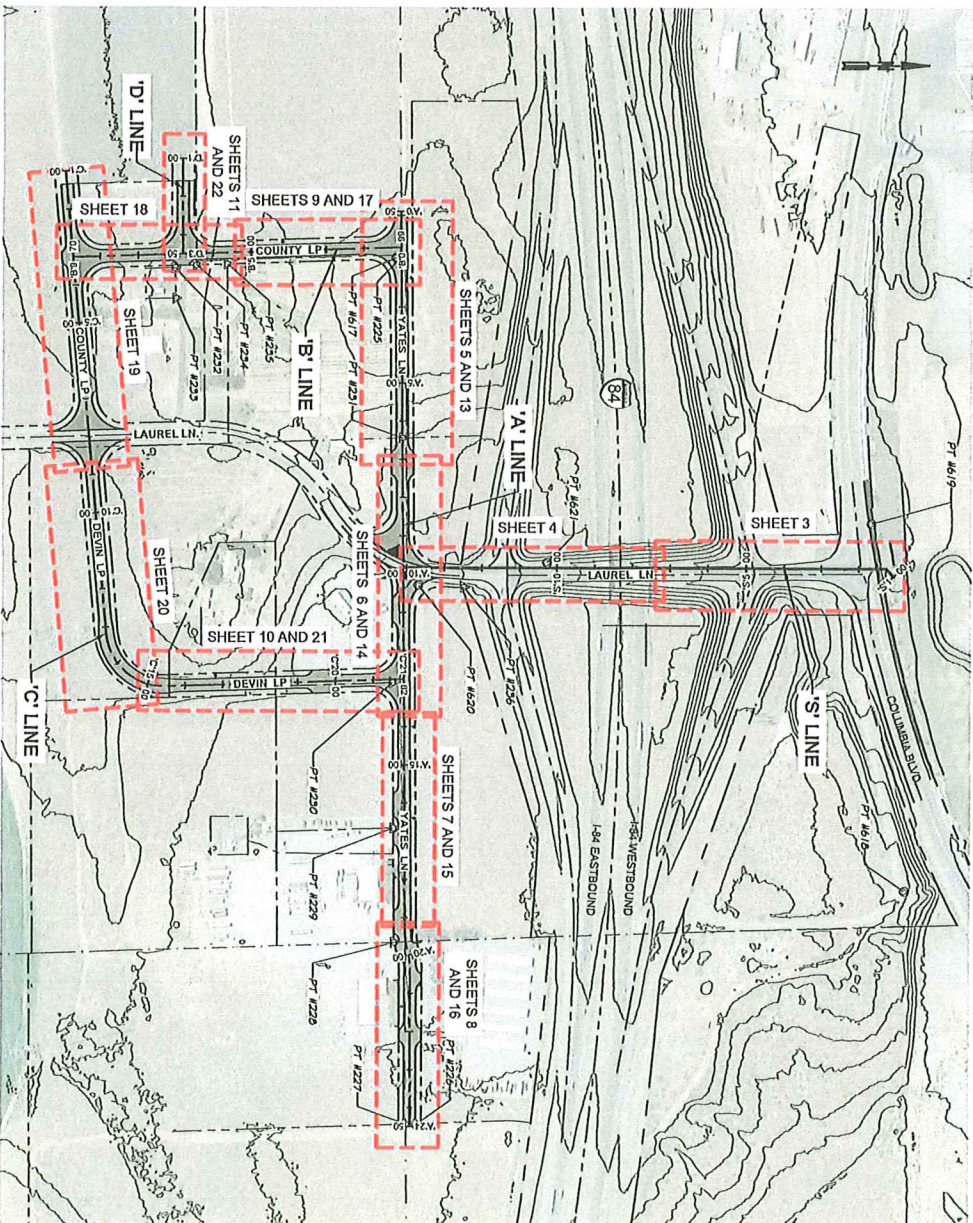
## SURVEY ACTIVITIES - GENERAL

THIS SITE IS LOCATED IN THE SE 1/4 OF SEC. 10 & SW 1/4 OF SEC. 11, T.44N, R.32E, OF THE WILLAMETTE MERIDIAN, MORROW COUNTY, OREGON. A TOPOGRAPHIC FIELD SURVEY WAS CONDUCTED AT THE SITE ON MARCH 14-15, 2010 (LOS 439-45 WATER SYSTEM IMPROVEMENTS) AND INCLUDED STATIC GPS OBSERVATIONS. ADDITIONAL DATA WAS GATHERED BEG. 10-14, 2020. LIDAR DATA WAS USED TO SUPPLEMENT TERRESTRIAL DATA. GENERAL SITE LOCATION BASED ON GOOGLE EARTH: 43.50726,0174.1914068,077W.

## SURVEY DATUMS

VERTICAL. ELEVATIONS SHOWN ARE A REPRESENTATION OF NAVD83 (GEOID112B) BASED ON AN OPUS SOLUTION DERIVED FROM A STATIC GPS TIE AT APA CONTROL POINT #617.

HORIZONTAL. THE COORDINATES OF API CONTROL POINT 4617 REPRESENT THE OREGON STATE PLANE COORDINATE SYSTEM - NORTH ZONE (NAD 83/2011), AS DETERMINED BY SAID STATIC GPS AND SAID GPS SOLUTION, BEARINGS SHOWN ARE GRID BEARINGS, DISTANCES AND COORDINATES OF OTHER POINTS AT THE SITE ARE BASED ON GRID MEASUREMENT.



		<p><b>CITY OF BOARDMAN</b></p> <p><b>LAUREL LANE AND LOOP ROAD IMPROVEMENTS</b></p>	<p><b>SHEET</b></p>
<p><b>2</b></p>			
<p><b>ANDERSON</b></p> <p><b>per property</b></p> <p><b>&amp; ASSOCIATES, INC.</b></p> <p><small>Engineering • Surveying • Natural Resources</small></p>	<p><b>SHEET INDEX AND SURVEY CONTROL.</b></p>	<p><b>2</b></p>	
<p><b>DATE</b></p> <p><b>2021</b></p> <p><b>BY</b></p> <p><b>DATE</b></p> <p><b>2021</b></p>	<p><b>PROJECT</b></p> <p><b>LAUREL LANE AND LOOP ROAD IMPROVEMENTS</b></p> <p><b>CLIENT</b></p> <p><b>CITY OF BOARDMAN</b></p>	<p><b>DESIGNED BY</b></p> <p><b>M. LEEB</b></p> <p><b>CHECKED BY</b></p> <p><b>L. WILLIAMS</b></p> <p><b>DATE</b></p> <p><b>2021</b></p>	<p><b>PROJECT</b></p> <p><b>LAUREL LANE AND LOOP ROAD IMPROVEMENTS</b></p> <p><b>CLIENT</b></p> <p><b>CITY OF BOARDMAN</b></p>





Table 7-1 POM IAMP Transportation Improvement Plan

Figure 7-1 Label	Near-Term Improvement Description	Trigger for Improvement	Estimated Cost	Potential Funding Source
A	<ul style="list-style-type: none"> <li>Widen Laurel Lane to include a 16' wide center turn lane between Columbia Avenue and the I-84 Eastbound ramp terminal.</li> </ul>	Southbound or northbound 95 <sup>th</sup> percentile vehicle queues exceed the available storage between the I-84 ramp terminals.	\$0.8M	PDF STIP
B	<ul style="list-style-type: none"> <li>Lengthen the I-84 eastbound and westbound on- and off-ramps (to current design standards) to provide additional room for vehicles to accelerate when entering the freeway and to decelerate when exiting the freeway.</li> </ul>	In conjunction with future I-84 mainline resurfacing projects.	\$1.5M	STIP PDF
C	<ul style="list-style-type: none"> <li>Acquire right-of-way and re-grade the east and west shoulders of Laurel Lane to provide intersection sight distance at Yates Lane (355 feet of intersection sight distance for southbound left-turning vehicles from Laurel Lane onto Yates Lane and 610 feet of intersection sight distance for westbound traffic on Yates Lane approaching Laurel Lane).</li> </ul>	New development along Yates Lane that generates 25 or more daily trips.	\$0.06M <sup>1</sup>	PDF
<b>Long-Term Improvement Description</b>				
D	<ul style="list-style-type: none"> <li>Construct a new Collector street connection to Yates Lane that would access Laurel Lane just north of the existing BPA transmission easement.</li> <li>Restrict the Laurel Lane/Yates Lane Intersection to right-in/right-out access only.</li> </ul>	Peak southbound left-turn 95 <sup>th</sup> percentile queue backs up to the I-84/Laurel Lane eastbound ramp terminal.	\$1.2M	PDF
E	<ul style="list-style-type: none"> <li>Realign Laurel Lane south of the I-84/Laurel Lane eastbound ramp terminal to improve the vertical and horizontal profile. Provide a southbound left-turn lane along Laurel Lane at the new Yates Lane access described in Project "D" above.</li> </ul>	Peak southbound left-turn 95 <sup>th</sup> percentile queue backs up to the I-84/Laurel Lane eastbound ramp terminal. -- or -- Eastbound approach to Laurel Lane (described in Project "F" below) operates at LOS "E" or worse.	\$1.4M	PDF
F	<ul style="list-style-type: none"> <li>Construct a new Collector Street connection to the parcels in the southwest quadrant of the interchange. This connection would access Laurel Lane directly across from Yates Lane.</li> </ul>	New development requiring access east of Laurel Lane.	\$0.03M	PDF
G <sup>2</sup>	<ul style="list-style-type: none"> <li>Construct a new Collector Street connection to the remaining parcels in the southwest quadrant of the interchange. The connection would access Laurel Lane just north of the existing BPA transmission easement.</li> <li>Restrict the access described in Project "F" above to right-in/right-out access only.</li> </ul>	Eastbound approach to Laurel Lane (described in Project "F" above) operates at LOS "E" or worse.	\$1.8M	

STIP – State Transportation Improvement Project

PDF – Private Development Funds

<sup>1</sup> – Construction costs only, does not include right-of-way costs

<sup>2</sup> – New Collector roadway may be waived by the City if all parcels to the east or west of Laurel Lane are consolidated, developed, and owned by a single entity.