



City of Woodburn
Community Development Department
270 Montgomery Street
Woodburn, OR 97071
Phone: 503-982-5246
Email: planning@ci.woodburn.or.us

| |
|---|
| OFFICE USE ONLY File Number(s): <u>AP 22-01</u> |
|---|

Appeal of a Development Decision

Who Can Appeal?

Pursuant to WDO 4.02.01 A.2 & 3: For Type II decisions, only those persons who are adversely affected or aggrieved or who are entitled to notice have standing to appeal a Director's decision to the City Council.

For Type III Decisions, only those persons who participated either orally or in writing, or who are adversely affected or aggrieved have standing to appeal the decision of the Planning Commission or Design Review Board to the City Council.

Timeline to Appeal

Pursuant to WDO 4.02.01 B. 1: A notice of intent to appeal (this application) any Type II or Type III decision must be received in writing by the Director within twelve (12) days from the date notice of the decision is mailed to those entitled to notice. Late filing of any appeal shall be a jurisdictional defect and will result in the automatic rejection of any appeal so filed.

Additional Appeal Information

Each appellant must submit a separate form and attachments. Only one appeal fee is required, regardless of the number of appellants.

Appeals of development decisions are made to the City Council. The Council conducts a *de novo* public hearing, which is a hearing where the previous decision is set aside and the matter is considered as if the previous decision had never happened.

The City Council makes the City's final decision. The Council's decision can be appealed to the Land Use Board of Appeals (LUBA) within 21 days.

If the Council sustains the appeal, the fee will be refunded to the appellant. If the Council denies the appeal, the appeal fee is forfeited.

Appeals are governed by Section 4.02.01 of the Woodburn Development Ordinance.

Fee

- | | |
|---|--|
| <input type="checkbox"/> Type II decision | \$250 |
| <input checked="" type="checkbox"/> Type III decision | \$100 + half the original application fee, but not more than \$2,000 |

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Required Attachments (one print + one digital copy for each attachment)

- Statement of how the appellant has standing to appeal
- Statement of the grounds for the appeal.

Prior to deeming an application complete, the Director may request additional information.

General Information:

Project Address or Location: 2540-2600 Newberg Hwy

File number(s) of the decision being appealed: CU 21-02

Date of the decision being appealed: 6/9/2022

Appellant Information:

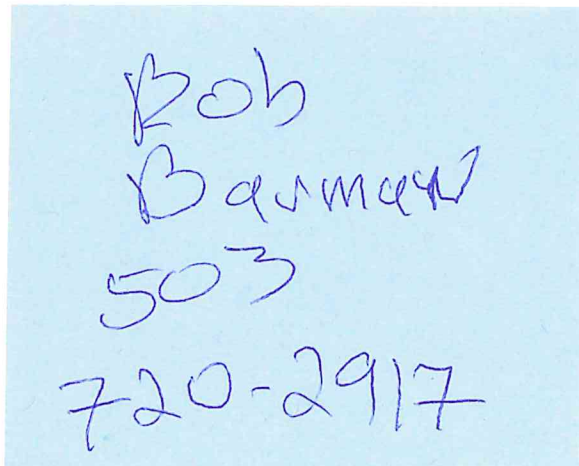
Name: Woodburn Fast Serv. Inc. and LB Group, LLC

Mailing Address: c/o Tonkon Torp LLP, Attn: David Petersen
888 SW Fifth Ave. #1600 Portland, OR 97204

Phone Number: 503-802-2054

Email: david.petersen@tonkon.com

Signature of Appellant:  Date: 6/21/22
on behalf of Woodburn Fast Serv. Inc. and LB Group, LLC



Bob
Barman
503
720-2917

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David J. Petersen
david.petersen@tonkon.com
Admitted to Practice in Oregon and California

503.802.2054 direct
503.221.1440 main

June 21, 2022

VIA HAND DELIVERY

Woodburn City Council
c/o Chris Kerr, Community Development Director
270 Montgomery Street
Woodburn, OR 97071

Re: Woodburn Fast Serv Inc. and LB Group, LLC
2540-2600 Newberg Highway, Woodburn, OR
City File No. CU 21-02
Planning Commission Final Order dated June 9, 2022

Dear City Council:

This firm's clients Woodburn Fast Serv Inc. and LB Group, LLC appeal the above-referenced decision of the Woodburn Planning Commission. This letter is attached to the appellants' appeal notice pursuant to WDO 4.02.01.

As an initial matter, it is not clear when notice of the Planning Commission's final decision was given, which means it is not clear when the appeal period expires. The order itself is dated June 9, which seems inaccurate since the Planning Commission hearing did not end until 9:30 that evening. The order is signed by the Commission Chair on June 14. There is no affidavit of mailing attesting to service of the final order on parties entitled to notice, but the postmark on the envelope mailing the notice to me is dated June 15. Mr. Cortes confirmed to me in an e-mail earlier today that the date of mailing is June 15. Nonetheless, without an affidavit of notice the appellants reserve the right to dispute any calculation of the appeal deadline.

The underlying land use matter is a Type III decision. The appellants have standing to appeal under WDO 4.02.01.A.3 because they participated orally and in writing in the Planning Commission proceedings below.

The grounds for appeal are as follows:

- The Planning Commission's order does not make any findings with respect to the applicable approval criteria, and is therefore inadequate. Findings were recommended to the Planning Commission in the staff report dated June 2,

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2022, but nowhere does the final order adopt, modify or incorporate those findings, nor does the Planning Commission make its own findings.

- Even if staff's recommended findings from the June 2 staff report are considered to have been incorporated into the final decision, those findings are inadequate with respect to numerous approval criteria by either failing to find that the criteria are satisfied, making findings not supported by substantial evidence in the record or improperly deferring a determination of compliance to administrative staff.
- Several conditions of approval are too vague, or improperly defer a determination of compliance to administrative staff, in violation of state law and WDO 4.01.06.A and 4.02.07. These conditions include, but are not limited to, conditions D3 and CU9.D.2(c).
- The applicant's Option 1, which is the only site plan approved by the Planning Commission, is not feasible because the applicant has provided no evidence that ODOT will lift the deed restriction that must be removed to allow the internal site circulation of Option 1 to work. As the City's own transportation consultant stated in a letter to the Community Development Director dated June 1, 2022:

The Transight statement in the new TIA does not address how their cross-circulation proposal avoids this violation, as the shifting of access to a shared access just to the west of the current RIRO [right in right out] driveway would still need ODOT approval and approach permit, and [the] Applicant would need to be successful arguing to ODOT that the existing RIRO driveway would be closed and replaced with this new, shared access and thus, they would need to argue that this new shared access driveway does not have the same deed restriction as the current driveway. Additionally, they have not presented any evidence that the properties to the west, not subject to the site development proposal, have agreed to this [change] of access and granting of shared access easements.

- The applicant's traffic consultant acknowledges that Option 1 exacerbates an existing elevated crash rate at the OR 214/Oregon Way intersection, yet no condition is imposed to mitigate this adverse impact on the transportation system. As the City's transportation consultant stated in a letter to the Community Development Director dated May 10, 2022:

The TIA indicated that the OR 214/Oregon Way intersection has an elevated crash rate under existing conditions, primarily due to left turns at this flashing yellow arrow left turn signal. Not only would the additional trips likely exacerbate this condition, but would require a quick multi-lane weave maneuver across eastbound OR 214, which increases the risk of collisions due to such a maneuver...[S]hould the applicant be successful in achieving ODOT approval of a shared, public access easement between the two tax lots and thus provide for on-site circulation that provides access for both lots to the right-in/right-out driveway on OR 214 as well as the full access onto

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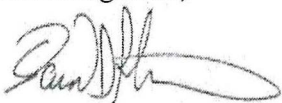


Oregon Way, the driveway onto OR 214 should be [designed] and signed so as to prohibit vehicles turning right onto OR 214 and then crossing over traffic lanes to turn left onto northbound Country Club Road (a multi-lane weaving maneuver over a short distance).

- Assuming it was adopted by the Planning Commission as its own findings, the analysis in the June 2 staff report in support of the grant of an exception to street right of way and improvement requirements is illogical, unresponsive to the applicable criteria and not supported by substantial evidence in the record.
- The approval does not meet the applicable traffic-related criteria as described in the May 10, 2022 and June 1, 2022 memoranda from the City's transportation consultant. As noted above, Option 1 does not provide adequate access between the two lots that is consistent with ODOT's deed restrictions on the site. Also, the applicant's traffic impact analysis is inadequate for failure to include the significant number of additional vehicle trips and turning movements associated with the approved Project Basie. As the City's transportation consultant stated in a letter to the Community Development Director dated June 1, 2022:

*Project Basie has been approved, US Market has not. The reference to a memo submitted to city staff in July 2021, with no apparent response,, does not change the fact that there was never a scoping approved for a TIA for this site, and such a scoping request would have yielded Project Basie as a pending in-process development. **The TIA analysis should be revised to include Project Basie trips.***

Best regards,



David J. Petersen

DJP/rkb

cc (via e-mail): Robert J. Barman
Garry L. LaPoint
Wayne K. Kittelson
Danny Draper

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DATE 6/21/22
 PROJECT LOCATION 2540-2600 Newbury Hwy
 PAYEE Woodburn Fast Serv, Inc. - LB
Group, LLC

PLANNING FEES (3456)

ADDRESSING _____
 ANNEXATION _____
 APPEAL OF LAND USE ACTION 2,000.00
 ARCHITECTURAL STDS. SUB. _____
 COMPREHENSIVE PLAN AMENDMENT _____
 CONDITIONAL USE PERMIT _____
 DESIGN REVIEW _____
 EXCEPTION TO STREET ROW IMP. _____
 GRADING PERMIT _____
 MODIFICATION TO COND OF APP. _____
 PROP. LINE ADJ/CONSOLIDATION _____
 PARTITION(PRELIMINARY) _____
 PARTITION (FINAL PLAT) _____
 PHASING PLAN _____
 PRE-APPLICATION CONFERENCE _____
 PUD CONCEPTUAL (PRELIMINARY) _____
 PUD DETAILED (FINAL) _____
 RCWOD PERMIT _____
 SIGN(PERMANENT) _____
 SUBDIVISION (PRELIMINARY) _____
 SUBDIVISION (FINAL) _____
 SIGNIFICANT TREE REMOVAL PERMIT _____
 TEMP. OUTDOOR MARKET PERMIT _____
 VARIANCE _____
 ZONING ADJUSTMENT _____
 ZONE MAP AMENDMENT _____
 OTHER _____

SALE OF MAPS & DOCS (3415)

ADDRESS/STREET MAP _____
 COMP. PLAN/ZONING MAP _____
 PHOTOCOPIES _____
 PUBLIC RECORDS REQUEST _____
 OTHER _____

GRAND TOTAL 2,000.00

City of Woodburn - 270 Montgomery St.
 Receipt #: 2022-00080887
 From: WOODBURN FAST SERV INC
 06/21/2022 11:43:09 AM

| | |
|----------------------|----------|
| 3456 - Planning Fees | 2,000.00 |
| Receipt Total | 2,000.00 |
| Check: 2001 | 2,000.00 |
| Total Remitted | 2,000.00 |
| Total Received | 2,000.00 |

Thank you for your payment!