

## ORDINANCE NO. NS-2224

AN ORDINANCE AMENDING THE OFF-SITE IMPROVEMENT OBLIGATIONS / TRAFFIC MITIGATION REQUIREMENTS OF CITY ORDINANCE NO. NS-2105.

### Findings

- A. On June 12, 2014, the Bend Park & Recreation District (BPRD) submitted a Quasi-judicial Modification of Approval application (File #PZ 14-444) to amend the off-site improvement obligations / traffic mitigation requirements of City Ordinance No. NS-2105 (PZ 06-570), which apply to Parcels 1, 2 & 3 of Partition Plat No. 2008-06, at the northwest corner of Simpson Avenue & Columbia Street (50 SW Shevlin-Hixon Drive, 1000 SW Bradbury Way, and 1001 SW Bradbury Way).
- B. The Bend City Council held a public hearing on July 16, 2014 to consider the requested Modification of Approval application.
- C. The requested Modification of Approval application meets all applicable Development Code criteria, as determined in the Findings of Fact contained in Exhibit A.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Section 1 of Ordinance No. NS-2105 is amended by amending the last sentence of that Section to read: "The Bend City Council adopts the findings in Exhibit A in support of this ordinance and imposes the conditions of approval contained in Exhibit A."

Section 2. Exhibit A to Ordinance No. NS-2105 is amended by deleting Conditions of Approval 2 through 6 and adding the following conditions of approval:

1. Prior to the issuance of a building permit for the multi-purpose recreation pavilion, BPRD shall provide a cash-in-lieu payment of \$98,000 to construct improvements at the Century Drive/Simpson Avenue roundabout to provide better emergency vehicle access. The City will complete the Century Drive/Simpson Avenue roundabout improvements as part of the planned 14th Street corridor improvements.
2. Prior to final occupancy of the multi-purpose recreation pavilion, BPRD shall install striping improvements at the intersection of Simpson Avenue/Columbia Street to improve intersection awareness and visibility in an effort to reduce crashes. The striping shall be ODOT Standard Specification 867.45, Type D - Inlaid Methacrylate. BPRD shall also review the existing signage to determine if any modifications or replacements are required. These required improvements shall be included in the infrastructure plans for the proposed multi-purpose recreation pavilion.
3. Prior to final occupancy of the multi-purpose recreation pavilion, BPRD shall construct curb bulb-outs and rebuild ADA ramps along Columbia Street to provide traffic calming for the neighborhood and provide better pedestrian connectivity between the site and the neighborhood. These locations may include:
  - a. SW corner of Columbia Street/Albany Avenue: curb bulb-out with two ADA curb ramps;

- b. NW corner of Columbia Street/Commerce Avenue: curb bulb-out with two ADA curb ramps; and
- c. SW corner of Columbia Street/Commerce Avenue: two new ADA curb ramps.

If for some reason, the design concept for the Columbia Street and Commerce Avenue gateway improvements is not fully developed at the time of occupancy for the pavilion, BPRD shall provide a cash-in-lieu payment of \$83,000 for these improvements.

- 4. Prior to occupancy of any additional development on the subject property other than the multi-purpose recreation pavilion on Parcel 3, BPRD or any future owners shall construct a roundabout at the intersection of Columbia Street/Simpson Avenue. BPRD or any future owners shall also donate right-of-way to the City when the roundabout is constructed. (Note: The transportation system in the area around the subject property will be reevaluated as part of the Westside Transportation Growth Management (TGM) project. If the outcome of the TGM study supports further deferral of the roundabout, or other alternative mitigation measures, then the applicant can submit an application for another Modification of Approval.)
- 5. Prior to the issuance of a building permit for the multi-purpose recreation pavilion, BPRD shall contribute \$25,000 toward the funding of the Westside Transportation Growth Management (TGM) project.

Section 3. The City Council adopts the Findings in support of this ordinance as contained in Exhibit 2014 A.

First reading: July 16, 2014.

Second reading and adoption by roll call vote: August 6, 2014.

YES: Mayor Jim Clinton  
Councilor Jodie Barram  
Councilor Scott Ramsay  
Councilor Mark Capell  
Councilor Doug Knight  
Councilor Sally Russell

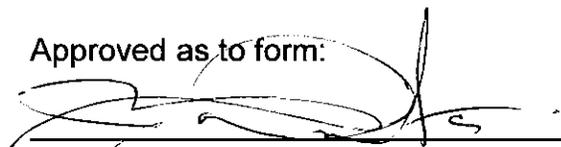
NO: none

  
\_\_\_\_\_  
Jim Clinton, Mayor

Attest:

  
\_\_\_\_\_  
Robyn Christie, City of Bend Recorder

Approved as to form:

  
\_\_\_\_\_  
Mary Winters, City Attorney

**EXHIBIT 2014 A  
CITY COUNCIL FINDINGS**

**APPLICANT/  
OWNER:** Bend Park & Recreation District (BPRD)  
799 SW Columbia Street  
Bend, Oregon 97702

**ATTORNEY:** Sharon R. Smith  
Bryant Lovlien & Jarvis PC  
591 SW Mill View Way  
Bend, Oregon 97702

**LOCATION:** The subject property is located in the Mixed Employment (ME) zone at the NW corner of Simpson Avenue and Columbia Street. Parcels 1, 2 & 3 of Partition Plat No. 2008-06, (50 SW Shevlin-Hixon Drive, 1000 SW Bradbury Way, and 1001 SW Bradbury Way); further identified on County Assessor's Tax Map 18-12-06AA as Tax Lots 1600, 1603, and 1604. It is roughly 11 acres in size.

**REQUEST:** Type III Quasi-judicial Modification of Approval to amend the off-site improvement obligations / traffic mitigation requirements of Ordinance NS-2105 (PZ 06-570).

**I. APPLICABLE CRITERIA:**

City of Bend Development Code

Chapter 4

Section 4.1                      Limitations on Approvals  
4.1.1325                      Modification of Approval

**II. FINDINGS OF FACT:**

**1. LOCATION:** The Subject Property is located in the Mixed Employment (ME) zone at the NW corner of Simpson Avenue and Columbia Street. Parcels 1, 2 & 3 of Partition Plat No. 2008-06, (50 SW Shevlin-Hixon Drive, 1000 SW Bradbury Way, and 1001 SW Bradbury Way); further identified on County Assessor's Tax Map 18-12-06AA as Tax Lots 1600, 1603, and 1604. It is roughly 11 acres in size.

**2. ZONING & GENERAL PLAN DESIGNATION:** The Subject Property is zoned Mixed Employment (ME) and is designated ME on the Bend Area General Plan map.

**3. SITE DESCRIPTION:** The "Subject Property" is comprised of Tax Lots 1600, 1603, and 1604 on Assessor's Tax Map 18-12-06AA and contains approximately 11.04

acres total. SW Bradbury Way (local), SW Simpson Avenue (minor arterial), SW Columbia Street (local), SW Shevlin-Hixon Drive (local), and SW Colorado Avenue (minor arterial) abut the Subject Property. A roundabout is located at the Simpson/Colorado intersection and the Columbia/ Simpson intersection is controlled with a 4-way stop. Tax Lot 1600 is presently vacant, Tax Lot 1604 is currently developed with a parking lot and some landscaping, and Tax Lot 1603 contains the former Mt. Bachelor Park and Ride facility, which is comprised of a parking lot, rain shelter, covered bike parking, outdoor lighting, and some landscaping.

**4. SURROUNDING LAND USES:** The surrounding properties are a variety of developed and undeveloped ME, Mixed Use Riverfront (MR), Light Industrial (IL), and Commercial Limited (CL) properties. The current Mt. Bachelor Park and Ride facility is located to the north of the Subject Property, and adjoins Tax Lot 1600. The property abutting Tax Lot 1604 to the northeast is owned by Brooks Resources, LLC and is undeveloped. Northeast of Tax Lot 1603 is the Shevlin Riverfront subdivision, which contains a mix of residential and office uses. Across Colorado Avenue to the east is the Shevlin Dental Center. Deschutes Brewery is located directly across the Simpson/Colorado roundabout from Tax Lot 1604 to the southeast. The Shevlin Corporate Park is located south of Simpson Avenue, and contains a range of businesses. To the west of Columbia Street are additional office buildings.

**5. REQUEST:** The applicants seek to modify the off-site improvement obligations / traffic mitigation requirements of File #PZ 06-570 (Ordinance No. NS-2105).

**6. BACKGROUND:** The Subject Property was originally owned by Proterra Bend II, LLC ("Proterra") who sought to construct a mixed used development on the Subject Property. Proterra obtained approval for a zone change and plan amendment to convert the Subject Property from IL to ME through NS-2105 (the "prior decision"). As is required by state law, the City analyzed Proterra's zone change/plan amendment proposal under OAR 660-012-0060, commonly referred to as the Transportation Planning Rule ("TPR"). The TPR requires local governments to evaluate whether the zone change/plan amendment will affect transportation facilities within a specified planning horizon based on a reasonable "worst-case scenario" of the development permitted under the proposed zone. If the worst-case scenario significantly affects a transportation facility, the local government must identify appropriate mitigation measures.

Upon first consideration, the Hearings Officer for PZ 06-570 determined that the Proterra proposal would impact transportation facilities under a worst-case scenario within the 2022 planning horizon. Moreover, she recommended that the application be denied because the proposed mitigation measures were insufficient. After further traffic analysis and discussion with the City, Proterra and the City came to an agreement on a package of off-site improvements, which included a single lane roundabout at the intersection of Simpson and Columbia. Based on the agreed upon improvements, the Hearings Officer recommended approval of the zone change / plan amendment in

PZ 06-570. The City adopted the Hearings Officer's findings through Ordinance No. NS-2105, and conditioned approval of the zone change/plan amendment on the construction of payment for the proposed off-site improvements. As is pertinent to this application (File #PZ 14-444), the required off-site improvements were to be completed prior to final occupancy of the development approved by the first site plan for the Subject Property. Proterra never pursued any development following the rezone, and Banner Bank foreclosed on the Subject Property in 2010. The Applicant subsequently purchased the Subject Property in 2011. On November 6, 2012, voters approved a bond measure to fund the development of public recreational facilities on the Subject Property. Specifically, Tax Lot 1604 is proposed to be developed with a multi-purpose recreation pavilion that features a seasonal ice rink (the "Pavilion"). The Applicant hopes to open the Pavilion by the fall of 2015. There are no current plans for Tax Lots 1600 and 1603, although a portion of Tax Lot 1603 may serve as occasional overflow parking for the Pavilion, if necessary.

Given that many of the off-site improvements required by File #PZ 06-570 (Ordinance NS-2105) have been completed and that the traffic demands of the Pavilion are substantially less than the demands of Proterra's worse-case scenario, the Applicant has requested the City to amend the conditions of approval for File #PZ 06-570 (Ordinance No. NS-2105). Namely, the Applicant requests that the City modify the required off-site improvements to allow the Applicant to obtain site plan approval and occupy the Pavilion without completing all of the off-site improvements required by Ordinance No. NS-2105.

Specifically, the Applicant has agreed to:

1. Provide a cash-in-lieu payment of \$98,000 to construct improvements at the Century Drive/Simpson Avenue roundabout to provide better emergency vehicle access. The City will complete the roundabout improvements as part of the 14th Street corridor improvements.
2. Install striping improvements at the intersection of Simpson Avenue/Columbia Street to improve intersection awareness and visibility in an effort to reduce crashes, and review the existing signage to determine if any modifications or replacements are required.
3. Provide a cash-in-lieu payment of \$83,000 to construct curb bulb-outs and rebuild ADA ramps along Columbia Street to provide traffic calming for the neighborhood and provide better pedestrian connectivity between the site and the neighborhood. These locations may include:
  - a. SW corner of Columbia Street/Albany Avenue: curb bulb-out with two ADA curb ramps;
  - b. NW corner of Columbia Street/Commerce Avenue: curb bulb-out with two ADA curb ramps; and
  - c. SW corner of Columbia Street/Commerce Avenue: two new ADA curb ramps.

4. Construct a roundabout at the intersection of Columbia Street/Simpson Avenue prior to occupancy of any additional development on the subject property other than the recreation pavilion on Parcel 3, and donate right-of-way to the City when the roundabout is constructed. (Note: The transportation system in the area around the subject property will be reevaluated as part of the Westside Transportation Growth Management (TGM) project. If the outcome of the TGM study supports further deferral of the roundabout, or other alternative mitigation measures, then the applicant can submit an application for another Modification of Approval.)
5. Contribute \$25,000 toward the funding of the Westside TGM project.

### III. APPLICATION OF THE CRITERIA:

#### 4.1.1325 Modification of Approval.

**A. An applicant may apply to modify an approval at any time after a period of 60 days has elapsed from the time a land use action approval becomes final.**

**FINDING:** The Hearings Officer's decision in File #PZ 06-570 was issued on January 25, 2008 and Ordinance No. NS-2105 was adopted on October 1, 2008. More than 60 days have elapsed from the time that these previous decisions became final.

**B. Unless otherwise specified this Code, the grounds for filing a modification shall be that a change in circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.**

**FINDING:** As described above, there has been a dramatic change in circumstances that render the proposed modification desirable. The original decision contemplated a worst-case scenario based on a private, large-scale mixed-use development project. The conceptual development plan analyzed by the City in PZ 06-570 / NS-2105 contemplated a total of 87,500 square feet of single-story building space consisting of 50,000 square feet of general office use, 15,000 square feet of medical office use, 5,000 square feet of bank use, and 17,500 square feet of restaurant use. A traffic impact analysis estimated that the worst-case scenario would generate 279 net new p.m. peak hour trips above the 190 p.m. peak hour trips predicted to be generated by IL development on the subject property by 2022.

The Subject Property is now in the ownership of a public entity (BPRD) and is proposed to be developed for public recreational facilities. Specifically, the Applicant is proposing a 28,800 square foot multi-purpose recreation pavilion with 10,755 square feet of supporting facilities (lobby, reception, concession, locker rooms, restrooms, equipment storage, and mechanical room). Accordingly, the traffic demand between the proposals of Proterra and the Applicant are considerably different, with the Applicant's proposal

being substantially less intense. Whereas the Proterra development is estimated to generate 469 p.m. peak hour trips in 2022, the Pavilion is estimated to generate 42 trips during the p.m. peak hour in 2013. Even with conservative estimates for growth during the planning period, the Pavilion will generate only a fraction of the traffic generated by the Proterra development. The Applicant's traffic study shows that even considering the traffic generated by OSU-Cascades, intersections within study area will continue to function in 2015 and 2020. Furthermore, analysis of a comparable facility in Klamath Falls, Oregon determined that the p.m. peak hour will likely occur between 6 and 7 p.m., and not during the typical peak hour of 5 to 6 p.m. during which traffic throughout the transportation system is at its worst.

While the Proterra conceptual development concerned all 11 acres, and the Pavilion will only occupy Tax Lot 1604, the Pavilion is the most intensive use of the Subject Property envisioned by the Applicant. Even if the Applicant were to construct three Pavilions, the traffic demand would be substantially less than that estimated for the conceptual Proterra development.

The required off-site improvements are cost prohibitive, and will prevent applicant from pursuing the Pavilion as currently designed to the community's expectation. Because the nature of the development proposed for the Subject Property is less intense and will not generate the same levels of traffic as the conceptual Proterra development, the City Council finds that it is desirable to modify the off-site improvements required by Ordinance No. NS-2105.

This proposed modification is not a substitute for an appeal because the Applicant is not challenging any of the off-site improvements required by Ordinance No. NS-2105. Although the Applicant's intended use of the Subject Property is substantially different than that conceived by Proterra, the prior decision only concerned a zone change/plan amendment, and not an actual development proposal. Accordingly, the proposed modification is not a substantially new proposal because the Applicant is not seeking a different type of zoning, general plan designation, or any other plan amendments. As the modification will not allow for different types of or intensities of uses, there will be no additional impacts on surrounding properties.

**C. An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposed or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in this section, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.**

**FINDING:** The Applicant seeks to modify a discrete aspect of the approval, that is, the scope and timing of required off-site improvements. Presently, all of the off-site

improvements must be completed prior to occupancy of the first site plan approved for the former Proterra property. Because the Applicant will develop the former Proterra property in stages, the Applicant proposes that the required off-site improvements be modified as previously described herein.

The Applicant is not requesting a modification to the type of zoning or general plan designation originally proposed, or to the improvements required by Ordinance No. NS-2105. Because there was no specific development plan submitted as part of the City's prior approval, the Applicant's requested modification will not have any additional impact on surrounding properties. Rather, there should be less impact as Applicant's intended use of the property is of a substantially lower intensity than that contemplated by PZ 06-570 / NS-2105. The proposed modification will not allow for development of a greater scope than what was allowed by the original decision because the modification only concerns the timing and scope of required off-site improvements.

The criteria that produced the conditions of approval are contained in the TPR, which the findings in NS-2105 erroneously asserted required concurrent development of required off-site improvements. The TPR only requires that allowed land uses be consistent with the identified function, capacity, and performance standards of the transportation facility measured at the end of the planning period identified in the jurisdiction's adopted Transportation System Plan (TSP). OAR 660-012-0060(2). Accordingly, the City can phase the required off-site improvements in any manner so desired, provided that transportation facilities affected by the Proterra zone change maintain function, capacity, and performance standards through the planning period. OAR 660-012-0060(2)(d). Because this modification by itself will not significantly impact any transportation facility, as it does not allow for more development than that contemplated by Ordinance No. NS-2105, and simply amends the timing and financing of the roundabout at Simpson/Columbia, no further TPR analysis is required. The Applicant's phasing proposal is therefore consistent with the TPR, and will ensure that the affected transportation facilities meet function, capacity, and performance standards through the planning period.

**D. An application for a modification of a Type I approval shall be processed as a Type I Application. All other modifications shall be processed as a Type II application unless elevated to a Type III process by the Community Development Director.**

**FINDING:** This application will be reviewed as a Type III quasi-judicial application.

**E. The effect, if any, of a modification upon the original approval time limitation shall be established in the modification decision.**

**FINDING:** Because the City Council's prior approval was a legislative change, there was no time limitation established by the prior decision.

**F. For modification of approval of a PUD or Master Planned Subdivision issued prior to the adoption of this ordinance, any proposed modification shall be subject to the criteria in Chapter 4.5.300.**

**FINDING:** This section of the Bend Development Code is not applicable.

**IV. CONCLUSION:**

The Applicant meets all of the applicable criteria for the requested Modification of Approval.