



Community Development Department

315 Kennel Ave/PO Box 248

Molalla, OR 97038

Phone 503.759.0205

www.cityofmolalla.com

AGENDA

Molalla Planning Commission

6:30 PM, May 1, 2024

Commission Chair Doug Eaglebear
Commissioner Clint Ancell
Commissioner David Potts
Commissioner Darci Lightner

Commission Vice-Chair Connie Sharp
Commissioner Martin Ornelas
Commissioner Brady Rickey

In accordance with House Bill 2560, the City of Molalla adheres to the following practices: Live-streaming of the Molalla Planning Commission Meetings are available on Facebook at "Molalla Planning Commission Meetings – LIVE" and "Molalla Planning Commission Meetings" on YouTube. Citizens can submit Public Comment in the following ways: attend the meeting, email support staff @ communityplanner@cityofmolalla.com by 12:00pm on the day of the meeting, or drop it off at the Civic Center, 315 Kennel Avenue.

I. CALL TO ORDER AND FLAG SALUTE

II. ROLL CALL

III. CONSENT AGENDA

A. Planning Commission Meeting Minutes- April 3, 2024

IV. PRESENTATIONS, PROCLAMATIONS, CEREMONIES

V. PUBLIC COMMENT & WRITTEN COMMUNICATIONS

Citizens are allowed up to 3 minutes to present information relevant to the city but not listed as an item on the agenda. Prior to speaking, citizens shall complete a comment form and deliver it to the support staff. The Planning Commission does not generally engage in dialog with those making comments but may refer the issue to the Community Development Director. Complaints shall first be addressed at the department level prior to addressing the Planning Commission.

VI. PUBLIC HEARINGS

VII. GENERAL BUSINESS

A. Training: Review of the Quasi-Judicial Process

B. Parks Survey and other Updates for Citywide Projects

VIII. STAFF COMMUNICATION

IX. COMMISSION COMMUNICATION

X. ADJOURN



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Planning Commission Meeting Minutes APRIL 3, 2024

The April 3, 2024, meeting of the Molalla Planning Commission was called to order by Chairperson Doug Eaglebear at 7:48pm, followed by the Flag Salute.

COMMISSIONER ATTENDANCE:

Commission Chair Doug Eaglebear – Present
Commissioner Connie Sharp - Absent
Commissioner Clint Ancell - Present
Commissioner Martin Ornelas – Present
Commissioner David Potts – Present
Commissioner Brady Rickey – Present
Commissioner Darci Lightner - Present

STAFF IN ATTENDANCE:

Mac Corthell, Asst City Manager - Present
Jessica Wirth, Comm Dev Tech - Present
Sam Miller, Engineering Sec Mngr – Present
Dan Zinder, Senior Planner – Present
Christie Teets, City Recorder - Present

CONSENT AGENDA

- A. Planning Commission Meeting minutes – March 6, 2024

ACTION:

Commissioner Ornelas moved to approve the Consent Agenda; Commissioner Ancell seconded. Motion passed 6-0.

AYES: Eaglebear, Ancell, Ornelas, Potts, Rickey, Lightner

NAYS: None

ABSTENTIONS: None

PRESENTATIONS, PROCLAMATIONS, CEREMONIES

None.

PUBLIC COMMENT & WRITTEN COMMUNICATIONS

None.

PUBLIC HEARINGS

- A. SDR05-2023 and CUP03-2023 – New Landscaping Use – Commercial PKWY Parcel 52E07D 01700

Senior Planner Zinder shared the staff report for the presentation of the Public Hearing. All items are included in the packet and all conditions have been met.

Commissioner Eaglebear opened the Public Hearing for SDR05-2023 and CUP03-2023 at 7:48pm.

Wendy Kellington, Kellington Law Group, provided commissioners with a detailed letter and explained her concerns.

(Letter attached to these meeting minutes.)

Commissioner Eaglebear closed the Public Hearing for SDR05-2023 and CUP03-2023 at 8:32pm.

GENERAL BUSINESS

Planning Commissioners welcomed Darci Lightner as the newest member.

STAFF COMMUNICATION

- Assistant City Manager Corthell informed commissioners the city does not have a permit for land use on property for the access point in question.
- Engineering Section Manager Miller verified the extension requirements stated in staff report.
- Senior Planner Zinder verified the statement in the staff report was 50ft with google maps.

COMMISSION COMMUNICATION

- Commissioner Eaglebear confirmed with Ornelas Wendy needing to do her homework on the options given in staff report regarding street access.
- Commissioner Ancell verified with Miller what was stated by Ms. Kellington was not ¼ mile.
- Commissioner Ornelas stated Ms. Kellington had not done the proper homework on alternative street access.
- Commissioner Potts had nothing to report.
- Commissioner Rickey had nothing to report.
- Commissioner Lightner had nothing to report.

ADJOURN

Commissioner Ornelas made a motion to adjourn the meeting at 8:52pm, seconded by Commissioner Potts. Motion passed unanimously.

PLANNING COMMISSION MEETING CAN BE VIEWED IN ITS ENTIRIETY HERE:

<https://www.youtube.com/watch?v=Lkx4vXD7wMQ>

Doug Eaglebear, Planning Commission Chair

Date

Attested by: _____
Mac Corthell, Assistant City Manager

Date

April 3, 2024

Via Electronic Mail
City of Molalla Planning Commission
117 N Molalla Ave,
Molalla, OR 97038

RE: Consolidated Site Design Review SDR05-2023 and CUP CUP03-2023

Dear Members of the Planning Commission:

This firm represents the applicant Dean Leasing LLC. Please include this letter in the record of the above referenced two consolidated matters.

First, we wish to thank the City and its professional planning staff for their courteous and diligent work with the applicant for this matter. Few local governments feature staff as open, courteous, and transparent with members of the public as yours. That work has resulted in a land use decision recommendation to you that has few areas of concern. But there are some concerns, and those are the purpose of this letter.

The hard work with the City has resulted in revised conditions of approval being suggested by staff, that we believe have been transmitted to you. To make sure we are all on the same page, those revised staff conditions are appended to this letter as Attachment A. The applicant has no quarrel with most of the proposed conditions. However, there are two that are of significant concern. The applicant's concerns stem from the fact that the two conditions would require hundreds of thousands of dollars in road improvements but under the proposal there are only a **total** of 10 am peak hour trips, 12 pm peak hour trips and a total of 53 average daily trips, spread between the two driveways. In other words, there are virtually no transportation impacts under the proposal and certainly none that can justify such onerous conditions.

Further, because Attachment A Condition 1a would limit the trips from the location of the existing gravel driveway to the south to "ingress" only, the number of trips at that driveway can be expected to be significantly less - maybe at best 5 am peak hour trips, no pm peak hour trips and perhaps 20 total average daily trips.

It is respectfully submitted that there is no proportionality between the proposal's minimal impacts and the two conditions of concern and similarly there is no essential nexus between those conditions and the problems that the approval standards are trying to solve. These are constitutional requirements that are a part of the "unconstitutional

conditions” doctrine. The “rough proportionality” requirement is also required by the City’s code:

PUBLIC FACILITIES

§ 17-3.6.010. Purpose and Applicability.

D. Public Improvement Requirement. *** Improvements required as a condition of development approval, when not voluntarily provided by the applicant, shall be roughly proportional to the impact of the development on public facilities. Findings in the development approval shall indicate how the required improvements directly relate to and are roughly proportional to the impact of development.

E. Limitations on Public Improvement Requirement. If the applicant asserts that it cannot legally be required, as a condition of building permit or site plan approval, to provide easements, dedications, or improvements at the level otherwise required by this section, then:

1. The building permit, site plan review, or appeal application shall include a rough proportionality report, prepared by a qualified civil or traffic engineer, as appropriate, showing:

a. The estimated extent, on a quantitative basis, to which the improvements will be used by persons served by the building or development, whether the use is for safety or for convenience;

b. The estimated level, on a quantitative basis, of improvements needed to meet the estimated extent of use by persons served by the building or development;

c. The estimated impact, on a quantitative basis, of the building or development on the public infrastructure system of which the improvements will be a part;

d. The estimated level, on a quantitative basis, of improvements needed to mitigate the estimated impact on the public infrastructure system; and

2. The applicant shall, instead, be required to provide easements, dedications, and improvements that are roughly proportional to what is needed for the safety or convenience of persons served by the building or development, plus those additional easements, dedications, and improvements that are roughly proportional to what is needed to mitigate the impact of the building or development on the public infrastructure system of which the improvements will be a part, if the impacts are not fully mitigated by the easements, dedications, and improvements needed for the safety or convenience of persons served by the building or development.

Respectfully, the City cannot make the City Code required “rough proportionality” findings. Therefore, the objectionable conditions should be removed by the planning commission.

The Conditions of Concern

The conditions of concern are:

- Attachment A Condition 1a (“The Applicant shall apply for a second access permit with the City for the new proposed approach at the southern portion of the site at time of submittal of PW Construction permit application. **Half street buildout of the undeveloped portion of Commercial PKWY in accordance with the Molalla TSP will be required in conjunction with access approval. Applicant may propose revised location for the proposed southern access subject to City approval. Improvements shall be required to the extent that proposed southern access location extends beyond the current edge of pavement.** If located within a half-street extension, the proposed southern access shall be ingress only until full buildout of the adjacent right-of-way is completed. Applicant shall provide onsite signage indicating the restriction of egress from the southern access.”)

and

- Attachment A, Condition 2c (“Applicant shall be required to construct street improvements to City standards consistent with the Transportation System Plan adopted cross section for half street improvements or provide a Waiver of Remonstrance.”)

With respect to proposed **Attachment A, Condition 1a**, the applicant has no objection to paving the driveway. The issue is with the half street improvement demands of the proposed condition. To be certain, moving the existing gravel driveway to align with the driveway across the street seems at first like an easy enough alternative to the requirement to build a half street improvement on the underdeveloped part of Commercial Parkway, such that the requirement to build a half street may be avoided altogether. But, the issue is that it may not be feasible to move the existing gravel driveway to align with the driveway for the property across the street. This is because there is major electric and telecommunications infrastructure at that location at the subject property that may not be possible to move or may only be moved at significant expense. That means that we do have to talk about the alternative requirement in the condition requiring a half street improvement that even after its construction would only allow “ingress” into the site from that location.

The law requires the City to carry a burden to demonstrate that its proposed conditions of approval are roughly proportional to the impacts of the proposed development. This comes from a United States Supreme Court case called *Dolan v. City of Tigard*, 512 US 374 (1994). There have been plenty of Oregon state cases that have applied and followed Dolan since it was decided. See *McClure v., City of Springfield*, 175 Or App 425 (2001). As noted above, this is also a requirement in the City’s Code.

Respectfully, that demonstration of rough proportionality cannot be made in this case for the two conditions of concern and has not been made here. Attachment A Condition 1a would require the applicant to construct a half street improvements to the underdeveloped part of Commercial Parkway for the entire length of the applicant's property that adjoins the underdeveloped part of Commercial Parkway, which is a significant distance. That condition would also require that the half street improvement be developed to current TSP standards. These requirements as demands in exchange for the applicant being granted city approval to use the property as the applicant seeks and as the prior owner used it (to include both driveways on the property) do not pass legal muster. It is even worse for the applicant here, because the condition seeks to limit this applicant's use of the half street they would be required to build, to "ingress" only. There was no such limitation for the prior owner. The City cannot meet its burden to show rough proportionality to require the Applicant to build a half street.

As noted, the existing gravel driveway to the south was used by the prior owner of the subject property for his nearly identical use to the applicant's proposed use- the prior owner used the subject 1.9 acres to store vehicles and equipment and accessed his property from both accesses on the property. He was also not limited to "ingress only". As noted above, if limited to "ingress only, the trips associated with that driveway will be extremely small – perhaps 5 am peak hour trips and perhaps at most 20 average daily trips. That is hardly enough to justify requiring the applicant to spend hundreds of thousands of dollars to build the half street for the significant area the condition would require of the underdeveloped Portion of Commercial Parkway. But regardless of "ingress only" or otherwise, the requirement that the applicant construct a half street on the underdeveloped part of Commercial Parkway cannot meet the required rough proportionality test given the applicant's minimal trips and that the applicant's trips are akin to those that were accommodated by the prior owner and use.

The law also requires the City show that there is an essential nexus between its approval standards (and the problems that its approval standards are trying to solve, and the conditions to be imposed. This comes from a United States Supreme Court case called *Nollan v. California Coastal Commission*, 483 US 825 (1987). Here, again, and respectfully, the City cannot make that showing for App A, Condition 1a. First, there is no known approval standard that would justify the condition in the first place. Nothing in MCC 17-3.3.30 applicable to the site plan approval, requires or justifies the condition. Similarly, there is nothing in the CUP criteria in MCC 17-4.040 that would justify the condition either. The street system is more than adequate for the proposal. There is adequate capacity in the City street system, there are no safety deficiencies, there is adequate site distance at the affected Commercial Parkway and Main Street intersection. The proposal does not worsen any transportation related interest of the City. The applicant will pave their driveway.

The planning commission should remove proposed App 1, Condition 1a.

With respect to proposed Attachment A, Condition 2c, it too cannot pass legal muster. First, this condition is impermissibly unclear - it is next to impossible to know how vast a half street improvement is required. But it appears to require the applicant to reconstruct all of Commercial Parkway with “half street improvements” to including giving up its property to do so, to enable Commercial Parkway to meet the City’s current TSP standards.

Recall that the City constructed Commercial Parkway to the standards the City identified and that the City decided applied. Further recall that the City entered into a “Dedication Agreement” with the applicant’s predecessor that required in exchange for the applicant’s predecessor dedicating to the City significant quantity of its land for Commercial Parkway right of way, that the City would construct Commercial Parkway and would install water, sewer, stormwater, and sidewalks on Commercial. The proposed condition seeks to impermissibly shift that responsibility to the applicant here.

The applicant here is the assignee of the prior owner’s interest in that Agreement and is a party to that Agreement. The applicant cannot and does not waive its rights under that Agreement to the City’s agreed upon performance. That means that the City is obliged to construct Commercial Parkway including to reconstruct it if it wants, but the City does not have any entitlement to applicant’s land to do so or any right to require the Applicant to make those improvements, to include sidewalks, sewer, water, and stormwater infrastructure.

Further, there is certainly no proportionality between that proposed condition and the minimal transportation impacts of the proposed development. The applicant already has an access driveway to the improved portion of Commercial Parkway, and there is adequate capacity in Commercial Parkway for the applicant’s minimal trips and there are no sight distance, safety or other transportation issues at that driveway or at the intersection with Main Street. Respectfully, the City cannot meet the unconstitutional conditions doctrine requirements for rough proportionality or an essential nexus for the disputed conditions and cannot meet City code requirements for the City to demonstrate rough proportionality. The alternative requirement for a “waiver of remonstrance” is also subject to the requirement of rough proportionality and the required City showing for that alternative to a half street improvement has not and cannot be made here either. The problem is that the costs associated with redoing Commercial Parkway – either as a half street or otherwise -- are in the hundreds of thousands of dollars. A “non remonstrance agreement” means that the applicant would be foreclosed from objecting to the share of those costs that the City decided to allocate to it. Which could be and would be substantial.

It is respectfully submitted that App A, Condition 2c does not meet either the requirement for rough proportionality or for an essential nexus to an approval standard and

therefore, it must be removed.

Thank you for your time and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wendie L. Kellington". The signature is fluid and cursive, with the first name "Wendie" being more prominent.

Wendie L. Kellington

WLK:wlk
Attachment A
CC: Clients



CITY OF MOLALLA

117 N. Molalla Avenue
PO Box 248
Molalla, OR 97038

Staff Report

Agenda Category: General Business

Agenda Date 5/01/2024

From: Dan Zinder

Approved by: Mac Corthell

SUBJECT: Parks Survey and other Updates for Citywide Projects

FISCAL IMPACT: None

RECOMMENDATION/RECOMMEND MOTION: Spread the word on the Parks Survey

BACKGROUND: The City is currently working on several long range planning projects include the Parks Master Plan, Economic Opportunities Analysis, and Urban Growth Boundary studies. Currently, the City has public participation surveys for the Parks Master Plan located on the Molalla Current and we need help getting the word out to increase participation.



Share your ideas for Molalla parks, recreation, and trails



The City of Molalla is creating a **new Parks, Recreation & Trails System Plan**, which will prioritize improvements and guide long-term funding and partnership decisions, starting later this year!

But first, the City needs to understand **what YOU** — and Molalla community members of all ages, abilities, and backgrounds — **want and need!**

TAKE THE SURVEY

Scan the QR code with your phone.

Or visit: <https://Current.CityofMolalla.com/Parks-Trails-Master-Plan-Update>



CHAT WITH US AT EVENTS



Molalla Farmers Market
Thursday, May 30th, 2 – 6 p.m.
Molalla River Brewing Co. (180 Industrial Way)



Music in the Park
Tuesday, June 18th, 6 – 8 p.m.
Fox Park (425 S Molalla Ave.)

Learn more: <https://Current.CityofMolalla.com/Parks-Trails-Master-Plan-Update>





¿Qué quiere para los parques y la recreación de Molalla?



La ciudad de Molalla está creando un **nuevo Plan del Sistema de Parques, Recreación y Senderos**, que priorizará los mejoramientos y orientará las decisiones de asociación y financiación a largo plazo, ¡a partir de finales de este año!

Pero primero, la ciudad necesita comprender **lo que USTED** — y los miembros de la comunidad de todas las edades, habilidades y orígenes — **quieren y necesitan**.

TAKE THE SURVEY

Escanea el código QR con tu teléfono.

O visite: <https://Current.CityOfMolalla.com/Embeds/Projects/22468/Survey-Tools/21279>



COMPARTA EN EVENTOS



Molalla mercado de agricultores
Jueves, 30 de mayo, de 3–7 por la tarde
Molalla River Brewing Co. (180 Industrial Way)



Música en el parque
Martes, 18 de junio, de 6–7:30 de la noche
Parque Fox (425 S Molalla Ave.)

Aprende más: <https://Current.CityofMolalla.com/Parks-Trails-Master-Plan-Update>

