

**AGENDA SEASIDE CITY COUNCIL MEETING
JANUARY 28, 2019 7:00 PM**

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. APPROVAL OF AGENDA
5. COMMENTS FROM STUDENT REPRESENTATIVE, Briana Boyd
6. COMMENTS – PUBLIC – (please keep speaking time to four minutes)
7. DECLARATION OF POTENTIAL CONFLICT OF INTEREST
8. CONSENT AGENDA
 - a) PAYMENT OF THE BILLS - \$1,226,405.82
 - b) APPROVAL OF MINUTES - January 14, 2019
9. UNFINISHED BUSINESS:
 - a) VACANCY - CITY TREE BOARD
AIRPORT COMMITTEE
PLANNING COMMISSION
10. NEW BUSINESS
 - a) PUBLIC HEARING - APPEAL 18-068HOZ PLANNING COMMISSION
HIGHWAY OVERLAY ZONE REQUEST BY MAIN & MAIN CAPITAL
GROUP TO BUILD RETAIL BUILDING AT 825 AVENUE 'N', SEASIDE,
Kevin Cupples
 - b) PRESENTATION - NORTH COAST TRAIL ALLIANCE (NCTA), KLOOTCHY
CREEK MOUNTAIN BIKE SYSTEM, Steven Blakesley
 - c) UPDATE - SEASIDE SCHOOL DISTRICT PROJECT, Sheila Roley
 - d) BID RESULTS - DOWNTOWN MAINTENANCE DISTRICT LITTER
REMOVAL, DALE MCDOWELL
 - e) VACANCY - COMMUNITY CENTER COMMISSION
 - f) CITY COUNCIL GOALS 2019-2020
 - g) DISCUSSION - CITY COUNCIL MEETING FEBRUARY 25, 2019
 - h) UPDATE - SEASIDE CIVIC AND CONVENTION CENTER
EXPANSION/RENOVATION, Russ Vandenberg

11. COMMENTS FROM THE CITY STAFF

12. COMMENTS FROM THE COUNCIL

13. ADJOURNMENT

Complete copies of the Current Council meeting Agenda Packets can be viewed at: *Seaside Public Library and Seaside City Hall. The Agendas and Minutes can be viewed on our website at www.cityofseaside.us.*

All meetings other than executive sessions are open to the public. When appropriate, any public member desiring to address the Council may be recognized by the presiding officer. Remarks are limited to the question under discussion except during public comment. This meeting is handicapped accessible. Please let us know at 503-738-5511 if you will need any special accommodation to participate in this meeting.

SEASIDE CITY TREE BOARD

(Meetings are scheduled every other month on the third Thursday at 4:00 PM)

The purpose of the City Tree Board is to study, investigate, and develop and/or update annually, a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees in parks, along streets, and in other public areas. The Tree Board, when requested by the City Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its duties and responsibilities,

- (1) Develop criteria for city staff and/or contractors to apply in making decisions entrusted to staff and/or contractor discretion,
- (2) Designate Heritage Trees on public and private lands within the city,
- (3) Promote the planting and proper maintenance of trees through special events including an annual local celebration of Arbor Day, and
- (4) Obtain the annual Tree City USA designation by the National Arbor Day Foundation.

The Board consists of five members, appointed by the City Council for a three-year term, and who are residents, or owners or employees of businesses within the city limit.

The City Tree Board shall schedule meetings as needed and elect a chairperson and a vice-chairperson. No more than 3 unexcused absences allowed in a calendar year.

Tree Board members serve without salary or compensation of any nature.

COMMITTEE/COMMISSION APPOINTMENT

1. **Date Council Notified:** June 25, 2018
Name: Ann Tierney-Ornie
Commission/Committee: City Tree Board Committee
Resignation Date: N/A
Term Expiration Date: Tierney-Ornie - June 30, 2018
Wants to be considered again: No
2. **Applicants:**
3. **Nominations:**
4. **Appointment:**



CITY of SEASIDE

OREGON'S
FAMOUS
ALL-YEAR
RESORT

989 BROADWAY
SEASIDE, OREGON 97138
(503) 738-5511

CITY TREE BOARD

Term of Office: 3 years

Number of Members: 5

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>TERM EXPIRES</u>
VACANCY (TIERNEY-ORNIE)			6/30/2018
JOHN CARTER	PO BOX 679	738-4387	6/30/2019
VINEETA LOWER	815 6 TH AVENUE	503-621-6588	6/30/2020
PAM FLEMING	1255 AVENUE 'B'	738-5637	6/30/2020
ARNIE OLSEN	PO BOX 645	717-5745	6/30/2021
DALE MCDOWELL	1387 AVENUE 'U'	738-5112	STAFF REPRESENTATIVE

SEASIDE AIRPORT COMMITTEE

(Meetings are scheduled every other month on the last Tuesday at 6:00 PM)

The purpose of the Seaside Airport Committee is to act as an advisory body to the City Council, the City Manager, and the Public Works Director/City Engineer regarding issues concerning the Seaside Public Airport.

The committee shall consist of the following Seven (7) members: resident of the City of Gearhart, and Six (6) members, who are not employees of the City, and at least (4) of the members shall reside within the City limits who shall serve as members. The Mayor shall appoint one member of the City Council as Council liaison, and the Public Works Director shall be the Staff liaison to the Committee.

The members of the committee shall be selected from, but are not limited to, members of the following groups: persons with a demonstrated interest in public airport, educators, private businesspersons, persons with a diversity of ethnic and cultural affiliations, and persons of diverse economic backgrounds and interests.

The members shall serve without salary or compensation of any nature.

All members shall be appointed by the City Council and shall serve for a term of three years. However, three of the first non-permanent members shall be appointed for a term of one year, two years, and three years respectively. As those terms expire, the vacancy will be filled for three-year terms in each case.

Each year, at the first Committee meeting in January, the members shall appoint one of their members as Chairperson and one as Vice-Chairperson. One of the Committee members will serve as Secretary. Minutes of all meetings will be filed with the City Council.

The Committee shall hold a regular meeting at least once each month of the calendar year. The meetings shall be open to the public. Any person appointed by the City Council to serve on this committee who misses three or more regularly scheduled meetings during a 12 month period shall be notified by letter that the position must be vacated. The individual may appeal the decision to the City Council. (A 12 month period is defined as beginning in January of each calendar year.)

COMMITTEE/COMMISSION APPOINTMENT

1. **Date Council Notified:** August 13, 2018
Name: Tracy MacDonald
Commission/Committee: Seaside Airport Committee
Resignation Date: MacDonald - August 1, 2018
Term Expiration Date: June 30, 2019
Wants to be considered again: N/A
2. **Applicants:**
3. **Nominations:**
4. **Appointment:**



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989 BROADWAY
SEASIDE, OREGON 97138
(503) 738-5511

AIRPORT COMMITTEE

Term of Office: 3 years

Number of Members: 7

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>TERM EXPIRES</u>
VACANCY (MACDONALD)			6/30/2019
TERI CARPENTER	220 AVENUE 'U'	425-246-9962	6/30/2019
RANDALL HENDERSON*	89066 OCEAN DRIVE WARRENTON, 97146	503-577-6153	6/30/2020
ROY BENNETT	2026 FERNWOOD ST.	738-4102	6/30/2020
BRUCE FRANCIS	90250 SHORE LINE DR. WARRENTON, 97146	440-0033	6/30/2021
DIANNE WIDDOP	PO BOX 2116 GEARHART, 97138	440-0358	6/30/2021
JESSE TAYLOR	2041 ALDERCREST ST.	440-7564	6/30/2021
DALE MCDOWELL	1387 AVENUE 'U'	738-5112	Public Works
RANDY FRANK	454 HIGHLAND DR.	440-3090	City Council

*Chair

SEASIDE PLANNING COMMISSION

(Meetings are scheduled the first and third Tuesday of every month at 7:00 PM)

The purpose of the Seaside Planning Commission is to recommend and make suggestions to the Council and to other public authorities concerning the laying out, widening, extending and locating of public thoroughfares, the parking of vehicles, the relief of traffic congestion, betterment of housing and sanitation conditions, and the establishment of districts for limiting the use, height, area, bulk and other characteristics of buildings and structures related to land development. The Planning Commission is to recommend to the Council and other public authorities plans for regulating the future growth, development and beautification of the city with respect to its public and private buildings and works, streets, parks, ground and vacant lots, and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants sanitation, proper service of public utilities, including appropriate public incentives for overall energy conservation, and plans for shipping and transportation facilities.

The commission consists of seven members who are not officials or employees of the city and who will be appointed by the Mayor, subject to the approval of the City Council. A minimum of five members shall reside within the city limits; a maximum of two members may reside within the urban growth boundary, but outside the city limits. All members shall serve for a term of four years. A Planning Commissioner's term of office shall commence on the first day of November of the first year of his or her term.

Each year, at the first Committee meeting in November, the members shall appoint one of their members as Chairperson and one as Vice-Chairperson. One of the Committee members will serve as Secretary. Minutes of all meetings will be filed with the City Council.

No more than two members of the Commission may engage principally in the buying, selling or development of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, which engages principally in the buying, selling or developing of real estate for profit.

The Committee shall hold a regular meeting at least once each month of the calendar year. The meetings shall be open to the public. Any person appointed to serve on this committee who misses three or more regularly scheduled meetings during a 12 month period shall be notified by letter that the position must be vacated. The individual may appeal the decision to the City Council. (A 12 month period is defined as beginning in January of each calendar year.)

The members shall serve without salary or compensation of any nature.

COMMITTEE/COMMISSION APPOINTMENT

1. **Date Council Notified:** **October 8, 2018**
Name: Ray Romine
Commission/Committee: **Planning Commission**
Resignation Date: **Romine - November 1, 2018**
Term Expiration Date: **November 1, 2019**
Wants to be considered again: **No**

2. **Applicants:**
Robin Montero

3. **Nominations:**

4. **Appointment:**

Please Note: It is Council policy that applicants must be a city or urban growth boundary resident, business owner or employee of a business for at least one year, depending on committee/commission residency requirements.

CITY OF SEASIDE

Interest Form for Committee/Commission/Board Vacancies

PLEASE RETURN TO CITY HALL BY: _____

NAME MONTERO ROBIN PHONE 206 1852-1810
Last First
ADDRESS 2471 SUNSET BLVD, SEASIDE, OR
MAIL ADDRESS (DIFFERENT THEN ABOVE) SAME
BUSINESS ADDRESS (IF APPLICABLE) -
EMAIL ADDRESS monteroarts@gmail.com
LENGTH OF TIME IN SEASIDE 18415 ARE YOU A REGISTERED VOTER IN SEASIDE: Yes No
OCCUPATION RETIRED
PAST OCCUPATIONS SR. PROJECT MNGR - TUBEART, SALES

List committee/commissions on which you would like to serve: PLANNING COMMISSION

List committee/commissions you are currently appointed to: Ø

List fields in which you have interest or ability: CODE INTERPRETATION / PERMIT PROJECT MANAGEMENT

List employment and volunteer activities, which may relate to service on committee/commissions:
CODE RESEARCH & ANALYSIS IN PREP FOR VARIANCE, PERMIT ACQUISITION, ASSESSMENT & APPEAL INCLUDING STATE, COUNTY, CITY; RETAILER SIGNAGE RIGHTS: LOCAL & FEDERAL; PRINT/PLAN ANALYSIS

List skills and special knowledge that you may have acquired from these activities:
WORKING WITH DEVELOPERS FROM CONCEPTION TO PROJECT COMPLETION INC INITIAL CODE RESEARCH, PLAN DEVELOPMENT, COORDINATING ALL PARTIES: LAND OWNER, DEVELOPER, CONTRACTORS, CITY/COUNTY BODIES TO INSURE A SUCCESSFUL & TIMELY PROJECT

Have you ever been convicted, pled guilty or pled "no contest" to any crime, offense, or major traffic violation? Yes () No (X) If yes, what offense? _____

When? _____ Please explain: _____

Please list 3 references including an employer or supervisor, and people that have known you for at least 2 years. (No City Council Members, Please)

NAME	RELATIONSHIP	ADDRESS	PHONE
<u>ANGIE BEAUCHAMP</u>	<u>CO-WORKER</u>	<u>LAWRENCEVILLE, CA</u>	<u>206-1093-3895</u>
<u>NEAL WALLACE</u>	<u>-</u>	<u>881 S EDGEMOOD - SEASIDE, OR</u>	<u>"</u>
<u>JAN BARBER</u>	<u>-</u>	<u>2400 S EDGEMOOD - "</u>	<u>"</u>

503-717-5017

I authorize, any person or entity contacted by the City of Seaside to furnish information relating to my appointment to the Commission/Committee/Board indicated above and I release any such person or entity from any and all liability for furnishing such information. I also release the City of Seaside from any and all liability for conducting such an investigation.

DATE January 23, 2019 SIGNATURE [Signature]

January 23, 2019

City of Seaside

989 Broadway

Seaside, OR 97138

RE: City of Seaside Planning Commission Vacancy

To Whom It May Concern:

Enclosed is my application for the vacant seat on the City Planning Commission.

My 23 years of experience includes working closely with Federal, State, County and City bodies of government in the area of retail development with a concentration on comprehensive Code analysis preparation, interpretation and implementation.

In addition to the governing authorities I have worked closely with developers, architects, land owners, general and specialty contractors along with others as needed to execute and complete the project successfully.

Please contact me for further amplification as needed. Thank you for your consideration.

Yours,

A handwritten signature in black ink, appearing to read "Robin L. Montero". The signature is fluid and cursive, with the first name "Robin" and last name "Montero" clearly distinguishable.

Robin L. Montero

2471 Sunset Blvd.

Seaside, OR 97138

206-852-1810



CITY of SEASIDE

OREGON'S
FAMOUS
ALL-YEAR
RESORT

989 BROADWAY
SEASIDE, OREGON 97138
(503) 738-5511

PLANNING COMMISSION

Term of Office: 4 years

Number of Members: 7

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>TERM EXPIRES</u>
VACANCY (ROMINE)			11/01/2019
LOUIS NEUBECKER	1859 BROADWAY	717-0153	11/01/2019
BILL CARPENTER	PO BOX 797	738-5410	11/01/2020
TERI CARPENTER	220 AVENUE 'U'	425-246-9962	11/01/2020
DAVID POSALSKI**	PO BOX 208	503-536-5396	11/01/2021
CHRIS HOTH*	420 AVENUE I	738-7861	11/01/2022
JON WICKERSHAM	780 6TH AVENUE	503-440-4816	11/01/2022

EX OFFICIO MEMBERS: MAYOR, CITY ATTORNEY, CITY MANAGER, CITY ENGINEER, CODE ENFORCEMENT OFFICER

*CHAIR

**VICE CHAIR

CITY OF SEASIDE MEMORANDUM

To: Mayor & City Council
From: Planning Director, Kevin Cupples
Date: January 28, 2019
**Applicant/
Appellants:** Matthew Wester, Main & Main Capital Group, 6600 Paige Rd., The Colony, TX 75056
**Applicant's
Representative:** Dave Phillips, Vial Fotheringham LLP
17355 SW Boones Ferry Road; Lake Oswego, OR 97035
Owner: National Credit Union Administration, 4807 Spicewood Springs Rd., Austin, TX 78759
Location: 825 Avenue N; T6-R10-S21DD-TL200, 500 and 10316
Subject: Appeal of Planning Commission Highway Overlay Zone 18-068HOZ Approval to Development of a New 18,000 sq. ft. Retail Building (Grocery Outlet) South of the Avenue N & the Coast Hardware Property

Request Summary:

The applicant is appealing the Planning Commission's approval of the Grocery Outlet's request based on the required improvements that were established under the Commission's final decision 18-068HOZ (Attached 1).

18-068HOZ is a Highway Overlay Zone request by Main & Main Capital Group to build an 18,000 sq. ft. retail building at 825 Avenue N (T6-R10-S21DD-TL200, 500 and 10316). The subject property is zoned General Commercial (C-3) and the primary access would be from Avenue N. The applicant's plans would utilize the undeveloped portions of S Irvine and Avenue O in conjunction with the proposed development of the surrounding property.

The new commercial building would be located south of Avenue N & the Coast Hardware property. The new commercial building (planned as a Grocery Outlet) would occupy the eastern portion of the property while the parking would be on the western portion. The two portions of property are separated by an undeveloped portion of the South Irvine Street right-of-way and the property is bounded on the south by the undeveloped portion of Avenue O.

The new retail store is an outright permitted use in zone; however, the Highway Overlay Zone requires a Planning Commission review of any use that will generate a significant increase in the number of vehicle trips.

The applicant/appellant's representative has submitted a memorandum (Attachment 2) that explains why the required improvements identified by Commission are not lawful along with additional supporting information from the applicant's traffic engineer (Attachment 3). The appeal is primarily based on case law that limits the requirements that can be placed on an applicant.

Planning Commission Public Hearings:

The Planning Commission reviewed the original staff report and heard public testimony during their initial hearing on October 2nd, 2018. The request was continued and additional testimony was taken at two additional hearings (November 20th & December 4th). Due to the amount of information in the record (applicant's submittals, staff report, written and verbal testimony reflected in the minutes), all of the file information will be provided in electronic form to each City Council member & the Mayor.

Planning Commission Action:

On December 4, 2018, the Seaside Planning Commission closed the public hearing and after deliberation, they approved the above referenced request. At issue is the following provision that was included in their decision:

"Approval to establish the new commercial building at 825 Avenue N is with the understanding the turn lane recommended under the TIA, or a right-in/right-out with a turning barrier at Avenue N, will be developed in accordance with any approval standards established by ODOT before the Grocery Outlet is open to the public for retail sales."

City Council Action:

The Council will conduct a public hearing to review the appeal, take additional testimony since this is a de novo hearing and it is not strictly based on the record.

Once the Council completes their hearing process, they will make a final decision. The City Attorney and staff are currently reviewing the appeal information and they will be able to provide additional information during the hearing.

Attachments:

1. Planning Commission's Decision
2. Appeal Form & Memorandum
3. Traffic Engineer's Memorandum & TIA

**SEASIDE PLANNING COMMISSION
NOTICE OF DECISION**

Date: December 12, 2018

To: Applicant & Interested Parties

From: Kevin Cupples, Planning Director

RE: 18-068HOZ is a Highway Overlay Zone request by **Main & Main Capital Group** to build an 18,000 sq. ft. retail building at 825 Avenue N (T6-R10-S21DD-TL200, 500 and 10316). The subject property is zoned General Commercial (C-3). Although the primary access will be from Avenue N, the applicant plans to utilize the undeveloped portions of S Irvine and Avenue O in conjunction with the proposed development of the surrounding property.

PLANNING COMMISSION DECISION:

On **December 4, 2018**; the Seaside Planning Commission conditionally approved the above referenced requests in accordance with the provision in the City of Seaside Zoning Ordinance.

The Commission's decision was based on the oral and written testimony provided during the hearing, the information submitted by the applicant, and the staff report. Approval to establish the new commercial building at 825 Avenue N is with the understanding the turn lane recommended under the TIA, or a right-in/right-out with a turning barrier at Avenue N, will be developed in accordance with any approval standards established by ODOT before the Grocery Outlet is open to the public for retail sales. Approval to **establish a new retail commercial building (approximately 18,000 sq. ft.) within the Highway 101 Overlay Zone** is subject to all of the development standards in the Seaside Zoning Ordinance.

In addition to the findings, justification statements, and conclusions adopted by the Commission; the request was approved subject to the applicant satisfying the following condition(s):

Condition 1: The applicant must provide a detailed exterior lighting plan. The plan is intended to help document that all exterior lighting fixtures will be designed to limit glare in accordance with the City's Outdoor Lighting Ordinance and conform to the exterior lighting provisions of the Highway Overlay Zone. Review of the plan does not ensure full compliance with the lighting restrictions; therefore, final site lighting is still subject to inspection after installation. Any necessary mitigation measures are the responsibility of the applicant and/or owner prior to final approval.

Condition 2: The applicant will need to provide detailed floor plan in order to document the number of parking spaces required for the use will be sufficient along with the estimated number of employees within the proposed building.

Condition 3: The handicapped parking spaces must be relocated so they are the closest spaces to the accessible route into the building as determined by the Building Official during plan review.

Condition 4: A striped pedestrian walkway must be provided to the segregated parking spaces that are located across South Irvine and the walkway adjacent to the spaces located north of the proposed building.

Condition 5: The required bike parking must be incorporated into the final development plan for the property.

Condition 6: The applicant must provide an engineered drainage plan that indicates how proposed drainage facilities will accommodate storm water runoff from the parking lots and roof drains. The plan would also need to address water quality measures that would be incorporated into the system in an effort to limit oil & sediment from entering the public storm water system or local groundwater.

Condition 7: The applicant's proposed improvements within the City of Seaside rights-of-way must be completed in accordance with the standards established by the Public Works Department.

Condition 8: Minor modifications to the applicant's proposed plan must be reviewed and approved by the Planning Director. These could be required in order to comply with other code issues applicable to the request or reduce impacts to the neighboring property. Any major changes or conflicts over a proposed modification will be reviewed with the Planning Commission prior to the approval of any development permits.

Adherence to these conditions is a matter of compliance with the Seaside Zoning Ordinance. Violations can be subject to the penalties identified in Article 12 of the Ordinance.

Although they are not conditions of approval, the following is a reminder to the applicant.

- As with any permit, the applicant must meet all applicable standards in the Seaside Zoning Ordinance such as erosion control provisions and any other applicable City of Seaside Ordinances.

APPEAL PROVISIONS:

The Planning Commission's decisions may be appealed in accordance with Section 10.068 of the Seaside Zoning Ordinance which states:

Any action or ruling of the Planning Commission pursuant to this Ordinance may be appealed to the City Council within fifteen (15) days after Notice of Decision is provided pursuant to Section 10.066. Written notice of the appeal shall be filed with the City Auditor. If the appeal is not filed (or postmarked) within the fifteen (15) day period, the decision of the Planning Commission shall be final. If the appeal is filed, the City Council shall receive a report and recommendation on it from the Planning Commission and shall hold a public hearing on the appeal.

The appeal must be filed at the Planning Department (located at 1387 Ave. U) or mailed to 989 Broadway, Seaside, OR 97138. The appeal must include the applicable fee of \$625.00.

If you have any questions regarding this decision or the appeal process, please contact the Planning Department at (503)738-7100. The Notice of Decision date and appeal deadline are listed below. Appeals must be submitted or postmarked by this deadline.

Date of Decision: Wednesday, December 12, 2018

Last Day to Appeal: Thursday, December 27, 2018

PLANNING COMMISSION'S FINAL DECISION WAS SUPPORTED BY THE APPLICANT'S SUBMITTED JUSTIFICATION AND THE ADOPTED INFORMATION IN THE STAFF REPORT THE REPORT PROVIDES FINDINGS, JUSTIFICATIONS, CONCLUSIONS & CONDITIONS TO SUPPORT THEIR FINAL DECISION SUBJECT TO THEIR EDITS

IF ADDITIONAL FINDINGS OR CONDITIONS WERE ADOPTED BY THE COMMISSION, THEY ARE NOTED AT THE END OF THE REPORT IMMEDIATELY FOLLOWING THE STAFF RECOMMENDATION

CITY OF SEASIDE UPDATED STAFF REPORT

To: Seaside Planning Commission

From: Planning Director, Kevin Cupples

Date: December 4, 2018

Applicant: Matthew Wester, Main & Main Capital Group, 6600 Paige Rd., The Colony, TX 75056

Owner: National Credit Union Administration, 4807 Spicewood Springs Rd., Austin, TX 78759

Location: 825 Avenue N; T6-R10-S21DD-TL200, 500 and 10316

Subject: Highway Overlay Zone 18-068HOZ, Development of a New 18,000 sq. ft. Retail Building (Grocery Outlet) South of the Avenue N & the Coast Hardware Property

REQUEST:

18-068HOZ is a Highway Overlay Zone request by Main & Main Capital Group to build an 18,000 sq. ft. retail building at 825 Avenue N (T6-R10-S21DD-TL200, 500 and 10316). The subject property is zoned General Commercial (C-3). Although the primary access will be from Avenue N, the applicant plans to utilize the undeveloped portions of S Irvine and Avenue O in conjunction with the proposed development of the surrounding property.

The applicant plans to develop a new 18,000 square foot commercial building south of Avenue N & the Coast Hardware property. The new commercial building (planned as a Grocery Outlet) would occupy the eastern portion of the property while the parking would be on the western portion. The two portions of property are separated by an undeveloped portion of the South Irvine Street right-of-way and the property is bounded on the south by the undeveloped portion of Avenue O. The vacant property is zoned General Commercial (C-3) and it is referenced as T6-R10-S21DD-TL200, 500 and 10316.

The new retail store is an outright permitted use in zone; however, the Highway Overlay Zone requires a Planning Commission review of any use that will generate a significant increase in the number of vehicle trips. The review will be conducted in accordance with Section 3.400, Appendix G of the Transportation System Plan, and Article 10 of the Seaside Zoning Ordinance which establishes the review criteria and procedures for development in the Highway Overlay Zone.

DECISION CRITERIA, FINDINGS, AND CONCLUSIONS:

The following is a list of the decision criteria applicable to the request. Each of the criteria is followed by findings or justification statements which may be adopted by the Planning Commission to support their conclusions. These may also include conditions which are necessary to ensure compliance with the Seaside Zoning Ordinance. Although each of the findings or justification statements specifically apply to one of the decision criteria, any of the statements may be used to support the Commission's final decision.

REVIEW CRITERIA # 1: Pursuant to Section 3.400 of Appendix G of Seaside's TSP, all development that will create a significant number of additional trips (more than 5 peak hour or 30 average daily trips) must address the following review standards and criteria:

Section 3.407 Highway Overlay Zone Standards

- 1. Building Size:** The maximum building size will be 20,000 square feet. Buildings larger than 20,000 square feet may be considered, but are subject to additional design review.
- 2. Landscaping:** A landscaped area must be provided along the highway frontage to assure that a buffer is provided between the development and the road surface. As a minimum requirement, the area must be equal to a 10' width multiplied by the length of the highway frontage. Any public sidewalk area provided on private property adjacent to the highway would be deducted from the required area.
- 3. Exterior Lighting:** All exterior lighting shall be designed so the lighting source or lamp is recessed or otherwise covered to eliminate line of site visibility from neighboring properties, street travel lanes, or the surrounding environment. All exterior lighting must be dark sky compliant and shielded, screened, or otherwise provided with cut-offs in order to prevent direct lighting on the adjacent properties, riparian area, or the state highway subject to the following exception: Line of site visibility and direct lighting of neighboring property can be permitted subject to a formal agreement with the neighboring property owner when the lighting will benefit joint parking, access, or safety.
- 4. Yards Abutting the Highway Frontage:** In an effort to promote more pedestrian oriented development, regardless of yard requirements of the underlying zone, buildings must be located close to the property line adjacent to highway such that the property line setback for the building entrance will not exceed 10'.
- 5. Off Street Parking:** In addition to the requirements in Section 4.100, parking areas must address the specific design standards in Section 3.410.

FINDINGS & JUSTIFICATION STATEMENTS:

1. Mailed Notice Request Summary:

18-068HOZ is a Highway Overlay Zone request by Main & Main Capital Group to build an 18,000 sq. ft. retail building at 825 Avenue N (T6-R10-S21DD-TL200, 500 and 10316). The subject property is zoned General Commercial (C-3). Although the primary access will be from Avenue N, the applicant plans to utilize the undeveloped

portions of S Irvine and Avenue O in conjunction with the proposed development of the surrounding property.

The applicant's submitted justification and site plan are adopted by reference. The applicant's request summary includes the following:

- The proposal will establish a new grocery store that is estimated to generate 1636 weekday trips with a 21% reduction (-344) for pass-by trips. The net 1292 trips (morning peak 36 and evening peak 119) are discussed in the Technical Memorandum prepared by Michael Ard with ARD Engineering.
- A complete Traffic Impact Analysis (TIA) has been performed by ARD Engineering and the applicant is seeking a preliminary approval of the project.
- The engineer has consulted with ODOT concerning the TIA and the improvements to the intersection of Avenue N and S Roosevelt. It was anticipated at the time of the application that an ODOT project would widen the highway and provide a center turn lane at the Avenue N & S Roosevelt intersection and the timing of the project would be similar to the applicant's proposed construction.
- The development does not actually front on S Roosevelt (Hwy 101) so some of the highway overlay zone standards are not applicable to the request.
- The primary entrance into the property will be from Avenue N. There are two private driveway entrances onto Avenue N and the applicant plans to develop S Irvine so that it will function as a major entry road to the development. That road is located between the main structure and the parking lot located west of the building.
- Pedestrian sidewalks are provided along the external boundaries (north, east, & south sides) of the parking lot west of the building site. An expansive walkway would be provided on the west side of the proposed building and a sidewalk is proposed on the south side of Avenue N.
- As proposed, there would be two pedestrian crosswalks installed in the S Irvine Street. One of these would be a broad crossing area that would connect to the entrance to the building and one smaller (standard) crosswalk further south. This would be in addition to the crossing at the intersection of Irvine and Avenue N.
- A total of 69 parking spaces are proposed for the site and 4 handicapped parking spaces are shown in the western parking lot. No handicapped parking is proposed in the smaller parking lot located north of the building.
- Avenue O would be improved as a no outlet stub street that would allow vehicle circulation to the parking lot and also function as an access for delivery trucks to access the loading bay on the property. The sidewalks and intersection of Irvine & Avenue O have been modified in order to allow the truck access and no crosswalk is provided at the intersection.
- Landscaping and storm water detention ponds are proposed on the west side of the parking lot and on the east side of the building. Detailed information about the proposed landscaping has been provided by the applicant.

- Lighting for the site is discussed in the applicant's written submittal; however, actual lighting fixture cut sheets and the layout for the lighting is not included in this submittal. The applicant has indicated a formal lighting plan could be provided at the time of formal plan submittal.
 - No shared parking exists between the subject property and adjacent properties.
 - No variances to the standards are proposed at this time.
 - Clear vision areas will be provided at the intersection of proposed street connections.
2. All outdoor lighting must conform to the City's outdoor lighting ordinance and be dark sky compliant. Although the applicant has indicated the lighting will shine down, the lighting elements (over 450 lumens) must be adequately shielded to prevent visible glare or direct illumination off site. Street lights within the public right of way are not subject to these same standards.
 3. The off-street parking provided for the building would not be sufficient if the entire store was utilized for retail sales. If the floor sales area accounts for 70% of the total square footage (12,600 sq. ft.), the parking demand would be 63 leaving sufficient parking for 6 employees.
 4. The building official has indicated that at least some (if not all) of the handicapped spaces would need to be relocated to the north side of the building since they would provide the closest accessible route to the front door of the building. The final location for these spaces would be determined at the time of plan review.

CONCLUSION TO CRITERIA #1:

The applicant's submittal appears to satisfy the general development standards in the Highway Overlay Zone subject to the following conditions:

Condition 1. The applicant must provide a detailed exterior lighting plan. The plan is intended to help document that all exterior lighting fixtures will be designed to limit glare in accordance with the City's Outdoor Lighting Ordinance and conform to the exterior lighting provisions of the Highway Overlay Zone. Review of the plan does not ensure full compliance with the lighting restrictions; therefore, final site lighting is still subject to inspection after installation. Any necessary mitigation measures are the responsibility of the applicant and/or owner prior to final approval.

Condition 2. The applicant will need to provide detailed floor plan in order to document the number of parking spaces required for the use will be sufficient along with the estimated number of employees within the proposed building.

Condition 3. The handicapped parking spaces must be relocated so they are the closest spaces to the accessible route into the building as determined by the Building Official during plan review.

REVIEW CRITERIA #2: Section 3.408 Highway Overlay Zone Criteria

- 1. The proposal is consistent with the purpose of the overlay zone, and protects the capacity of US 101.**
- 2. If the proposal involves a development with frontage along US 101, the required permits from ODOT will need to be obtained prior to construction. If a**

permit already exists, proof of permit shall be provided to the City and ODOT. Developers are advised to coordinate with ODOT concurrently with their development proposal to discern the appropriate permit requirements. To confirm an appropriate permit, or to obtain a permit, contact the Permit Specialist at ODOT.

3. The location, design, and size of the development are such that the development can be well integrated with the surrounding transportation facilities or anticipated future developments, and will adequately address the impact of development on US 101.

4. The location, design, and size of the development are such that traffic generated by the development can be accommodated safely and is less than the mobility standard on existing or planned streets, including US 101.

5. The location, design, and size of the development are such that the proposed uses will be adequately served by existing or planned facilities or services.

6. The location, design, and size of the development are such that the proposed uses will provide functional and efficient access and circulation for anticipated pedestrians, bicycles, and vehicles.

FINDINGS & JUSTIFICATION STATEMENTS:

5. There are a number of concerns that were addressed in the results of a Traffic Impact Analysis (TIA). First and foremost, is the way to improve the access at the intersection of South Roosevelt and Avenue N so that it can safely accommodate the additional trips. This would include providing a center turn lane to address the increased traffic associated with the development. Initially, the City and the applicant believed this would be completed as part of an ODOT improvement project; however, a letter from ODOT (attached) has indicated they will not have sufficient funds to include the turn lane in conjunction with their improvement project. The letter also reaffirms the warranted need for the center turn lane in S Roosevelt as indicated in the TIA due to the traffic generated by the Grocery Outlet.
6. The proposed improvement to the Avenue O street right-of-way and the intersection of South Irvine Street, so they can be used for truck delivery, is highly irregular. The Commission is not opposed to this design since Avenue O would be a stub street with no outlet on either end. This design would recognize the street's future use as a truck backup area.
7. The applicant's plan would have the majority of the pedestrian access from the parking lot coming through the midblock of what would essentially be a dead end street. This configuration is highly irregular and it would require the city's authorization to provide two midblock pedestrian crossings between the building and the proposed parking lot. One of the crossings would be an atypically wide crossing.
8. The interior streets were previously vacated by the City Council, on more than one occasion, to aid in the development of the property. These vacations included a reversionary clause, so that if development did not occur, the rights-of-way would go back to the city. Each time the proposed property developments failed to materialize and the streets reverted back to the city.

9. The applicant did attempt to seek some assurance from the City Council they would be willing to vacate the streets again; however, the Council did not provide any formal assurances that would be possible. If the streets were vacated, the applicant's use of the former streets (Avenue O and S Irvine) would be more conventional.
10. The applicant is attempting to get some assurance the plan is practical and they are attempting to work around the street vacations by incorporating their development into a consolidated plan for the overall site.
11. A formal fire and life safety plan review would be needed in order to determine what, if any changes would be needed in order to address emergency vehicle access for the proposed building. The building layout could be impacted by the review and the Fire Chief has indicated that at this point, he would want to maintain Avenue N as a fire lane for the apartments north of Avenue N, even if the remaining portion of the street was improved down to Jackson. He is concerned that improvements to a narrow street would encourage on street parking and negatively impact fire apparatus access.
12. The vehicle access at the northwest corner of the parking lot would create additional turning movements in an area that is relatively close to the intersection of Avenue N and S Roosevelt. The applicant's traffic engineer has indicated this access will not adversely impact the access onto the highway.
13. Bike parking standards were included in Appendix G of the TSP and they will require four short term and two long term (covered) spaces for a building this size. The four short term spaces will need to be provided no further from the main entrance to the building than the closest parking space.
14. The landscaping used within the clear vision areas must be carefully selected so that any mature plants will not exceed 36" or they must be maintained by the property owner so they will not impede visibility in the clear vision areas.
15. Improper site drainage facilities could adversely impact traffic circulation on site and within the public right of way.
16. The purpose of the highway overlay zone states: This overlay zone provides a flexible process to review proposed development or redevelopment of land in a manner that is compatible with long-term highway capacity, safety and operations, and the community's efforts to reduce these and other adverse effects of traffic congestion.
17. The Planning Commission supports the applicant's proposed development provided the recommended improvements identified in the TIA are completed. This is in keeping with the purpose of the overlay zone and it will ensure the Grocery Outlet will not adversely impact the highway's capacity, safety, & operations and avoid the adverse effects of traffic congestion.
18. The local transit district has submitted a letter (attached) indicating their concerns about performing on-time bus service. They believe the construction of a center turn lane should be constructed in conjunction with this development in order to avoid further delays in the movement of traffic and they have asked for a bus stop with a pull out, & shelter to be added as a condition of approval.

19. Plans for a bus stop in this area have not been developed and the applicant's property does not front on the highway. Any transit district plans for a new stop should be forwarded to ODOT so it can be included in their future improvement plans for the highway.
20. A condition of approval that would require the applicant to develop the center turn lane on the highway (as recommended by the applicant's TIA, ODOT, & the transit district) would likely fail the rough proportionality test established by case law under Dolan.
21. Based on the TIA, the proposed Grocery Outlet will have a significant impact on local highway traffic that should be addressed by improving the center turn lane on the highway and that would meet the nexus test established by case law under Nolan.
22. Additional funding that would allow for the development of the center turn in the highway at Avenue N (included in ODOT's proposed improvement project or as part of a standalone project) would address the traffic impacts associated with development of the Grocery Outlet.
23. At present, neither ODOT or the City of Seaside have sufficient funds to address the traffic impacts that would be created by the development.

CONCLUSION TO CRITERIA #2:

The overall layout of the proposed development, given the use of public streets, is acceptable to the Commission and the criteria applicable to the request and the purpose statement for the overlay zone can be satisfied when the turn lane recommended under the TIA is developed in accordance with any approval standards established by ODOT and the applicant satisfies the following conditions of approval:

Condition 4: A striped pedestrian walkway must be provided to the segregated parking spaces that are located across South Irvine and the walkway adjacent to the spaces located north of the proposed building.

Condition 5: The required bike parking must be incorporated into the final development plan for the property.

Condition 6: The applicant must provide an engineered drainage plan that indicates how proposed drainage facilities will accommodate storm water runoff from the parking lots and roof drains. The plan would also need to address water quality measures that would be incorporated into the system in an effort to limit oil & sediment from entering the public storm water system or local groundwater.

Condition 7: The applicant's proposed improvements within the City of Seaside rights-of-way must be completed in accordance with the standards established by the Public Works Department.

Condition 8: Minor modifications to the applicant's proposed plan must be reviewed and approved by the Planning Director. These could be required in order to comply with other code issues applicable to the request or reduce impacts to the neighboring property. Any major changes or conflicts over a proposed modification will be reviewed with the Planning Commission prior to the approval of any development permits.

FINAL STAFF RECOMMENDATION

Conditionally approve the establishment of the new commercial building at 825 Avenue N with the understanding the turn lane recommended under the TIA will be developed in accordance with any approval standards established by ODOT before the Grocery Outlet is open to the public for retail sales. This decision can be supported by the Commission adopting the findings, justification statements, and conclusions in this report subject to the previously stated conditions.

Although it is not a condition of approval, the following is a reminder to the applicant.

- As with any permit, the applicant must meet all applicable standards in the Seaside Zoning Ordinance, Sign Code, Building Code, and any other applicable City of Seaside Ordinances.

The information in this report and the recommendation of staff is not binding on the Planning Commission and may be altered or amended during the public hearing.

Attachments:

Applicant's Submitted Information, Proposed Site Development Plan, & ARD Engineering's Technical Memorandum

TIA 10-18-18

Landscape Plan 10-30-18

ODOT Letter 11-7-18

Sunset Empire Transportation District Letter 11-30-18

Planning Commission Amendment:

The Commission amended their final decision by adding an alternative to the understanding the turn lane would need to be developed prior to opening the new retail store. It recognized the option of providing a right-in and right-out at the intersection of Avenue N and South Roosevelt (Highway 101). This alternative would effectively prevent the impacts to traffic caused by south bound left turns into Avenue N that were recognized in the TIA. This alternative was previously discussed by the Commission as a way to potentially avoid the traffic impacts until such time the center turn lane is improved. The following highlighted text was incorporated into the final decision that was expressed in the Final Staff Recommendation of the staff report:

Conditionally approve the establishment of the new commercial building at 825 Avenue N with the understanding the turn lane recommended under the TIA, or a right-in/right-out with a turning barrier at Avenue N, will be developed in accordance with any approval standards established by ODOT before the Grocery Outlet is open to the public for retail sales. This decision can be supported by the Commission adopting the findings, justification statements, and conclusions in this report subject to the previously stated conditions.

ATTACHMENT 2

LAND USE DECISION APPEAL FORM

You do not have to use this form to file an appeal. However, if you do not use it, please make sure that your appeal includes all the information requested on this form. The appeal, along with any required filing fee, must reach Seaside City Hall (989 Broadway) or Seaside Community Development (1387 Ave. U) no later than 5:00 p.m. of the last day of the appeal period.

APPELLANT INFORMATION (Person or group making appeal)

1. Appellant:

If several individuals are appealing together, list their names and addresses on a separate sheet. If appeal is on behalf of an organization, indicate the group's name and mailing address.

Name Main & Main Capital Group

Address 6600 Paige Road
The Colony, Texas 75056

Phone: Home _____ Work _____

E-mail Address: _____

2. Authorized Representative:

Name of representative if different from the appellant indicated above. Groups must specify one person to be representative/contact person.

Name Dave Phillips, Vial Fotheringham LLP

Address 17355 SW Boones Ferry Road
Lake Oswego, Oregon 97035

Phone: Home _____ Work 503-684-4111

E-mail Address: David.Phillips@vf-law.com

DECISION BEING APPEALED

1. Decision appealed (File Reference Number): 18-068HOZ

2. Property address of decision being appealed: 825 Avenue N (T6-R10-S21DD-TL200, 500 & 10316)

3. Elements of decision being appealed. Check one or more as appropriate:

Adequacy of conditions

Decision maker error

Impartiality, bias, or notice challenge

Other. Please specify: _____

APPEAL INFORMATION

Answer each question as completely and specifically as you can. Attach separate sheets if needed and refer to questions by number.

1. What is your interest in this decision? How are you affected by it?

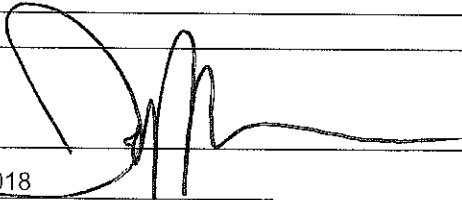
Appellant is a company seeking to commercially develop a retail space at 825 Avenue N, Seaside, Oregon. While the Planning Commission has conditionally approved the development, several of the conditions imposed are unconstitutional. Moreover, compliance with those conditions would render the project economically infeasible.

2. What are your objections to the decision? List and describe what you believe to be the errors, omissions, or other problems with this decision. The objections need to be specific and relevant to the criteria applicable to the decision.

Appellant objects to the Planning Commission's requirement that a left turn lane (or right-in/right-out with turning barrier) be added to the adjacent road despite the present road configuration allowing for adequate—and safe—access to the site. First, the Planning Commission added this requirement subsequent to the hearing and final decision by amended, which deprived Appellant the opportunity to present countervailing evidence; this manner of decision deprived Appellant of the notice proscribed by ordinance and its due process rights under the state and federal constitutions. Second, the Planning Commission's requirement is unconstitutional under Dolan v. City of Tigard, 512 U.S. 374 (1994) and progeny. Third, the requirement violates decisions of Oregon's Land Use Board of Appeals.

3. What relief are you seeking? (Specify what you want the appellate body to do? e.g. reverse the decision, require additional conditions, modify the approval conditions, etc.)

Appellant asks the City Council to alternatively: (1) reverse the Planning Commission's decision by striking the road modification requirement; (2) remand the decision to the Planning Commission to permit Appellant to adequately respond (through testimony and documentary evidence) to the condition; or (3) reform the condition to conform it to state and federal statutory and constitutional law.

Signature 

Date 12/27/2018

Appellant or Authorized Representative Dave Phillips, Vial Fotheringham LLP

Appeal Fee Based on level of appeal: \$625.00

For Office Use Only:

Appeal Hearing Body: Seaside City Council

Payment Receipt Number: cx 2297

Proposed Appeal Hearing Date: Jan 28, 2019 - per applicant

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BEFORE THE CITY COUNCIL OF THE
CITY OF SEASIDE, OREGON

MAIN & MAIN CAPITAL GROUP, LLC,
Appellant.

Appeal No. 16-068HOZ
Meeting Date: January 28, 2019
Property: 825 Avenue N Seaside, OR

MEMORANDUM OF APPEAL

STATEMENT OF THE CASE

Appellant, Main & Main Capital Group, LLC, is the applicant for real property at 825 Avenue N (T6-R10-S21DD-TL200, 500, and 10316) ("Subject Property") that it seeks to develop into a commercial space. Appellant submitted a completed land use application form proposing the development of the Subject Property into a Grocery Outlet and a second commercial space. The City of Seaside Planning Commission held a hearing and received oral and written testimony from Appellant and a staff report. The Planning Commission issued a written land use decision, which is identified as 18-068HOZ, conditionally approving Appellant's proposed development. Appellant timely filed the applicable filing fee and appeal form on December 27, 2018. A hearing before the City Council is currently scheduled on this matter for January 28, 2019.

1 **I. Nature of Relief Sought**

2 The Planning Commission conditioned approval of Appellant's development on a
3 number of conditions, one of which is unconstitutional and the subject of this appeal. The
4 problematic condition, which is unenumerated and will be referred to as the "traffic control
5 condition," requires:

6 Approval to establish the new commercial building at 825 Avenue N is
7 with the understanding the turn lane recommended under the TIS, or a
8 right-in/right-out with a turning barrier at Avenue N, will be developed in
accordance with any approval standards established by ODOT before the
Grocery Outlet is open to the public for retail sales.

9 *See Comm'n Dec. at 1.* This condition, which would impose a tremendous cost to Appellant far
10 in excess of its development's impact, is unconstitutional as disproportionate. Furthermore, the
11 Planning Commission's decision and constituent findings cannot meet the heavy burden on the
12 City to justify its ultimate imposition of such a condition. Accordingly, Appellant respectfully
13 requests the City Council strike the condition and otherwise approve its application.

14 Given the magnitude of the proposed conditions, I asked for a meeting with your
15 Planning Director, Mr. Cupples yesterday. He and Mr. Ard, our Transportation Engineer, and I
16 discussed the arguments presented below in detail to determine whether the City is in fact intent
17 on imposing the construction of a left turn lane upon the Applicant in light of Finding 20 in the
18 Staff report where Mr. Cupples acknowledges our position. Mr. Cupples called me again this
19 morning with an update and promised to continue to work with us in finding a rational solution
20 where a substitute condition of approval can be proposed and accepted, alleviating the
21 unconstitutional burden from the Applicant and thereby avoiding costly appeal.

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1 ARGUMENT

2 **I. The Planning Commission's traffic control condition, in either form, is**
3 **unconstitutional under *Nolan/Dolan* and progeny.**

4 The Planning Commission's conditional approval of Appellant's proposed development
5 required Appellant, *inter alia*, to improve the Highway 101-Avenue N interface. The Planning
6 Commission structured the traffic control condition in the alternative, requiring Appellant to
7 either (1) construct a dedicated left-turn lane for southbound traffic on Highway 101 turning onto
8 Avenue N or (2) construct a right-in/right-out lane with a traffic barrier at the intersection of
9 Highway 101 and Avenue N. The Planning Commission suggests that either of these alternatives
10 will be necessary to ameliorate the impact of increased southbound traffic on Highway 101
11 turning left onto Avenue N. The Commission's decision regarding the traffic control condition
12 was largely, if not entirely, based on the Traffic Impact Study performed by ARD Engineering
13 ("TIS") at Appellant's request. *See* Comm'n Dec. at 7-8, 10. Because ODOT does not have the
14 funding to satisfy the traffic control condition, which has changed since the TIS, ARD
15 Engineering has provided an update to the TIS, which is attached as Exhibit A.

16 In either alternative, the Planning Commission's traffic control condition violates the
17 Takings Clause of the Fifth Amendment of the United States Constitution and/or Article I,
18 Section 18, of the Oregon Constitution. Although there might be a nexus between the City's
19 interests and the traffic control condition under *Nollan v. California Coastal Commission*, 483
20 U.S. 825 (1987), the monetary contribution required of Appellant to satisfy either permutation of
21 the traffic control condition is disproportionate to the expected impacts of the proposed
22 development in violation of *Dolan v. City of Tigard*, 512 U.S. 374.

23 Satisfaction of the traffic control condition would require Appellant to undertake—and
24 fund—substantial construction on Highway 101. While Appellant's proposed development

1 would receive some tangential benefit from the construction, the benefit conferred by
2 Appellant—and required by the City—would largely inure to the community-at-large. Indeed,
3 the now-mandated improvement is one that would ordinarily be undertaken by the state, through
4 the Oregon Department of Transportation (“ODOT”), in conjunction with the City. Until ODOT
5 defunded the project, the only related condition placed on Appellant was the requirement that the
6 proposed commercial space delay opening until ODOT finished construction. *See* Comm’n Dec.
7 at 7. While Appellant shares in the community’s disappointment that ODOT cancelled the
8 project, the City cannot, consistent with the Constitution, require Appellant to fill the funding
9 gap left by the state. The Planning Commission’s Decision to impose the traffic control condition
10 appears largely due to the spatial and temporal proximity of Appellant’s proposed development
11 to ODOT’s cancellation decision rather than resulting from any due consideration of
12 proportionality.

13 The U.S. Supreme Court’s decisions in *Nollan* and *Dolan* are “special application[s] of
14 the ‘doctrine of unconstitutional conditions[.]’” *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 530
15 (2005).¹ An evaluation of the constitutionality of challenged conditions requires a two-step
16 analysis. First, a permit condition subject to scrutiny under the Takings Clause must have an
17 “essential nexus” to a legitimate state interest that would confer a valid ground upon which to
18 deny the permit outright. *See Nollan*, 483 U.S. at 837; *Brown v. City of Medford*, 251 Or. App.

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¹ In *W. Linn Corp. Park, L.L.C. v. City of W. Linn*, 349 Or. 58 (2010), the Oregon Supreme Court held that a government conditioning a development on the property owner’s undertaking of a monetary obligation did not implicate *Nollan/Dolan* of the Fifth Amendment. *See id.* at 78–89. The Supreme Court, however, has since implicitly overruled the *W. Linn* Court’s interpretation of the Fifth Amendment. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 612 (2013) (“Such so-called ‘in lieu of’ fees are utterly commonplace, and they are functionally equivalent to other types of land use exactions. . . . [W]e reject respondent’s argument and hold that so-called ‘monetary exactions’ must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan*.”) (internal citation omitted).

1 42, 47 (2012). The Court noted that a long-standing precedent had established that “a broad
2 range of governmental purposes and regulations satisfies these requirements.” *Nollan*, 483 U.S.
3 at 834–35. However, the mere existence of a legitimate state regulatory interest does not itself
4 permit conditions of approval that fail to have the essential nexus. The Court ultimately struck
5 down a condition of approval that required conveyance of an easement along a homeowner’s
6 beachfront property because the nexus was too weak between the condition of approval and the
7 legitimate state interest of protecting public views of the ocean front. *Id.* at 831.

8 Appellant concedes, for the purposes of this appeal, that the Planning Commission has
9 established a sufficient **nexus** between the City’s legitimate interest and the traffic control
10 condition. Appellant does, however, take issue with the Planning Commission’s 21st Finding,
11 which states that the development will have “a significant impact on local highway traffic.” *See*
12 *Comm’n Dec.* at 9. The development will cause, at most, a measurable increase in traffic along
13 Highway 101 without any deleterious impact on congestion or safety. *See infra* pp. X–XX
14 (discussing conclusions in TIS relied on by Planning Commission).

15 Second, the conditions imposed on a development must be “roughly proportional” to the
16 impacts of that development. *Dolan*, 512 U.S. at 385; *Brown*, 251 Or. App. at 47. That standard,
17 the Court wrote, is an “intermediate standard” between “very generalized statements as to the
18 necessary connection” on one hand, and on the other, a requirement that the government
19 “demonstrate that its exaction is directly proportional to the specifically created need.” *Dolan*,
20 512 U.S. at 389–90. The burden is, thus, on the City to justify and support the imposition of a
21 condition of development, such as the one here. *See id.* at 395 (placing the burden on the
22 government); ORS § 197.796(4) (“In any challenge to a condition of approval that is subject to
23 the Takings Clause of the Fifth Amendment to the United States Constitution, the local
24 government shall have the burden of demonstrating compliance with the constitutional

1 requirements for imposing the condition.”). As a part of the requisite “individualized
2 determination,” mathematical precision is not required, “but the city must make some effort to
3 quantify its finding in support . . . beyond . . . conclusory statement[s].” *Id.* at 395–96. Thus, this
4 portion of the analysis requires the City to (1) identify the potential impacts of Appellant’s
5 proposed development and (2) demonstrate that the traffic control condition would be
6 proportionally related to those impacts in “nature and extent.” There was no “individualized
7 determination” here.

8 The Planning Commission’s decision, which adopts and incorporates the underlying Staff
9 Report, to require the traffic control condition is driven largely by concerns about the impact of
10 “increased traffic associated with the development.” *See* Comm’n Dec. at 7–9. The Commission
11 finds that requiring the traffic control condition is consistent with the highway overlay zone’s
12 purpose to “ensure the [development] will not adversely impact the highway’s *capacity, safety,*
13 *& operations and [to] avoid the adverse effects of traffic congestion.*” *See id.* at 8 (emphasis
14 added). Beyond such general statements, however, the Commission relies entirely on the TIS
15 submitted by Appellant, which is attached here as Exhibit B.² *See* Comm’n Dec. at 7–9. But the
16 TIS does not discuss or contradicts the specific interests cited by the Commission.

17 Appellant does not dispute that its proposed development will marginally increase the
18 heavy existing traffic along Highway 101 and, to a greater extent, Avenue N; this conclusion is
19 supported by the TIS. *See* Ex. B at 14–16 (evaluating, quantitatively, the expected increase in the
20 number of trips following completion of the development). In evaluating several of the concerns
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22 ² The Planning Commission also considered a letter from Keith Blair at ODOT, which is attached
23 as Exhibit D. *See* Comm’n Dec. at 9. This letter only assesses the TIS and its compliance with ODOT’s
24 analysis procedures and methodologies; the letter does not provide any independent data that might
support a decision on the traffic control condition. *See* Ex. D.

1 listed by the Commission, which it adopted from purpose of the highway overlay zone, the TIS
2 determined that Appellant's development will have no impact. *See* Comm'n Dec. at 8 ("capacity,
3 safety, & operations and [to] avoid the adverse effects of traffic congestion"):

4 (1) Capacity: "all intersections are projected to operate acceptably through year 2020
5 either with or without the addition of site trips from the proposed development,"
6 Ex. B at 17;

7 (2) Safety: "[b]ased on the crash data analysis, no significant safety concerns were
8 identified [and] . . . [n]o specific crash mitigations are necessary or
9 recommended," *id.* at 21–22;

10 (3) Operations: "[b]ased on the analysis, adequate sight distances are available, and
11 no mitigations are necessary or recommended," *id.* at 22;

12 (4) Congestion: "no queues are projected to accumulate along US 101 either
13 northbound or southbound between the closely-spaced intersections," *id.* at 18.

14 *See generally* Ex. B at 24. The author of the TIS, Michael Ard PE at ARD Engineering, has
15 confirmed these conclusions in a letter updating the TIS. *See generally* Ex. A at 1–2 (relaying
16 testimony given at the hearing before the Planning Commission). Mr. Ard confirms that "the
17 [TIS] study demonstrated that the intersection meets the relevant performance standard even
18 absent a left-turn lane." Ex. A at 2. As the only expert to have considered this matter, Mr. Ard's
19 un rebutted conclusions, which the Planning Commission has already generally accepted, should
20 be given due consideration.

21 In his supplemental letter, Mr. Ard also considers the alterative "right-in/right-out"
22 condition proposed by the Planning Commission. *See* Ex. A at 3. Having considered the road
23 configuration surrounding the Highway 101-Avenue N intersection, Mr. Ard finds that a right-

1 in/right-out condition “would not be expected to eliminate the southbound left-turn demand to
2 the [Subject Property].” *Id.* Ultimately, he concludes:

3 Based on the most direct lawful alternative travel routes, restriction of
4 turning movements at Avenue N would not be projected to result in a
5 meaningful improvement to safety or operations of the highway
6 intersections in the site vicinity.

7 *Id.* Because neither alternative traffic control condition would be expected to ameliorate the
8 impacts of Appellant’s development, the staggering costs of Appellant’s compliance with that
9 condition is disproportionate, unjustifiable, and unconstitutional.

10 Quantitatively, Appellant’s development would be expected to increase the number of
11 trips on Highway 101 (in both the peak AM and PM hours) by only 3.3% in the northbound
12 direction and only 5.3% in the southbound direction—hardly significant. *See* Ex. B at 16
13 (providing projected numbers of trips with and without the development). This projection can
14 almost be characterized as a de minimis increase in Highway 101 traffic—something that will
15 have little impact on congestion felt by motorists. *See, e.g.,* Ex. B at 18 (“[N]o queues are
16 projected to accumulate along US 101 either northbound or southbound between the closely-
17 spaced intersections[.]”). This stands in stark contrast to the magnitude of the traffic control
18 condition, which would require Appellant to fund a major construction project at the Highway
19 101-Avenue N intersection. Appellant projects that completing either alternative construction
20 would cost it—and only it—between an estimated \$1,900,000 and \$2,900,000. The
21 disproportionality is staggering, as the Planning Commission’s staff recognized in stating that
22 imposing the left-turn lane condition “would likely fail the rough proportionality test established
23 by case law under *Dolan*.” *See* Comm’n Dec. at 9. This admission is conclusive and on the
24 record.

1 The Planning Commission's staff is correct; the City cannot justify imposing such a
2 heavy burden on Appellant as a cost of obtaining approval for its development. In *McClure v.*
3 *City of Springfield*, 175 Or. App. 425 (2001), the Court of Appeals upheld an exaction where the
4 projected increase in traffic due to the development (1.86 percent) was less than "the percentage
5 of land exacted (1.59 percent)." *Id.* at 435. In Appellant's case, the corresponding values are not
6 even within several orders of magnitude; there is no correlation—thus, no proportionality—
7 between the projected traffic increase and Appellant's conditioned liability for the mitigation
8 effort. When the Planning Commission learned that ODOT's planned improvement was
9 unfunded, the Commission impermissibly shifted the entire burden to Appellant. The traffic
10 control condition appears to represent the path to an alternative funding source much more so
11 than a condition imposed after an "individualized determination" of the development's specific
12 impacts. *See Dolan*, 512 U.S. at 391 (requiring an exaction be "related both in nature and extent
13 to the impact of the proposed development").

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CONCLUSION

Under *Nollan/Dolan*, the traffic control condition, in either alternative, is unconstitutional because its costs to Appellant are disproportionate to the impact of the proposed development on a state highway. Additionally, the City's reliance on the TIS is misplaced and cannot be the City's burden to demonstrate proportionality. For these reasons, Appellant respectfully requests that the City Council strike the traffic control condition and the following language from the second paragraph of the Planning Commission's decision:

Approval to establish the new commercial building at 825 Avenue N is with the understanding the turn lane recommended under the TIS, or a right-in/right-out with a turning barrier at Avenue N, will be developed in accordance with any approval standards established by ODOT before the Grocery Outlet is open to the public for retail sales.

Comm'n Dec. at 1.

Dated this 23rd day of January, 2019.

VIAL FOTHERINGHAM LLP

/s/David Phillips
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Of Attorneys for Appellant



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January 23, 2019

David Phillips, JD, EnvE
VF Law
17355 SW Boones Ferry Rd, Suite A
Lake Oswego, OR 97035

Subject: Seaside Grocery Outlet Update

Dear David,

This letter is written to provide information regarding the history and current status of the proposed Seaside Grocery Outlet traffic analysis subsequent to submittal of the formal Traffic Impact Study on October 18, 2018.

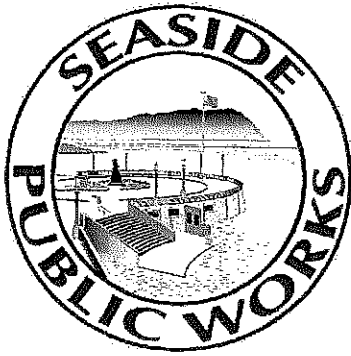
At the time of preparation and submittal of the TIS, we had received assurances from ODOT staff that a project that would widen Highway 101 to a continuous three-lane cross-section including a center two-way left-turn lane between Avenue C and S Holladay Drive was funded and scheduled for construction during the summer of 2020. Knowing that this improvement would widen the state highway at Avenue N, we acknowledged this planned improvement, noted that warrants for a southbound left-turn lane from Highway 101 to Avenue N were met, and recommended that the turn lane be provided.

Subsequent to submittal of the study, ODOT informed us that the project had obtained only partial funding and that the segment of Highway 101 at Avenue N (our primary site access) was not planned for inclusion in the current project but may be constructed at a later date.

Since neither ODOT nor any other party is currently planning to fund the widening of Highway 101 at Avenue N which would facilitate installation of a center left-turn lane, any requirement for a turn lane to be in place prior to occupancy of the proposed Grocery Outlet facility amounts to a de-facto condition requiring Grocery Outlet to construct the turn lane. However, since the expected construction costs of this improvement are in the range of \$2-3 million, a requirement to construct this turn lane would be disproportionate to the actual impacts of the proposed store. This disproportionate burden has been acknowledged by City of Seaside staff including within the written records of the staff report prepared for the Planning Commission hearing on December 4, 2018 and in the Planning Commission's written Notice of Decision dated December 12, 2018.

Knowing that the proposed development cannot be required to construct the recommended turn lane and that no other parties are likely to construct the turn lane in the foreseeable future, we were faced with the need to re-evaluate whether the project can be approved absent this improvement. I provided detailed testimony related to this question during the course of the Planning Commission hearing on December 4, 2018. This testimony included the following facts:

- 1) Satisfaction of turn-lane warrants does not require installation of a turn lane. Rather, satisfaction of warrants means that installation of a turn lane can be considered. Decisions regarding whether and when turn lanes are to be installed must take into account the totality of circumstances, not just the satisfaction of warrants, prior to making final findings. In this instance, the turn lane cannot lawfully be required from the applicant due to the disproportionate costs of the improvement, and no other party is expected to



MEMO

January 28, 2019

From: Dale McDowell

To: The Honorable Mayor and City Council

Re: Downtown Maintenance District Litter Removal Bids

The City of Seaside advertised for bids for the Downtown Maintenance District Litter Removal. There were two bids submitted on January 15, 2019.

There were two bids received for the Downtown Maintenance District Litter Removal. Bids were submitted and received from Kris Johnston in the amount of \$30,302.00 and Affordable Carpet - Jay Paul in the amount of \$38,000.00. Kris Johnston currently carries the contract for the litter removal.

Staff recommends accepting the bid from Kris Johnston in the amount of \$30,302.00

COMMUNITY CENTER COMMISSION

(Meetings are scheduled the first Tuesday of every month at 10:00 AM)

The purpose of the Community Center Commission is to be an advisory body to recommend and make suggestions to the City Council concerning matters relating to the well being of the community center and its users. Receive direction from the Council concerning matters relating to the well being of the community center and its users.

The commission consists of nine members who are not officials or employees of the city and who shall be appointed by the City Council. A minimum of five members shall reside within the city limits; a maximum of four members may reside within the Urban Growth Boundary, but outside the City limits.

A Community Center Commissioner's term of office shall commence on June 1, of each year of his/her term. At the first Commission meeting in June, the Commission will appoint one of their members as Chairperson and one as Vice-Chairperson. One member of the Commission will serve as secretary and minutes will be filed with the City Council.

The Commission shall hold a regular meeting at least once each month of the calendar year. The meetings shall be open to the public. Any person appointed to serve on this committee who misses three or more regularly scheduled meetings during a 12-month period shall be notified by letter from the Mayor that the position must be vacated. The individual may appeal the decision to the City Council. (A 12 month period is defined as beginning in January of each calendar year.)

The members shall serve without salary or compensation of any nature. "The members shall serve without salary or compensation of any nature."

COMMITTEE/COMMISSION APPOINTMENT

1. **Date Council Notified:** January 14, 2019
Name: Greta Passetti
Commission/Committee: Community Center Commission
Resignation Date: Deceased
Term Expiration Date: June 1, 2019
Wants to be considered again: N/A
2. **Applicants:**
3. **Nominations:**
4. **Appointment:**

CITY of SEASIDE

OREGON'S
FAMOUS
ALL-YEAR
RESORT

989 BROADWAY
SEASIDE, OREGON 97138
(503) 738-5511

COMMUNITY CENTER COMMISSION

Term: 3 years

Number of Members: 9

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>TERM EXPIRES</u>
PIPER O'BRIEN***	720 S. LINCOLN	738-3169	6/01/2019
VACANCY			6/01/2019
MOLLY IRONS**	221 7 TH AVENUE	738-7005	6/01/2019
MALINDA AUSTIN	2062 CEDAR STREET	738-3926	6/01/2020
JOE (FRED) FISHER	2533 OREGON	738-9897	6/01/2020
KRISTIN TSCHANNEN*	770 16 TH AVENUE	323-397-5116	6/01/2020
LOUIS NEUBECKER	1859 BROADWAY	717-0153	6/01/2021
LEILA VERNOR	764 3 RD AVENUE	738-4352	6/01/2021
GENEVIEVE ULBRICHT	391 BEACH DRIVE	503-781-4644	6/01/2021
DANA PHILLIPS	1845 BROADWAY	738-9413	CITY COUNCIL

*CHAIR
**VICE CHAIR
***SECRERY



CITY OF SEASIDE: Seaside City Council Goal Setting 2019

OUR VISION 2034:

Seaside is a remarkable, culturally rich community. Our families thrive, our businesses prosper and generations of visitors create memories that last lifetimes — all in a healthy, safe and neighborly coastal environment.

OUR STRATEGIC DECISIONS MUST:

- Preserve or enhance the desirable characteristics of our community.
- Be inclusive of all community members.
- Be in the best interest of Seaside.
- Be supported by resources, including all additional needs caused by each decision.
- Have benefits that outweigh negative or unintended consequences.

KEY:

- ▨ Imperatives
- ▨ Measures of Success
- ▨ Two-year Goals
- ▨ Four-year Goals
- 👤 City Council Leads
- 👤 Staff Members

	Two-Year Goals	Four-Year Goals
Our Economic Base	<ul style="list-style-type: none"> Enable Workforce Housing Development Council 👤 Seth/Tita 🗓 Russ Vandenberg Workforce Housing Plan & Begin Implementation (Dec. 2020) Revise Vacation Rental Ordinances 👤 Randy/Steve 🗓 Kevin Cupples Ordinances Updated and in Place (Dec. 2020) 	<ul style="list-style-type: none"> Develop Evaluate UGB Expansion for the Purpose of Housing Tourism Management Plan
Our Infrastructure	<ul style="list-style-type: none"> Support School Infrastructure 👤 Dana 🗓 Dale McDowell Infrastructure in Place to Allow School to Open (Sept. 2020) Develop 20-Year Bridge Replacement Plan 👤 Tom/Randy 🗓 Bob Mitchell Plan Complete (Dec. 2020) 	<ul style="list-style-type: none"> Identify Long-term Downtown Parking Solution Develop Regional Strategy to Address Traffic Challenges
Our Operational Excellence	<ul style="list-style-type: none"> Develop Plans to Increase Citizen Involvement in City Govt 👤 Steve 🗓 Esther Moberg Plan in Place and Begin Implementation (March 2020) Improve Communications with Public 👤 Seth/Tita 🗓 Esther Moberg Plan in Place and Begin Implementation (March 2020) Revise and Update City Ordinances 👤 Jay/Dana 🗓 Dave Ham Update Sex High Priority Ordinances (Dec. 2020) Revise and Update City Charter 👤 Tita/Jay 🗓 Russ Vandenberg Review Complete (Dec. 2020) 	
Our Resiliency	<ul style="list-style-type: none"> Create a Plan for Disaster, Evacuation and Survival Infrastructure 👤 Randy 🗓 Joey Daniels Create Plan & Implement Infrastructure (Dec. 2020) Develop a Resiliency Master Plan (Jay) (Dave Ham) 👤 Jay 🗓 Dave Ham Consultant Retained & Begin Study (Dec. 2019) 	<ul style="list-style-type: none"> Seek Funding and Begin Construction of Evacuation and Survival Infrastructure Take Initial Steps Toward Implementation of Resiliency Master Plan
Our Quality of Life	<ul style="list-style-type: none"> Continue Development of Our Parks and Trails System 👤 Steve/Randy 🗓 Bob Mitchell Development Activity Has Begun (Dec. 2020) Engage Partners to Begin Implementation of Secure Water Protection Plan 👤 Tom 🗓 Kevin Cupples Ordinances Updated and in Place (Dec. 2019) 	<ul style="list-style-type: none"> Implementation of Parks and Trail System Improvements