Appeal, Staff Report and Recommendation to the Hearing Examiner

Project Name: Skyview Station Appeal

Case Number: APD2019-00001

Location: 13909 NE 10th Avenue, Parcels 185727 & 185726 in Southwest Quarter of Sections 23, Township 3, Range 1 east of the Willamette Meridian

Appellant: Miller Nash Graham & Dunn LLP
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Date of notice: May 1, 2019

Hearing Examiner: Joe Turner

Neighborhood contact: North Salmon Creek - North Salmon Creek Neighborhood Council, E-mail - nscna+president@salmoncreeklive.com

Public hearing date: May 23, 2019

Recommendation
Uphold Land Use Manager’s Determination
Manager’s Initials: Date issued: May 8, 2019

County Review Staff

<table>
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Revised 5/4/19

For an alternate format, contact the Clark County ADA Compliance Office.
Phone: 564.397.2322
Relay: 711 or 800.833.6384
E-mail: ADA@clark.wa.gov
Zoning: GC
Comp plan GC

Applicable Laws:
Clark County Code: 15 (Fire Prevention), 40.230.010 (Commercial Districts), 40.320 (Landscaping), 40.340 (Parking), 40.350 (Transportation), 40.350.020 (Transportation Concurrency), 40.360 (Solid Waste), 40.380 (Stormwater & Erosion Control), 40.440 (Wetlands), 40.500 & 40.510 (Procedures), 40.520.040 (Site Plan Review), 40.540.030 (Short Plats); 40.550 (Road Modifications), 40.570 (SEPA), 40.570.080 (SEPA Archaeological), 40.610 (Impact Fees), 24 (Public Health), and the Clark County Comprehensive Plan

Project description
Appeal approval of site plan (PSR2018-00036)

Background
On November 19, 2018, the applicant received a fully complete determination for the Skyview Station commercial development site plan review to construct eight commercial buildings including a drive-through restaurant, a drive-through bank, and other retail buildings totaling almost 80,000 square feet of building area in eight phases. The subject site plan was approved on March 4, 2019.

On March 13, 2019, LeAnne Bremer representing Hurley Development, LLC filed the appeal of the Skyview Station site plan (PSR2018-00036). Denial of road modification, and several other transportation related requirements were included in the appeal (see appeal letter - Exhibit 24)

Appeal issues and staff response

Issue #1
"TIFs should be calculated based on the shopping center category (ITE Land Use Code 820), rather than for each individual building, according to an accepted methodology in the County’s TIF program, and past County practice for similar developments, and consistent with the applicant’s methodology contained in the TIS. Staff failed to note a credit is available for existing/prior uses on the site.” “...In addition, there are a number of other items in the Decision that we wish to highlight or that need correction:” “We are unable to duplicate all of the County’s TIF estimate on page 11. Details of the TIF calculations should be provided.” excerpts from Letter dated March 11, 2019 prepared by Miller Nash Graham & Dunn LLP.

Response to issue #1
CCC 40.630.030(B) states “If the development for which approval is sought contains a mix of uses, the impact fee must be separately calculated for each type of use.” The applicant’s development plan listed a number of separate structures each with a different use. Because of this, traffic impact fees (TIF) will be calculated per building and based on the specific use.

The applicant has cited a 2008 site plan review as evidence to the justification of calculating TIF under one land use category. Gaither Commercial Center (PSR2008-00016) was a development request for site plan approval to consist of six one-story commercial buildings totaling 174,640 square feet.
This staff report included a TIF total for the proposed six structures specifically called out as “Buildings A, B, D, E, F, G – 171,958 SF”. However, in compliance with CCC 40.630.040(A) which states, “The impact fee imposed under this chapter shall be due and payable at the time of issuance of a building permit... for the development. ...”, the county’s TIF calculation used the specific building square footage and land use for each proposed structure and summed the amount to achieve the TIF amount reported in PSR2008-00016.

County practice in 2008 used this methodology which allowed a builder to pick up a specific building permit and only pay TIF assessed against that structure. This methodology also allowed staff to track the amount paid, what buildings and the associated TIF that was remaining.

Since 2008, the TIF districts, TIF rates, and the TIF code language have changed, but the calculation methodology for developments has not.

The following are TIF calculation estimates based on the current TIF rate, (4/1/19), in the Mt. Vista TIF District (the then current TIF rate at the time of building permit issuance will be used to assess TIF, as required by CCC 40.610.040):

Given:
Mt. Vista TIF District Rate per Average Daily Trip (ADT): $605/ADT
Tax Increment = 0.85 (constant in all TIF Districts)
Business Enhancement Factor (BEF) = 0.7 (0.7 multiplier used typically for retail development)
Unit of Measure: 1,000 Square Feet

Formula:
(Development Size/Unit of measure) x Tax Increment x BEF x Pass By x Rate per unit of measure x $ per ADT = TIF Assessment ESTIMATE
### Proposed Use*

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<tr>
<th>Proposed Use</th>
<th>LUC</th>
<th>Size (SF)</th>
<th>Trip Rate</th>
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<th>Estimated TIF</th>
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Unadjusted Total TIF Estimate $2,186,515.27

### Existing Use****

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Total TIF Reduction Estimate for Existing Uses $47,907.53

Adjusted Total TIF Estimate**** $2,138,607.74

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*Proposed Uses are based on the applicant’s submitted site plan and the submitted Traffic Impact Study, prepared by Mackenzie and dated October 31, 2018, Appendix I – Traffic Impact Fee Calculations Table Fully Disaggregated Using Clark County Rates.

**The applicant’s Traffic Study Appendix I – Traffic Impact Fee Calculations Table Fully Disaggregated Using Clark County Rates had used ITE LUC 880 Pharmacy without drive through for trip generation and pass by rates. Staff used ITE LUC 881 Pharmacy w/DT, as represented in the applicant’s table on the applicant’s proposed site plan, to estimate trip generation and pass by rates.

***The applicant's TIF calculation for Retail F was broken into 2 different land uses even though it is proposed as a one-story 7,200 square foot single building structure. Because of the proposed use that has a high trip generation rate and the inability to require additional TIF assessments after the initial building permit has been acquired, county practice is to assess TIF for the square footage of the full structure at the highest and best use.

****Existing Uses were based on the Transportation Impact Study prepared by Kittelson & Associates, Inc. dated November 27, 2017.

*****The TIF estimates are based on the current TIF rates for the Mt. Vista TIF District effective 4/1/19. TIF will be assessed at the time of building permit issuance. TIF assessments will be based on the then current TIF rate for the Mt. Vista TIF District.

### Issue #2

"Denial of Road Modification for right-out access on NE 139th Street - Staff's sole justification for denying the right-out is because of its unsupported view that “all outbound development trips would be better served at signalized intersections.” The applicant's evidence, on the other hand, demonstrates that the right-out movement benefits the transportation system by reducing the left turns out of the site on NE 10th, providing for more green time to through traffic on NE 10th where the right-turn lane southbound on 10th would have less queuing and blocking of through lanes. Staff’s engineering findings on page 12 claim a “majority” of the 39 vehicles utilizing the right-out would turn left, but Figure 13B in the TIA clearly shows only 11 of the 39 trips will do so.” excerpt from Letter dated March 11, 2019 prepared by Miller Nash Graham & Dunn LLP.

### Response to issue #2

The applicant’s argument, that staff’s sole justification is based on an unsupported view, failed to acknowledge staff’s analysis that evaluated safety and mobility of the traveling public to arrive at a recommendation of denial.

The finding that staff presented in the subject staff report that helped justify a denial recommendation, states “... the traffic study shows that out of approximately 200 PM peak hour trips leaving the site only 39 would be using the southbound right-out and a majority of those outbound right turns onto NE 139th Street, are turning left at the intersection with NE..."
10th Avenue. Because a majority of southbound right-turning vehicles are trying to cross multiple lanes of traffic to get in the far left-turning lane, the number of conflict points increases and the potential for crashes also increases. As previously mentioned, the applicant’s traffic study has indicated that the intersections and corridors analyzed operate at an acceptable LOS, all of the outbound trips would be better served at those locations. ...”. Based on the applicant’s traffic study that showed that the study area intersections and corridors operate at an acceptable level-of-service (LOS), the county did not see the benefit to the traveling public by increasing the potential for safety issues, for reducing the number of left turning vehicles out of the subject site, onto NE 10th Avenue, by 39 vehicles.

The applicant’s reference to Figure 13B in the TIA showing 11 of the 39 trips as not being a majority of trips is not a full picture of how the impact to the intersection is reported. The applicant’s reporting, “...the TIF clearly shows only 11 of 39 trips” scenario creates a large discrepancy in the trip volumes shown entering the intersection of NE 139th Street/NE 10th Avenue, 16 vehicle trips to be exact.

As shown in Figure 13 B of the TIA prepared by Mackenzie dated October 31, 2018, under the NE 139th Street Site Access Alternative Right-in/Right-out intersections numbered 11 and 12, number 12 shows that 16 vehicles will be removed from the NE 139th Street westbound direction to enter the subject site at the right-in access location. The removal of the 16 vehicles from the NE 139th Street westbound direction will no longer impact the intersection of NE 139th Street/NE 10th Avenue (number 11) at the same time the 39 southbound to westbound vehicles leaving the subject site. Because of this, the 16 inbound vehicles are subtracted from the 39 outbound vehicles to achieve the site generated trip impact on the intersection. Therefore, based on the site generated trip impact on the intersection, as reported in the applicant’s traffic study, staff found that a majority of the outbound trips would be crossing multiple lanes to get to the far-left lane. The majority being 11 westbound to southbound left turning vehicles of the 23 site generated vehicles impacting the intersection of NE 139th Street/NE 10th Avenue.

Issue #3
“Requirement to dedicate and construct an east-west public road or establish a non-exclusive easement - There are no adopted road plans that show a public road through the site; The road or easement would not connect to any off-site road or easement that would ensure cross-circulation; meeting the standard would be grossly disproportionate to impacts of the development and would have an adverse environmental impact; WSDOT would require addition dedication and improvements for additional traffic on to NE 139th; benefitting an adjacent property owner who would not share in the covenant mitigation measures it is otherwise subject to is grossly unfair; the cost to comply would be upwards of $1,500,000; and prevailing case law prohibits a public road or easement condition to benefit a private party.” excerpt from Letter dated March 11, 2019 prepared by Miller Nash Graham & Dunn LLP.

Response to issue #3
Per CCC 40.350.030(B)(2) the applicant is required to address area circulation to show that circulation will be provided in a manner that meets circulation standards and, where possible, that will allow subsequent developments to meet these standards. Application of the circulation code is not dependent on whether there is an adopted road plan rather that the development show how area circulation is in compliance.
The applicant is proposing to construct a fourth leg to the intersection of NE 141st Street/NE 10th Avenue. The applicant has also proposed to signalize the intersection to comply with a mitigation component of the Concomitant Rezone Agreement associated with/attached to the subject parcels being developed. As discussed in staff’s evaluation of the applicant’s road modification request to deviate from block length and block perimeter length, there are no east-west connection opportunities north of the subject site between the subject site and NE 179th Street. However, construction of an east-west road between NE 10th Avenue and NE 16th Avenue would comply with block length and reduce the block perimeter in the immediate area to more nearly comply with county code.

The applicant’s road modification request dated February 15, 2019 prepared by Mackenzie, claimed that a public road constructed within the subject site for the purpose of circulation would:

a. Have “development costs that are neither proportionate to nor sustainable by the proposed development”
b. Have “adverse environmental impacts”;
c. Have “practical and engineering impacts that all parties wish to avoid”;
d. Have “An unreasonable economic impact...imposed on the development due to involvement with WSDOT regarding the adjacent highway structure and costs associated with the proposed access on NE 139th Avenue”; and,
e. Be prohibited by prevailing case law.

The applicant’s engineer used these claims to justify the deviation to circulation requirements. However as a part of the road modification submittal, the applicant’s justification did not provide information to substantiate how compliance with the county’s circulation code would not be proportionate, sustainable or prohibited by prevailing case law. Further, the applicant did not provide evidence that compliance with the circulation code would cause adverse environmental impacts.

The applicant’s remaining justifications regarding practical and engineering impacts and an unreasonable economic impact due to costs associated with proposed access on NE 139th Avenue were not a component of consideration. The practical, engineering, and economic impacts are a result of a deviation request for access onto an arterial when a lessor classified road is available. Based on the information provided in the traffic study, the public road network is not dependent on the proposed NE 139th Street right-in/right-out access to operate at acceptable levels. Therefore, it cannot be assumed that the related costs due to meeting the county’s circulation requirements are a hardship. Furthermore, as stated in the issued staff report, in lieu of constructing a public road, the applicant may volunteer a non-exclusive access easement through the subject development site for future cross-connection between NE 10th Avenue and NE 16th Avenue. This will require only slight revision to the proposed site plan while meeting the intent of the circulation plan.

Issue #4
"Deviation from driveway spacing requirements deemed unnecessary because denial of right-out. Finding based on erroneous decision to deny right-out onto NE 139th Street. If right-out approved in this appeal, decision on driveway spacing deviation needed consistent with applicant’s road modification request" excerpt from Letter dated March 11, 2019 prepared by Miller Nash Graham & Dunn LLP.
Response to issue #4
See Response to Issue #3 for staff's discussion regarding the applicant’s claim that the county made an “erroneous decision to deny right-out onto NE 139 th Street.”

Regarding the need for a road modification to deviate from the county’s requirement for driveway spacing if the proposed right-out onto NE 139 th Street is approved in this appeal, staff concurs with the applicant’s finding. A road modification would need to be submitted for review.

However, based on the safety and mobility benefit evaluation discussed in the subject staff report and the Response to Issue #3 above, staff concluded that because of the recommendation of right-in only access from NE 139 th Street into the site, the driveway spacing requirement was not needed to ensure minimized opposing turning movement conflict points and maximized safety of the traveling public.

Issue #5
"Requirement for dual southbound left-turn lanes at NE 10 th Avenue - The Concomitant Rezone Covenant allows one of two options to satisfy impacts to the NE 10 th and NE 139 th Street intersection. According the traffic analysis accepted by the County, both options meet County standards. The applicant prefers Option 2 because of a lesser impact and cost where Option 1 may require modifications to the south leg of the intersection to align the northbound through lane. Because Option 2 meets County standards, The County cannot condition the project on providing Option 1. The County requires option 1 because of what may happen operationally in the future and not based on impacts of this project.” excerpt from Letter dated March 11, 2019 prepared by Miller Nash Graham & Dunn LLP.

Response to issue #5
The Concomitant Rezone Agreement does identify two options but it does not prevent or limit mitigation measures that may be required by Clark County as part of the development review process. Staff reviewed the applicant’s evaluation of the two options, as a part of the development review process, and found that although both options reported an overall intersection LOS that complies with the concurrency code, the applicant’s traffic study stated that “…the double left-turn lane option performs better.”

In order to understand the differences between the two options, evaluated along with the impacts from the proposed development, staff used the applicant’s evaluation to review the intersection approaches and the associated movements within the approach for LOS and capacity. As discussed in the subject staff report, the evaluation of the individual movements on approach to the intersection of NE 10 th Avenue/NE 139 th Street for both options and as a part of the impacts of the proposed development revealed that the LOS and capacity of the approach movements is diminished with the split phase option. Because the LOS and capacity is diminished due to development impacts along with the split phase signal timing option, the efficiency and mobility of this intersection is reduced.

Therefore, the county concluded that in order to mitigate the impacts of the proposed Skyview Station development, facilitate maintaining the operational efficiency of the NE 10 th Avenue/NE 139 th Street intersection, and reduce the transportation impacts to the adjacent properties with future road projects, construction of the option that includes dual southbound left-turn lanes and the westbound right-turn lane shall be implemented.
Issue #6
"Condition A-1.b.1-4 (right-in access only)" excerpt from Letter dated March 11, 2019 prepared by Miller Nash Graham & Dunn LLP.

Response to issue #6
These conditions of approval are design requirements for the right-in only access from NE 139th Street into the development site as determined by the findings from the road modification request. These design requirements do not have anything to do with the applicant’s appeal of the road modification request denial of a right-out access onto NE 139th Street. Because of this, staff does not know what the applicant is contesting or how to respond. Staff requests the examiner allow staff to respond if the applicant provides additional information on this issue.

Issue #7
"Condition A1.f (cross-circulation)" excerpt from Letter dated March 11, 2019 prepared by Miller Nash Graham & Dunn LLP.

Response to issue #7
This condition of approval requires the submittal of construction plans and outlines the design requirements for compliance with the county’s circulation code requirements. This condition was a result of a road modification denial that requested deviation from the county’s circulation code regarding block length and block perimeter length. See discussion under Response to issue #4, above.

Issue #8
"Condition A-1.g (dual southbound left-turn lanes)" excerpt from Letter dated March 11, 2019 prepared by Miller Nash Graham & Dunn LLP.

Response to issue #8
This condition of approval requires the submittal of construction plans and outlines the design requirements for construction of a Concomitant Rezone Agreement mitigation requirement. This condition was a result of findings presented in the applicant’s analysis that showed the dual southbound left-turn lanes option mitigated the development impacts and facilitated maintaining the operational efficiency at the intersection of NE 10th Avenue/NE 139th Street. See discussion under Response to issue #6, above.

Issue #9
"Condition E-1 (comply with Concomitant Rezone Agreement (5170404 AGR))” “Mitigation measures in Concomitant Rezone Agreement include alternatives; only alternatives proposed by the applicant, or decided in this appeal should be applicable, not all measures” excerpt from Letter dated March 11, 2019 prepared by Miller Nash Graham & Dunn LLP.

Response to issue #9
Condition of Approval E-1 establishes the development timing for when the mitigations identified in the Concomitant Rezone Agreement (5170404 AGR) need to be completed. The Concomitant Rezone Agreement conditioned that the “Properties” (185796-000; 185700-000; 185672-000; 185726-000; and 185727-000) have the following transportation mitigations be in place prior to building permit issuance:
a. A westbound right-turn lane on NE 139th Street at NE 10th Avenue with an overlap phase;
b. Modify the southbound NE 10th Avenue approach to NE 139th Street to provide either: (1) a second southbound left-turn lane; or (2) a shared through-left center lane (converted from the existing though only lane) and split phasing with the northbound approach;
c. Modify the southbound NE 23rd Avenue approach to NE 134th Street to provide either; (1) a shared left-right lane (converted from the existing left only lane) with the existing exclusive right turn lane; or (2) an overlap phase for the existing right-turn lane;
d. Install a traffic control device at the site access to NE 10th Avenue opposite NE 141st Street: either a traffic signal or a roundabout; and,
e. Modify the northbound NE 10th Avenue between NE 139th Street and the site access to include turn lane for the entire street segment.”

Although there are mitigations that have alternatives that could be implemented, the Concomitant Rezone Agreement does not provide flexibility to deviate from the required mitigation nor does it allow the applicant the sole ability to choose the mitigation alternative. Therefore whatever the outcome of this appeal, the applicant shall show compliance with the conditions as shown in the Concomitant Rezone Agreement.

**Issue #10**

“In addition, there are a number of other items in the Decision that we wish to highlight or that need correction:

a. The Concomitant Rezone Agreement did not allow the rezoning, but instead removed the trip cap (page 7).
b. We are unable to duplicate all of the County’s TIF estimate on page 11. Details of the TIF calculations should be provided.
c. Please note that for conditions C-2 and D-6, there will no longer be buffers on the site.
d. The TIF waiver program no longer applies (E-3 page 16).
e. Staff’s evaluation of the road modification request for access to 139th incorrectly states on page 11 that the Appellant uses the volume thresholds in CCC 40.350.030(B)(4)(d)(i)(b) as justification for access. Even though this access is approved, we believe the record should be accurate.
f. Page 12 of the engineering comments has the incorrect statement “majority of those outbound right turns”, noted above, and the unsubstantiated stated that denying the right-out onto NE 139th would be “better served at signalized intersection.” excerpt from Letter dated March 11, 2019 prepared by Miller Nash Graham & Dunn LLP.

**Response to issue #10**

Staff will address each of the applicant’s bullet points individually.

- “The Concomitant Rezone Agreement did not allow the rezoning, but instead removed the trip cap (page 7).”

Staff acknowledges the error and concurs with the applicant’s statement. CPZ2008-00022 NE 139th Street established the zone change with a trip cap. In 2015, the trip cap was removed with the Concomitant Rezone Agreement that established transportation mitigations.
• "We are unable to duplicate all of the County’s TIF estimate on page 11. Details of the TIF calculations should be provided."

This topic is discussed above. See Response to issue #1.

• "Please note that for conditions C-2 and D-6, there will no longer be buffers on the site."

Staff generally agrees with the applicant, but notes that final approval from the US Army Corps of Engineers has not been granted for the wetland/buffer fill. The condition should remain until the final approval from the US Army Corps is granted.

• "The TIF waiver program no longer applies (E-3 page 16)."

Staff acknowledges the discrepancy between Finding 21 and condition E-3 with regard to the statement "This project is under the TIF waiver program." Staff concurs with the applicant’s finding that the TIF waiver program is no longer available and does not apply to this project.

• "Staff's evaluation of the road modification request for access to 139th incorrectly states on page 11 that the Appellant uses the volume thresholds in CCC 40.350.030(B)(4)(d)(1)(b) as justification for access. Even though this access is approved, we believe the record should be accurate."

In the applicant’s road modification request letter dated January 18, 2019 (Revised January 21, 2019) prepared by Mackenzie, on page 2 and the first bullet point under the heading Justification, it states "Per CCC 40.350.030(B)(4)(d)(1)(b), “the number of driveways and driveway lanes on arterials shall be based upon an estimate of site traffic generation in accordance with Table 40.350.030-6” This table shows that sites generating more than 2,000 daily trips can have an additional driveway on a minor arterial. This criterion is met by the proposed project."

As discussed in the subject staff report, staff highlights the applicant’s justification to note that their interpretation of the code section was incorrect. The ability to access an arterial classified roadway is not dependent on the number of vehicles generated by the site when there is the opportunity for access on a lessor classified roadway.

• "Page 12 of the engineering comments has the incorrect statement “majority of those outbound right turns”, noted above, and the unsubstantiated stated that denying the right-out onto NE 139th would be “better served at signalized intersection.”"

This topic is discussed above. See Response to issue #3.

**Conclusion**

Development engineering staff, based on finding above, recommends denial of the appeal.
Recommendation
Based on the above findings and information in the record, the Development Engineering and Land Use Managers recommend the Hearings Examiner DENY the appeal and uphold the site plan approval.

Attachments
Proposed Site Plan