



# Land Use Final Decision (Denial) City Council

**File number(s):** CU 21-02, DR 21-10, EXCP 21-05, & PP 21-01

**Project name:** US Market Gas Station

**Date of decision:** August 8, 2022

**Applicant:** Ronald "Ron" James Ped, Ronald James Ped Architect, PC, 145 21st St SE, Salem, OR 97301-8846

**Landowner(s):** Lal Din Sidhu ("Don" Sidhu), Woodburn Petroleum LLC, 1038 Broadway St NE, Salem, OR 97301-1276

**Site location:** 2540 & 2600 Newberg Hwy (OR Hwy 214); Tax Lots 052W12DB03700 [primary] & 3600

**Zoning:** Commercial General Zone (CG)

## I. INTRODUCTION & PROCEDURAL HISTORY

**Proposal:** The Applicant requests approval on a consolidated land use application package (Type III), Conditional Use 21-02, Design Review 21-10, Exception to Street Right of Way and Improvement Requirements ("Street Exception") EXCP 21-05, & Phasing Plan PP 21-01 for a gas station with convenience store, known as US Market, and commercial office space, in the Commercial General (CG) zoning district.

**Approval Criteria:** To be approved, this proposal would need to comply with the following applicable approval criteria:

Transportation System Plan (TSP) Figures 1, 4 & 7 and Woodburn Development Ordinance (WDO) 1.02, 1.04, 2.03, 2.06, 3.01-3.07, 4.01, 4.02, and 5.03.01, 02, 03, & 05

All section references are to the Woodburn Development Ordinance (WDO).

## **Procedural History:**

**Woodburn Planning Staff Recommendation to Planning Commission:** Approval with conditions.

**Public Hearing before Planning Commission:** The Planning Commission held a public hearing on June 9, 2022, and by a vote of 4-1 approved the consolidated land use applications package with the conditions recommended by staff through the staff report published June 2, 2022, except for two revision items:

1. Raising the Architectural Wall minimum height along the Panor 360 condominiums boundary (950 Evergreen Rd; Tax Lot 052W12DB90000) from 8 to 9 feet, which is the maximum that Woodburn Development Ordinance (WDO) 2.06.02C.1 allows, and striking allowance for that wall to have upper segments of cedar wood between columns/piers.
2. Striking allowance for the developer to refine and construct site plan Option 2, the one that the applicant had drafted because of Oregon Department of Transportation (ODOT) highway access restrictions.

Testimony topics raised generally during the Planning Commission Hearing included concerns about:

- Crime
- Gas fumes smell
- The homeless
- Noise
- Theft
- Traffic
- Trespass
- Unsavory convenience store customers; and
- Vandalism.

## **Testified at the Planning Commission Hearing:**

- D. Michael Mills, Lawyer PC (Applicant's Attorney)
- Joseph Bressman (Transight Consulting, LLC, Applicant's Traffic Consultant)
- Del Huttington (Huntington Traffic Solutions, Applicant's Traffic Consultant)
- Wayne Kittleson (Kittelson & Associates, Traffic Engineer representing The Woodburn Fast Serv Inc. and LB Group, LLC)
- David Petersen (Tonkon Torp, LLC, Attorney representing The Woodburn Fast Serv Inc. and LB Group, LLC)
- Largo Abshire
- Janice Aiken
- Carol Bettendorff
- Nancy Ferguson
- Karen Halter
- Mickey Harrison
- Rebecca Hayes
- Doris Ehlen Kruse
- Dorothy Monnier
- Bobbi Reisner
- Carolyn Schindlbower

- Betty Torabi
- Don Zehring

Written testimony was also submitted at or prior to the hearing by:

- Rebecca Hayes, on behalf of the Panor 360 Condominiums Homeowners & Residents, Letter dated May 5, 2022
- Anna Phillips, Letter dated May 10, 2022
- Wayne Kittleson, Kittelson & Associates, Traffic Engineer representing The Woodburn Fast Serv Inc. and LB Group, LLC, Letter dated May 11, 2022
- David Petersen, Tonkon Torp, LLC, Attorney representing The Woodburn Fast Serv Inc. and LB Group, LLC, Letters dated May 12, 2022 & June 8, 2022; and
- D. Michael Mills, Lawyer PC, Applicant's Attorney, Letter dated June 9, 2022

**Planning Commission Decision:** The Planning Commission Chair, Charles Piper, on June 14, 2022, signed the Final Decision of the Planning Commission. Then staff mailed the Final Decision on June 15, 2022.

**Appeal:** Type III decisions rendered by the Planning Commission are appealable to the City Council. The City Council's decision is the City's final decision. The last date to appeal the Planning Commission's decision for consolidated applications for the US Market applications was June 27, 2022. The Woodburn Fast Serv Inc. and LB Group, LLC, represented by David J. Petersen of Tonkon Torp, LLC, timely appealed by submitting a Notice of Intent to Appeal, dated June 21, 2022, which included each of the elements required by WDO 4.02.01.B.2., including a statement of the grounds for the appeal.

The Appellant specifically cited the following grounds for appeal: (i) failure of the Planning Commission to make any findings with respect to the applicable approval criteria; (ii) inadequate findings with respect to numerous approval criteria; (iii) vague conditions of approval or conditions of approval that improperly defer a determination of compliance to administrative staff; (iv) improper approval of Site Plan 1 due to infeasible ODOT access restrictions on the two parcels; (v) failure of the City to apply a condition of approval to mitigate adverse impacts on the OR 214/Oregon Way traffic system that includes an elevated crash rate; and (vi) inadequate findings related to the street exception application where the findings are not supported by substantial evidence.

**City Council Hearing:** Notice of the Public Hearing before the City Council on appeal of a land use decision by the Planning Commission was mailed on July 1, 2022, to all parties who signed in or participated before the close of the record of the Planning Commission Hearing (per WDO 4.02.01.C).

The City Council held a public hearing on the appeal at its regularly scheduled meeting on July 25, 2022. The meeting was held in person at Woodburn City Hall, 270 Montgomery Street, Woodburn, Oregon, with the hearing beginning at 7:38 p.m. The hearing was simultaneously held virtually over the videoconferencing software GoToMeeting.

Per WDO 4.01.15, the City Council conducted the public hearing pertaining to the Type III appeal pursuant to the standard quasi-judicial hearing procedure, proceeding in the following general order: (i) staff report; (ii) applicant's presentation; (iii) testimony in favor of the application; (iv) testimony in opposition to the application (with appellant permitted to testify and present its evidence and argument first); (v) rebuttal by the applicant; (vi) record closed; and (v) deliberation and decision.

During the Council Appeal Hearing, Council also followed the procedural instructions of WDO 4.01.16.E.1-3:

- "E. If the decision is appealed, the City Council shall consider:
1. The Planning Commission or Director's decision.
  2. The applicant and other parties shall have an opportunity to present testimony, arguments and evidence on all applicable criteria.
  3. The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal.
  4. The rights of participants to continuances or open record persons applicable to initial public hearings do not apply."  
(emphasis added)

While the WDO standard for appeal hearing notices provides that the notice shall include the following statement, "the appeal hearing is confined to the issues raised in the notice of appeal" (WDO 4.02.01.C.7); the Council interprets that provision to be limited in application to the notice itself and not to any restriction on evidence that may be admitted during the appeal hearing. Further, the notice for the hearing did not include any such statement that the appeal hearing would be confined to the issues raised in the notice of appeal.

During the hearing itself, City staff entered its full Staff Memorandum with associated attachments, dated July 25, 2022, into the hearing record. Attachments included, but were not limited to the Planning Commission Final Decision, PC Staff Report and related Findings & Analyses, as well as all written testimony received by the City up to the date and time of the Council Hearing.

Several parties testified at the Council Hearing (besides the applicant) and/or submitted written testimony prior to the hearing. The Appellant submitted additional written testimony and argument at the hearing. The Applicant also submitted an additional piece of written evidence regarding a sound impact assessment that was prepared for the proposed gas station use. The table below in the "Testifiers" section lists further details.

Following testimony by the Appellant and others opposed to the applications, the Council provided the Applicant an opportunity for rebuttal.

Following the testimony and closure of the record, a motion was made to (i) Overturn the Planning Commission's Decision; (ii) Tentatively Deny the Consolidated Applications, CU 21-02, DR 21,10, EXCP 21-05, and PP 21-01 for US Market Gas Station, on the basis that it fails to meet the Conditional Use Criteria Section B.3 on the basis of evidence in the record that demonstrates that the proposed development will not be compatible with surrounding properties; and (iii) Direct Staff to return with a final decision at the next Council meeting. The motion was seconded. A vote was taken and the City Council voted 4-0 in support of the motion overturning the Planning Commission decision and denying the applications. Staff was directed to prepare findings consistent with the Council's tentative decision and return to a future Council meeting with a final decision in writing.

The City Council considered the findings at a public meeting on August 8, 2022, and approved this Final Decision along with the associated findings at that time.

**Summary of Decision:** Following a hearing on the appeal of the Planning Commission's decision for the consolidated land use applications for the US Market gas station and office building, the Council voted to overturn the Planning Commission's decision and deny the applications.

The denial was made on the basis that the proposed development would not be compatible with the surrounding properties. Specifically, that unsafe traffic patterns and increased daily trips to and from the site would cause additional road safety hazards and an unreasonable level of congestion to the adjacent neighborhood of single and multi-family dwellings that primarily house senior citizens. Additionally, the adverse noise, odors, illumination, air quality, and aesthetic impacts from adding a third gas station within a two block area would negatively affect the quality of the living environment of the residential properties in the vicinity of the site.

## II. GENERAL BACKGROUND

### *Applications*

The land use application master case file number is Conditional Use CU 21-02, and the corollary case file numbers are Design Review 21-10, Exception to Street Right of Way and Improvement Requirements (“Street Exception”) EXCP 21-05, & Phasing Plan PP 21-01.

- CU 21-02 & DR 21-10: Conditional use application and design review to redevelop vacant land following demolition of two vacant bank buildings into a gas station of 12 pumps with a convenience store of 4,314 square feet (sq ft) and an office building of 3,800 sq ft with a total minimum of 36 parking stalls and a 6-foot high “Architectural Wall” where segments don’t yet exist as a buffer/screen wall along southerly property lines adjacent to the Retirement Community Single Family Residential (R1S) zoning district.
- EXCP 21-05: Street Exception (EXCP) application to *not* upgrade the highway frontage by demolishing the curb-tight sidewalk and planting a landscape strip with street trees and new sidewalk. Includes partial upgrade of Oregon way frontage with some new landscape strip and street trees.
- PP 21-01: A Phasing Plan (PP) to allow different timing to develop the gas station / convenience store versus the office building and accommodate developer’s choice of one of two alternative site plans following City approval and dependent on how severely the Oregon Department of Transportation (ODOT) restricts access via the highway driveway via its own agency permitting process.

### *Site*

The subject property is 2540 & 2600 Newberg Highway, composed of two lots totaling 1.42 acres, and located at the southwest corner of the intersection of Newberg Highway (Oregon Highway 214) and Oregon Way.

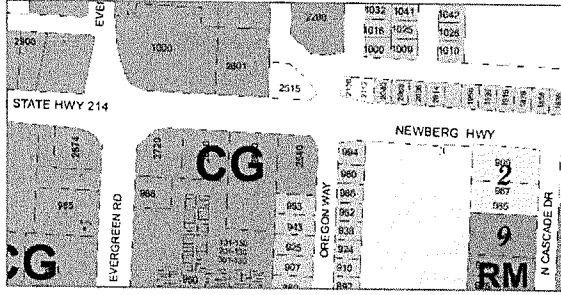
### *History of the Site*

The subject property was occupied by two vacant bank buildings. A contractor demolished the buildings and cleared the site in 2021.

### *Zoning*

Commercial General (CG)

Surrounding Properties and Neighborhood

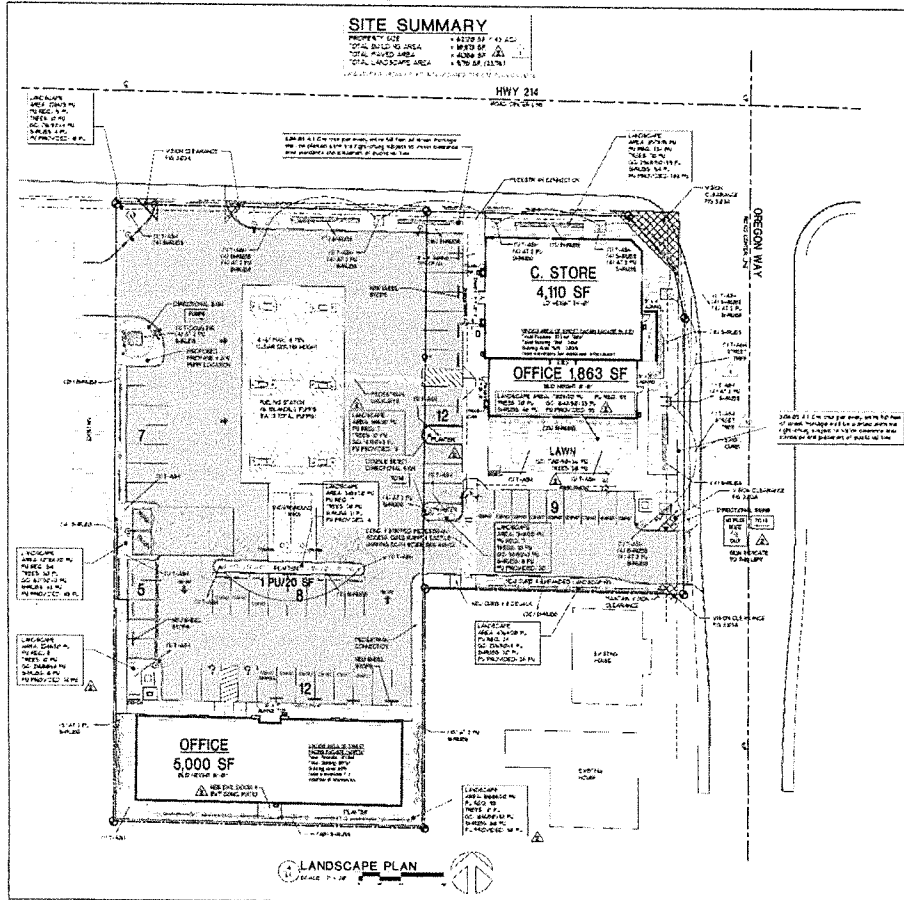


Zoning map excerpt

Cardinal Direction	Adjacent Zoning
North	Across OR Hwy 214: Commercial General (CG)
East	Across Oregon Way: Retirement Community Single Family Residential (R1S)
South	East to west: R1S (943 & 953 Oregon Way; houses) and CG (950 Evergreen Rd; Panor 360 condominiums)
West	CG (950 Evergreen Rd; Panor 360 condominiums; and 2620 Newberg Hwy; Dairy Queen)

\*Surrounding Properties and Neighborhood Table

CU 21-02 Option 1 Site & Phasing Plan



### *Traffic Impact Analysis*

The applicant as part of the application materials submitted a traffic impact analysis (TIA) dated August 13, 2021 as required by WDO 3.04.05. The applicant revised the TIA May 26, 2022, and submitted it May 31, 2022.

The TIA demonstrated that the development would have generated more daily vehicle trips than the two banks, now demolished, did – 422 net increase per revised TIA Table 1 on p. 6.

### **III. STANDARDS & CRITERIA**

The Conditional Use Criteria apply to gasoline stations located in the commercial general zoning district when that use will be located within 200 feet of residentially zoned properties (WDO Table 2.03A).

#### **WDO 5.03      General Requirements**

- A. The purpose of this Section is to identify what types of actions are considered Type III decisions. Type III decisions involve significant discretion and evaluation of subjective approval standards, yet are not required to be heard by the City Council, except upon appeal. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the Planning Commission or Design Review Board hearing is published and mailed to the applicant, recognized neighborhood associations and property owners. The decision of the Planning Commission or Design Review Board is appealable to the City Council. The City Council's decision is the City's final decision and is appealable to the Land Use Board of Appeals.
- B. To initiate consideration of a Type III decision, a complete City application, accompanying information, and filing fee must be submitted to the Director. The Director will evaluate the application as outlined in this Section.

5.03.01 Conditional Use

5.03.02 Design Review, Type III

5.03.03 Exception to Street Right of Way and Improvement Requirements

5.03.04 Manufactured Dwelling Park, Preliminary Approval

5.03.05 Phasing Plan for a Subdivision, PUD, Manufactured Dwelling Park or any other Land Use Permit

5.03.06 Planned Unit Development (PUD), Preliminary Plan Approval

5.03.07 Planned Unit Development (PUD), Design Plan Final Approval

5.03.08 Special Conditional Use - Historically or Architecturally Significant Building

5.03.09 Special Use as a Conditional Use

5.03.10 Subdivision Preliminary Approval

5.03.11 Telecommunications Facility, Specific Conditional Use

5.03.12 Variance

#### **WDO 5.03.01      Conditional Use**

- A. Purpose: A conditional use is an activity which is permitted in a zone but which, because of some characteristics, is not entirely compatible with other uses allowed in the zone, and cannot be permitted outright. A public hearing is held by the Planning Commission and conditions may be imposed to offset impacts and make the use as compatible as practical with surrounding uses. Conditions can also be

imposed to make the use conform to the requirements of this Ordinance and with other applicable criteria and standards. Conditions that decrease the minimum standards of a development standard require variance approval.

**B. Criteria:**

1. The proposed use shall be permitted as a conditional use within the zoning district.
2. The proposed use shall comply with the development standards of the zoning district.
3. The proposed use shall be compatible with the surrounding properties.

Relevant factors to be considered in determining whether the proposed use is compatible include:

- a. The suitability of the size, shape, location and topography of the site for the proposed use;
- b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
- c. The impact of the proposed use on the quality of the living environment:
  - 1) Noise;
  - 2) Illumination;
  - 3) Hours of operation;
  - 4) Air quality;
  - 5) Aesthetics; and
  - 6) Vehicular traffic.
- d. The conformance of the proposed use with applicable Comprehensive Plan policies; and
- e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.

#### **IV. APPLICATION OF CRITERIA & FINDINGS**

##### **Conditional Use Criteria #3**

3. The proposed use shall be compatible with the surrounding properties.

Relevant factors to be considered in determining whether the proposed use is compatible include:

- a. The suitability of the size, shape, location and topography of the site for the proposed use;
- b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
- c. The impact of the proposed use on the quality of the living environment:
  - 1) Noise;
  - 2) Illumination;
  - 3) Hours of operation;
  - 4) Air quality;
  - 5) Aesthetics; and
  - 6) Vehicular traffic.
- d. The conformance of the proposed use with applicable Comprehensive Plan policies; and
- e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.



**Evidence:**

The proposal is to consolidate and redevelop lots totaling 1.42 acres at 2540 & 2600 Newberg Highway (Oregon Highway 214). The subject property is located at the southwest corner of the intersection of Hwy OR 214 and Oregon Way.

The subject property is zoned Commercial General (CG) and was occupied by two previous bank buildings, now demolished. The site is bounded on the north side by Hwy OR 214, on the west side by a Dairy Queen fast food restaurant, on the west and part of the south side by a senior-living condominium building (Panor 360 Condominiums), and on the remainder of the south boundary and on the east boundary by single-family residential homes that make up part of the Woodburn Estates 55+ residential living community.

From the proposed US Market site, going west along Hwy OR 214 toward Interstate-5, there are already two existing gas/fuel stations with convenience stores operating. These gas stations are on the same south side of Hwy OR 214 and would be within 1-2 blocks of the subject site. These two gas stations are located closer to the Interstate-5 interchange and are not bounded by or adjacent to residentially zoned properties or residential uses.

While specific operating hours for the proposed gas station were not confirmed by the applicant during the public hearing process, testimony offered by adjacent residential neighbors indicated that the gas station and convenience store use would likely be a 24-hour operation, similar to the typical operation of others in the area. This assertion regarding long/late night operating hours, made by numerous neighboring property owners, was not rebutted by the Applicant.

In addition to the concerns raised regarding hours of operation of the proposed use, Applicant's TIA indicated that the overall daily vehicle trip counts generated for the gas station use would exceed that of the previous bank buildings (net increase of 422 daily trips), even while peak hour trips from the gas station use would be lower than that of the banks.

During the hearing and through written testimony, the Appellant's traffic engineer identified that the Applicant's TIA was insufficient in a number of regards, but most importantly it identified the following:

"No queuing analysis was performed for critical lane groups at the intersections that were studied. This is a particularly important consideration with respect to the through- and left-turning vehicle queues on the EB approach on OR 214 to Oregon Way. It is important because the right-out movement being proposed to be maintained from the development onto ORS 214 could be affected if queue backups at the downstream signal make it difficult for vehicles leaving the site to enter OR 214 safely. Drivers wanted to make a U-turn at Oregon Way to return to the freeway or other destinations to the west may be most severely affected by long queues at this intersection. Likewise, no queuing analysis was reported for the full access drive to Oregon Way. . . ."

While the Applicant did refer to queuing in an appendix to their TIA, that analysis identifies issues of queuing along ORS 214 at several intersections under existing conditions as well as with in-process traffic being added. Further, the issue of eastbound queues on OR 214 blocking

the right-in right-out driveway exit from the proposed site during PM peak hours was identified as a concern.

Further analysis from the City's own traffic consultant, also identified problematic conditions presented in the Applicant's TIA:

"The TIA identified the intersection of ORS 214 and Oregon Way/Country Club Road as having an elevated crash rate that exceeds ODOT's 90th percentile crash rate for these types of intersections. This results in the intersection having an elevated crash rate and potentially adding trips could exacerbate this condition."

"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."

While the Council acknowledges that the flashing yellow arrow, left turn signal option was recently deactivated or turned-off by ODOT at the OR 214/Oregon Way intersection, testimony received during the public hearing from residential neighbors in the area still identified continued problematic vehicle crashes, near-misses, and other incidents at or near the OR 214/Oregon Way intersection, including a recent roll-over vehicle collision at that intersection.

Furthermore, the Applicant did not propose any mitigation or solution to the problematic vehicular pattern that may occur when vehicles would exit the site and take a right-turn out of the gas station onto OR 214 and then theoretically weave across a bike lane and two lanes of highway traffic to then turn left or make a U-turn at Oregon Way. This multi-lane weaving would have to occur within a space of less than 200 feet for a vehicle to be able to turn left or make a U-turn at Oregon Way. Making a U-Turn at Oregon Way would be one of two routes that vehicles could theoretically take leaving the gas station to travel west back to Interstate 5.

With regards to vehicle traffic on Oregon Way, that street is a local street that provides a connection from OR 214 to the residential neighborhood of Woodburn Estates. Woodburn Estates is a 55+ senior community with residents that have homes along Oregon Way, both adjacent to and across from the proposed site. Residents testified to regularly using Oregon Way (which does not have sidewalks) for walking and to travel by golf cart to and from their club house for recreational activities.

As part of the Planning Commission's approval, it added a condition that a 9 foot masonry wall would need to be built between the proposed gas station property and the adjacent residential uses. Many of the neighbors testifying during the hearing illustrated that while the proposed screening provided by an architectural wall along the southern boundary of the property may help mitigate some noise and site issues, it would still not alleviate every concern related to typical convenience store and gas station operations, such as long operating hours (sometime 24 hours), increases in constant/regular circulating traffic to and from the site, increased exhaust/fumes from idling vehicles, and vehicle headlight illumination spreading across Oregon Way into neighboring homes when vehicles would be leaving/exiting the site to the east.

## Findings:

Type III decisions involve significant discretion and evaluation of subjective approval standards. For Conditional Use applications, relevant factors to be considered in determining whether the proposed use is compatible with the surrounding properties include the following:

- a. *The suitability of the size, shape, location and topography of the site for the proposed use;*

This approval criterion requires a proposed facility to remain compatible with the surrounding development in terms of the noted factors. While the proposed site is currently vacant, relatively flat, and located along a state highway within a close vicinity to Interstate-5, the suitability of the site location remains problematic due to the adjacent residentially zoned properties and uses.

Unlike the two nearby existing gas stations located closer to Interstate-5, within the City's interchange management area, this site would be bounded by properties that are used solely for residential purposes. The secondary access to the site would be along a local residentially-classified street. Additionally, current single-family homes that are located directly across from the site, separated only by Oregon Way, would have little buffer from an intensive gas station and commercial use (in contrast to those residences that might have had some protection through a previously proposed condition of approval that would have required an architectural wall be constructed for screening purposes).

For these reasons, the location of this site for the proposed gas station use is unsuitable.

- b. *The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;*
- c. *The impact of the proposed use on the quality of the living environment:*
  - 1) *Noise;*
  - 2) *Illumination;*
  - 3) *Hours of operation;*
  - 4) *Air quality;*
  - 5) *Aesthetics; and*
  - 6) *Vehicular traffic.*

Both the Woodburn Estates and Panor 360 Condominium communities pointed to adverse traffic volumes and traffic safety issues as the most concerning impacts of the proposed gas station development on their communities and their quality of living. To the extent that those concerns were consistent with findings in the Appellant's traffic engineer memo and the City's own traffic consultant's conclusions regarding the Applicant's TIA, the City Council finds that evidence to be both credible and compelling.

Specifically, the potentially hazardous vehicular conditions that would be created or exacerbated if this particular project is approved is of legitimate concern to the Council as it would negatively impact the surrounding neighborhood and all residents of Woodburn that travel through the OR 214/Oregon Way intersection.

Notably, the following vehicular traffic and safety issues are of greatest concern:

- The OR 214/Oregon Way intersection already has an elevated crash rate that exceeds ODOT's 90th percentile crash rate for these types of intersections under existing conditions. While the proposed gas station use would only contribute an additional 10 vehicles to the PM peak hour, the overall impact would be a daily increase in overall trip counts (+244 trips) to and from the site, likely exacerbating the crash rate condition. It is also reasonable to believe that a gas station, more so than a bank, will attract an increased number of drivers from Interstate-5 that will be unfamiliar with the road configuration and elevated crash risk at the subject intersection.
- Drivers exiting the proposed gas station using the driveway along OR 214 would likely engage in a multi-lane weave maneuver across eastbound OR 214 when desiring to return to Interstate-5 or generally head west on OR 214, which would increase the risk of collisions at the OR 214/Oregon Way intersection due to such a maneuver.

While staff proposed a number of conditions for the project that may have mitigated some of the traffic safety concerns (including added onsite directional signage and proportional cost-sharing for future signal timing studies), the Council finds that the most effective and compelling mitigation option would be to deny the project. The Council finds this option to be reasonable primarily because the proposed gas station use would not only increase a particularly dangerous condition, but it would do so without clear assurances or evidence from the Applicant that any of the proposed mitigation measures would effectively reduce or address the vehicular traffic impacts of the use.

In addition to the traffic safety concerns related to the OR 214/Oregon Way intersection, it is reasonable to believe that the proposed use will also have a measurable effect on other quality of living factors due to increased noise, illumination, hours of operation, air quality, and aesthetics of a gas station.

Approving the conditional use application would significantly change the use of the property from two bank building operations to a more intensive gas station, convenience store, and speculative office use. That change would have discernable resulting impacts on the adjacent residential neighbors. The onsite impacts from a gas station are notably apparent when contrasted to a former bank operation. Hours of operation are increased to nights and weekends, visibly intense illumination for the fueling islands would be required to be installed (noticeable even with full cut-off fixtures as proposed as a condition by staff), and fumes from gas station fueling or idling cars would likely increase as the total number of daily vehicle trips to and from the site would increase.

Due to the identified negative impacts that the proposed use would have on the quality of the living environment, it is clear that the proposed gas station use is unsuitable.

- d. The conformance of the proposed use with applicable Comprehensive Plan policies; and*
- e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.*

Council finds the conditional use criteria (WDO 5.03.01.B.3), has not been met by the Applicant on the basis that evidence in the record demonstrates that the proposed gas station development will not be compatible with surrounding properties. Furthermore, the Council finds that it cannot reasonably condition the proposed use given the problematic vehicular traffic findings and adverse livability issues discussed above, and must therefore deny the application.

## **V. DECISION**

Based on the above findings, the City Council makes the following Decision:

1. Reverse the Planning Commission Decision; and
2. Deny the land use applications for the US Market Gas Station project, Conditional Use 21-02, Design Review 21-10, Exception to Street Right of Way and Improvement Requirements EXCP 21-05, & Phasing Plan PP 21-01.

## **VI. APPEALS**

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) pursuant to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) 661-010.

A copy of the decision is available for inspection at no cost, and the City would provide a copy at reasonable cost at the Community Development Department, City Hall, 270 Montgomery Street, Woodburn, OR 97071-4730. For questions or additional information, contact Cassandra Martinez, Administrative Specialist, at (503) 982-5246 or [cassandra.martinez@ci.woodburn.or.us](mailto:cassandra.martinez@ci.woodburn.or.us).

**Testifiers:**

Name	Address	City Council	
		Written	Verbal
Wallace W. Lien, (applicant's attorney)	1004 Crescent Dr NW Salem, OR 97304	x	x
Wayne Kittelson (appellant's traffic consultant)	Kittelson & Associates, Inc. 851 SW 6 <sup>th</sup> Ave, Ste 600 Portland, OR 97204		x
David Petersen (appellant's attorney)	Tonkon Torp, LLC, 888 SW 5 <sup>th</sup> Ave, Ste 1600, Portland, OR 97204	x	x
Joseph Bessman (applicant's traffic consultant)	Transight Consulting, LCC 61271 Splendor Ln Bend, OR 97702		x
Del Huntington (applicant's traffic consultant)	Huntington Traffic Solutions 1665 A St NE Salem, OR 97301		x
Nancy Ferguson	950 Evergreen RD, Unit 323 Woodburn, OR 97071		x
Rebecca Hayes	950 Evergreen RD, Unit 205 Woodburn, OR 97071		x
Doris Ehlen Kruse	950 Evergreen RD, Unit 312 Woodburn, OR 97071		x
Bobbi Reisner	950 Evergreen RD, Unit 221 Woodburn, OR 97071		x
Carolyn Schindlbower	950 Evergreen RD, Unit 206 Woodburn, OR 97071		x
Betty Torabi	925 Oregon Way Woodburn, OR 97071	x	
Charles Stein	2238 OREGON CT Woodburn, OR 97071	x	
Julitta Bromenschenkel	2330 OREGON CT Woodburn, OR 97071	x	
Doris M Ebanks	2340 OREGON CT Woodburn, OR 97071	x	
Norman Ebanks	2340 OREGON CT Woodburn, OR 97071	x	
John Englin	2325 Oregon CT Woodburn, OR 97071	x	
Sharon Hoyt	2287 Oregon CT Woodburn, OR 97071	x	
Beverly Ramsey	2343 Oregon CT Woodburn, OR 97071	x	
Sandra L. Alsbury	2227 Oregon CT Woodburn, OR 97071	x	
Ruth B. Teneyck	2207 Oregon CT Woodburn, OR 97071	x	
Jeanette E. Johnson	170 E Clackamas CIR. Woodburn, OR 97071	x	

Name	Address	City Council	
		Written	Verbal
Neil A. Johnson	170 E Clackamas CIR. Woodburn, OR 97071	x	
Sandra White	892 Oregon Way Woodburn, OR 97071	x	
Charlie Nilson	892 Oregon Way Woodburn, OR 97071	x	
Susan M Huggins	910 Oregon Way Woodburn, OR 97071	x	
Jill Morris	952 Oregon Way Woodburn, OR 97071	x	
Don Lee Zehrung	966 Oregon Way Woodburn, OR 97071	x	
Janice K Duncum	980 Oregon Way Woodburn, OR 97071	x	
Lorena Soto Astorga	953 Oregon Way Woodburn, OR 97071	x	
Debra S. Mendenhall	943 Oregon Way Woodburn, OR 97071	x	
Adam P. Mendenhall	943 Oregon Way Woodburn, OR 97071	x	
Jay E. Toll	889 Oregon Way Woodburn, OR 97071	x	
Timothy K. Gordon	876 Oregon Way Woodburn, OR 97071	x	
Magdalena Martinez	796 Oregon Way Woodburn, OR 97071	x	
Glenda Sheldon	778 Oregon Way Woodburn, OR 97071	x	
Vickie J. Hibbard	2317 Umpqua RD Woodburn, OR 97071	x	
Laura Harryman	724 Oregon Way Woodburn, OR 97071	x	
Marie William Wright	706 Oregon Way Woodburn, OR 97071	x	
Patty S. Bathen	690 Oregon Way Woodburn, OR 97071	x	
Daryll Fisher	618 Oregon Way Woodburn, OR 97071	x	
Jerrilynn Vanslkye	741 Oregon Way Woodburn, OR 97071	x	
Marjorie Vanslkye	741 Oregon Way Woodburn, OR 97071	x	
David C. Bunnell	763 Oregon Way Woodburn, OR 97071	x	
Donna Rector	853 Oregon Way Woodburn, OR 97071	x	
Dennis Martin	817 Oregon Way Woodburn, OR 97071	x	
Carol A. Bettendorff	717 N. Cascade DR	x	

Name	Address	City Council	
		Written	Verbal
	Woodburn, OR 97071		
Diana Meithof	275 S. Cascade DR Woodburn, OR 97071	x	
Betty Yaws	784 S Columbia DR Woodburn, OR 97071	x	
Marilyn M. Dykes	2005 W. Santiam DR Woodburn, OR 97071	x	
Karen Ewing	1910 Sallal DR Woodburn, OR 97071	x	
Louise Davidson	643 S. Columbia DR Woodburn, OR 97071	x	
Diane Mann	1366 Astor CT Woodburn, OR 97071	x	
Mickey Harrison	924 Oregon Way Woodburn, OR 97071	x	
Paula Kilgore	636 Oregon Way Woodburn, OR 97071	x	
Sandra Blogloch	2220 Oregon CT Woodburn, OR 97071	x	
Mary Edinger	2256 Oregon CT Woodburn, OR 97071	x	
Jane Stein	2238 Oregon CT Woodburn, OR 97071	x	
Connie Cobb	1760 Vanderbeck LN Woodburn, OR 97071	x	
Karen Halter	938 Oregon Way Woodburn, OR 97071	x	
Connie Johnson	1363 Princeton RD Woodburn, OR 97071	x	
Gary Johnson	1363 Princeton RD Woodburn, OR 97071	x	
Ronald Sartin	797 N Cascade DR Woodburn, OR 97071	x	
Donna Burnside	1580 Thompson RD Woodburn, OR 97071	x	
Largo Abshere	855 N. Cascade DR Woodburn, OR 97071	x	
Ruth DeSantis	173 McLaughlin DR Woodburn, OR 97071	x	
Betty Burrows	1099 Princeton RD Woodburn, OR 97071	x	
Sally Carter	740 S Columbia DR Woodburn, OR 97071	x	
Christina Morris	950 Evergreen RD Woodburn, OR 97071	x	
Terri Smith	1975 W Santiam DR Woodburn, OR 97071	x	
Sherry Manier	760 Oregon Way Woodburn, OR 97071	x	



<i>Name</i>	<i>Address</i>	<i>City Council</i>	
		<i>Written</i>	<i>Verbal</i>
Maggie Sasse	345 S Cascade DR Woodburn, OR 97071	x	
Vickie Lambert	1260 Randolph RD Woodburn, OR 97071	x	
Madaline Delnick	1244 Randolph RD Woodburn, OR 97071	x	
Resident/Homeowner [petition signature illegible]	813 S. Columbia Rd Woodburn, OR 97071	x	
Jan Duncum	980 Oregon Way Woodburn, OR 97071		x
Anne Reslock	1375 Quinn Rd Woodburn, OR 97071		x
Janie Torabi	925 Oregon Way Woodburn, OR 97071		x
Doris Ehlen-Kruse	950 Evergreen Rd, Unit 128 Woodburn OR, 97071		x

**Attachment(s):**


- A. City Council July 25, 2022, Staff Report with its Attachments
- B. Written Testimony Submitted at or prior to the City Council Hearing
- C. Written Testimony Submitted at or prior to the Planning Commission Hearing
- D. Memorandum to the City of Woodburn Development Review from Chuck Green, PE, Otak, RE: Review of US Market Revised Traffic Impact Study (CU 21-02), dated June 1, 2022
- E. Memorandum to the City of Woodburn Development Review from Chuck Green, PE, Otak, RE: Review of US Market Traffic Impact Study (CU 21-02), dated May 18, 2022
- F. Memorandum to the City of Woodburn Development Review from Chuck Green, PE, Otak, RE: Review of US Market Traffic Impact Study (CU 21-02), dated May 10, 2022

Sincerely,



Colin Cortes, AICP, CNU-A  
Senior Planner

As authorized by the City Council on August 8, 2022

  
Eric Swenson, Mayor

August 8, 2022  
Date

ES/cmc

cc: Chris Kerr, Community Development Director  
Ronald "Ron" James Ped, Ronald James Ped Architect, PC, 145 21st St SE, Salem, OR 97301-8846  
(applicant) [mail]  
Lal Din Sidhu ("Don" Sidhu), Woodburn Petroleum LLC, 1038 Broadway St NE, Salem, OR 97301-1276  
(landowner) [mail]  
David Petersen, Tonkon Torp, LLC, 888 SW 5th Ave, Ste 1600, Portland, OR 97204 (appellant) [mail]  
Testifiers: Per the table above [mail]  
Casey Knecht, P.E., Development Review Coordinator, Oregon Dept. of Transportation (ODOT) Region 2  
<casey.knecht@odot.oregon.gov>