

January 14, 2021

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Oregon Land Use Board of Appeals
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Salem, OR 97301-1283

Michael C. Robinson
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RE: Roll Tide Properties Corp. v. City of Sandy

Dear Board Member:

Enclosed is the original and two copies of the Notice of Intent to Appeal and my firm's check in the amount of \$400.00.

Very truly yours,



Michael C. Robinson

MCR:jmhi
Enclosure

cc: Notice List (*via First Class Mail*) (*w/enclosure*)
Mr. Cameron Zebroff (*via email*) (*w/enclosure*)
Ms. Leslie Lowe (*via email*) (*w/enclosure*)
Mr. David Doughman (*via First Class Mail*) (*w/enclosure*)
Mr. Garrett H. Stephenson (*via email only*) (*w/enclosure*)

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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

ROLL TIDE PROPERTIES CORP.

Petitioner,

vs.

CITY OF SANDY,

Respondent.

LUBA No. 2021-_____

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that Roll Tide Properties, Inc. (“Petitioner”) intends to appeal that final land use decision of the City of Sandy (“Respondent”) denying Petitioner’s applications for a Type IV Zone Map Amendment, Comprehensive Plan Map Amendment, and Subdivision which decision is also identified as City casefile 19-050 CPA/SAP/SUB/TREE. The challenged decision is enclosed as **Exhibit 1**. The decision denies Petitioner’s consolidated land use applications for development of a seven-lot subdivision. The challenged decision became final on December 21, 2020 and the City mailed notice of the decision on December 29, 2020.

II.

Petitioner is the applicant for the consolidated land use actions denied in the challenged decision. Petitioner participated in all levels of challenged decision, and offered written and oral testimony regarding the same.

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III.

Petitioner is represented by Michael C. Robinson and Garrett H. Stephenson. Petitioner's legal counsel has as its address and telephone number: Schwabe, Williamson & Wyatt, P.C., 1211 SW Fifth Avenue, Suite 1900, Portland, OR 97204, 503-796-3756.

IV.

Respondent is represented by: David F. Doughman of Beery Elsner & Hammond, LLP. Respondent's mailing address is: 707 NE Couch Street, Portland, OR 97232-2922. Mr. Doughman's telephone number is 503-226-7191.

V.

The list of persons provided notice of the decision by the City is enclosed as **Exhibit 2**.

NOTICE

Anyone designated in Paragraph V of this Notice who desires to participate as a party in this case before the Land Use Board of Appeals must file with the Board a Motion to Intervene in this proceeding as required by OAR 661-010-0050.

Dated this 14th day of January, 2021.

Schwabe, Williamson & Wyatt, P.C.

By: 

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Garrett H. Stephenson, OSB #136356

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Of Attorneys for Roll Tide Properties Corp.

**FINDINGS OF FACT and FINAL ORDER
TYPE IV DECISION**

DATE: December 29, 2020

FILE NO.: 19-050 CPA/ZC/SUB/SAP/TREE

PROJECT NAME: Bull Run Terrace

APPLICANT/OWNER: Roll Tide Properties Corp.

LEGAL DESCRIPTION: T2 R5E Section 18CD, Tax Lots 900 and 1000

FINDINGS OF FACT:

General

1. These findings are based on the applicant's submittals received on December 30, 2019, July 14, 2020, September 29, 2020, the records of the Planning Commission and the City Council hearings including agency comments and public testimony, and other information as detailed in this document. Planning Division staff deemed the application incomplete on January 27, 2020. The applicant submitted additional materials on February 11, 2020. The application was deemed complete on February 14, 2020 and the original 120-day deadline was June 13, 2020. However, due to the unforeseen effects of COVID-19 affecting the timing of public hearings, the applicant agreed to a deadline extension of 30 days to July 13, 2020.
2. On May 13, 2020 the Development Services Director sent the applicant the following: "Instead of requesting 120-day extensions and going back and forth between the applicant and city staff we are going to invoke ORS 227.178 (10) to remove the 120-day clock provisions for the Bull Run Terrace application." That statute effectively eliminates the 120-day deadline that would otherwise apply to applications involving subdivisions and zone changes when an application includes a request to amend a comprehensive plan. Therefore, this application does not have a 120-day deadline because the proposal includes a comprehensive plan map amendment.
3. The subject site is approximately 15.91 acres. The site is located at 40808 and 41010 Highway 26.
4. The parcel has a Comprehensive Plan Map designation of Village and Zoning Map designations of R-1, Low Density Residential; R-2, Medium Density Residential; and C-3, Village Commercial.

5. The applicant, Roll Tide Properties Corp., requested a Type IV Comprehensive Plan Map Amendment, Zone Map Amendment, Specific Area Plan and development of a 7-lot subdivision for two parcels totaling approximately 15.91 acres. Four lots were proposed to have the R-1 zoning designation and were proposed to each contain a single family dwelling. One lot was proposed to have the R-3 zoning designation. One lot was proposed to have the R-2 zoning designation. The exact number of multifamily dwelling units was proposed to be determined with a subsequent design review application for these lots, but according to the applicant the maximum number of dwelling units on the R-3 land was proposed at 130 units and the maximum number of dwelling units on the R-2 land was proposed at 17 units for a total of 147 dwelling units. While the C-3 zoning district would likely have contained some commercial development the C-3 land would likely also contain some residential dwelling units. The development code permits outright single-family and multi-family residential in the C-3 zoning district so long as the dwelling units are above, beside or behind a commercial business. The code also allows as a minor conditional use multi-family dwellings that are not located above a commercial business.
6. Notification of the proposed application was mailed to affected agencies on February 14, 2020 and to affected property owners within 500 feet of the subject property on April 17, 2020. A correction to the notice was sent on May 5, 2020. Due to concerns raised by Planning Division staff as well as by surrounding residents, the applicant requested additional time to modify the application for this proposed development. On May 21, 2020, a notification was mailed to affected property owners stating that the Planning Commission meeting was rescheduled to Monday, July 27, 2020 at 7:00 pm. The City Council meeting was rescheduled to Tuesday, September 8, 2020 at 7:00 pm.
7. After additional discussion, the applicant and Planning Division staff agreed to move the public hearing dates once more. A notice was sent on July 23, 2020 informing affected property owners that the Planning Commission meeting will be held on August 24, 2020 and the City Council meeting on October 19, 2020.
8. A legal notice was submitted to the newspaper on August 5, 2020 to be published on August 12, 2020 informing residents of the public hearings.
9. During the Planning Commission meeting on August 24, 2020 the Commission granted a continuance of the public hearing. An additional Planning Commission hearing was scheduled for October 26, 2020. On October 26, 2020 the Planning Commission reconvened to continue the public hearing for Bull Run Terrace. After hearing additional input from Planning Division staff, the applicant, and the public the Planning Commission recommended the City Council approve the application.

17.24 – Comprehensive Plan Amendment Procedures

10. Chapter 17.24, Comprehensive Plan Amendment Procedures, contains review criteria for Comprehensive Plan amendments. The proposed modifications to the comprehensive plan map and zone map included adding High Density Residential (R-3) and Parks and Open Space (POS), increasing the area designated as Village Commercial (C-3), reducing the area designated as Medium Density Residential (R-2), and reducing the area designated as Low

Density Residential (R-1). The Comprehensive Plan states that area and density increase within a village may be increased or decreased up to 20 percent. Changes greater than 20 percent will require a Plan Map amendment. Planning Division staff found that the maximum residential density with the existing zoning designations on the R-2 and R-1 lands is somewhere between 112 and 117 dwelling units. The proposed comprehensive plan map modification would have allowed for 152 dwelling units on the R-3, R-2, and R-1 lands. Therefore, the potential increase in residential density, excluding the C-3 zoned land, exceeds the threshold of 20 percent as defined in the comprehensive plan. Therefore, a Comprehensive Plan Map amendment was required.

11. Chapter 17.24 of the Sandy Municipal Code governs Comprehensive Plan amendments. Pursuant to Section 17.24.10, the intent of the chapter is to: “A. Respond to changing conditions and community attitudes; B. Ensure flexibility while at the same time maintain the integrity of the Comprehensive Plan; and C. Establish procedures by which the Plan text and map may be amended.” The review criteria that apply to plan amendments are contained in Section 17.24.70. That subsection states as follows:

Comprehensive Plan amendments shall be reviewed to assure consistency with the purposes of this chapter, policies of the Comprehensive Plan, and any other applicable policies and standards adopted by the City Council. Amendments shall be approved only when the following findings are made:

- A. The change being proposed is the best means of meeting the identified public need; and
- B. The change conforms to all applicable Statewide Planning Goals.

12. In order to approve the proposed Comprehensive Plan amendments – and ultimately the zone changes, specific area plan and subdivision that depend upon their approval – a public need must be identified, and the proposed amendment must be the best way to meet it. If a need is identified, it is not enough that the proposed amendment would be a good way to meet the need. Rather, it must be the best way.

13. The applicant offers examples of public needs it believes the proposed amendments would fill, including an extension of Dubarko Road, additional parkland and additional multi-family housing. Ultimately, it is the responsibility of the City Council to determine: (1) whether a public need exists; and (2) if so, whether the best way to satisfy it is through the proposed amendment. Such determinations in the context of plan amendments are subject to deference. *Hubenthal v. Woodburn*, 39 Or LUBA 20 (2000); *see also Siporen v. Medford*, 349 Or 247 (2010) (local governing body’s interpretation of local criteria is entitled to deference if interpretation is plausible).

Extending Dubarko Road is certainly a goal for the City. It is included as a project in the City’s transportation system plan (“TSP”) and can reasonably be identified as a need of the City. However, as discussed below, the City Council is ultimately not persuaded that extending it in the manner presented by the applicant is the best way to meet the need. The City Council also does not believe that there is a public need for additional multi-family

housing, based upon the existing surpluses of land in the medium and high density residential plan categories.

14. As the record shows, the City is currently meeting its need for residential land uses to the year 2034. The City has three residential land designations in its Comprehensive Plan: Low Density, Medium Density and High Density. In the Low Density Residential designation, the City currently has a 19.2 acre surplus of land. In the Medium Density Residential designation, the City's current surplus is 17.1 acres of land. Finally, for the High Density designation, the City has a current surplus of 12.6 acres.

Therefore, for planning purposes, and at least until the year 2034, the City currently has more land than is necessary to meet its acknowledged residential needs in all three plan designations. The proposed amendments would reduce the surplus of land in the Medium Density designation to 13.3 acres and would increase the surplus of the land in the High Density designation to approximately 19.3 acres. The amendments would also reduce the surplus of lands designated Low Density to approximately 11.7 acres.

At least from the perspective of the Comprehensive Plan, the City Council does not believe there is an identified need to increase the amount of land designated High Density Residential in order to provide more opportunities for multi-family housing. In the absence of a demonstrated need for additional land designated Medium Density and High Density, the City Council would prefer to consider changes to residential Plan designations City-wide and not on a site-specific basis.

15. With respect to Dubarko Road, the City Council does not believe the proposed comprehensive plan amendments are the best way to connect it to Highway 26, as anticipated in the City's TSP. The proposed comprehensive plan amendments would result in more density in this area of the City, at least 35-40 additional dwelling units. This figure does not include the additional dwelling units that could be built on the C-3 zoned land, a designation that the application proposes to increase by approximately .75 acres. The proposed modifications to the comprehensive plan would increase the number of multi-family housing units significantly in an area of Sandy that is predominately single-family homes, and as discussed above, without an identified need to do so.

Based on the existing zoning, the Council does not believe the subject area was intended to have densities at the scale that would result if the amendments were approved. While it is accurate to anticipate multi-family housing on the existing R-2 zoned land, the existing R-1 zoned land was not intended to include multi-family housing as multi-family housing is not a permitted use in the R-1 zone. Ultimately, while the proposed amendments would be one way to connect Dubarko Road to Highway 26, the Council finds that it is not the best way based upon the changes the additional density would make to the character of the neighborhood and the impacts the additional density would have on adjacent residents.

16. For these reasons, the Council finds that the application does not satisfy 17.24.70(A). Having found the application does not comply with this approval criterion, there is no reason to determine whether the application complies with 17.24.70(B) or other applicable code

criteria that would still need to be satisfied if the proposed comprehensive plan amendments were approved.

DECISION: The Bull Run Terrace proposal was reviewed concurrently as a Type IV comprehensive plan amendment, zone change, subdivision, and specific area plan overlay with tree removal. For the reasons discussed in this order, the application is **DENIED**.



Stan Pulliam
Mayor

RIGHT OF APPEAL: Any person who appeared before the City Council, either orally or in writing, may appeal this decision to the Land Use Board of Appeals. An appeal to the Land Use Board of Appeals must be made within 21 days of this order's date and must comply with ORS 197.830 and LUBA's rules at OAR Chapter 661, division 10. A notice filed thereafter will not be timely filed and LUBA will dismiss the appeal.

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David F. Doughman
Beery Elsner & Hammond, LLP
707 NE Couch Street
Portland, OR 97232-2922.

CERTIFICATE OF FILING AND TRUE COPY

I certify that this is a true copy of the Notice of Intent to Appeal Filed with the Land Use Board of Appeals on January 14, 2021, via United States Postal Service certified mail, return receipt requested.

Dated this 14th day of January, 2021.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 

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Portland, Oregon 97204

Of Attorneys for Roll Tide Properties Corp.

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2021, I served a true and correct copy of this Notice of Intent to Appeal on all persons below pursuant to OAR 661-010-0115(2) by first class mail, and have provided an email copy of the Notice to persons who did not give their addresses during the proceedings. Their addresses are as follows:

Amelia Williams Robinson
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Dated this 14th day of January, 2021.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 

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Garrett H. Stephenson, OSB #136356

Of Attorneys for Roll Tide Properties Corp.