

From: [James Nicita](#)
To: [Pete Walter](#)
Cc: [james nicita](#)
Subject: Re: Planning Commission hearing on CP 17-02, DP 17-03, and NR 17- 04: Rebuttal Comments
Date: Monday, October 09, 2017 3:27:00 PM

Hi Pete,

Here are my rebuttal comments for the above reference land use file.

Rebuttal Applicant's General Development Plan Application dated April 14, 2017:

CHAPTER 12.04 - STREETS SIDEWALKS AND PUBLIC PLACES

12.04.007 - Modifications.

The review body may consider modification of this standard resulting from constitutional limitations restricting the city's ability to require the dedication of property or for any other reason, based upon the criteria listed below and other criteria identified in the standard to be modified. All modifications shall be processed through a Type II Land Use application and may require additional evidence from a transportation engineer or others to verify compliance.

Compliance with the following criteria is required:

- A. The modification meets the intent of the standard;
- B. The modification provides safe and efficient movement of pedestrians, motor vehicles, bicyclists and freight;
- C. The modification is consistent with an adopted plan; and
- D. The modification is complementary with a surrounding street design; or, in the alternative;
- E. If a modification is requested for constitutional reasons, the applicant shall demonstrate the constitutional provision or provisions to be avoided by the modification and propose a modification that complies with the state or federal constitution. The city shall be under no obligation to grant a modification in excess of that which is necessary to meet its constitutional obligations.

Applicant's statement:

12.04.195 Spacing Standards

- **Because of the narrow depth between Washington Street and the railroad right-of-way, it is requested that no public street or public pedestrian connection be imposed on the development as the railroad right-of-way blocks any through connection to Main St.**

The modification requests are intended to meet the [intent] of the standards. All would allow for safe and efficient movement of pedestrians, motor vehicles, bicycles and freight and would hopefully reduce conflicts of such. The proposed changes are generally consistent with the adopted plan and together provide a complimentary package to make the streetscape work better for pedestrians and drainage while still allowing vehicular traffic to use a visually better defined through street area with the extended landscape area marking the through street area from the parking area. We also note the proposed driveway entrance / planter extensions and radiuses would match that already in place for the Amtrak Station.

Nicita rebuttal: the modification to OCMC 12.04.195 should not be granted. The pertinent part of this provision states:

OCMC 12.04.195 - Spacing standards.

- A. All new streets shall be designed as local streets unless otherwise designated as arterials and collectors in Figure 8 in the transportation system plan. The maximum block spacing between streets is five hundred thirty feet and the minimum block spacing between streets is one hundred fifty feet as measured between the right-of-way centerlines. If the maximum block size is exceeded, pedestrian accessways must be provided every three hundred thirty feet. The spacing standards within this section do not apply to alleys.

The subject site is on a “block” that runs along Washington Street from 17th Street to OR 213. It clearly exceeds 530 feet. Certainly it is not the intent of the standard to allow a mile of Washington St. to go without some kind of pedestrian accessway. Even if taken alone, the distance from 17th Street to the driveway of the Amtrak Station (which, by the way, is not a public street, and there is no evidence that the Applicant has obtained permission from the owner, the Oregon City Urban Renewal Agency, to use the Amtrak driveway and parking area for supplementary vehicle circulation) is over 600 feet. Furthermore, Tax Map 03_2s2e29ca shows that the width along the northeast line of Tax Lot is 332.86 feet. Therefore, pedestrian accessways conforming to OCMC 12.04.199 must be provided paralleling both Washington Street and 17th Street. The applicant is not asking for a modification, which might entail modifying how far distant from a street a parallel accessway would be placed; the applicant is asking for a complete waiver. The modification is not consistent with the 1990 End of the Oregon Trail Master Plan, which shows a dedicated Abernethy Road extension through the site. Nor is it consisted with the 2002 Waterfront Master Plan which shows a trail connecting the End of the Oregon Trail Interpretive Center and the Cove running through the subject property. The modification does not provide for safe and efficient movement of pedestrians and bicyclists, who would have to dodge cars in the parking lot drive lanes and cars pulling in and out of parking spaces.

12.04.199 - Pedestrian and bicycle accessways.

Pedestrian/bicycle accessways are intended to provide direct, safe and convenient connections between residential areas, retail and office areas, institutional facilities, industrial parks, transit streets, neighborhood activity centers, rights-of-way, and pedestrian/bicycle accessways which minimize out-of-direction travel, and transit-orientated developments where public street connections for automobiles, bicycles and pedestrians are unavailable. Pedestrian/bicycle accessways are appropriate in areas where public street options are unavailable, impractical or inappropriate. Pedestrian and bicycle accessways are required through private property or as right-of-way connecting development to the right-of-way at intervals not exceeding three hundred thirty feet of frontage; or where the lack of street continuity creates inconvenient or out of direction travel patterns for local pedestrian or bicycle trips.

A. Entry points shall align with pedestrian crossing points along adjacent streets and with adjacent street intersections.

Applicant's Response: Pedestrian-bicycle accessway connections through the property perpendicular to Washington St, is not possible because of the railroad right-of-way that would block continuing connections to Main Street. Pedestrian-bicycle accessway connections parallel with Washington Street is not needed as the width of the parcel between Washington Street and the railroad right-of-way does not exceed 350 feet.

Nicita rebuttal: The Applicant's response mis-states the standard. The standard is 330 feet, not 350 feet. As stated in the prior response, the width of the subject site exceeds 330 feet, so a pedestrian/bicycle accessway conforming to OCMC 12.04.199 must be provided, most appropriately paralleling the railroad right-of-way from 17th St. to the train station. Access ways from Washington to the railroad station is not "impossible." They would connect Washington St. to the aforementioned accessway paralleling the railroad right-of-way.

13.12.050.C. Stormwater Quality Control. The stormwater quality control requirements of this chapter shall apply to the following proposed activities, uses or developments:

1. Category A. Activities subject to general water quality requirements of this chapter:
 - a. The construction of four or more single-family residences;
 - b. Activities located wholly or partially within water quality resource areas pursuant to Chapter 17.49 that will result in the creation of more than five hundred square feet of impervious surface within the WQRA or will disturb more than one thousand square feet of existing impervious surface within the WQRA as part of a commercial or industrial redevelopment project. These square footage measurements will be considered cumulative for any given seven year period; or
 - c. Activities that create more than eight thousand square feet of new impervious surface for other than a single-family residential development. This eight thousand

square foot measurement will be considered cumulative for any given seven year period;

d. An exemption to the stormwater quantity control requirements of this subsection will be granted if the development site discharges to a stormwater quality control facility approved by the city engineer to receive the developed site runoff after verification that the facility is adequately sized to receive the additional stormwater.

2. Category B. Uses Requiring Additional Management Practices. In addition to any other applicable requirements of this chapter, the following uses are subject to additional management practices as contained in the Public Works Stormwater and Grading Design Standards:

1. Fuel dispensing facilities;
2. Bulk petroleum storage in multiple stationary tanks;
3. Solid waste storage areas for commercial, industrial or multi-family uses;
4. Loading and unloading docks for commercial or industrial uses; or
5. Covered vehicle parking for commercial or industrial uses.

3. Category C. Clackamas River Watershed. In addition to any other applicable requirements of this chapter, any development that creates new waste discharges and whose stormwater runoff may directly or indirectly flow into the Clackamas River is subject to additional requirements associated with Oregon Administrative Rules (OAR) 340-41-470 (Three Basin Rule).

Applicant's Response: OCMC 13.12.050C1 is applicable to the site areas.

Nicita rebuttal: Applicant's response is wholly deficient. The Applicant has submitted no evidence to substantiate compliance with this provision. Furthermore, the Applicant only states that Chapter 13.12.050C1 is applicable. In fact, Chapter 13.12.050C3 applies as well, because the Applicant is creating a new direct or indirect storm water discharge into the Clackamas River, via Outfall 1 of Clackamette Cove. The "Three Basin Rule" is now at OAR 340-41-0350, and pertinent to this land use review, OAR 340-41-0350(7) states:

(7) Long-term general and individual stormwater permits may be allowed as required by State and/or Federal law. The following requirements apply:

(a) New stormwater discharge permit holders must maintain a monitoring and water quality evaluation program that is effective in evaluation of the in-stream water quality impacts of the discharge; and

(b) When sufficient data is available to do so, the Department will assess the water quality impacts of stormwater discharges. Within a subbasin, if the proportion of total degradation that is contributed by the stormwater is determined to be significant compared to that of other permitted sources, or if the Department determines that reducing degradation due to stormwater is cost-effective when compared to other available pollution control options, the Department may institute regulatory mechanisms or modify permit conditions to require control technologies and/or practices that result in protection that is greater than that required

Statewide.

The foregoing would apply both to the Applicant's required storm water discharge permit under ORS 468B.050, and the City's NPDES MS4 discharge permit, because pursuant to OAR 340-41-0350(3)(d), the City is allowing an increased discharge from its MS4 system by accepting the increased load from Applicant's new storm water discharges. Neither the Applicant nor the City have placed evidence into the record of this land use proceeding that they have instituted a monitoring and water quality evaluation program for the new discharges pursuant to OAR OAR 340-41-0350(7)(a). In addition, the City must include as a condition of approval that the Applicant will obtain a storm water discharge permit pursuant to ORS 468B.050 for its storm water system construction and discharges from the developed site after construction is complete.

OCMC 17.65.050.B.1.c. A description, approximate location, and timing of each proposed phase of development, and a statement specifying the phase or phases for which approval is sought under the current application. May also reference submitted maps or diagrams.

Applicant's Response: Proposed development consists of two phases. Phase 1 includes a new hotel and retention of the existing historic Hackett House on the southern part of the site. Phase 2 includes a mixed-use development on the north portion of the site, including multifamily residential uses over street level retail/commercial and parking. A DDP for Phase 1 is being submitted concurrently with the GDP submittal with development of this phase to occur as soon as government approvals allow. Timing for Phase 2 is variable, with hoped for construction beginning prior to completion of Phase 1. See "Phasing" drawing 2.1 for additional information.

Nicita Rebuttal: The General Development Plan is inconsistent with the 1990 End of the Oregon Trail Master Plan. Phase 2 in particular is inconsistent with the 1990 Plan, in that the Plan shows the Phase 2 area as the Festive Marketplace. Therefore the application must be denied and resubmitted with Phase 2 as the Festive Marketplace pursuant to the 1990 End of the Oregon Trail Master Plan.

Rebuttal to Detailed Development Plan Application dated April 14, 2017:

OCMC 17.62.050 - Standards.

A. All development shall comply with the following standards:

(...)

2. Vehicular Access and Connectivity.

(...)

k. Parcels larger than three acres shall provide streets as required in Chapter 12.04. The streets shall connect with existing or planned streets adjacent to the site.

Applicant's Response: It does not serve the City any purpose to provide street connections as shallow depth of the parcel between Washington St. and the railroad right-of-way, would prevent any meaningful connection to be made as a connection across the railroad right-of-way will not be allowed at grade.

Nicita Rebuttal: The development must include a dedication of the Abernethy Street realignment segment as shown on the site plan of the 1990 End of the Oregon Trail Master Plan.

6. Drainage shall be provided in accordance with city's drainage master plan, Chapter 13.12, and the public works stormwater and grading design standards.

Applicant's Response: Drainage improvements will be done in accordance with the city's master plan and the public works storm water and grading design requirements. Public storm drain extension in Washington St. will be constructed to serve the Hotel site and its Washington St. frontage. Onsite water quality features will be developed in the lower parking area that will be able to be extended when Phase2 is developed. A portion of the Hotel site nearest Washington St. will need to go into through filters to be able to meet the water quality requirements. Storm detention is not required as the site lies within the 100 year floodplain.

Nicita Rebuttal: The City's Stormwater and Grading Design Standards, at pp. 1-1 to 1.2, Sec. 1.2 state, "All development, as defined by the City is subject to the requirements of these standards during the land use decision and permitting processes. These processes generally include all land use proposals, site development and permit approvals within, or proposed to be within City boundaries."

In other words, the Applicant has to demonstrate, with substantial evidence, during this Planning Commission Type III proceeding, that the proposed development complies with the Stormwater and Grading Design Standards. Not only has the Applicant not gone through these Standards and offered substantial evidence of compliance with each requirement, there is really no evidence presented at all. For example, while the Applicant states there will be "filters," nothing in the records demonstrates the effectiveness of the Applicants storm water management plan to meet state water quality standards, as required by p.6-2, Sec. 6.1.4, and

by ORS 468B.025. Do they address the discharge of toxics? To what efficiency? Do they cool the water discharged so as to not exceed temperature limitations? There is just no evidence.

Thanks, Pete. Kindly place these rebuttal comments into the record of the land use file referenced in the subject line of this email.

James Nicita
Oregon City