

October 9, 2017

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VIA EMAIL (SUBMITTED BEFORE 3:30 P.M.)

Ms. Denyse McGriff, Chair
Oregon City Planning Commission
221 Molalla Avenue, Suite 200
Oregon City, OR 97045

**Re: Abernethy Place Hotel and Mixed Use Development
City of Oregon City Planning File Nos. CP-17-0002, DP-17-0003, and NR-17-0004
Applicant's Second Open Record Period Submittal**

Dear Chair McGriff and Members of the Oregon City Planning Commission:

This office represents Hackett Hospitality, LLC ("Applicant"), the applicant in this matter. This letter and its exhibit comprise Applicant's second open record period submittal, which is being timely made to City of Oregon City ("City") staff before the 3:30 p.m. deadline. Please place a copy of this submittal into the official record for this matter, and please consider it before making a decision in this matter.

Consistent with the parameters of the open record schedule established by the Planning Commission, this submittal is limited to rebuttal of testimony submitted during the first open record period. Specifically, Applicant addresses a letter, email, and related exhibits from Mr. James Nicita dated October 2, 2017. For the reasons explained below, the Planning Commission should deny Mr. Nicita's contentions.

- 1. Because the City Commission never adopted the End of the Oregon Trail Master Plan ("Master Plan") and Design Guidelines ("Design Guidelines") either directly or through incorporation, these documents are not mandatory approval criteria applicable to the applications.**

The City must approve or deny the applications based upon approval criteria set forth in the Oregon City Municipal Code ("OCMC"). ORS 197.763(5)(a); ORS 227.173(1). The City has not set forth the Master Plan and Design Guidelines in the OCMC, either directly or by incorporation.

Although Mr. Nicita contends that the City Commission “effectively” or “constructively” adopted the Master Plan and Design Guidelines on December 19, 1990, the Planning Commission should deny this contention for two reasons. First, the law does not recognize “effective” or “constructive” adoption; the City Commission must follow specific procedures to adopt a document, and if that does not occur, the City Commission has not adopted the document. Mr. Nicita does not contend that the City Commission followed its formal procedures to adopt the Master Plan or Design Guidelines. Second, despite submitting hundreds of pages of testimony in this matter, Mr. Nicita did not submit the meeting minutes for the December 19, 1990 City Commission meeting into the record. The City Recorder also did not locate any record that the City Commission has adopted these items. Therefore, there is no basis to conclude that the City Commission adopted the Master Plan and Design Guidelines.

The fact that the City has taken various steps outside of the land use process to further the effort to develop the End of the Oregon Trail Interpretive Center does not make the Master Plan and Design Guidelines mandatory approval criteria applicable to a land use application. Further, contrary to Mr. Nicita’s baseless contention, there is no authority to conclude that these non-land use actions prevent the City from claiming that the Master Plan and Design Guidelines are not applicable in this context.

Further, the City Commission’s adoption of the Downtown Community Plan (“DCP”), which included the Design Guidelines in a Technical Appendix, did not adopt the Design Guidelines as approval criteria. Mr. Nicita himself has submitted ample evidence to support this conclusion. For example, the November 22, 1999 staff report to the Planning Commission for the DCP clearly states that the DCP proposal consists of two phases: (1) Phase I is to adopt the DCP and to add the Chapter P policies to the comprehensive plan; and (2) Phase II is to consider “changed zoning, new Plan Map designations, overlay districts, design guidelines and the like,” which will form the “package of implementing measures for the project.” Staff Report at 1. Thus, this statement makes clear the legislative intent that adoption of the DCP did not adopt Design Guidelines as mandatory approval criteria.

The staff report continues by explaining that the OCCP would control over the DCP in the event of a conflict:

“During the public testimony, the question was raised, if the proposed Downtown Community Plan was adopted as an ancillary document to the Comprehensive Plan, but Phase II of the implementation process was not completed (i.e. no Comprehensive Plan amendment or zone change was adopted), what would be the guiding document, the Comprehensive Plan or the Downtown Community Plan?

“The Comprehensive Plan would be the guiding document because no Comprehensive Plan amendment or zone change has been adopted at this time. Therefore, any proposed applications would refer to the existing Comprehensive Plan for guidance on goals and policies.”

Staff Report at 4. Finally, the existence of passing references in Comprehensive Plan Goal 2, Policy 2.2.11, 9.6.2, and 9.6.3 to the End of the Oregon Trail area does not cause the Master Plan and Design Guidelines to be applicable to the applications.

Because the City Commission never adopted the Master Plan and the Design Guidelines as approval criteria, the provisions of these documents do not operate as approval criteria applicable to the applications. The Planning Commission should deny Mr. Nicita’s contentions on this issue.

2. Mr. Nicita’s stormwater contentions do not provide a basis to deny the applications.

Mr. Nicita contends that Applicant must demonstrate that there will be no toxic discharges from parking lot stormwater runoff. In response, Applicant’s civil engineer, Tom Sisul, P.E., has submitted a letter explaining that the City has adopted Stormwater and Grading Design Standards, that compliance with these standards will ensure that the project will not release toxic discharges, and that it is feasible for the project to comply with the Stormwater and Grading Design Standards. A copy of this letter is attached as Exhibit 1. The letter also explains that Mr. Sisul has over 30 years of experience designing stormwater drainage systems, so he is well-qualified to address this issue.

Mr. Nicita also contends that Applicant must obtain a waste discharge permit for construction of its stormwater system pursuant to ORS 468B.050. This statute requires

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a developer to obtain a water quality permit before discharging any waste into waters of the State. *Id.* There are several potential exceptions to the statute. ORS 468B.053. The City has not incorporated these statutes into its local approval criteria, and the statutes themselves do not state that they must be addressed as a prerequisite to issuing a local land use permit. Therefore, they are not mandatory approval criteria that the City must address. Because these permit standards are a matter of state law, they will apply (or not apply) based upon their own terms. A City determination that they will apply or not apply will not override state law. Accordingly, the City is not required to adopt findings of compliance or non-compliance with these statutes in its decision.

The Planning Commission should deny Mr. Nicita's contentions on this issue.

3. Conclusion.

For the reasons explained above, the Planning Commission should deny Mr. Nicita's contentions raised during the first open record period. For the additional reasons set forth in the record, the Planning Commission should approve the applications, subject to the conditions proposed by City staff.

Thank you for your consideration of the points in this letter.

Very truly yours,



Michael C. Robinson

MCR

Enclosure

cc: Mr. Pete Walter (w/encl.) (via email)
Ms. Carrie Richter (w/encl.) (via email)
Mr. Dan Fowler (w/encl.) (via email)
Mr. Mark Foley (w/encl.) (via email)
Mr. Lloyd Hill (w/encl.) (via email)
Mr. Robin Chard (w/encl.) (via email)
Mr. Tom Sisul (w/encl.) (via email)
Mr. Mike Ard (w/encl.) (via email)



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October 6, 2017

City of Oregon City
625 Center Street
Oregon City, OR 97045

ATTN: Planning Commission and Planning Staff

RE: Abernethy Place – CP 17-0002, DP 17-0003 and NR 17-0004

Dear Planning Commission Chair Denise McGriff and Planning Commission:

Information has been entered into the record with respect to the National Pollutant Discharge Elimination System – Municipal Separate Storm Sewer System (MS4) Discharge Permit. A permit between Oregon's Dept. of Environmental Quality (DEQ) and Clackamas County, the City of Oregon City and a number of other cities in the metro urban area of Clackamas County.

This permit submitted to the record was issued by DEQ in 2012, and notes controls and limitations for stormwater discharges from municipal drainage systems, monitoring and reporting requirements, and special conditions. This permit is reissued on 5 year cycles.

In response to the 2012 MS4 permit, the City of Oregon City updated its stormwater standards to comply with the MS4 permit, of which the Stormwater and Grading Design Standards, adopted by the City in 2015, was the result. I have attached the Cover and Forward (foreword) of this document that explains, among the reasons for the new stormwater design standards, that its purpose was to address the new standards as per the agreement with DEQ of 2012.

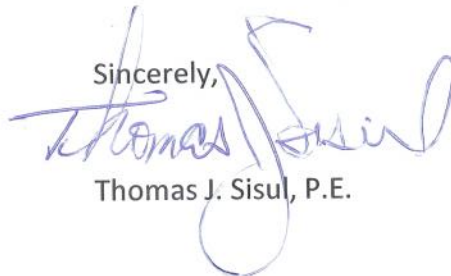
Mr. Nicita, in an email expressed that the applicant must not allow the discharge of toxic pollutants from the parking lot of the site. We note that the proposed improvements must comply with the MS4 permit, as encompassed and addressed in the City's Stormwater and Grading Design Standards. This standard must be met for all new construction. It is feasible to for the proposed improvements to comply to the City's Stormwater and Grading Design

Standards, and preliminary stormwater drainage calculations, provided as a part of the application materials, support this. Compliance of the City's stormwater standards, will prevent toxic discharges.

Further, we note the existing pavement areas this redevelopment would replace, are not necessarily complying with the current standards per the City's Stormwater and Grading Design Standards. Therefore, redevelopment will actually help the City in better meeting the MS4 requirements.

For those of you on the Commission who may not be familiar with me and for the record, I am an Professional Engineer registered in Oregon as such since 1985, President of Sisul Engineering, and I and my firm have design storm drain facilities related to development and redevelopment for more than 30 years.

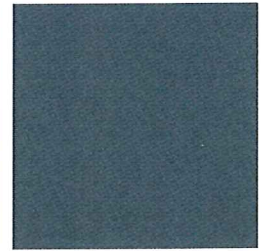
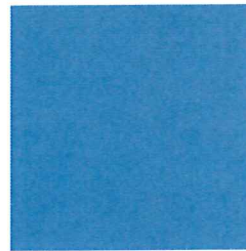
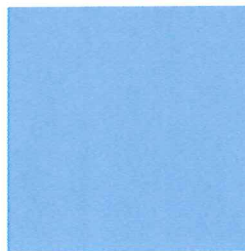
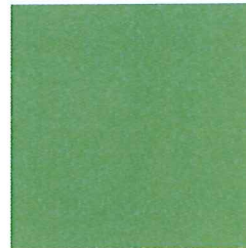
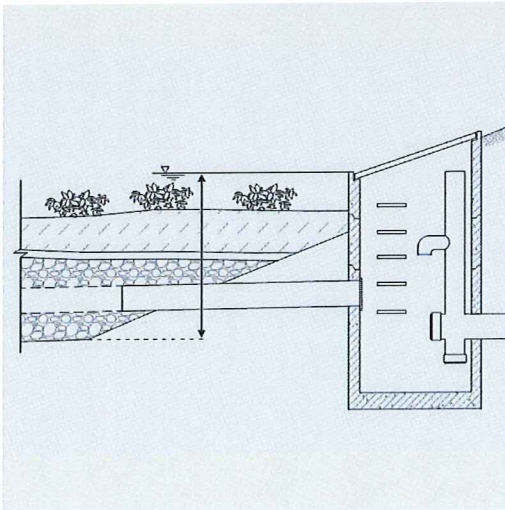
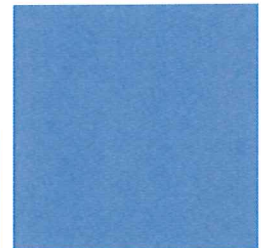
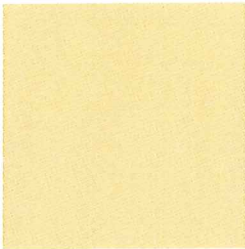
Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas J. Sisul". The signature is fluid and cursive, with a large, stylized "S" at the end.

Thomas J. Sisul, P.E.

Stormwater and Grading Design Standards

February 2015



FORWARD

Pursuant to Oregon City Municipal Code (OCMC) 13.12.020 these Stormwater and Grading Design Standards have been developed to implement the Stormwater Management standards as outlined in OCMC 13.12.

Stormwater management is a key element in maintaining and enhancing livability within the City of Oregon City (City). There is a direct link between stormwater runoff and the City's surface and ground water quality and quantity. As land is developed, creation of new impervious surfaces and loss of vegetation increases stormwater runoff during rainfall events, altering the natural hydrologic cycle. Without stormwater management, the increase in flows erodes stream channels and limits groundwater recharge. In addition, runoff that flows over roadways, parking areas, rooftops, and other impervious surfaces collects pollutants that are transported within the watershed to streams, rivers, and groundwater resources. Properly managing stormwater is vital to protecting our water resources for a great number of uses, including fish and wildlife habitat, recreation, and drinking water.

The Federal Clean Water Act of 1972 (CWA) established a national commitment to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The CWA prohibits the discharge of pollutants into water of the United States, unless the discharge is in compliance with a **National Pollutant Discharge Elimination System (NPDES) Permit**. The CWA requires cities such as Oregon City to obtain an NPDES permit for discharge from the **Municipal Separate Storm Sewer System (MS4)**. The City's MS4, which is comprised of catch basins, pipes, ditches, stormwater management facilities, and other structures, conveys runoff from private and public properties within the City and drains directly into the Willamette River, Clackamas River, and other local waterways such as Abernethy Creek. The Oregon Department of Environmental Quality (ODEQ) administers the state's NPDES program and issues NPDES permits on the the federal government's behalf. The City was reissued its current NPDES MS4 permit in 2012, which requires the City to implement a comprehensive stormwater management program, including establishing controls for stormwater runoff from developing areas.

The City's stormwater management standards, set forth in OCMC 13.12 and these Stormwater and Grading Design Standards, emphasize low-impact development (LID) practices, source controls for higher pollutant generating activities, erosion prevention and sediment controls, and operation and maintenance practices designed to properly manage stormwater runoff and protect our water resources. **Each of these measures have been or are being implemented as direct requirements under the City's existing NPDES MS4 permit.**

The goal of these updated standards is to provide local engineers, developers, builders, and City staff clear guidance in planning and designing stormwater conveyance and management systems that are appropriate to the local climate, hydrogeology, and geology. These standards apply to public and private projects throughout the City.