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Via Electronic Mail  
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City of Boardman  
Planning Commission  
c/o Carla McLane  
200 City Center Circle  
Boardman, OR 97818

RE: Appeal to Planning Commission of #ZP21-068: Granting Zoning Approval for Loop Road Improvements

Dear Members of the Planning Commission:

This firm represents appellants 1<sup>st</sup> John 2:17, LLC and Jonathan Tallman (collectively “Tallmans” or “Appellants”), the owners of tax lots 3205, 3207 and 3302 of Morrow County Assessor’s Map 4N 25E 10. Please include this letter in the record of the above-captioned proceeding.

The decision challenged in this appeal grants “Zoning Approval” for the Loop Road improvements within the I-84/Laurel Lane Interchange area on multiple tax lots zoned Commercial-Service Center Subdistrict. Appellants received mailed notice dated April 4, 2022 that the challenged decision had been made and filed this appeal on April 12, 2022. As an initial matter, because the decision has been appealed and has not yet been decided, it is not “effective” per BDC 4.1.400(F), which provides:

**“F. Final decision and effective date.** A Type II administrative decision is final for purposes of appeal, when it is mailed by the City. A Type II administrative decision is effective on the day after the appeal period expires. *If an appeal is filed, the decision is effective when the appeal is decided.*” (Emphasis added).<sup>1</sup>

Despite the City not having an effective land use decision approving the Loop Road, the City has steamrolled ahead with construction anyway and, importantly to the Tallmans and their business, is planning to close Laurel Lane tomorrow, May 18, to install a sewer line, which will either foreclose or restrict the Tallmans’ and their customers’ access to the property and business. The City has previously represented that detours will be in place during the road closure to allow access to the Tallmans’ property and business, but an email sent this morning

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<sup>1</sup> Even if the City believes the challenged decision to be a Type I administrative decision, which Appellants do not concede that it is, the decision is likewise not effective under BDC 4.1.300(F).

from City staff notifying adjacent property owners that Laurel Lane will be closed tomorrow from 7am to 3:30pm states only that the road will be “closed” and does not advise whether any detours will actually be in place and, if so, where those detours will be located. As of the writing of this letter, the City has not answered our inquiries about whether detours will be in place during the road closure and, if so, where those detours will be. The Tallmans lost a motion to stay the City’s decision awarding the contract to construct the Loop Road at LUBA, based in part on the City’s representation that detours would be in place and access to the Tallman property would be maintained at all times during the road closure. The City’s lack of transparency on the road closure/detours issue now is unacceptable.

On the merits, one of the bases for this appeal was that the City erred in approving the Loop Road improvements on the Tallman properties, tax lots 3205, 3207 and 3302, over which the City has no existing rights-of-way. Although portions of the decision purported to only approve construction of the Loop Road adjacent to and serving tax lots south of I-84 and *east* of Laurel Lane and identified 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, other portions of the decision made it reasonably evident that the City approved the *entire* Loop Road, both *east and west* of Laurel Lane. For example, the “Zoning Approval” document signed-off on by the City includes the Tallman properties, tax lots 3205, 3207 and 3302, and the decision adopts the improvements depicted in the City engineer’s “Loop Road Improvements 2021 Sheet 2” and in the POM IAMP Figure 7-2, both of which describe the entire Loop Road and are not limited to just the southeast quadrant. The Staff Report on this appeal clarifies that the City did not intend to approve the Loop Road on the Tallman properties. The Planning Commission should ensure that the findings of the decision on appeal make it 100% clear that the Tallman properties are not included in the Zoning Approval of #ZP21-068.

Beyond the issue of the City incorrectly approving the Loop Road on the Tallman properties, the decision suffers from a number of other errors, namely that it does not find compliance with any of the street design standards in BDC 3.4.100. The fact that the City is the developer of the Loop Road does not excuse it from complying with the City’s standards for such roads. Approval of the Loop Road requires that the City undertake Site Design Review, which the challenged decision does not do. Site Design Review applies to “all developments” in the City and requires either Type II or Type III land use review and approval. BDC 4.2.200(A); Table 4.1.200. The Loop Road is unquestionably “development”, which the City’s code defines 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.” BDC Chapter 1.2 (emphasis added).

That “street/road” is separately defined in the City’s code does not mean that streets/roads are excluded from the definition of “development”. The definition expressly encompasses “all improvements on a site” and includes “paved or graveled areas” and “grading”,

all of which describe streets or their preparation. The only exclusion from the definition of “development” in the definition is for “natural geologic forms or landscapes”. The Loop Road is “development” subject to Site Design Review.

Site Design Review requires the City to make findings that the Loop Road complies with the street design standards in BDC 3.4.100. BDC 3.4.100(E) provides that “the location, width and grade of all streets shall conform to the Transportation System Plan[.]” BDC 3.4.100(F) provides that “[s]treet rights-of-way and improvements shall conform with the widths in Table 3.4.100”, and that a “Class B variance shall be required \* \* \* to vary the standards in Table 3.4.100.” Table 3.4.100 provides that Minor Collectors, like the Loop Road, shall have a minimum right-of-way width of 68 feet and a minimum roadway of 47 feet. BDC 3.4.100(J) provides that “[s]idewalks, planter strips, and bicycle lanes shall be installed in conformance with the standards in Table 3.4.100, applicable provisions of the Transportation System Plan, the Comprehensive Plan, and adopted street plans.” BDC 3.4.100(N)(1) provides that centerline curve radii on minor collectors shall not be less than 350 feet. BDC 3.4.100(X) provides that “[s]treetlights shall be installed in accordance with City standards which provides for installation at intervals of 300 feet.” The City was required to, but did not make any findings whatsoever that the Loop Road complies with any of these standards, and it does not comply. The Planning Commission should deny the application for these reasons.

Even if Site Design Review does not apply directly to the Loop Road, it is still subject to the standards in BDC 3.4.100 through BDC 3.4.000(B), which provides that “the standard specifications for construction, reconstruction or repair of transportation facilities \* \* \* within the City shall occur in accordance with the standards of this Chapter.” The standards in BDC 3.4.100 must be applied to the Loop Road.

The width of the Loop Road does not conform to the TSP as required by BDC 3.4.100(E) or with the widths in BDC Table 3.4.100 as required by BDC 3.4.100(F).

BDC 3.4.100(E) provides that “the location, width and grade of all streets shall conform to the Transportation System Plan[.]” And BDC 3.4.100(F) provides that “[s]treet rights-of-way and improvements shall conform with the widths in Table 3.4.100”, and that a “Class B variance shall be required \* \* \* to vary the standards in Table 3.4.100.”

The Loop Road is designated as a “collector” facility in the POM IAMP, which is part of the TSP. POM IAMP, p. 2, 99. The TSP provides that “all collector facilities” in the TSP are “Minor Collectors.” TSP, p. 6. Therefore, the Loop Road is a Minor Collector. TSP Table 7 “summarizes the street design standards for the City’s different roadway classifications”, but, curiously, that table does not include standards for “Minor Collectors”. Rather, Table 7 provides that “City Developed Alternative”<sup>2</sup> collectors shall have 75-foot rights-of-way. TSP, p. 9. The TSP addresses “Minor Collectors” elsewhere in the document, stating that they have a right-of-

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<sup>2</sup> The only other “collector” street design standards in Table 7 are for “Downtown Collectors” and the Loop Road is not located in “downtown”, which the TSP identifies as either the area of South Main Street (TSP, p. 3) or North Main Street (TSP, p. 20).

way requirement of 70 feet. *Id.* The Loop Road plans show that the road has a right-of-way width of only 60 feet. The Loop Road does not meet the TSP’s right-of-way width requirements for either a “City Developed Alternative” collector or a “Minor Collector”.

BDC 3.4.100(F) provides that street rights-of-way and improvements shall conform with the widths in Table 3.4.100 and that a Class B variance is required to vary from those standards. Table 3.4.100 provides that Minor Collectors shall have a minimum right-of-way width of 68 feet and a minimum roadway of 47 feet. The Loop Road has a right-of-way width of 60 feet and a roadway width that ranges from 32 feet to 40 feet,<sup>3</sup> (Loop Road Drawings, p. 24),<sup>4</sup> which are smaller than the minimum right-of-way and roadway width requirements of Table 3.4.100.<sup>5</sup> The City has not obtained a Class B variance to these standards and so does not comply with BDC 3.4.100(F).

Moreover, as the Staff Report points out, 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 Loop Road’s deeded 60-foot right-of-way does not conform to BDC 3.4.100(F).

The Planning Commission should deny the application because the Loop Road does not conform to the required road widths in the TSP or in BDC Table 3.4.100 and does not have a Class B variance to deviate from these standards.

The Loop Road does not contain sidewalks or bike lanes in conformance with the TSP and comprehensive plan as required by BDC 3.4.100(J).

BDC 3.4.100(J) provides that “[s]idewalks, planter strips, and bicycle lanes shall be installed in conformance with the standards in Table 3.4.100, applicable provisions of the Transportation System Plan, the Comprehensive Plan, and adopted street plans.”

TSP Table 7 provides that “City Developed Alternative” collectors shall have 8-foot bike lanes and 5-foot sidewalks. TSP, p. 9. Elsewhere, the TSP provides that Minor Collectors will not require sidewalks or bike lanes where a multi-use path is available. TSP, p. 10. The Loop Road does not have a multi-use path, so sidewalks and bike lanes are required, but none are provided. Moreover, the TSP encourages the installation of sidewalks on all 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

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<sup>3</sup> The majority of the Loop Road’s roadway is 32-feet wide. Loop Road Drawings, p. 24. A small portion of the Loop Road (curve on southeast portion) is 40-feet wide. *Id.* at p. 20 and 24.

<sup>4</sup> The Loop Road Drawings are attached as Exhibit 1 to this letter.

<sup>5</sup> BDC Table 3.1.400 provides that the minimum roadway width for neighborhood collectors is 38 feet. The majority of the Loop Road’s roadway is only 32 feet wide, which does not meet neighborhood collector standards either.

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). The Planning Commission should deny the application because the Loop Road does not contain sidewalks or bike lanes in conformance with the TSP as required by BDC 3.4.100(J).

The comprehensive plan provides that “[b]ikeways shall be included on all new arterials and collectors within the Urban Growth Boundary except on limited access freeways.” Plan, p. 3. No bikeways are included on the Loop Road, which is a new collector that is within the City’s UGB and is not a limited access freeway. The plan also provides that “[s]idewalks shall be included on all new streets within the Urban Growth Boundary except on limited access freeways.” Plan, p. 3. No sidewalks are included on the Loop Road, which is not a limited access freeway. The Planning Commission should deny the application because the Loop Road does not contain sidewalks or bike lanes in conformance with the comprehensive plan as required by BDC 3.4.100(J).

The curve in the southeast portion of the Loop Road does not comply with BDC 3.4.100(N)(1).

BDC 3.4.100(N)(1) provides that centerline curve radii on minor collectors shall not be less than 350 feet. The curve in the southeast portion of the Loop Road has a centerline curve radius of 150 feet. Loop Road Drawings, p. 20. The Loop Road does not comply with BDC 3.4.100(N)(1).

The Loop Road does not comply with BDC 3.4.100(X) which provides that streetlights shall be installed at 300-foot intervals.

BDC 3.4.100(X) provides that “[s]treetlights shall be installed in accordance with City standards which provides for installation at intervals of 300 feet.” The Loop Road does not include any streetlights and so does not comply with BDC 3.4.100(X).

The Planning Commission should deny the application because the Loop Road fails to comply with the City’s applicable street design standards.

Sincerely,



Sarah C. Mitchell

SCM:scm  
CC: Client