

**RESOLUTION NO. 2456  
AND ORDER**

**RESOLUTION TO ISSUE AN ORDER BY THE CITY COUNCIL APPROVING THE APPEAL OF THE STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW, AND MASTER SIGN PLAN REVISION AND SIGN WAIVER OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95<sup>TH</sup> AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. APPLICANT/ APPELLANT/OWNER WILSONVILLE DEVCO, LLC. APPLICATION NOS. DB 13-0046, DB 13-0047, AND DB 13-0048.**

WHEREAS, City Council received a timely filed appeal from Appellant/Applicant Wilsonville Devco LLC of the decision of the Development Review Board, Panel A (“DRB”), denying the above captioned project applications (“Applications”) made pursuant to Wilsonville City Code 4.022(.02), following a denial of said Applications at the public hearing held on February 2014; and

WHEREAS, after granting the Appeal at a public meeting held on March 3, 2014, setting the date for public hearing of the appeal for March 17, 2014, and limiting the record on appeal to evidence already in the DRB record and limited new evidence and testimony relating only to on-site traffic congestion; adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation, inclusive of delivery vehicles and other larger format vehicles; and Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C of the Wilsonville City Code requirements; and

WHEREAS, having conducted the appeal hearing and having reviewed all of the evidence in the DRB record, including DRB member reasoning and findings for denial or approval; and having heard new evidence, as allowed, from both the Appellant/Applicant and opponents to the Applications at the appeal hearing; and

WHEREAS, having considered all of the foregoing evidence and following all applicable requirements of the Wilsonville Development Code pertaining to the Applications and appeal, the City Council hereby orders as follows:

1. The City Council hereby orders that the decision of the DRB on the above referenced Applications is hereby reversed and the Applications approved, adopting the Findings of Fact, Conclusions of Law and Decision of City Council,

rendered on April 17, 2014, attached hereto as **Exhibit A** and incorporated by reference herein.

2. City Council authorizes City staff to implement this Order as directed by the Findings of Fact, Determinations and Conclusions.
3. This Order is subject to the rights of appeal, as set forth in Oregon law. If you desire to appeal this decision to the Oregon Land Use Board of Appeals you must make application stating the grounds for appeal with the Land Use Board of Appeals, as proscribed by State law and within the timeframe proscribed by State Law.

IT IS HEREBY ORDERED by the Wilsonville City Council at a regular meeting thereof this 21<sup>st</sup> day of April, 2014, to be effective immediately and filed with the Wilsonville City Recorder on this date.

  
TIM KNAPP, MAYOR

ATTEST:

  
Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Abstain
Councilor Goddard	Abstain
Councilor Fitzgerald	Yes
Councilor Stevens	Yes

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION BY  
CITY COUNCIL RENDERED ON APRIL 17, 2014

*Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk*

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**APPEAL HEARING DATE**            March 17, 2014

**APPLICATION NOS.:**        DB13-0046 Stage II Final Plan Revision  
                                      DB13-0047 Site Design Review  
                                      DB13-0048 Master Sign Plan Revision and Sign Waiver

**REQUEST/SUMMARY:** The Applicant appealed the decision of the Development Review Board (“DRB”) denying its request for a revised Stage II Final Plan, Site Design Review, and revised Master Sign Plan for the development of a new 450 square foot drive-thru coffee shop to replace an approved but un-built 3,150 square foot multi-tenant commercial building at the corner of 95<sup>th</sup> Avenue and Boones Ferry Road in North Wilsonville. Based on the findings set forth herein, which includes additional conditions imposed as the result of the introduction of new evidence the DRB did not have the benefit of hearing, City Council reverses the decision of the DRB and approves, with additional conditions, the revised Stage II Final Plan, Site Design Review request, and revised Master Sign Plan.

**LOCATION:** The proposed coffee shop location is on the southeast corner of the 95th Avenue/Boones Ferry Road intersection near Elligsen Road/I-5 Interchange. The property is specifically known as Tax Lot 0302, Section 2DB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon.

**OWNER/APPLICANT:**        Josh Veentjer  
                                      Wilsonville Devco LLC

**APPLICANT’S REPS:**        Ben Altman  
                                      SFA Design Group  
  
                                      Craig Anderson  
                                      CB Anderson Architects

**COMPREHENSIVE PLAN MAP DESIGNATION:** Commercial

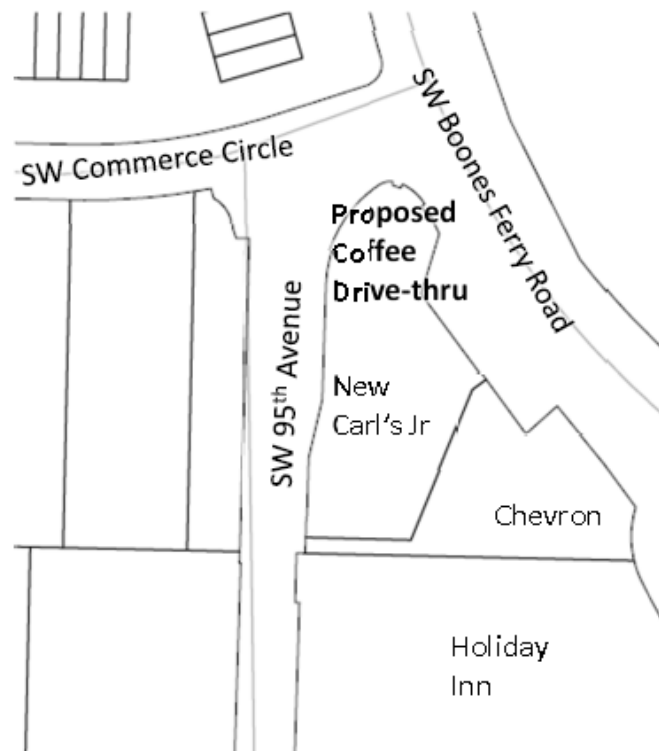
**ZONE MAP CLASSIFICATION:** PDC (Planned Development Commercial)

**STAFF REVIEWERS:** Daniel Pauly AICP, Associate Planner  
                                      Steve Adams PE, Development Engineering Manager  
                                      Don Walters, Building Plans Examiner

**APPLICABLE REVIEW CRITERIA**

<b>Section 4.008</b>	<b>Application Procedures-In General</b>
<b>Section 4.009</b>	<b>Who May Initiate Application</b>
<b>Section 4.010</b>	<b>How to Apply</b>
<b>Section 4.011</b>	<b>How Applications are Processed</b>
<b>Section 4.014</b>	<b>Burden of Proof</b>
<b>Section 4.031</b>	<b>Authority of the Development Review Board</b>
<b>Subsection 4.035 (.04)</b>	<b>Site Development Permit Application</b>
<b>Subsection 4.035 (.05)</b>	<b>Complete Submittal Requirement</b>
<b>Section 4.110</b>	<b>Zones</b>
<b>Section 4.116</b>	<b>Standards Applying to Commercial Development in All Zones</b>
<b>Section 4.118</b>	<b>Standards Applying to Planned Development Zones</b>
<b>Section 4.131</b>	<b>Planned Development Commercial Zone (PDC)</b>
<b>Section 4.140</b>	<b>Planned Development Regulations</b>
<b>Section 4.154</b>	<b>On-Site Pedestrian Access and Circulation</b>
<b>Section 4.155</b>	<b>Parking, Loading, and Bicycle Parking</b>
<b>Sections 4.156.01 through 4.156.11</b>	<b>Sign Regulations</b>
<b>Section 4.167</b>	<b>Access, Ingress, and Egress</b>
<b>Section 4.171</b>	<b>Protection of Natural Features and Other Resources</b>
<b>Section 4.175</b>	<b>Public Safety and Crime Prevention</b>
<b>Section 4.176</b>	<b>Landscaping, Screening, and Buffering</b>
<b>Section 4.177</b>	<b>Street Improvement Standards</b>
<b>Section 4.179</b>	<b>Mixed Solid Waste and Recyclables Storage</b>
<b>Sections 4.199.20 through 4.199.60</b>	<b>Outdoor Lighting</b>
<b>Sections 4.300 through 4.320</b>	<b>Underground Utilities</b>
<b>Sections 4.400 through 4.450 as applicable</b>	<b>Site Design Review</b>

## Vicinity Map



### **BACKGROUND/SUMMARY:**

#### **Approved Stage I Master Plan/Site History**

The subject property is part of the Edwards Business Center Industrial Master Plan. This Master Plan envisioned a variety of industrial and commercial uses. The Master Plan designated the subject site as commercial, but did not specify the type of commercial use. Previously the City received an application for an office building on the site, which was never built. In March 2013 the Development Review Board approved an application to construct a fast-food restaurant and a multi-tenant commercial building, consistent with the designation of the property in the Master Plan. The restaurant building has been built, but the property owner determined they were unable to find appropriate tenants and finance the commercial building. The Applicant is now requesting to replace the multi-tenant commercial building portion of the development with a drive-thru coffee kiosk, which remains consistent with the Stage I Master Plan commercial designation.

#### **Stage II Final Plan (DB13-0046)**

The Stage II Final Plan looks at the function and overall aesthetics of the proposed development, including traffic, parking, and circulation.

The proposed revised Master Plan includes a 450 square foot drive-thru coffee kiosk and associated site improvements, including parking, circulation, and landscaping. The coffee kiosk development replaces a multi-tenant commercial building approved by the DRB in March 2013,

City Council Final Findings Rendered April 17, 2014

Exhibit A1

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

DB13-0046, DB13-0047, DB13-0048

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at the same time the adjacent Carl's Jr. restaurant was approved. The development site sits just north of the recently completed Carl's Jr. restaurant at the southeast corner of SW 95<sup>th</sup> Avenue and SW Boones Ferry Road. The kiosk building has a flat roof with a parapet to screen view of mechanical equipment. The north end of the building has a tower featuring the sign bands. A drive through lane wraps around the east, north, and west sides of the kiosk and the adjoining patio and parking area. Parking is to the south and southeast.

Vehicle access to the coffee kiosk is via an existing shared driveway with Holiday Inn, Chevron, and Carl's Jr.

The Modified Stage II Final Plan for Boones Ferry Point, which will include Carl's Jr. and the proposed coffee kiosk, proposes approximately 15,569 square feet of landscaping, 37 parking spaces (35 required), maneuvering and circulations areas, and mixed solid waste and recyclables storage. The total gross area of the site covered by the Stage II Master Plan is 55,605 square feet or 1.28 acres.

### **Site Design Review (DB13-0047)**

#### *Architectural Design*

In the application for the original Boones Ferry Point (DB12-0074 et. seq.), the Applicant explained how the design goal was to identify with the general environment of commercial development at Argyle Square and along Wilsonville Road while also adding a unique personality to the development and proper identity to the planned tenants. Smaller scale wood-frame structures using traditional exterior materials intended to reinforce their location in Wilsonville's small town setting. The approved buildings featured brick, horizontal lap siding, and board and batten materials. The proposed coffee kiosk follows this same architectural theme previously proposed and approved. The building features brick around the base, with a mix of lap siding and horizontal siding on the main body of the building. The tower design has a similar shape as the Carl's Jr. building towers but uses different material and colors. The Carl's Jr. building and the proposed coffee kiosk incorporate similar architectural elements but have enough differences to be unique and complementary.

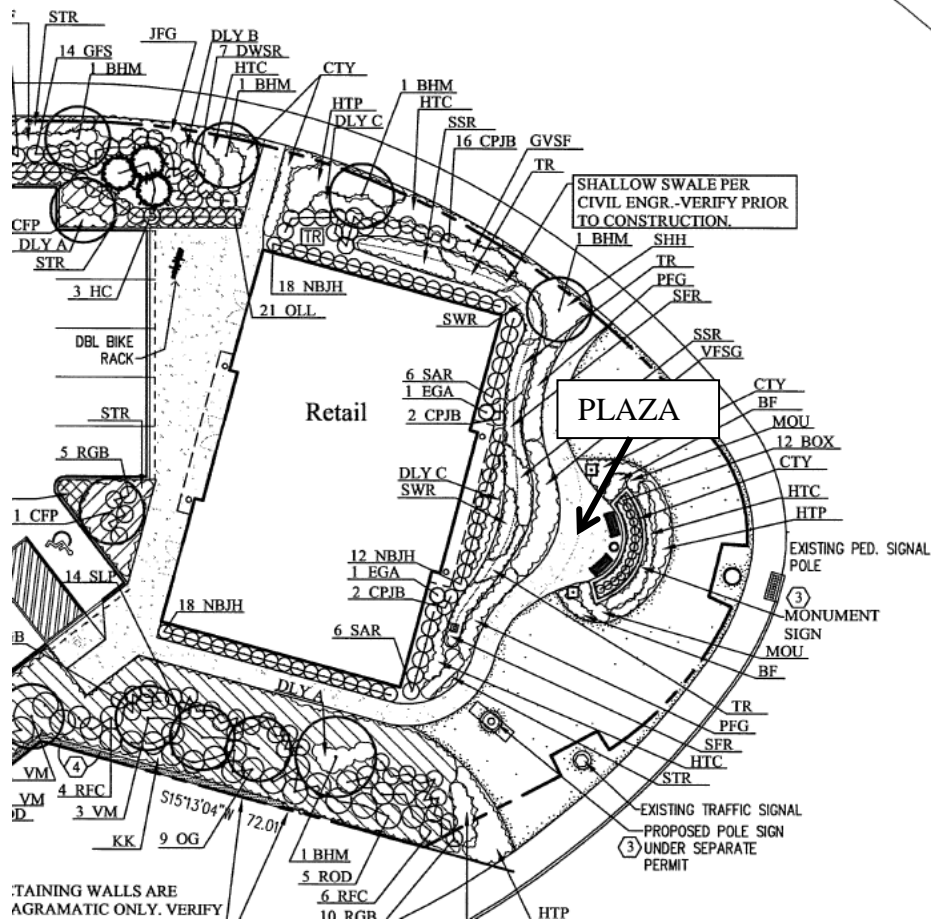
#### **Proposed Drive-thru Coffee Kiosk Rendering**



## Landscape and Hardscape Design

In the design of Boones Ferry Pointe previously approved by the DRB, a planter and plaza are featured at the north of the site to acknowledge the gateway at a prominent intersection on the northern edge of the City. The remainder of the landscaping is typical of parking lots and commercial areas in Wilsonville. In the proposed revised plan, the planter and gateway sign with flag remain, but the plaza has been replaced with a patio area adjacent to the coffee kiosk. The remainder of the area around the coffee kiosk accommodates the drive-thru lane and otherwise remains typical of parking lots and commercial areas in Wilsonville.

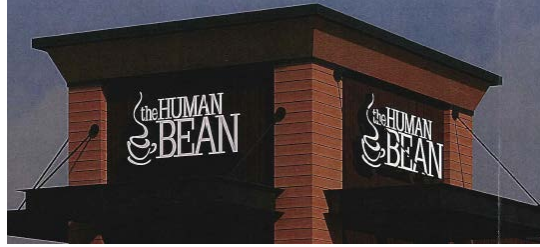
### Landscape Plan Previously Approved by DRB







## Proposed Building Signs



### DISCUSSION TOPICS:

#### *Bicycle Parking*

The required number of bicycle parking spaces is provided. Condition of Approval PDA 2 requires the spacing between bike parking and the kiosk building and the distance of the bike parking from the pedestrian service window to meet bicycle parking development standards.

#### *Existing Hardscape and Landscape Improvements*

Most of the hardscape and landscape for the proposed development has already been installed.

#### *Tables and Other Furnishings for Patio Area*

The Applicant has not provided information on tables or other furnishings for the patio area adjacent to the coffee kiosk. While none are currently proposed, it is understood furnishings will be placed in this area. Condition of Approval PDB 9 ensures the design of these furnishings will be durable and match or complement the neighboring building, thus helping to meet the site design review standards.

#### *Restrictive Covenant Legal Dispute*

As described in Exhibit D1, a legal dispute is ongoing regarding whether a restrictive covenant on the property prevents the operation of the proposed coffee kiosk. City Council finds that this is a private matter to be resolved between the parties and that the City is not obligated nor authorized to adjudicate such private matter in this proceeding. Therefore, City Council finds such dispute irrelevant to the Application and does not consider it as part of this review. See letter regarding this matter from Barbara Jacobson, Assistant City Attorney, Exhibit C3.

### CONCLUSION AND CONDITIONS OF APPROVAL:

City Council has reviewed the Applicant's analysis of compliance with the applicable criteria. City Council adopts the Applicant's responses as Findings of Fact except as noted in these Findings. Based on the findings set forth herein, with the following additional conditions imposed by City Council and agreed to by Applicant, City Council reverses the DRB's decision and approves the proposed application (DB13-0046, DB13-0047, DB13-0048) as follows:

## CITY COUNCIL ADDITIONAL CONDITIONS OF APPROVAL

The following additional Conditions of Approval are provided by City Council (City Council Conditions "CC"):

**CC 1** No vehicles greater than thirty feet (30') in length shall be used to make deliveries to The Human Bean or future tenant of the kiosk unless an easement is granted by the neighboring property owner or found to exist by the appropriate legal authority that would allow the maneuvering of larger delivery vehicles.

**CC 2** Site circulation to The Human Bean or future tenant of the kiosk, including inventory deliveries and typical customer traffic, shall be accomplished without the use of the curb cut along the property line between the trash enclosures and SW Boones Ferry Road unless an easement is granted by the neighboring property or found to exist by the appropriate legal authority that would allow use of the curb cut and circulation on the neighboring property.

**CC 3** The following shall be installed and maintained to aid in site safety and circulation:

- a. A stop line and stop sign for northbound traffic directly east of the north building line of the Carl's Jr. restaurant building. The stop sign shall meet ASHTO dimension standards.
- b. Clearly marked "Do Not Block" areas at the entrance of the Carl's Jr. drive-thru lane sufficient to allow traffic through exiting from the north.

**City Council also incorporates the following Conditions of Approval from the Staff Report, dated January 6, 2014:**

### **REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION**

#### **Planning Division Conditions:**

**PDA 1.** The approved final plan schedule shall control the issuance of all building permits and shall restrict the nature, location and design of all uses. Minor changes to the approved final development plan may be approved by the Planning Director through administrative review pursuant to Section 4.030 if such changes are consistent with the purposes and general character of the plan. All other modifications shall be processed in the same manner as the original application and shall be subject to the same procedural requirements.

**PDA 2.** The applicant shall modify or relocate the bicycle parking spaces to meet the following standards identified in Subsection 4.155(.04)B, while continuing to meet all other applicable standards:

- An aisle at least 5 feet wide shall be maintained behind all required bicycle parking to allow room for bicycle maneuvering.
- Each space be located within 30 feet of the pedestrian service window.

## REQUEST B: DB13-0047 SITE DESIGN REVIEW

### Planning Division Conditions:

**PDB 1.** Construction, site development, and landscaping shall be carried out in substantial accord with the plans, drawings, sketches, and other documents included in the record, except that all improvements must be contained solely within the Applicant's own property. Minor revisions may be approved by the Planning Director through administrative review pursuant to Section 4.030. See Findings B3.

**PDB 2.** All landscaping requirements set forth in the record shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping, as determined by the Planning Director, is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account, or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases, the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City will be returned to the applicant. See Finding B9.

**PDB 3.** The approved landscape plan is binding upon the applicant/owner. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, pursuant to the applicable sections of Wilsonville's Development Code. See Finding B10.

**PDB 4.** All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved, unless altered as allowed by Wilsonville's Development Code. See Findings B11 and B12.

**PDB 5.** The following requirements for planting of shrubs and ground cover shall be met:

- Non-horticultural plastic sheeting or other impermeable surface shall not be placed under landscaping mulch.
- Native topsoil shall be preserved and reused to the extent feasible.
- Surface mulch or bark dust shall be fully raked into soil of appropriate depth, sufficient to control erosion, and shall be confined to areas around plantings.
- All shrubs shall be well branched and typical of their type as described in current AAN Standards and shall be equal to or better than 2-gallon containers and 10" to 12" spread.
- Shrubs shall reach their designed size for screening within three (3) years of planting.
- Ground cover shall be equal to or better than the following depending on the type of plant materials used: gallon containers spaced at 4 feet on center

	<p>minimum, 4" pot spaced 2 feet on center minimum, 2-1/4" pots spaced at 18 inch on center minimum.</p> <ul style="list-style-type: none"> <li>• No bare root planting shall be permitted.</li> <li>• Ground cover shall be sufficient to cover at least 80% of the bare soil in required landscape areas within three (3) years of planting.</li> <li>• Appropriate plant materials shall be installed beneath the canopies of trees and large shrubs to avoid the appearance of bare ground in those locations.</li> <li>• Compost-amended topsoil shall be integrated in all areas to be landscaped, including lawns.</li> </ul> <p>See Finding B22.</p>
<b>PDB 6.</b>	<p>Plant materials shall be installed to current industry standards and be properly staked to ensure survival. Plants that die shall be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City. See Finding B27.</p>
<b>PDB 7.</b>	<p>Outdoor lighting associated with the coffee kiosk use shall be dimmed at 10:00 p.m. by an automatic system. See Finding B38.</p>
<b>PDB 8.</b>	<p>All non-exempt luminaires shall be limited to down lighting. Non-exempt luminaires, except luminaire DD, shall be mounted and aimed consistent with their fully shielded classification. See Finding B35 and B37.</p>
<b>PDB 9.</b>	<p>Furnishings for the patio area shall be of durable materials that can withstand multiple years of outdoor exposure and remain in a like-new condition. Furnishings for the patio area shall be colors matching or complementary to the coffee kiosk building. Furnishings are not approved to have any signage. Final design and placement of furnishings shall be approved by the Planning Division through the Class I Administrative Review process.</p>

**REQUEST C DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER**

<b>PDC 1.</b>	<p>Non-exempt signs shall be issued a Class I Sign Permit through the Planning Division prior to installation to ensure compliance with the approved Master Sign Plan.</p>
<b>PDC 2.</b>	<p>This action only changes the components of the Master Sign Plan explicitly noted. All other aspects of the Master Sign Plan and Conditions of Approval of Case File DB12-0076 remain in effect.</p>
<b>PDC 3.</b>	<p>The illuminated directional signs at internal circulation drive intersections shall be limited to six (6) square feet. See Finding C24.</p>

**CONDITIONS OF APPROVAL FROM THE ENGINEERING AND BUILDING DIVISIONS FOR ALL REQUESTS**

The following Conditions of Approval are provided by the Engineering and Building Divisions of the City’s Community Development Department, which have authority over development approval. A number of these Conditions of Approval are not related to land use regulations under the authority of the Development Review Board or Planning Director. Only those Conditions of Approval related to criteria in Chapter 4 of the Wilsonville Code and the Comprehensive Plan, including but not limited to those related to traffic level of service, site vision clearance, and concurrency, are subject to the Land Use review and appeal process

defined in the Wilsonville Code and Oregon Revised Statutes and Administrative Rules. Other Conditions of Approval are based on City Code chapters other than Chapter 4, state law, federal law, or other agency rules and regulations. Questions or requests about the applicability, appeal, exemption, or non-compliance related to these other Conditions of Approval should be directed to the City Division with authority over the relevant portion of the development approval.

<b>Engineering Division Conditions:</b>			
<b>Specific Comments:</b>			
<b>PF 1.</b>	Engineering Public Facilities Conditions of Approval (PF conditions) for DB12-0074 and DB12-0075 remain in effect for this project except as further modified below.		
<b>PF 2.</b>	At the request of Staff, DKS Associates completed a Trip Generation memo dated September 5, 2013, revising a previously completed Carl's Jr. Traffic Impact Study that was completed in May 2012. The proposed use is expected to generate 13 fewer new primary trips than the previously approved use. The project is hereby limited to no more than the following impacts.		
	<table> <tr> <td style="padding-right: 100px;">Estimated New PM Peak Hour Trips</td> <td>117</td> </tr> </table>	Estimated New PM Peak Hour Trips	117
Estimated New PM Peak Hour Trips	117		
<b>PF 3.</b>	Stormwater detention and storm water quality for this site will be handled via the stormwater facility constructed with the Boones Ferry Pointe project.		
<b>PF 4.</b>	The project shall connect to the existing Storm lateral constructed with the Boones Ferry Pointe project.		
<b>PF 5.</b>	The project shall connect to the existing Sanitary Sewer stub constructed with the Boones Ferry Pointe project.		
<b>PF 6.</b>	The project shall connect to the existing Water service constructed with the Boones Ferry Pointe project.		

<b>Building Division Conditions:</b>	
<b>BD 1.</b>	<b>ACCESSIBLE.</b> At least one of the walk-up service windows shall be accessible.

**MASTER EXHIBIT LIST:**

The following exhibits are hereby entered into the public record by the City Council as confirmation of its consideration of the application as submitted. This is the exhibit list that includes exhibits for Planning Case Files DB13-0046, DB13-0047, DB13-0048, as submitted to the Development Review Board, along with additional exhibits as submitted to the City Council for the hearing held on March 17, 2014.

- A1.** Staff report and findings
- A2.** Staff's public hearing presentation slides
- A3.** Email dated January 13, 2014 from Daniel Pauly to Barbara Jacobson, noting the dates that information was submitted to Garry LaPoint over the last month on the project
- A4.** Memo from Staff to DRB, dated February 10, 2014
- B1.** Applicant's Notebook:
  - 1. Notice of Complete Application Dated December 9, 2013

2. Response to Letter of Incomplete Application Dated December 4, 2013
  3. Notice of Incomplete Application Dated November 20, 2013
  4. Application Form signed by Josh Veentjer, Managing Member of Wilsonville Devco LLC
  5. Compliance Report
  6. DKS Traffic Memo
  7. Site Plans Approved by DRB in Case Files DB12-0074 through DB12-0076
  8. Signage (Proposed)
  9. Lighting Detail & Photometrics (Proposed)
  10. Revised Site & Architectural Plans (Proposed)
- B2.** Plan Sets and Architectural Drawings:  
 Color Architectural Renderings (Proposed)  
 C105 Previous Approved Grading Plan (DB12-0074 through DB12-0076)  
 A1.0 Architectural Site Plan (Proposed)  
 DD101 Composite Utility Plan (Proposed)  
 DD102 Grading Plan (Proposed)  
 L2.0 Landscape Planting Plan (Proposed)  
 L1.0 Landscape Irrigation Plan (Proposed)  
 A-1 Coffee Kiosk Floor Plan and Upper Wall Framing Plan from Pacific Mobile  
 A-3 Coffee Kiosk Wall Elevations from Pacific Mobile  
 E-1 Coffee Kiosk Electrical Plan from Pacific Mobile  
 SE1.0 Photometric Site Plan (Proposed)  
 Sign Drawings
- B3.** Materials Boards for Coffee Kiosk (available at public hearing)
- B4.** Email correspondence received from the Applicant on January 8, 2014, regarding patio furniture
- B5.** Site Plan, Sheet A1.0, submitted by the Applicant showing maximum queuing for the Human Bean drive-thru
- B6.** Applicant Submittal, January 27, 2014
- B7.** Applicant Rebuttal, February 3, 2014
- B8.** Truck Turning Movement, February 3, 2014
- B9.** March 10<sup>th</sup> Submittal for City Council
- C1.** Engineering Division Comments and Conditions
- C2.** Building Division Comments and Conditions
- C3.** January 3, 2014 letter from Barbara Jacobson, Assistant City Attorney, to Alec Laidlaw  
 RE: The Human Bean Coffee Store Legal Dispute
- C4.** Comments received from the Public Works Department Plan Review
- D1.** Written Testimony Received January 3, 2014 on behalf of Garry LaPoint  
 January 3, 2014 email from Terra Burns, Laidlaw and Laidlaw Paralegal, to Daniel Pauly, Associate Planner  
 January 3, 2014 Letter from Alec Laidlaw to Daniel Pauly, Associate Planner  
 Copy of Washington County Circuit Court Case No. C138125CV Defendants' ORCP 21 Motions  
 Copy of Washington County Circuit Court Case No. C138125CV Declaration of Garry L.

LaPoint in Support of Defendants' ORCP 21 Motions

Copy of Washington County Circuit Court Case No. C138125CV Defendants' Counsel's Certificate of Compliance (UTCR 5.010)

- D2.** Cover letter and Memorandum in Opposition from Wallace W. Lien, which included a number of pictures of the site and several site maps indicating circulation flows for the subject businesses
- D3.** Traffic videos and photos submitted by Wallace W. Lien that were included on DVDs and flash drives received January 14, 2014.
- D4.** Letter received on January 14, 2014 from Garry LaPoint via email titled, "Proposed— Convenient Coffee Store Business" requesting a continuance of the public hearing
- D5.** Wallace Lien Submittal, January 27, 2014
- D6.** Traffic Photos and Video
- D7.** LaPoint Response, January 31, 2014
- D8.** Wallace Lien Rebuttal
- D9.** March 10<sup>th</sup> LaPoint Submittal for City Council (written material)
- D10.** March 10<sup>th</sup> LaPoint Submittal for City Council (DVD)

**FINDINGS OF FACT:**

1. The statutory 120-day time limit applies to this application. The application was received on November 12, 2013. On November 20, 2013, staff conducted a completeness review within the statutorily allowed 30-day review period and, on December 4, 2013, the Applicant submitted new materials. Additional materials were submitted on December 7, 2013. On December 9, 2013, the application was deemed complete. The deadline for the City to issue a final decision in this matter is April 8, 2014; however, the City and the Applicant entered into a Tolling Agreement, dated March 25, 2014, which tolled the date by which the City must render a final decision for the request until April 30, 2014.
2. Surrounding land uses are as follows:

<b>Compass Direction</b>	<b>Zone:</b>	<b>Existing Use:</b>
North:	PDI	95 <sup>th</sup> /Boones Ferry Intersection/Riverwood Industrial Campus
East:	PDC	Chevron/Boones Ferry Rd.
South:	PDC	Holiday Inn
West:	PDC	95 <sup>th</sup> Avenue/AGC Center

3. Prior land use actions include:

Edwards Business Center Industrial Park Plat - Stage I  
97DB28 Stage II, Site Design Review, LaPoint Center  
DB06-0041, DB06-0043, DB06-0057, DB06-0042 Stage II Final Plan, Site Design Review,  
Waiver to Building Height, Master Sign Plan for Brice Office Building (Expired)

DB12-0074 through DB12-0076 Stage II Final Plan, Site Design Review, and Master Sign Plan for fast food restaurant and multi-tenant commercial building.  
DB13-0027 Site Design Review for accent lighting on fast food restaurant.

4. The Applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

#### **CONCLUSIONARY FINDINGS:**

NOTE: Pursuant to Section 4.014, the burden of proving that the necessary findings of fact can be made for approval of any land use or development application rests with the Applicant in the case.

<b>GENERAL INFORMATION</b>
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#### ***Section 4.008 Application Procedures-In General***

**Review Criteria:** This section lists general application procedures applicable to a number of types of land use applications and also lists unique features of Wilsonville’s development review process.

**Finding:** These criteria are met.

**Explanation of Finding:** The application is being processed in accordance with the applicable general procedures of this Section.

#### ***Section 4.009 and Subsection 4.140 (.03) Who May Initiate Application and Ownership***

**Review Criterion:** “Except for a Specific Area Plan (SAP), applications involving specific sites may be filed only by the owner of the subject property, by a unit of government that is in the process of acquiring the property, or by an agent who has been authorized by the owner, in writing, to apply.” “The tract or tracts of land included in a proposed Planned Development must be in one (1) ownership or control or the subject of a joint application by the owners of all the property included.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The application has been submitted on behalf of the property owner, Wilsonville Devco LLC. The application form is signed by Josh Veentjer, Managing Member.

#### ***Subsection 4.010 (.02) Pre-Application Conference***

**Review Criteria:** This section lists the pre-application process

**Finding:** These criteria are satisfied.

**Explanation of Finding:** A pre-application conference was held on August 22, 2013 in accordance with this subsection.

#### ***Subsection 4.011 (.02) B. Lien Payment before Application Approval***

**Review Criterion:** “City Council Resolution No. 796 precludes the approval of any development application without the prior payment of all applicable City liens for the subject property. Applicants shall be encouraged to contact the City Finance Department to verify that there are no outstanding liens. If the Planning Director is advised of outstanding liens while an application is under consideration, the Director

City Council Final Findings Rendered April 17, 2014

Exhibit A1

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

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shall advise the applicant that payments must be made current or the existence of liens will necessitate denial of the application.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No applicable liens exist for the subject property. The application can thus move forward.

#### ***Subsection 4.035 (.04) A. General Site Development Permit Submission Requirements***

**Review Criteria:** “An application for a Site Development Permit shall consist of the materials specified as follows, plus any other materials required by this Code.” Listed 1. through 6. j.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** City Council finds that the Applicant has provided all of the applicable general submission requirements contained in this subsection and that there is no loading requirement for this site. City Council finds that the plans submitted by the Applicant include a detailed plan of drive aisle striping and vehicle stacking, directional arrows and traffic flow, pedestrian walkways and crossings, parking spaces, traffic signs, trash enclosures, and all other aspects of the proposed development in compliance with these criteria.

#### ***Section 4.110 Zoning-Generally***

**Review Criteria:** “The use of any building or premises or the construction of any development shall be in conformity with the regulations set forth in this Code for each Zoning District in which it is located, except as provided in Sections 4.189 through 4.192.” “The General Regulations listed in Sections 4.150 through 4.199 shall apply to all zones unless the text indicates otherwise.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** This proposed development is in conformity with the applicable zoning district, and general development regulations listed in Sections 4.150 through 4.199 have been applied in accordance with this Section.

**REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION**

**Planned Development Regulations**

***Subsection 4.140 (.01) Purpose of Planned Development Regulations***

A1. **Review Criterion:** The proposed Stage II Final Plan shall be consistent with the Planned Development Regulations purpose statement.

**Finding:** This criterion is satisfied.

**Explanation of Finding:** Based on the information provided by the Applicant in their application narrative, City Council finds that the purpose of the planned development regulations is met by the proposed Stage II Final Plan.

***Subsections 4.140 (.02) and (.05) Planned Development Lot Size and Permit Process***

A2. **Review Criteria:** “Planned Development may be established on lots which are suitable for and of a size to be planned and developed in a manner consistent with the purposes and objectives of Section 4.140.” “Any site designated for development in the Comprehensive Plan may be developed as a Planned Development, provided that it is zoned ‘PD.’ All sites which are greater than two (2) acres in size, and designated in the Comprehensive Plan for commercial, residential, or industrial use shall be developed as Planned Developments, unless approved for other uses permitted by the Development Code.”

“All parcels of land exceeding two (2) acres in size that are to be used for residential, commercial or industrial development, shall, prior to the issuance of any building permit:

1. Be zoned for planned development;
2. Obtain a planned development permit; and
3. Obtain Development Review Board, or, on appeal, City Council approval.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The development site is less than two (2) acres. However, it has previously been zoned for Planned Development. The property is designated for commercial development in the Comprehensive Plan, and is zoned Planned Development Commercial. The property is of sufficient size and will be developed as a planned development in accordance with this subsection.

***Subsection 4.140 (.04) Professional Design Team Required for Planned Developments***

A3. **Review Criteria:** “The applicant for all proposed Planned Developments shall certify that the professional services of the appropriate professionals have been utilized in the planning process for development. One of the professional consultants chosen by the applicant shall be designated to be responsible for conferring with the planning staff with respect to the concept and Explanation of the plan.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The Applicant’s compliance narrative lists the appropriate professionals involved in the planning and permitting process. Ben Altman of SFA Design Group has been designated the coordinator for the planning portion of the project.

## **Stage II Final Plan Submission Requirements and Process**

### ***Subsection 4.140 (.09) A. Timing of Submission***

- A4. **Review Criterion:** “Unless an extension has been granted by the Development Review Board, within two (2) years after the approval or modified approval of a preliminary development plan (Stage I), the applicant shall file with the City Planning Department a final plan for the entire development or when submission in stages has been authorized pursuant to Section 4.035 for the first unit of the development”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** A previous Stage I approval identified the subject property as a future commercial stage. A Stage II Final Plan was approved consistent with the previous Stage I Master Plan in March 2013. This application requests revision of the Stage II Final plan.

### ***Subsection 4.140 (.09) C. Conformance with Stage I and Additional Submission Requirements***

- A5. **Review Criteria:** “The final plan shall conform in all major respects with the approved preliminary development plan, and shall include all information included in the preliminary plan plus the following:” listed 1. through 6.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The City finds that the Stage II plans substantially conform to the Stage I Master Plan. The Applicant has provided the required drawings and other documents showing all the additional information required by this subsection.

### ***Subsection 4.140 (.09) D. Stage II Final Plan Detail***

- A6. **Review Criterion:** “The final plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development or phase of development.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The Applicant has provided sufficiently detailed information to indicate fully the ultimate operation and appearance of the development, including a detailed site plan, landscape plans, floor plans, elevation drawings, and material information.

### ***Subsection 4.140 (.09) E. Submission of Legal Documents***

- A7. **Review Criterion:** “Copies of legal documents required by the Development Review Board for dedication or reservation of public facilities, or for the creation of a non-profit homeowner’s association, shall also be submitted.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No additional legal documentation is required for dedication or reservation of public facilities.

***Subsection 4.140 (.09) J. Planned Development Permit Requirements***

A8. **Review Criteria:** “A planned development permit may be granted by the Development Review Board only if it is found that the development conforms to all the following criteria, as well as to the Planned Development Regulations in Section 4.140:” listed J. 1. through 3. Includes traffic level of service requirements.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Proposed is a coffee kiosk in an area designated for commercial use in the Comprehensive Plan. The proposed use is at a corner and clustered with commercial uses similarly serving the travelling public, thus being part of a commercial center rather than strip commercial development. As demonstrated in the DKS Traffic Memo in the Applicant’s notebook, Exhibit B1, specifically page 2 of 3 of the memo, the required traffic level of service is being maintained. All utilities and services are available to serve the development.

**Commercial Development in Any Zone**

***Subsection 4.116 (.01) Commercial Development to be in Centers and Complexes***

A9. **Review Criterion:** “Commercial developments shall be planned in the form of centers or complexes as provided in the City’s Comprehensive Plan. As noted in the Comprehensive Plan, Wilsonville’s focus on centers or complexes is intended to limit strip commercial development.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The approved Boones Ferry Pointe commercial development is in the form of a center clustered at an intersection with other commercial development.

***Subsection 4.116 (.05) All Commercial Activity to be Completely Enclosed***

A10. **Review Criteria:** “All businesses, service or processing, shall be conducted wholly within a completely enclosed building; except for:” Listed A. through G.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** All commercial activity other than exempt activities will be conducted within the proposed buildings. The only exceptions from the list given are off-street parking for customers and employees, outdoor seating, and temporary outside sales.

***Subsection 4.116 (.07) Uses Limited to those Meeting Industrial Performance Standards***

A11. **Review Criteria:** “Uses shall be limited to those which will meet the performance standards specified in Section 4.135(.05), with the exception of 4.135(.05)(M).(3.).”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposed development facilitates commercial uses meeting these performance standards. It is understood that all uses will need to continue to meet these standards over time.

***Subsection 4.116 (.08) Vision Clearance Standards for Corner Lots***

A12. **Review Criteria:** “Corner lots shall conform to the vision clearance standards set forth in Section 4.177.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Vision clearance has been reviewed by the City’s Engineering Division, and the City’s Public Works standards for vision clearance are met.

***Subsection 4.116 (.10) Commercial Development Generally***

A13. **Review Criteria:** This subsection lists a number of requirements for commercial development such as setback, lot size, lot coverage, and street frontage requirements.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As shown on the plans submitted with the application and throughout this proceeding, all the applicable standards listed in this subsection are met.

***Subsection 4.116 (.14) B. Prohibited Uses***

A14. **Review Criteria:** “Any use that violates the performance standards of Section 4.135(.05), other than 4.135(.05)(M)(3.) is prohibited within commercial developments.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No uses prohibited by this subsection are proposed.

**Standards Applying in All Planned Development Zones**

***Subsection 4.118 (.01) Additional Height Guidelines***

A15. **Review Criterion:** “In cases that are subject to review by the Development Review Board, the Board may further regulate heights as follows:

A. Restrict or regulate the height or building design consistent with adequate provision of fire protection and fire-fighting apparatus height limitations.

B. To provide buffering of low density developments by requiring the placement of three or more story buildings away from the property lines abutting a low density zone.

C. To regulate building height or design to protect scenic vistas of Mt. Hood or the Willamette River.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The City finds that the proposed height provides for fire protection access, does not abut a low density zone, and does not impact scenic views of Mt. Hood or the Willamette River.

***Subsection 4.118 (.03) Waivers***

A16. **Review Criteria:** “Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may” waive a number of standards as listed in A. through E.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No planned development waivers have been requested by the Applicant or are necessary to approve the application as proposed.

***Subsection 4.118 (.03) E. Other Requirements or Restrictions***

A17. **Review Criteria:** “Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may adopt other requirements or restrictions, inclusive of, but not limited to, the following:” Listed 1. through 12.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No additional requirements or restrictions are recommended pursuant to this subsection.

***Subsection 4.118 (.04) Effect of Determination of Compliance and Conditions of Approval on Development Cost***

A18. **Review Criteria:** “The Planning Director and Development Review Board shall, in making their determination of compliance in attaching conditions, consider the effects of this action on availability and cost. The provisions of this section shall not be used in such a manner that additional conditions, either singularly or cumulatively, have the effect of unnecessarily increasing the cost of development. However, consideration of these factors shall not prevent the Board from imposing conditions of approval necessary to meet the minimum requirements of the Comprehensive Plan and Code.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The City finds that the determination of compliance or attached conditions do not unnecessarily increase the cost of development, and no evidence has been submitted to the contrary.

***Subsection 4.118 (.05) Requirements to Set Aside Tracts for Certain Purposes***

A19. **Review Criteria:** “The Planning Director, Development Review Board, or on appeal, the City Council, may as a condition of approval for any development for which an application is submitted, require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated for the following uses:” Recreational Facilities, Open Space Area, Easements.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No additional tracts are being required for the purposes given.

***Subsection 4.118 (.09) Habitat Friendly Development Practices***

A20. **Review Criteria:** “To the extent practicable, development and construction activities of any lot shall consider the use of habitat-friendly development practices, which include:

A. Minimizing grading, removal of native vegetation, disturbance and removal of native soils, and impervious area;

B. Minimizing adverse hydrological impacts on water resources, such as using the practices described in Part (a) of Table NR-2 in Section 4.139.03, unless their use is prohibited by an applicable and required state or federal permit, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;

C. Minimizing impacts on wildlife corridors and fish passage, such as by using the practices described in Part (b) of Table NR-2 in Section 4.139.03; and

D. Using the practices described in Part (c) of Table NR-2 in Section 4.139.03.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As stated by the Applicant and adopted by the DRB for the previous Stage II approval, “The site has previously been rough graded and there is no significant native vegetation. The site does not contain any SROZ, and no fish or wildlife habitats are associated with this property. The site has been designed consistent with the Habitat-Friendly practices. The storm system design provides for on-site water quality and volume control, which protects the downstream wetland area south of the AGC building.” The City finds that the proposal does not significantly alter compliance as previously found.

### **Planned Development Commercial Zone**

#### ***Subsection 4.131 (.01) A. 1. Uses Typically Permitted***

A21. **Review Criteria:** This subsection lists the uses that are typically permitted in the PDC Zone.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposal replaces an approved but un-built multi-tenant commercial building with drive-thru coffee kiosk, which is an allowed service establishment use.

#### ***Subsection 4.131 (.02) Prohibited Uses***

A22. **Review Criteria:** This subsection lists the prohibited uses in the PDC Zone.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The Applicant has not proposed any prohibited uses for the site.

#### ***Subsection 4.131 (.03) 1. Block and Access Standards: Connectivity for Different Modes***

A23. **Review Criteria:** “The Development Review Board shall determine appropriate conditions of approval to assure that adequate connectivity results for pedestrians, bicyclists, and motor vehicle drivers. Consideration shall be given to the use of public transit as a means of meeting access needs.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No new blocks are proposed, and the proposed development proposes to use the existing shared private driveway on 95<sup>th</sup> Avenue, partially on the subject property. A development agreement has been agreed upon between the owner of the subject property, neighboring properties, and the City ensuring appropriate access from the shared driveway.

### **On-site Pedestrian Access and Circulation**

#### ***Subsection 4.154 (.01) B. 1. Continuous Pathway System***

A24. **Review Criterion:** “A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The Applicant has provided a network of pathways from the proposed location of the coffee kiosk to support a continuous pathway system throughout the site. This includes two connections to the 95<sup>th</sup> Avenue sidewalk, which then connects to Carl’s Jr. and Holiday Inn, as well as a pathway connection to the east to provide access to parking, trash enclosures, and the Chevron property. See sheet A1.0 in Exhibit B2.

***Subsection 4.154 (.01) B. 2. Safe, Direct, and Convenient Pathways***

A25. **Review Criteria:** “Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:

- a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.
- b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.
- c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.
- d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)(B.)(3.)(d).”

**Finding:** These criteria are satisfied.

**Explanation of Finding:**

- All proposed pathways are of smooth and consistent concrete and no hazards are evident on the site plan.
- All proposed pathways are reasonably direct. The path from Carl’s Jr. to the 95<sup>th</sup> Avenue sidewalk then across to the coffee kiosk is reasonably direct. The path from the intersection of 95<sup>th</sup> Avenue/Boones Ferry is reasonably direct. A direct path is provided from the parking stalls and trash enclosure serving the coffee kiosk.
- Where required, pathways meet ADA requirements or will be required to by the building code.
- The parking lot is not larger than 3 acres in size.

City Council also incorporates by this reference its findings in section C, below, under “Additional City Council Findings Related to Appeal Issues.”

***Subsection 4.154 (.01) B. 3. Vehicle/Pathway Separation***

A26. **Review Criterion:** “Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** All pathways affected by this review are separated consistent with this subsection. City Council also incorporates by this reference its findings in Section C, below,



under “Additional City Council Findings Related to Appeal Issues.”

***Subsection 4.154 (.01) B. 4. Crosswalks***

A27. **Review Criteria:** “Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light-color concrete inlay between asphalt, or similar contrast).”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The Applicant has proposed crosswalks meeting this standard.

***Subsection 4.154 (.01) B. 5. Pathway Width and Surface***

A28. **Review Criteria:** “Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five (5) feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Primary pathways are the required width. The pathway from the parking area/trash enclosure near Chevron is not a primary pathway and is allowed to be less than five (5) feet in width.

***Subsection 4.154 (.01) B. 6. Signs for Pathways***

A29. **Review Criteria:** “All pathways shall be clearly marked with appropriate standard signs.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No pathways requiring signs are proposed.

**Parking and Loading**

***Subsection 4.155 (.02) General Parking Provisions***

A30. **Review Criteria:** This subsection lists a number of general provisions for parking.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The Applicant has provided sufficient information demonstrating compliance with the provisions in this subsection applicable to Stage II Final Plan review. Among the information provided are parking calculations on sheet A1.0 of Exhibit B2. Staff specifically points out the following:

- In relation to provision B, all parking areas are accessible and usable for parking.
- In relation to provision D, the provided parking meets the sum of the minimum parking for the fast food restaurant and the coffee kiosk.
- In relation to provision J, a note on sheet A1.0 of Exhibit B2 states this requirement will be met.
- In relation to provision K, the parking area is paved and provided with adequate drainage. See Sheets A1.0 and DD102 in Exhibit B2.
- In relation to provision L, the parking lot lighting is fully shielded as to not shine into adjoining structures or the eyes of passersby.

- In relation to provision N.6, compact parking spaces are proposed, which is less than forty (40) percent of the proposed parking spaces. They are shown appropriately marked on Sheet A1.0 of Exhibit B2.

***Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas***

A31. **Review Criteria:** “Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The City finds that the proposal complies with these criteria. Council construes the requirements of this criteria to apply solely to the proposed coffee kiosk site, and not to any adjacent site. In addition, Council construes the requirements of these criteria to mean that the proposed coffee kiosk site shall be designed with access and maneuvering areas adequate to allow deliveries, as well as vehicular and pedestrian customer circulation. Specifically, the City finds that Exhibit B of Exhibit B9, which is a Truck Turning and Circulation Analysis, dated March 2, 2014, prepared by transportation engineering firm, Kittelson & Associates, Inc., demonstrates that the delivery area is separated from the general customer and employee parking and pedestrian areas, and that the access and maneuvering areas for deliveries are adequate to serve the functional needs of the site. The City finds that there is no loading berth requirement for commercial uses of the proposed floor area.

Moreover, the City finds that the access and maneuvering areas for passenger vehicle parking areas is sufficient to serve the functional needs of the site by providing safe and adequate space for two-way travel. As demonstrated on the site plans, the City also finds that the site design separates vehicle and pedestrian traffic to the greatest extent possible by providing a clear plan for pedestrian ways, parking spaces, drive aisles, and pedestrian crossings necessary to connect the proposed coffee kiosk with its associated parking, the sidewalk, and adjacent properties. In short, the City finds that the site is designed with access and maneuvering areas that are adequate to meet the functional needs of the site related to deliveries, vehicular traffic, and pedestrian traffic. Additionally, the City finds that circulation patterns will be clearly marked by directional arrows and striping, and that the Applicant has also proposed two (2) new directional signs directing customers of the coffee kiosk to exit using the drive aisle in front of Carl’s Jr. to the shared driveway. See Site Plan in Exhibit A of Exhibit B6 and Revised Site Plan in Exhibit D of Exhibit B9. The City also incorporates the findings, discussed below, in the section entitled, “Additional City Council Findings Related to Appeal Issues.”

***Subsection 4.155 (.03) B. 1.-3. Parking Area Landscaping***

A32. **Review Criteria:** “Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:” Listed 1. through 3.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As shown in the planting plans (Applicant's sheet L1.0), the required amount of landscaping and trees are provided.

***Subsection 4.155 (.03) C. Parking and Loading Areas-Safe and Convenient Access***

A33. **Review Criterion:** “Be designed for safe and convenient access that meets ADA and ODOT standards. All parking areas which contain ten (10) or more parking spaces, shall for every fifty (50) standard spaces., provide one ADA-accessible parking space that is constructed to building code standards, Wilsonville Code 9.000.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The City finds that the parking areas are designed for safe and convenient access that meets ADA and ODOT standards, and incorporates herein the findings described above in response to Subsection 4.155(.03)A. Additionally, the City finds that the required ADA space for the coffee kiosk is provided.

***Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation***

A34. **Review Criteria:** “Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The City finds that the proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses, as well as the existing Chevron and Holiday Inn, share a common driveway off 95<sup>th</sup> Avenue and their access and parking areas are interconnected. Joint use of many of the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations and direct vehicle and pedestrian paths between destinations with limited choke points. The City finds that, to the extent practicable, parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron, a direct pedestrian path is provided to the coffee kiosk. The City also finds that multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, the City finds that care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site. The City also incorporates the findings, discussed below, in the section entitled, “Additional City Council Findings Related to Appeal Issues.”

***Subsection 4.155 (.03) G. Parking Minimum and Maximum***

A35. **Review Criteria:** “Tables 5, below, shall be used to determine the minimum and maximum parking standards for various land uses. The minimum number of required parking spaces shown on Tables 5 shall be determined by rounding to the nearest whole parking space.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As shown in the table below, the proposed parking is consistent with Table 5: Parking Standards.

Use	Floor Area	Min	Max	Min	Max	Provided
Fast food (with drive-thru)	2,867	9.9 per 1,000 SF	14.9 per 1000 SF	29	43	
Coffee Kiosk	450	9.9 per 1,000 SF	14.9 per 1000 SF	4	7	
Standard Spaces						29
Compact Spaces (40% Max)				--	18	6
Total Non-ADA Spaces				33	50	35
ADA Spaces				2	--	2
<b>Total Parking Spaces</b>						<b>37</b>

***Subsection 4.155 (.04) A. Bicycle Parking-General Provisions***

A36. **Review Criteria:** This subsection lists general provisions for bicycle parking, listed 1. through 4., including required number of spaces.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** A minimum of four (4) spaces are required for the drive-thru coffee kiosk, and four (4) are provided.

***Subsection 4.155 (.04) B. Bicycle Parking-Standards***

A37. **Review Criteria:** This subsection lists standards for required bicycle parking, listed 1. through 5., including size, access aisle size, spacing between racks, anchoring of lockers and racks, and location standards.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As shown on sheet A1.0 of Exhibit B2, each of the 4 required parking stalls exceeds the minimum dimensions of 2 feet by 6 feet. There is sufficient space to use the bicycle racks without obstructions. Bicycle racks will be securely fastened. Five (5) feet of spacing is not provided between the bicycle racks and the kiosk. The bicycle racks are further than 30 feet from the primary entrance which, in this case, staff understands to be the service window open to pedestrians. Condition of Approval PDA 2 will ensure bicycle parking is placed to meet all requirements of this subsection, including the spacing from the building and distance from the service window.

***Subsection 4.155 (.05) Minimum Off-Street Loading Requirements***

A38. **Review Criteria:** This subsection defines the requirements for loading berths including when loading berths are required and size requirements.

**Finding:** These criteria are not applicable.

**Explanation of Finding:** No loading berths are required for commercial uses of the proposed floor area.

***Subsection 4.155 (.06) Carpool and Vanpool Parking Requirements***

- A39. **Review Criteria:** This subsection defines the requirements for carpool and vanpool parking.  
**Finding:** These criteria are not applicable.  
**Explanation of Finding:** No carpool or vanpool parking is required for commercial parking lots of the proposed size.

***Section 4.167 Access, Ingress, and Egress***

- A40. **Review Criterion:** “Each access onto streets or private drives shall be at defined points as approved by the City and shall be consistent with the public's health, safety and general welfare. Such defined points of access shall be approved at the time of issuance of a building permit if not previously determined in the development permit.”  
**Finding:** This criterion is satisfied.  
**Explanation of Finding:** The access points for the development site are existing and approved by the City. No change in access is proposed.

**Natural Features**

***Section 4.171 Protection of Natural Features and Other Resources***

- A41. **Review Criteria:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.  
**Finding:** These criteria are satisfied.  
**Explanation of Finding:** None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

**Public Safety and Crime Prevention**

***Subsection 4.175 (.01) Design to Deter Crime and Ensure Public Safety***

- A42. **Review Criterion:** “All developments shall be designed to deter crime and insure public safety.”  
**Finding:** This criterion is satisfied.  
**Explanation of Finding:** City Council finds that the Applicant’s application narrative demonstrates that attention has been given to site design to deter crime and allow natural surveillance. City Council finds there is no evidence that the proposed development would otherwise negatively impact public safety.

***Subsection 4.175 (.02) Addressing and Directional Signing***

- A43. **Review Criteria:** “Addressing and directional signing shall be designed to assure identification of all buildings and structures by emergency response personnel, as well as the general public.”  
**Finding:** These criteria are satisfied.  
**Explanation of Finding:** The design of the site provides for appropriate addressing and directional signage to assure easy identification.

***Subsection 4.175 (.03) Surveillance and Police Access***

A44. **Review Criterion:** “Areas vulnerable to crime shall be designed to allow surveillance. Parking and loading areas shall be designed for access by police in the course of routine patrol duties.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The parking areas are easily assessable to law enforcement. No loading berths are required for commercial uses of the proposed floor area.

***Subsection 4.175 (.04) Lighting to Discourage Crime***

A45. **Review Criterion:** “Exterior lighting shall be designed and oriented to discourage crime.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** While exterior lighting has been minimized, it was previously found to discourage crime and continues to do so.

**Landscaping Standards**

***Subsection 4.176 (.01) Purpose of Landscape, Screening, and Buffering***

A46. **Review Criteria:** “This Section consists of landscaping and screening standards and regulations for use throughout the City. The regulations address materials, placement, layout, and timing of installation. The City recognizes the ecological and economic value of landscaping and requires the use of landscaping and other screening or buffering to:” Listed A. through K.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** In complying with the various landscape standards in Section 4.176, the Applicant has demonstrated the proposed Stage II Final Plan is in compliance with the landscape purpose statement.

***Subsection 4.176 (.02) B. Landscaping Standards and Code Compliance***

A47. **Review Criteria:** “All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

***Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent***

A48. **Review Criteria:** “The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The Applicant's submitted landscape plans (Applicant's sheets L1.0 and L2.0) show a variety of plant materials and placement consistent with the general landscape standard, specifically along the frontage with SW 95<sup>th</sup> Avenue and SW Boones Ferry Road.

***Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials***

A49. **Review Criteria:** "Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.

b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The planting plan (Applicant's sheet L2.0) shows landscaping meeting the functional requirements of this subsection.

***Subsection 4.176 (.02) E. 1. High Screen Landscape Standard-Intent***

A50. **Review Criterion:** "The High Screen Landscaping Standard is a landscape treatment that relies primarily on screening to separate uses or developments. It is intended to be applied in situations where visual separation is required."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No development related to the coffee kiosk requires the high screen standards be applied, especially as menu boards are oriented as to not be visible off site. If menu boards are relocated so the face of the sign faces Boones Ferry Road or 95<sup>th</sup> Avenue, then additional review will be needed to provide landscaping that provides appropriate screening, such as the planting screening the Carl's Jr. menu board.

***Subsection 4.176 (.03) Landscape Area and Locations***

A51. **Review Criteria:** "Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** According to the Applicant, twenty-eight percent (28%) of the site is proposed to be in landscaping. The landscaping is in a variety of areas throughout the site, including the street frontage areas. Landscaping is placed along the streets to



soften the look of off-street parking areas. As shown on the Applicant's sheet L2.0, a variety of landscape materials are being used.

#### ***Subsection 4.176 (.04) Buffering and Screening***

A52. **Review Criteria:** "Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.

C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.

D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.

E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.

F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.

#### ***Subsection 4.176 (.09) Landscape Plans***

A53. **Review Criteria:** "Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Applicant's sheets L1.0 and L2.0 in Exhibit B2 provide the required information.

#### ***Subsection 4.176 (.12) Mitigation Standards***

A54. **Review Criterion:** "A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No existing native plants are being removed requiring a mitigation plan pursuant to this subsection.

#### **Other Standards**

#### ***Section 4.177 Street Improvement Standards***

A55. **Review Criteria:** This section establishes improvement standards for public streets, along with private access drives and travel lanes.

**Finding:** These criteria are satisfied.

**Explanation of Finding:**

- Access is provided to the proposed development clear of any obstructions.
- The travel lanes are proposed to be asphalt and have been constructed to City standards.
- All access lanes are a minimum of 12 feet.
- The development will comply with requirements of the Fire District.
- No construction is proposed in the public right-of-way.

***Section 4.179 Mixed Solid Waste and Recyclables Storage***

A56. **Review Criteria:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No changes to the mixed solid waste facilities are proposed. The proposed coffee kiosk replaces a larger multi-tenant commercial building. The mixed-solid waste enclosure designed and built for the multi-tenant building is adequately sized for the smaller coffee kiosk.

***Sections 4.199.20 Outdoor Lighting***

A57. **Review Criteria:** This section states that the outdoor lighting ordinance is applicable to “Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas” and “Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas.” In addition the exempt luminaires and lighting systems are listed.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** All the outdoor lighting for the new development on the site is being required to comply with the outdoor lighting ordinance. A photometric site plan has been provided, sheet SE1.0 (Exhibit B2), showing the functional effect of the proposed lighting on the site. Detailed requirements for site lighting are being reviewed as a component of Request B, Site Design Review, of this application. See Findings B32 through B39.

***Sections 4.300-4.320 and Subsection 4.118 (.02) Underground Installation of Utilities***

A58. **Review Criteria:** These sections list requirements regarding the underground installation of utilities.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** There are no existing overhead facilities that require undergrounding as part of this development. All new utilities associated with the development are proposed to be installed underground.

## REQUEST B: DB13-0047 SITE DESIGN REVIEW

### Site Design Review

#### ***Subsection 4.400 (.01) and Subsection 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.***

B1. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The Applicant provides a response to this subsection on pages 18-20 of the compliance narrative in their notebook, Exhibit B1. The City summarizes the compliance with this subsection and finds as follows:

*Excessive Uniformity:* The design of the coffee kiosk is different from the Carl’s Jr. building, yet complementary, and has an architectural character unique from other surrounding development, preventing uniformity. The coffee kiosk uses the same brick around the base as used on the Carl’s Jr. building. Lap siding and board and batten siding are used similarly as with the Carl’s Jr. building, only painted different colors.

*Inappropriate or Poor Design of the Exterior Appearance of Structures:* The coffee kiosk is professionally designed with a unique historic “small-town” theme indicative of other commercial development in Wilsonville, including Old Town Square (Fred Meyer development). The result is a professional design appropriate for Wilsonville.

*Inappropriate or Poor Design of Signs:* Signs are typical of the type of development proposed and meet applicable City standards. See Request C, Master Sign Plan.

*Lack of Proper Attention to Site Development:* The appropriate professional services have been used to design the site incorporating unique features of the site, including site size and shape and available access, and demonstrating appropriate attention being given to site development.

*Lack of Proper Attention to Landscaping:* Landscaping is provided exceeding the area requirements, has been professionally designed by a landscape architect, and includes a variety of plant materials, all demonstrating appropriate attention being given to landscaping.

#### ***Subsection 4.400 (.02) and Subsection 4.421 (.03) Purposes of Objectives of Site Design Review***

B2. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “The City Council declares that the

purposes and objectives of site development requirements and the site design review procedure are to:” Listed A through J.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** City Council finds that the proposal provides a design appropriate for the site and its location in Wilsonville. Council adopts and incorporates by this reference the Applicant’s response to design on pages 18-20 of the compliance narrative in their notebook, Exhibit B1, demonstrating compliance with the listed purposes and objectives. City Council also finds that the proposed site design assures proper and adequate functioning of the site and hereby incorporates the findings in response to WCC Section 4.155(.03) and the findings in the section below, entitled, “Additional City Council Findings Related to Appeal Issues.”

#### ***Section 4.420 Development in Accordance with Plans***

B3. **Review Criteria:** The section states that development is required in accord with plans approved by the Development Review Board.

**Finding:** These criteria will be satisfied by Condition of Approval PDB 1.

**Explanation of Finding:** City Council has reversed the DRB decision and, based on substantial evidence in the record, including new evidence that the DRB did not have the benefit of hearing, City Council has approved the subject proposal. A condition of approval has been included to ensure construction, site development, and landscaping are carried out in substantial accord with the approved plans, drawings, sketches, and other documents contained in the record, excluding and excepting any plans, drawings, sketches, or documents that show any improvements located outside of Applicant’s own property. All improvements must be located within Applicant’s own property.

#### ***Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards***

B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) “The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** City Council finds that the Applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the Applicant’s notebook, Exhibit B1, which Council adopts and incorporates by this reference as findings. City Council notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met. City Council also finds that the proposed site design assures adequate functioning of the site and hereby incorporates the findings in response to WCC Section 4.155(.03) and the findings in the section below, entitled “Additional City Council Findings Related to Appeal Issues.”

#### ***Subsection 4.421 (.05) Site Design Review-Conditions of Approval***

B5. **Review Criterion:** “The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

#### ***Subsection 4.421 (.06) Color or Materials Requirements***

B6. **Review Criterion:** “The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** All material and color information has been provided by the Applicant.

#### ***Section 4.430 Design of Trash and Recycling Enclosures***

B7. **Review Criteria:** “The following locations, design and access standards for mixed solid waste and recycling storage areas shall be applicable to the requirements of Section 4.179 of the Wilsonville City Code.” Listed (.02) A. through (.04) C.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** City Council finds that no new trash and recycling enclosures are proposed as part of this Application; therefore these criteria are inapplicable. Nevertheless, City Council finds that the plans in the record demonstrate that collection vehicles and The Human Bean employees have a relatively direct and safe access to the existing trash enclosures.

#### ***Section 4.440 Site Design Review-Submittal Requirements***

B8. **Review Criteria:** This section lists additional submittal requirements for Site Design Review in addition to those listed in Section 4.035.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The Applicant has submitted the required additional materials, as applicable.

#### ***Subsection 4.450 (.01) Landscape Installation or Bonding***

B9. **Review Criterion:** “All landscaping required by this section and approved by the Board shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping as determined by the Planning Director is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time

authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City shall be returned to the applicant.”

**Finding:** This criterion will be satisfied by Condition of Approval PDB 2.

**Explanation of Finding:** The condition of approval will assure installation or appropriate security at the time occupancy is requested.

#### ***Subsection 4.450 (.02) Approved Landscape Plan Binding***

B10. **Review Criterion:** “Action by the City approving a proposed landscape plan shall be binding upon the applicant. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, as specified in this Code.”

**Finding:** This criterion will be satisfied by Condition of Approval PDB 3.

**Explanation of Finding:** The condition of approval shall provide ongoing assurance this criterion is met.

#### ***Subsection 4.450 (.03) Landscape Maintenance and Watering***

B11. **Review Criterion:** “All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved by the Board, unless altered with Board approval.”

**Finding:** This criterion will be satisfied by Condition of Approval PDB 4.

**Explanation of Finding:** The condition of approval will ensure landscaping is continually maintained in accordance with this subsection.

#### ***Subsection 4.450 (.04) Addition and Modifications of Landscaping***

B12. **Review Criterion:** “If a property owner wishes to add landscaping for an existing development, in an effort to beautify the property, the Landscape Standards set forth in Section 4.176 shall not apply and no Plan approval or permit shall be required. If the owner wishes to modify or remove landscaping that has been accepted or approved through the City’s development review process, that removal or modification must first be approved through the procedures of Section 4.010.”

**Finding:** This criterion will be satisfied by Condition of Approval PDB 4.

**Explanation of Finding:** The condition of approval shall provide ongoing assurance that this criterion is met by preventing modification or removal without the appropriate City review.

#### ***On-site Pedestrian Access and Circulation***

##### ***Subsection 4.154 (.01) B. Standards for On-site Pedestrian Access and Circulation***

B13. **Review Criteria:** This subsection lists standards for on-site pedestrian access and circulation, listed 1. through 6.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** City Council finds that the design of the on-site pedestrian access and circulation described and illustrated in the Applicant’s submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review

and the proposed revised Stage II Final Plan for the site. See Findings A24 through A29 under Request A.

## Parking

### *Subsection 4.155 (.02) Provision and Maintenance of Off-Street Parking*

B14. **Review Criteria:** This subsection lists general provisions for parking, A. through O.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The design of the parking described and illustrated in the Applicant's submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review and the proposed revised Stage II Final Plan for the site. See Finding A30 under Request A.

### *Subsection 4.155 (.03) B. 1.-3. Landscaping of Parking Areas*

B15. **Review Criteria:** "Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:" Listed 1. through 3.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As shown in the planting plans, sheet L2.0 of Exhibit B2, landscape screening is provided between the proposed parking and the public right-of-way. Trees are provided for the proposed parking spaces as required by this subsection. Tree planting areas generally meet the minimum size requirements. However, the planting area with a tree between a parking stall and the entry to the coffee drive-thru queuing area is less than 8 feet wide. City Council finds that it is desirable to have a tree and other plantings at this location, and that the planter is as wide as practicable, balancing competing design requirements and site restraints.

### *Section 4.171 Protection of Natural Features and Other Resources*

B16. **Review Criterion:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.

**Finding:** This criterion is satisfied.

**Explanation of Finding:** None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

## Landscaping

### *Subsection 4.176 (.02) B. Landscape Standards and Compliance with Code*

B17. **Review Criterion:** "All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length"

**Finding:** This criterion is satisfied.



**Explanation of Finding:** No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

***Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent***

B18. **Review Criteria:** “The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The Applicant’s sheet L2.0 of Exhibit B2 shows a variety of plant materials and placement consistent with the general landscape standard.

***Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials***

B19. **Review Criteria:** “Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.

b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The planting plan, sheet L2.0 of Exhibit B2, shows landscaping meeting the requirements of this subsection.

***Subsection 4.176 (.03) Landscape Area and Locations***

B20. **Review Criteria:** “Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Consistent with the proposed revised Stage II Final Plan for the site, the proposed design of the site provides for more than the required amount of landscaping and landscaping in at least three separate and distinct areas, including the area along SW 95<sup>th</sup> Avenue and SW Boones Ferry Road. See Finding A51 of Request A. The planting plans, sheet L2.0 of Exhibit B2, show landscape placed in areas that will define, soften, and screen the appearance of buildings and off-street parking areas.

***Subsection 4.176 (.04) Buffering and Screening***

- B21. **Review Criteria:** “Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.
- C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.
- D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.
- E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.
- F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.

#### ***Subsection 4.176 (.06) A. Plant Materials-Shrubs and Groundcover***

- B22. **Review Criteria:** This subsection establishes plant material and planting requirements for shrubs and ground cover.

**Finding:** These criteria are satisfied or will be satisfied by Condition of Approval PDB 5.

**Explanation of Finding:** The condition of approval requires that the detailed requirements of this subsection are met.

#### ***Subsection 4.176 (.06) B. Plant Materials-Trees***

- B23. **Review Criteria:** This subsection establishes plant material requirements for trees.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The plants material requirements for trees will be met as follows:

- The Applicant’s planting plan, sheet L2.0 of Exhibit B2, shows all trees as B&B (Balled and Burlapped).
- Landscaping is being required to meet ANSI standards.
- The Applicant’s planting plan lists tree sizes required by code.

#### ***Subsection 4.176 (.06) D. Plant Materials-Street Trees***

- B24. **Review Criteria:** This subsection establishes plant material requirements for street trees.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As shown in their planting plan, sheet L2.0 of Exhibit B2, the Applicant proposes Bowhall Maple street trees (*Acer rubrum* “Bowhall”). The proposed trees are a cultivar of *Acer rubrum*, which is listed as a satisfactory street tree in this subsection. The trees are proposed to be planted at 3” caliper, the required size for arterial streets.

#### ***Subsection 4.176 (.06) E. Types of Plant Species***

B25. **Review Criteria:** This subsection discusses use of existing landscaping or native vegetation, selection of plant materials, and prohibited plant materials.  
**Finding:** These criteria are satisfied.  
**Explanation of Finding:** The Applicant has provided sufficient information showing the proposed landscape design meets the standards of this subsection. See sheet L2.0 of Exhibit B2.

***Subsection 4.176 (.06) G. Exceeding Plant Material Standards***

B26. **Review Criterion:** “Landscape materials that exceed the minimum standards of this Section are encouraged, provided that height and vision clearance requirements are met.”  
**Finding:** This criterion is satisfied.  
**Explanation of Finding:** The selected landscape materials do not violate any height or vision clearance requirements.

***Subsection 4.176 (.07) Installation and Maintenance of Landscaping***

B27. **Review Criteria:** This subsection establishes installation and maintenance standards for landscaping.  
**Finding:** These criteria are satisfied or will be satisfied by Condition of Approval PDB 6.  
**Explanation of Finding:** The installation and maintenance standards are or will be met as follows:

- Plant materials are required to be installed to current industry standards and be properly staked to ensure survival.
- Plants that die are required to be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City.
- Sheet L1.0 of Exhibit B2 shows a permanent built-in irrigation system with an automatic controller, satisfying the related standards of this subsection.

***Subsection 4.176 (.09) Landscape Plans***

B28. **Review Criterion:** “Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated.”  
**Finding:** This criterion is satisfied.  
**Explanation of Finding:** Sheets L1.0 and L2.0 of Exhibit B2 provide the required information.

***Subsection 4.176 (.10) Completion of Landscaping***

B29. **Review Criterion:** “The installation of plant materials may be deferred for a period of time specified by the Board or Planning Director acting on an application, in order to avoid hot summer or cold winter periods, or in response to water shortages. In these cases, a temporary permit shall be issued, following the same procedures specified in subsection (.07)(C)(3), above, regarding temporary irrigation systems. No final Certificate of Occupancy shall be granted until an adequate

bond or other security is posted for the completion of the landscaping, and the City is given written authorization to enter the property and install the required landscaping, in the event that the required landscaping has not been installed. The form of such written authorization shall be submitted to the City Attorney for review.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The Applicant has not requested to defer installation of plant materials.

#### ***Subsection 4.176 (.12) Mitigation and Restoration Plantings***

B30. **Review Criterion:** “A mitigation plan is to be approved by the City’s Development Review Board before the destruction, damage, or removal of any existing native plants.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** Consistent with the proposed revised Stage II Final Plan, the proposed landscape design involves no removal of existing native plants requiring a mitigation plan pursuant to this subsection.

#### **Other Standards**

#### ***Section 4.179 Mixed Solid Waste and Recyclables Storage***

B31. **Review Criterion:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The design of the mixed solid waste and recycling enclosures is not proposed to be changed by this application.

#### **Outdoor Lighting**

#### ***Section 4.199.20 Applicability of Outdoor Lighting Standards***

B32. **Review Criterion:** This section states that the outdoor lighting ordinance is applicable to “Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas” and “Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas.” In addition the exempt luminaires and lighting systems are listed.

**Finding:** This criterion is satisfied.

**Explanation of Finding:** Non-exempt new outdoor lighting proposed for the development site is being required to comply with the outdoor lighting ordinance.

#### ***Section 4.199.30 Outdoor Lighting Zones***

B33. **Review Criterion:** “The designated Lighting Zone as indicated on the Lighting Overlay Zone Map for a commercial, industrial, multi-family or public facility parcel or project shall determine the limitations for lighting systems and fixtures as specified in this Ordinance.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The development site is within LZ 2 and the proposed outdoor lighting systems are being reviewed under the standards of this lighting zone.

***Subsection 4.199.40 (.01) A. Alternative Methods of Outdoor Lighting Compliance***

B34. **Review Criterion:** “All outdoor lighting shall comply with either the Prescriptive Option or the Performance Option below.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The Applicant has submitted information to comply with the performance option.

***Subsection 4.199.40 (.01) C. Performance Option for Outdoor Lighting Compliance***

*“If the lighting is to comply with the Performance Option, the proposed lighting design shall be submitted by the applicant for approval by the City meeting all of the following:” Listed 1. through 3.*

***Subsection 4.199.40 (.01) C. 1. Weighted Average of Direct Uplight Lumens Standard***

B35. **Review Criteria:** “The weighted average percentage of direct uplight lumens shall be less than the allowed amount per Table 9.”

**Finding:** These criteria are satisfied or will be satisfied by Condition of Approval PDB 8.

**Explanation of Finding:** As shown in the revised sheet SE1.0 provided with the Applicant’s notebook, Exhibit B1, the only luminaires that are not fully shielded are the landscape bollards. The luminaires are such that the weighted average percentage of direct uplight lumens will be less than five percent (5%). A condition of approval limits all wall mounted fixtures to down lighting.

***Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines***

B36. **Review Criteria:** “The maximum light level at any property line shall be less than the values in Table 9, as evidenced by a complete photometric analysis including horizontal illuminance of the site and vertical illuminance on the plane facing the site up to the mounting height of the luminaire mounted highest above grade.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Sheet SE1.0 shows the horizontal foot candles comply with Table 9. The Applicant states on page 18 of their compliance narrative, the vertical foot candles remain substantially the same as previously approved as compliant with Table 9.

***Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines***

B37. **Review Criteria:** “Luminaires shall not be mounted so as to permit aiming or use in any way other than the manner maintaining the shielding classification required herein:”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The mountings will be in a downward position. Condition of Approval PDB 8 helps ensure this position.

***Subsection 4.199.40 (.01) D. Outdoor Lighting Curfew***

B38. **Review Criterion:** “All prescriptive or performance based exterior lighting systems shall be controlled by automatic device(s) or system(s) that:” Listed 1. through 3.

**Finding:** This criterion is satisfied or will be satisfied by Condition of Approval PDB 7.

**Explanation of Finding:** As previously approved, Carl’s Jr. is exempt from lighting curfew as a 24/7 operation. However, the coffee kiosk is not. A condition of approval requires lighting associated with this building and supporting parking shall be dimmed at 10:00 p.m. pursuant to Table 10.

***Subsection 4.199.50 Submittal Requirements***

B39. **Review Criteria:** “Applicants shall submit the following information as part of DRB review or administrative review of new commercial, industrial, multi-family or public facility projects:” Listed A. through F. “In addition to the above submittal requirements, Applicants using the Prescriptive Method shall submit the following information as part of the permit set plan review:

A. A site lighting plan (items 1 A - F, above) which indicates for each luminaire the 3 mounting height line to demonstrate compliance with the setback requirements. For luminaires mounted within 3 mounting heights of the property line the compliance exception or special shielding requirements shall be clearly indicated.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The Applicant has submitted sufficient information to review the application.

**REQUEST C: DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER**

**Subsection 4.031 (.01) M. and Subsection 4.156.02 (.07) and (.07) C. Review Process**

C1. **Review Criteria:** These subsections establish that Master Sign Plans are reviewed by the Development Review Board and that modifications to Master Sign Plans other than minor and major adjustments are reviewed the same as a new Master Sign Plan.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Due to the request for a waiver, the request does not qualify as a minor or major adjustment and is therefore being reviewed the same as a new Master Sign Plan.

**Subsection 4.156.02 (.07) A. Master Sign Plan Submission Requirements**

C2. **Review Criteria:** This subsection identifies submission requirements for Master Sign Plans

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As indicated in the table below, the Applicant has either satisfied the submission requirements, or has been granted a waiver under Subsection 4.156.02(.10).

Requirement	Submitted	Waiver Granted		Condition of Approval	Not Applicable	Additional findings/notes
		Info Already Available to City	Info Not Necessary for Review			
Completed Application Form	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sign Drawings or Descriptions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Documentation of Building/Tenant Space Lengths	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Drawings of Sign Placement of Building Facades	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Project Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	



***Subsection 4.156.02 (.05) E. Class II Sign Permit Review Criteria: Generally and Site Design Review***

- C3. **Review Criteria:** “Class II Sign Permits shall satisfy the sign regulations for the applicable zoning district and the Site Design Review Criteria in Sections 4.400 through 4.421,” Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As indicated in Findings C25 through C31, these criteria are met.

***Subsection 4.156.02 (.05) E. 1. Class II Sign Permit Review Criteria: Compatibility with Zone***

- C4. **Review Criteria:** “The proposed signage is compatible with developments or uses permitted in the zone in terms of design, materials used, color schemes, proportionality, and location, so that it does not interfere with or detract from the visual appearance of surrounding development;” Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposed signage is typical of and compatible with development within the PDC zones. This includes a design and colors reflecting corporate identity, illuminated channel letters and logo on a raceway, freestanding cabinet signs, and individual non-illuminated letters on an architectural wall. The placement of signs on buildings is in recognizable sign bands and proportional to the building facades. No evidence exists, nor has testimony been received, that the subject signs would detract from the visual appearance of the surrounding development.

***Subsection 4.156.02 (.05) E. 2. Class II Sign Permit Review Criteria: Nuisance and Impact on Surrounding Properties***

- C5. **Review Criteria:** “The proposed signage will not create a nuisance or result in a significant reduction in the value or usefulness of surrounding development;” Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** There is no evidence, and no testimony has been received, that the subject signs would create a nuisance or negatively impact the value of surrounding properties.

***Subsection 4.156.02 (.05) E. 3. Class II Sign Permit Review Criteria: Items for Special Attention***

- C6. **Review Criteria:** “Special attention is paid to the interface between signs and other site elements including building architecture and landscaping, including trees.” Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The building signs are within an architectural feature identifiable as a sign band with a buffer within the sign band around the sign, which demonstrates consideration of the interface between the signs and building architecture. No sign-tree conflicts have been noted.

***Subsection 4.156.02 (.06) B. Class III Sign Permit Review Criteria***

C7. **Review Criteria:** “The review criteria for Class II Sign Permits plus waiver or variance criteria when applicable.” Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** A waiver is being requested and responses to the waiver criteria have been provided.

***Subsection 4.156.02 (.07) B.1. Master Sign Plan Review Criteria: Consistent and Compatible Design***

C8. **Review Criteria:** “The Master Sign Plan provides for consistent and compatible design of signs throughout the development.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The channel letter/logo design is similar to what was previously approved for the multi-tenant commercial building. The coffee kiosk signs are consistent with the design of the signs approved and installed on the Carl’s Jr. building. No additional freestanding signs are proposed. Directional signs are similar in character to the Carl’s Jr. directional signs and are typical of drive-thru establishments.

***Subsection 4.156.02 (.07) B.2. Master Sign Plan Review Criteria: Future Needs***

C9. **Review Criteria:** “The Master Sign Plan considers future needs, including potential different configuration of tenant spaces and different sign designs, if allowed.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** City Council has accepted the Staff Report, as amended hereby, which recommended increasing the sign allowance to 25.4 square feet on each facade to allow flexibility of sign design over time within a rectangle that the proposed sign fits within.

***Subsection 4.156.02 (.08) A. Sign Waiver***

***Subsection 4.156.02 (.08) A. Waivers in General***

C10. **Review Criteria:** “The DRB may grant waivers for sign area, sign height from ground (no waiver shall be granted to allow signs to exceed thirty-five (35) feet in height), number of signs, or use of electronic changeable copy signs in order to better implement the purpose and objectives of the sign regulations as determined by making findings that all of the following criteria are met:” Listed 1.-4. See Findings C12 through C15 below.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** A waiver is being requested for sign area consistent with this subsection.

***Subsection 4.156.02 (.08) A. 1. Waivers Criteria: Improved Design***

C11. **Review Criteria:** “The waiver will result in improved sign design, in regards to both aesthetics and functionality.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposed coffee kiosk is a particularly long narrow building at only 12’ 10” wide with a length of 35’ 4”. According to the table showing the sign area allowed in Subsection 4.156.08(.02)B.1, the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The waiver allows signs of equal size to be placed on three facades that are of a consistent size and design, creating a consistent look for portions of the buildings that are otherwise architecturally similar. City Council concurs with staff recommendation that greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Therefore, City Council adopts the staff recommendation that a waiver be approved for the allowed sign area to be increased to 25.4 square feet on the 12.83 long facade.

***Subsection 4.156.02 (.08) A. 2. Waivers Criteria: More Compatible and Complementary***

C12. **Review Criteria:** “The waiver will result in improved sign design, in regards to both aesthetics and functionality.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The waiver will provide for more consistent signs around the building and neighboring buildings, providing for compatible and complementary design.

***Subsection 4.156.02 (.08) A .3. Waivers Criteria: Impact on Public Safety***

C13. **Review Criteria:** “The waiver will result in a sign or signs that improve, or at least do not negatively impact, public safety, especially traffic safety.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** If anything, the added readability of the sign facing the intersection will aid drivers in making decisions on maneuvers earlier. No negative impacts on safety have been noted.

***Subsection 4.156.02 (.08) A .4. Waivers Criteria: Content Neutrality***

C14. **Review Criteria:** “Sign content is not being considered when determining whether or not to grant a waiver.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Sign content is not being considered in granting the waiver. Similar consideration on building shape would occur regardless of the tenant or message.

**Section 4.156.03 Sign Measurement**

***Subsection 4.156.03 (.01) B. Measurement of Individual Element Signs***

C15. **Review Criteria:** “The area for signs constructed of individual elements (letters, figures, etc.) attached to a building wall or similar surface or structure shall be the summed area of up to three squares, rectangles , circles, or triangles drawn around all sign elements.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposed signs have not been measured consistent with this subsection. However, as recommended by Staff, the proposed Master Sign Plan revision allows for the proposed signs measured according to this subsection.

***Subsection 4.156.03 (.03) A.-B. Measurement of Sign Height and Length***

C16. **Review Criteria:** “Height of a sign is the vertical distance between the lowest and highest points of the sign.”

Length of a sign is the horizontal distance between the furthest left and right points of the sign.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposed signs have been measured consistent with this subsection.

***Subsection 4.156.08 (.01) L. Design of Sign Based on Initial Tenant Configuration and Size***

C17. **Review Criteria:** “When a sign is designed based on the number of planned tenant spaces it shall remain a legal, conforming sign regardless of the change in the number of tenants or configuration of tenant spaces.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The master sign plan is proposed based on the number of planned tenants, and it is understood the sign plan will be valid regardless of the number of future tenants.

***Subsection 4.156.08 (.02) Building Signs in the PDC, PDI, and PF Zones***

***Subsection 4.156.08 (.02) A. Sign Eligible Facades***

C18. **Review Criteria:** “Building signs are allowed on a facade of a tenant space or single tenant building when one or more of the following criteria are met:

1. The facade has one or more entrances open to the general public;
2. The facade faces a lot line with frontage on a street or private drive with a cross section similar to a public street, and no other buildings on the same lot obstruct the view of the building facade from the street or private drive; or
3. The facade is adjacent to the primary parking area for the building or tenant.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** All facades of the proposed coffee kiosk are sign eligible. The north, east, and west face lot lines with frontages of public streets. The south facade faces the primary parking area.

***Subsection 4.156.08 (.02) B. Building Sign Area Allowed***

C19. **Review Criteria:** This subsection includes a table identifying the sign area allowed for facades based on the linear length of the facade. Exceptions are listed 2. through 5.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** There are no changes to the previously approved sign allowance for the Carl’s Jr. building. The following are the allowances for the proposed coffee kiosk.

Coffee Kiosk				
Façade	Linear Length	Sign Area Allowed	Proposed Max	Staff Recommendation
North	12.83 feet	12.83 sf	15.86 sf	25.4 sf
East	34.33 feet	34.33 sf	15.86 sf	25.4 sf
South	12.83 feet	12.83 sf	0 sf	0 sf
West	34.33 feet	34.33 sf	15.86 sf	25.4 sf

The proposed coffee kiosk is a particularly long narrow building at only 12' 10" wide with a length of 35' 4". According to the table showing the sign area allowed in Subsection 4.156.08(.02)B.1, the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The Applicant, in their narrative, requests 15.83 square feet of signage for each of three facades, which includes a waiver to increase the sign area on the north facade. Staff notes the Applicant's method of measurement does not follow the measurement method prescribed in Section 4.156.03. Staff additionally noted greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Staff recommended, and City Council has approved, 25.4 square feet on the east, west, and north facades. See also Finding 31 regarding waiver request.

***Subsection 4.156.08 (.02) B. 6. Calculating Linear Length to Determine Sign Area Allowed***

C20. **Review Criteria:** "For facades of a single tenant building the length the facade measured at the building line, except as noted in a. and b. below. For multi-tenant buildings the width of the façade of the tenant space shall be measured from the centerline of the party walls or the outer extent of the exterior wall at the building line, as applicable, except as noted in a. and b. below. Applicants shall provide the dimensions needed to calculate the length. Each tenant space or single occupant building shall not be considered to have more than five (5) total facades."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The Applicant has supplied the required measurements used to determine linear lengths according to this subsection.

***Subsection 4.156.08 (.02) C. Building Sign Length Allowed***

C21. **Review Criterion:** "The length of individual tenant signs shall not exceed seventy-five (75) percent of the length of the facade of the tenant space."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** None of the proposed sign bands exceed seventy-five (75) percent of the length of the façade.

***Subsection 4.156.08 (.02) D. Building Sign Height Allowed***

C22. **Review Criteria:** "The height of building signs shall be within a definable sign band, fascia, or architectural feature and allow a definable space between the sign and the top and bottom of the sign band, fascia, or architectural feature."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** All of the proposed sign bands are within a definable architectural feature and have a definable space between the sign and the top and bottom of the architectural feature.

***Subsection 4.156.08 (.02) E. Building Sign Types Allowed***

C23. **Review Criterion:** “Types of signs permitted on buildings include wall flat, fascia, projecting, blade, marquee and awning signs. Roof-top signs are prohibited.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** All the proposed buildings signs are wall flat, which is an allowable type.

***Subsection 4.156.08 (.03) A. Additional Signs: Directional Signs***

C24. **Review Criteria:** “Notwithstanding the signs allowed based on the site in (.01) and (.02) above, the following signs may be permitted, subject to standards and conditions in this Code:” “In addition to exempt directional signs allowed under Subsection 4.156.05 (.02) C. freestanding or ground mounted directional signs six (6) square feet or less in area and four (4) feet or less in height:

1. The signs shall be designed to match or complement the architectural design of buildings on the site;
2. The signs shall only be placed at the intersection of internal circulation drives; and
3. No more than one (1) sign shall be placed per intersection corner with no more than two (2) signs per intersection.”

**Finding:** These criteria are satisfied or will be satisfied by Condition of Approval PDC 3.

**Explanation of Finding:** Two (2) illuminated double faced directional signs are proposed as part of the Master Sign Plan. The signs are shown in the Applicant’s sign section of their notebook, Exhibit B1. Exhibit B1 shows the signs slightly larger than 6 square feet. A condition of approval requires they be limited to six (6) square feet. The signs are shown at 4’ tall. The signs match the design of other signs on the property and complement the architecture of the building similarly. The signs are placed at the intersection of internal circulation drives, and only one sign is placed per intersection.

**Site Design Review**

***Subsections 4.400 (.01) and 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.***

C25. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:**

*Excessive Uniformity:* The sign plan allows for a variety of sign shapes, fonts, and colors chosen by different tenants so as to avoid excessive uniformity.

*Inappropriate or Poor Design of Signs:* Signs are typical of the type of development proposed found to be appropriate throughout the City. At issuance of the Class I Sign Permits, consistent with the Master Sign Plan, the City will ensure quality design of signs.

*Lack of Proper Attention to Site Development:* The appropriate professional services have been used to design the site incorporating unique features of the site, including site size and shape and available access, demonstrating appropriate attention being given to site development and sign placement.

*Lack of Proper Attention to Landscaping:* Landscaping around the monument sign and freestanding sign is consistent with other landscaping on the property and is of an acceptable quality and design.

***Subsections 4.400 (.02) and 4.421 (.03) Purposes of Objectives of Site Design Review***

- C26. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “The City Council declares that the purposes and objectives of site development requirements and the site design review procedure are to:” Listed A through J. including D. which reads “Conserve the City's natural beauty and visual character and charm by assuring that structures, signs and other improvements are properly related to their sites, and to surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to exterior appearances of structures, signs and other improvements;”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** City Council finds that the signs comply with the purposes and objectives of site design review, especially objective D, which specifically mentions signs. The proposed signs are of a scale and design appropriately related to the subject site, and the appropriate amount of attention has been given to visual appearance.

***Subsection 4.421 (.01) Site Design Review-Design Standards***

- C27. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Only F. is applicable to this application, which reads, “Advertising Features. In addition to the requirements of the City's sign regulations, the following criteria should be included: the size, location, design, color, texture, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** There is no indication that the size, location, design, color, texture, lighting, or material of the proposed signs would detract from the design of the building and the surrounding properties.

***Subsection 4.421 (.02) Applicability of Design Standards to Signs***

C28. **Review Criteria:** “The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Design standards have been applied to exterior signs, as applicable, see Finding C27 above.

#### *Subsection 4.421 (.05) Site Design Review-Conditions of Approval*

C29. **Review Criterion:** “The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

#### *Subsection 4.421 (.06) Color or Materials Requirements*

C30. **Review Criterion:** “The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** Staff does not recommend any additional requirements for materials or colors for the proposed signs.

#### *Section 4.440 Site Design Review-Procedures*

C31. **Review Criteria:** “A prospective applicant for a building or other permit who is subject to site design review shall submit to the Planning Department, in addition to the requirements of Section 4.035, the following:” Listed A through F.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The Applicant has submitted a sign plan as required by this section.

### **ADDITIONAL CITY COUNCIL FINDINGS RELATED TO APPEAL ISSUES**

The opponent of this Application, Garry LaPoint of LaPoint Business Group, LLC (“Opponent”), raised several issues in his oral testimony and in written and CD submittals to the Development Review Board during the Development Review Board hearings process, and then to City Council through additional submittals to the City Council record on March 10, 2014, and through testimony at the appeal hearing before City Council on March 17, 2014. As determined by City Council, the scope of review of the appeal was limited to the DRB record, except as pertaining to the following issues:

- On-site traffic congestion;



- Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation, inclusive of delivery vehicles and other larger format vehicles; and
- Wilsonville Development Code (“WDC”) Sections 4.154, 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C.

The issues raised by Mr. LaPoint are set forth below, along with City Council’s findings of fact and conclusions of law related to each issue.

**A. Trucks Serving the Site Will Not Exceed 30 feet in Length and Turning Movements Will Be Fully Contained Within the Site.**

Opponent asserted that the WB-40 delivery truck (40 foot semi-trailer truck) turning movement plan submitted by the Applicant to the DRB was infeasible and unsafe. In support of such assertion, Opponent submitted an email from Steve High, Night Transportation Supervisor of vendor Core-Mark Portland, dated February 10, 2014. Mr. High stated that Core-Mark would likely utilize a delivery pattern that was different from the WB-40 truck turning movement plan submitted by the Applicant in order to minimize or avoid movement that requires backing up into a loop. In addition, Opponent submitted a CD on March 10, 2014, which showed video of a WB-40 Carl’s Jr. delivery truck maneuvering on the site. Opponent argued that such truck was used by the Applicant to physically demonstrate the feasibility of the truck turning movement plan, which was created using the AutoTurn computer program, but that the truck failed to complete the proposed delivery pattern.

Although the maneuvering of a 40 foot truck had been presented by the Applicant to the DRB and was of concern to the DRB, resulting in DRB denial of the Application, that issue is now moot in that the Applicant has provided new evidence that deliveries to the coffee kiosk will be made by vendors in box trucks not to exceed an overall length of 30 feet. See Exhibit A to letter from Steve Pfeiffer, dated March 10, 2014. Additionally, the Applicant has provided a Truck Turning and Circulation Analysis (“Truck Turning Analysis”) performed by transportation engineering firm, Kittelson & Associates, Inc., dated March 2, 2014. See Exhibit B to letter from Steve Pfeiffer, dated March 10, 2014. The Truck Turning Analysis analyzes a 30 foot Umpqua box truck with a wheelbase of 18.6 feet, which is the largest vehicle that would perform deliveries to the coffee kiosk. The Truck Turning Analysis concludes that the studied Umpqua delivery truck can successfully access the site in a safe and efficient manner.

Based on the new evidence and commitment provided by the Applicant that all deliveries to the site will be made in delivery trucks 30 feet in length or less, and that such 30 foot trucks can successfully access the site safely and efficiently, City Council finds that Opponent’s assertion that 40 foot semi-trailer trucks will have difficulty maneuvering on the site is moot. To ensure that all deliveries are made in trucks 30 feet or less in length, Council adds Condition CC1, prohibiting vehicles greater than 30 feet in length from making inventory deliveries to The Human Bean or future tenant of the kiosk, unless an easement is found to legally exist that would allow the maneuvering of larger delivery vehicles on the adjacent property.

**B. All Vehicular Access and Maneuvering Will Occur On-Site.**

Opponent asserted that, due to traffic congestion caused in part by Carl's Jr. delivery trucks blocking drive aisles, customers to The Human Bean would utilize his property for ingress and egress to the site. Specifically, Opponent contended that customers to The Human Bean would utilize the curb cut along the property line between his property and Applicant's property near the trash enclosures to access, and exit from, the coffee kiosk.

City Council finds that the Applicant has provided substantial evidence of safe and convenient vehicular circulation, which can be fully accommodated on Applicant's own site and without the need for use of the Opponent's property. Specifically, City Council finds that the Applicant's site plan, and other evidence in the record as a whole, shows the following:

- Circulation and stacking patterns for vehicles visiting the coffee kiosk, with safe stacking for at least seven (7) vehicles;
- Directional striping and arrows separating traffic flow;
- Eight (8) adjacent parking spaces; and
- Two (2) directional signs directing customers of the coffee kiosk to exit using the drive aisle in front of Carl's Jr. to the shared driveway.

Additionally, City Council finds that the Truck Turning Analysis, discussed above in Section A, shows delivery truck entrance and exit movements that are fully accommodated on site, without the need to utilize Opponent's property. Based on the above evidence, and substantial evidence in the record as a whole, City Council finds that the subject proposal complies with WCC Sections 4.154, 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C, and that with the new circulation pattern and smaller truck use, as conditioned by City Council, all vehicular access and maneuvering is adequate to serve the functional needs of the site and is required to be fully accommodated on-site.

City Council acknowledges that it cannot physically prevent customers of The Human Bean from traveling across Opponent's property to purchase gas, patronize the convenience store, or to access or exit from the Applicant's site; however, City Council finds that substantial evidence in the record demonstrates that The Human Bean site is capable of safely and efficiently accommodating all customer and delivery truck traffic on its own site. To further ensure that all coffee kiosk activities occur on-site, Council adds Condition CC2, requiring that site circulation to The Human Bean or future tenant of the kiosk, including delivery vehicles and typical customer traffic, be accomplished without the use of the curb cut along the property line with Opponent's property, unless an easement is legally found to exist that would allow use of the curb cut and circulation on Opponent's property.

Opponent had also argued that the City did not have jurisdiction to review this Application because Opponent should have been added as a "necessary party" in compliance with WCC 4.035(.04).3. Although unclear from the record, Opponent appears to have argued that his consent was required to file the Application because his property was needed as part of the Applicant's site plan. However, based on the above analysis, the evidence presented by the Applicant, and the additional conditions of approval imposed by City Council, City Council

finds that The Human Bean site is capable of accommodating all customer and delivery truck traffic on its own site, without the need for use of the Opponent's property. Therefore, City Council finds that Opponent was not a "necessary party" to this Application and that there is no "jurisdictional defect" in this proceeding. City Council also incorporates by this reference the findings in Section E, below, related to the cross-easement.

### **C. On-Site Pedestrian Circulation Is Safe and Adequate.**

Opponent asserted that pedestrian circulation on the site is unsafe because pedestrians will travel the most direct path to their destination, even if it means crossing congested drive aisles.

Contrary to Opponent's assertion, City Council finds that the Applicant's site plan demonstrates a clear and safe plan for pedestrian ways and pedestrian crossings necessary to connect the proposed coffee kiosk with its associated parking, the sidewalk, and adjacent properties. More specifically, City Council finds that the Applicant's site plan shows the following:

- Two separate pedestrian connections to the 95<sup>th</sup> Avenue sidewalk, each with its own striped drive aisle crossing;
- Paved walkways with striped drive aisle crossings connecting the coffee kiosk to parking, the trash enclosures, and the Chevron property to allow, if desired, those who are fueling their cars to walk to the coffee kiosk; and
- A patio area near the coffee kiosk to provide pedestrians with a safe space to drink their coffee other than the parking lot.

Based on the above evidence, and substantial evidence in the record as a whole, City Council finds that the subject proposal complies with WCC Sections 4.154, 4.155(.03)A, 4.400(.02)A, and 4.421(.01)C, and that all pedestrian circulation is safe and adequate to serve the functional needs of the site.

City Council also finds that, although the City Council cannot control or regulate how pedestrians access the site, pedestrians are inclined to protect themselves from potential bodily harm and, when confronted with congested traffic, should therefore look to travel the safest path along the paved pedestrian walkways to their destination that are available and are being provided in this Application. Therefore, City Council finds that the on-site pedestrian circulation is adequate and safe, and that Opponent's argument is without merit.

### **D. On-Site Vehicular Circulation Is Safe and Adequate.**

Opponent asserted that the proposed drive-thru coffee kiosk did not allow for the proper functioning of the whole site and that on-site vehicular circulation is unsafe. Specifically, Opponent asserted that an Institute of Traffic Engineers ("ITE") study showed that drive-thru coffee shops produce the longest maximum queues of any of the land uses studies and that, given

such long queues, the proposed coffee kiosk would create on-site congestion that conflicted with the traffic flows of the adjacent Carl's Jr. and Chevron establishments.

Contrary to Opponent's assertions, City Council finds that the site design allows for proper functioning of the whole site, and that on-site vehicular circulation is safe and adequate. First, it is important to note that the ITE study referenced by Opponent was not entered into the record as evidence; therefore, City Council will not consider it since it is not entered into the record of this proceeding. Alternatively, even if it were in the record, City Council finds that the ITE study is irrelevant to this matter because the study was not performed locally in Wilsonville (or anywhere in Oregon).

Secondly, City Council finds that the impact or effect on the Chevron site is irrelevant to this proceeding. The only site currently under review pursuant to City Code requirements, is the site of the proposed coffee kiosk. As discussed in Section B, above, City Council finds that all vehicular access and maneuvering related to the proposed coffee kiosk can occur on-site, without the need to utilize Chevron's property. Based on testimony presented by the Applicant and the Carl's Jr. Franchisee at the hearing, City Council finds that the fast food restaurant and coffee kiosk uses are complimentary, and that the Applicant and Carl's Jr. Franchisee agree that the on-site traffic patterns for the two businesses will not conflict. Specifically, City Council finds that the peak volume of customers for the coffee kiosk will occur in the morning, while the peak volume of customers to Carl's Jr. will occur at the noon hour. Moreover, the Applicant testified that deliveries to the coffee kiosk will occur in the early morning hours, at approximately 4:00 a.m., in order to avoid traffic congestion and to ensure that the coffee kiosk is fully stocked to serve morning customers. Given the different peak customer times of Carl's Jr. and the coffee kiosk, as well as the early morning coffee kiosk delivery schedule, City Council finds that traffic can flow sufficiently enough to meet this criteria.

City Council is not persuaded by Opponent's evidence that increased vehicular accidents should cause City Council to deny the Application. Opponents have certainly not provided any evidence that any on-site accidents were caused by design of the proposed coffee kiosk site which has not yet been built. Furthermore, this site has already been finally approved for the development of a larger retail space and there is nothing in the record to show that the approved development would cause less traffic accidents than the proposed coffee kiosk.

Lastly, City Council finds that the Applicant has provided evidence of safe and convenient circulation on the site, in compliance with WCC Sections 4.400.02, 4.421C, 4.154 and 4.155. Specifically, City Council finds that the site plans show the following:

- Circulation and stacking patterns for vehicles visiting the coffee kiosk, with safe stacking for at least seven (7) vehicles;
- Directional striping and arrows separating traffic flow;
- Eight (8) adjacent parking spaces; and
- Adequate access for passenger vehicles and delivery trucks.

To further ensure safe and convenient on-site vehicular circulation, Council adds Condition CC3, which requires a stop line and stop sign for northbound traffic directly east of the north building line of the Carl's Jr. restaurant building, as well as a "DO NOT BLOCK" area at the entrance of the Carl's Jr. drive-thru lane sufficient to allow traffic through exiting from the north. This condition should help to promote the flow of traffic through the drive-thru lanes and help to ease congestion.

**E. A Gate Separating the Applicant's and Opponent's Properties Is Not Properly Before City Council.**

Opponent asserts that there is no legal cross-easement providing ingress and egress over both properties at the curb cut where the northeastern boundary of Applicant's property meets the northwestern boundary of Opponent's property. Opponent asserts that the Applicant is not permitted to utilize Opponent's property in order to operate its proposed coffee kiosk, and Opponent requests that a gate be required along the curb cut to separate Applicant's and Opponent's properties.

At the outset, it is important to note that City Council has already found in Section B, above, that all coffee kiosk vehicular access and maneuvering can occur on-site, without the need for use of the Opponent's property. City Council hereby incorporates by reference the findings in Section B, above. Therefore, City Council finds that a gate along the curb cut separating the Applicant's and Opponent's properties is unnecessary. To further ensure that all coffee kiosk activities occur on-site, Council adds Condition CC2, requiring that site circulation to The Human Bean or future tenant of the kiosk, including delivery vehicles and typical customer traffic, be accomplished without the use of the curb cut along the property line with Opponent's property, unless an easement is legally found to exist that would allow use of the curb cut and circulation on Opponent's property.

Although Council finds that substantial evidence in the record demonstrates that The Human Bean site is capable of safely and efficiently accommodating all customer and delivery truck traffic on its own site, the Applicant and Carl's Jr. Franchisee contend that such cross-easement legally exists to benefit their properties. City Council finds that it is not obligated nor authorized to adjudicate the validity of a private agreement. Such function is the purview of the courts, not of city government. Accordingly, City Council makes no determination as to the validity or legality of the cross-easement. To the extent that such cross-easement may affect a third party, such as Carl's Jr., which has been fully built, City Council finds that such third parties are not before Council for review. Therefore, City Council finds that it cannot impose conditions or other requirements on third parties who are not part of the present application. For this reason, City Council finds that imposition of a gate along the curb cut separating the Applicant's and Opponent's properties would be improper and not within the City's authority through this Application.

**F. Stage II Final Plan Approval for Retail Building Already Granted.**

Opponent asserts that he was coerced into entering a Development Agreement with the Applicant, Holiday Inn, and the City in 2012. See Exhibit B6. Specifically, Opponent asserts that he begrudgingly agreed to development of a Carl's Jr. fast food restaurant and "other yet to be determined retail" on Applicant's property as part of the Development Agreement, but that he was misled by the Applicant as to the nature of the retail and that he did not agree to a drive-thru coffee kiosk.

Although the Opponent may regret entering into a Development Agreement with the Applicant in hindsight, City Council finds that it is not obligated nor authorized to adjudicate any disputes between the Applicant and the Opponent arising out of that Development Agreement. As with the cross-easement, City Council finds that it is within the purview of the courts to adjudicate such disputes, not city government.

City Council finds that the Applicant had previously obtained Stage II Final Plan approval for a 3,150 square foot multi-tenant retail commercial building on the site. City Council also finds that such approval is still valid, and the retail building remains authorized for construction, as approved.

Lastly, although the revised Application includes a drive-thru component, City Council finds that the current coffee kiosk proposal would result in a 2,700 square foot reduction in the size of the previously approved building and, according to the traffic study, an attendant reduction in overall traffic on the site. Given the size of the previously approved retail building and various retail uses that could occupy such a larger building, City Council finds that the traffic, site circulation, and fire/life/safety impacts of the current proposal are more likely less than the originally-proposed and approved retail building. Based on the record as a whole, City Council finds that on-site vehicular and pedestrian circulation, as proposed for the coffee kiosk, is safe and adequate, and that the site design sufficiently serves the functional needs of the site.

#### **G. Notice of the DRB Hearing Was Adequate and Timely.**

Opponent asserts that he did not receive adequate legal notice of the Application prior to the DRB hearing. However, City Council finds the record shows that Opponent admitted to receiving e-mailed notice of the DRB hearing from the City on December 23, 2013, and that the City's notarized record of mailing demonstrates that Opponent was on the list of individuals notified by that mailing. There is no dispute that the notice was mailed on December 23, 2013, which was twenty-one (21) days before the January 13, 2014 hearing. Therefore, City Council finds that substantial evidence in the record shows that Opponent was mailed the notice within the statutory twenty (20) day time limit established by ORS 197.763(3)(f)(A).

Furthermore, City Council finds that the notice was adequate and did not prejudice Opponent's substantial rights. Specifically, City Council finds that the notice provided sufficient specificity to put the Opponent on notice that certain code sections within a clearly-defined range of code sections are applicable to the proposed development. Even if the notice were technically deficient (it is not), City Council also finds that Opponent's substantial rights were not prejudiced by any technical procedural errors in the notice. City Council finds that Opponent

had the opportunity to be heard at the initial DRB hearing, through his legal counsel, and had enough lead time to prepare a detailed written testimonial in time for the DRB hearing. Additionally, Opponent had the opportunity to participate in, and did participate in, the open record periods before the DRB, and Opponent presented testimony at the second DRB hearing on the matter. Opponent also had the opportunity to participate in the proceedings before City Council on this matter. Based on substantial evidence in the record, including the letter from Applicant's attorney, dated January 27, 2014 (Exhibit B6), City Council finds that Opponent received adequate and timely notice of the Application.

#### **H. The Proposed Coffee Kiosk Will Not Create an Adverse Traffic Impact.**

Opponent asserts that the proposed coffee kiosk will have an adverse traffic impact, in violation of WCC 4.140(.09)(J). Opponent also asserts that pass-by trips have the same impact as primary trips on site circulation. However, City Council is persuaded by the trip generation estimate ("TGE"), dated November 5, 2013, and AM Peak Hour Traffic Analysis ("AM Peak Analysis"), dated January 27, 2014, performed by the City's designated traffic engineer, DKS. See Exhibit 6 of Exhibit B6. City Council finds that DKS's initial TGE and the AM Peak Analysis demonstrate that the proposed coffee kiosk will not adversely impact study intersections in the AM or PM peak, and that all levels of service of affected intersections remain operating within the City's standards.

While the Opponent asserts that pass-by trips have the same impact as primary trips on internal site circulation, City Council finds that they do not have the same impact on the levels of service of affected intersections. The TGE specifically notes that while the proposed development "would generate slightly more trips than the previously-proposed retail center...it has a much higher pass-by trip rate...and therefore generates fewer primary trips." TGE at 2. It goes on to state that "the small increase in driveway trips is not expected to negatively impact intersection operations." Id. City Council finds that compliance with WDC 4.140(.09)(J) does not hinge, as the Opponent suggests, on internal site circulation; rather, it hinges on the levels of service of affected intersections. City Council finds that the TGE and AM Peak Analysis are sufficient proof of compliance with WDC 4.140(.09)(J) because DKS evaluated all likely-affected intersections and determined that the AM and PM peak levels of service would not be substantially affected by the proposed development.

Finally, City Council finds that the Opponent's citation of the Gibson Traffic Consultant's study of an 1,800 SF coffee shop is irrelevant because the proposed coffee kiosk is a different use than analyzed in that study (ITE § 938 vs. § 934), is substantially smaller, and affects different roadways for level of service purposes. For all of the above reasons, City Council finds that the proposed development will not create an adverse traffic impact on surrounding intersections.

#### **I. Drainage Facilities Are Sufficient to Accommodate the Proposal.**

Opponent argues that the Applicant constructed a drainage ditch over the Opponent's property without permission. Regardless of the veracity of this allegation, City Council finds

that it is, at most, a private trespass that has no bearing on the proposed development. City Council finds that it has no obligation, and no authority, to adjudicate a private trespass as part of this proceeding.

Opponent also argues that the City did not address storm water in its review. However, City Council finds that Conditions of Approval listed as PF 3 and PF 4 require that the proposed development connect its onsite storm drainage collection system to the Boone Ferry Point project, which City Council finds will provide sufficient detention and storm water quality for the site.