

**Development Review Board – Panel A
Minutes– July 8, 2019 6:30 PM**

I. Call to Order

Chair Joann Linville called the meeting to order at 6:30 p.m.

II. Chair’s Remarks

The Conduct of Hearing and Statement of Public Notice were read into the record.

III. Roll Call

Present for roll call were: Joann Linville, Fred Ruby, and Daniel McKay. Jennifer Willard and Angela Niggli were absent.

Staff present: Daniel Pauly, Amanda Guile-Hinman, Kimberly Rybold, Cindy Luxhoj, Miranda Bateschell, Patty Nelson, and Dominique Huffman

IV. Citizens’ Input This is an opportunity for visitors to address the Development Review Board on items not on the agenda. There were no comments.

V. Consent Agenda:

A. Approval of minutes of May 13, 2019 DRB Panel A meeting

The May 13, 2019 DRB Panel A meeting minutes were approved as presented.

VI. Public Hearing:

A. **Resolution No. 367. Industrial Focus: Gavin Russell, CIDA Architects & Engineers – Representative for David Nicoli, Nicoli Pacific LLC – Owner.** The applicant is requesting approval of a Stage II Final Plan, Site Design Review, Class III Sign Review and Type C Tree Removal Plan for development of Phase I of a new three-phase multi-tenant industrial complex. The subject site is located on Tax Lots 300 and 500 of Section 14A, Township 3 South, Range 1 West, Clackamas County, Oregon. Staff: Cindy Luxhoj

Case Files: DB19-0013 Stage II Final Plan
DB19-0014 Site Design Review
DB19-0015 Class III Sign Review
DB19-0016 Type C Tree Removal Plan

Chair Linville called the public hearing to order at 6:35 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site. No board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

Cindy Luxhoj, Associate Planner, announced that the criteria applicable to the application were stated on pages 2 and 3 of the Staff report, which was entered into the record. Copies of the report were made available to the side of the room.

The following exhibits were entered into the record:

- Exhibit A4: Planning Division Memorandum dated July 5, 2019 regarding additional testimony received and including the testimony received from E. Michael Connors, Hathaway Larson, LLP on July 1, 2019. (will include both documents)
- Exhibit B3: Testimony received from E. Michael Connors, Hathaway Larson, LLP on July 1, 2019

Ms. Luxhoj presented the Staff report via PowerPoint, noting the site's location and surrounding features and reviewing the project's background and application requests with these key additional comments:

- The subject property was approximately 6.16 acres in two undeveloped parcels. The Applicant, DP Nicoli Shoring Solutions, provided shoring equipment to the construction industry and the company's current headquarters in Tualatin was inadequate for their needs. The Applicant planned to develop the property as an industrial/flex complex to attract local industry and house DP Nicoli Shoring Solutions' Corporate Headquarters.
- On May 13, 2019, this DRB Panel reviewed the Applicant's first submittal, approving the Stage I Master Plan with conditions and recommending to City Council approval of the Zone Map Amendment to change the property from Residential Agricultural Holding (RA-H) to Planned Development Industrial (PDI). City Council approved the Zone Map Amendment with conditions. The appeal period for that approval would expire on July 24, 2019.
- Tonight, the Board would review the second submittal for Phase 1 of the three-phase, multi-tenant industrial complex. Phase 1 included one, 53,000 sq-ft, three-story industrial building on the east side of the property, and a 40,000 sq-ft outdoor storage yard on the western part of the property.
- Proper noticing was followed for the application, and two comments were received.
 - Shirley Keith, a resident of the Walnut Mobile Home Park, raised concerns with safety and vision clearance associated with entry to and exit from the proposed driveway in the southwest part of the development. She objected to any driveway being located near her residence at the northwest corner of the mobile home park, and raised similar concerns related to noise and privacy for other residents with houses located in the north part of the park. She also requested that above-ground utility lines along the north edge of the park be taken into account during construction of the proposed development.
 - Testimony was also received from Michael Connors, Hathaway Larson, LLP on behalf of Nicoli Pacific, LLC, owner of the subject property, which Staff was reviewing
- Although not required, the Applicant held a meeting on May 21, 2019 for residents of the Walnut Mobile Home Park to explain the project and proposed buffer area, and to solicit comments.
- Stage II Final Plan. Phase 1 of the proposed development was expected to occur in 2019. The property owner's headquarters would occupy 24,000 sq ft of the building, and the other 29,000 sq ft would be made available for lease. (Slide 9)
 - Two driveways off SW Boberg Rd and one driveway off SW Boones Ferry Rd would provide access to the site, and public improvements along both roads would be constructed in Phase 1. The Applicant had been granted two waivers to the Public Works Standards for reduced driveway spacing for the northern access driveway and reduced clear drive aisle length for all site driveways.
 - The proposed Stage II Final Plan met, with conditions of approval, the parking, landscaping, and industrial performance standards, and no waivers to development standards had been requested by Applicant.
 - A condition of approval ensures that the outdoor storage area will not begin operation until the required site obscuring fencing and planting were installed and approved by the City.

- The subject property was located in Area of Special Concern E of the Comprehensive Plan, which required special design considerations related to the Walnut Mobile Home Park.
 - The Screening and Buffering Overlay Zone required appropriate separation between non-residential use in the proposed development and residential use in the mobile home park to the south. The Applicant proposed a 10 ft-wide landscape buffer between the development and the north property boundary of the mobile home park.
 - A 6-ft wall composed of smooth and split face concrete masonry blocks with a sloped cap and one solid metal gate for maintenance access was proposed along the north side of the buffer area. On the south side of the wall, the buffer area included trees, shrubs, and ground cover of wildflower and legumes designed for low maintenance while providing an attractive area of usable space for residents of the mobile home park.
- The Industrial Performance Standards required limitations on noise that might be generated by truck circulation and loading or unloading activities within 100 ft of residential areas, particularly related to night operations. The south driveway and part of the outdoor storage yard and truck maneuvering area is located within 100 ft of the Walnut Mobile Home Park. A condition of approval prohibited loading and unloading operations and truck maneuvering in this area between the hours of 10:00 pm and 7:00 am, as long as the property to the south was used for residential purposes. Additionally, this area must be clearly marked with signs or by other means to indicate the limitation.
- Site Design Review
 - The proposed building was 56.5 ft tall when measured from the ground to the top of the roof on the west, or backside, of the building. Due to the downward slope of the site from east to west, the at finished grade the building measures 47.5 ft tall to the roof on the front elevation, which faces SW Boones Ferry Rd and I5.
 - The project design uses variation in materials and reveals to offset the simplistic geometry of a standard concrete tilt-up building, and two circulation towers of differing material highlight the building entries.
 - The design clearly defined the public area as being in front of the proposed building along SW Boones Ferry Rd and transparency afforded by windows and glazing connected the interior to the exterior to provide eyes on the street.
 - The proposed colors include a primary finish in a light gray tone with a secondary finish of a dark gray tone to be used in horizontal striping. Corrugated metal siding in medium gray, storefront frames in blackish-gray, metal accent paneling with a brown wood grain finish and gray tinted windows and glazing complement the primary finishes and add architectural and visual interest. (Slide 12)
 - Surrounding uses in the general area of the subject property were of similar intensity, and landscaping and screening at the site perimeter would provide appropriate buffering to the adjacent properties, including the Walnut Mobile Home Park.
 - Proposed landscaping and outdoor lighting would meet with conditions of approval, the applicable standards.
- Class III Master Sign Plan Review
- The Master Sign Plan proposed two ground-mounted monument signs. One would be located on the south side of the driveway entrance from SW Boones Ferry Rd and the other, on the north side of the south driveway entrance from SW Boberg Rd.
 - Building-mounted signs were proposed on the main building façade facing SW Boones Ferry Rd and I-5 on the east side of the building and on the west side facing SW Boberg Rd
 - No signage was proposed on the north and south sides of the building as these sides are not sign eligible.

- The sign for Tenant 5 on the east façade was outside the designated sign band for the other four tenants. However, this tenant was the only occupant of the top floor of the building and did not have space on any other floor, so that sign's proposed location was appropriate.
- The proposed signs were typical of and compatible with development in the PDI zone. The design and colors reflected corporate identity, placement of the wall signs was in recognizable sign bands, and the signs are proportional to the building façade.
- All signs would be compatible with the building's color scheme and architectural elements, and would meet standards for size and placement.
- Type C Tree Removal Plan
 - The 25 trees on the subject site ranged in diameter from 6-in to 27-in, and most were located along the south property line adjacent to the Walnut Mobile Home Park. Species included red oak, big leaf maple, hazelnut, hawthorn, and black locust. All were in fair to poor condition, and most were tree stump sprouts or had been topped for utility clearance. Per the arborist's report, preservation and conservation of the trees was not warranted, and the Applicant proposed removing all the trees and mitigating their removal by planting in excess of 25 trees on the site.
 - Four trees identified on adjacent properties were to be preserved and protected during construction. (Slide 16) A condition of approval ensured that protective fencing would be placed around the drip line of the trees prior to site grading or other site work that could damage them.
- During planning review, Staff noted numerous inconsistencies between the application narrative, including the response to Code criteria, and the submitted plan set. Therefore, in preparing the report, Staff relied on the plan set as the basis for determining Code compliance, referring to the narrative Code response when needed for additional clarity.
 - Exhibit A3 included a list of needed Plan Set corrections noted by Staff during the application review. These corrections were in addition to any that might be needed to respond to the conditions of approval.
- As noted, additional testimony submitted regarding the applications was being reviewed by Staff, and it was recommended the DRB continue the hearing to the next meeting on August 12, 2019, or another future date, to allow Staff time to provide additional information for the DRB to consider.

Daniel McKay asked what resulted from the meeting with the residents of the Walnut Mobile Home Park.

Ms. Luxhoj stated that the minutes and sign-up sheet from that meeting were included within the Applicants materials in the Staff report. The meeting was attended by 15 to 20 residents who were generally supportive of the Applicants proposal regarding the wall and landscaping, although Shirley Keith did express some concerns.

Mr. McKay confirmed the SBOZ was a general requirement by the City for zoning when residential abutted against an industrial area. He asked if any additional considerations were given to the design objectives since the site was within Area of Special Concern E.

Ms. Luxhoj noted the buffer being proposed by the Applicant addressed those concerns. Within the SBOZ, a 20-ft wide landscape buffer, a high-screen standard, or a 10-ft buffer with the high-wall standard could be used to meet the requirement. The Applicant chose the 10-ft wide buffer with a 6-ft wall. She clarified there were additional requirements regarding the Area of Special Concern E.

Daniel Pauly, Planning Manager explained the Comprehensive Plan did not give specific language or requirements, and both the Zone Map Amendment and Stage I Master Plan had specific conditions of approval. Findings in the Staff report stated that the same treatments that met SBOZ also satisfied the Zone Map Amendment and Stage I conditions, which in turn, satisfied the Area of Special Concern laid out in the Comprehensive Plan.

Mr. McKay noted he had visited the site and asked for additional information about the location of the property lines.

Ms. Luxhoj responded there were survey stakes at the site.

Mr. McKay stated that SBOZ required that there be no storage, but Staff required that it be just within 100 ft. He asked if an exception or a waiver was being made to the requirement or was the condition that the storage be 100 ft from the SBOZ line.

Ms. Luxhoj clarified the SBOZ required there was to be no storage within the buffer area, which was 10 to 20 ft. The limitation Staff added was related to noise and night operations. The condition stated there could be no truck maneuvering, loading, or unloading within that 100-ft distance from the south property line into the storage area and the truck maneuvering area and the south driveway.

Mr. Pauly stated there were separate requirements. The 100-ft limitation came from a specific industrial performance standard that was general for any industrial development throughout the city that might be near residential. He confirmed the SBOZ requirements were only for that buffer zone.

Mr. McKay asked for a revised narrative noting the inconsistencies Staff found between the application narrative and the plan set that he could review before the continued hearing next month.

Mr. Pauly replied Staff would provide that if the Applicant provided one.

Chair Linville confirmed the 6-ft concrete fence in the buffer zone placed the planted area on the mobile home park side, but still within the property line of the parcel. She asked if maintenance of the area had been addressed.

Ms. Luxhoj replied maintenance was the responsibility of the property owner, adding that a maintenance door was included in the wall for access.

Chair Linville called for the Applicant's presentation.

Dave Nicoli, Owner, Nicoli Pacific LLC, commended Staff for their work on the application. He had a couple objections to the Staff report and noted his goal was to begin construction this year. During a meeting that took place about a month ago, Staff asked him to build an 8-in water line that he did not need. Its sole purpose was to close a loop to make the system more efficient for the City, and had nothing to do with him or his building's water line. He was being asked to spend \$150,000 for a water line he did not need and would not benefit him or his property.

- Staff also asked him to convey storm sewer for the existing City street, which also had nothing to do with him and was highly unusual. Normally, the City put in its own storm sewer for its own public conveyance. He objected to both of those requests on legal constitutional reasons, noting this was addressed in a letter sent to the Board.

- In addition, he felt blindsided on a couple other items during the meeting, since he knew nothing about them. He objected to the 100-ft limitation, adding he would not build the project if that 100 ft was taken from what the property was zoned to do; he would have to fight the City on that. He did not know where that came from since no one had talked about it during the previous six months, and he would not live with it.
- He noted Ms. Luxhoj repeatedly stated, “The Applicant proposed,” but a lot of that was not proposed, it was required. He was putting in that wall and had to set it back 10 ft. He paid \$5 million for the property and was basically giving away 10 ft, and maintaining it; so the park would be getting 10 ft more backyard.
- He added that a good friend owned the mobile home park on the south property line. The mobile home park could eventually be converted to the same zoning as his property and would not be there anymore. He understood people live there and he was sympathetic to their situation. The economics of the situation were going to change, and the park would not be there after another 10 or 20 years. His property, when completed, would bring in \$200,000 a month in rent and the park brings in about \$30,000 a month in rent. Economically, it's too valuable. The long-term zoning was the same as his, so that property would eventually be bought and converted. Greg had no desire to do that at the moment, and he left the property to his kids and they probably would.
- In addition to giving up the 10 ft, he was going to build a 6-ft wall, even though he did not have to build the wall the whole length of the property line; he could have put a fence in. During a meeting with the neighbors, the lady on the southwest corner of his property was concerned about the noise, just as he was, so he agreed to constructing the 6 ft wall all the way down. After giving up 10 ft and putting in a 6 ft wall, now they wanted him to give up another 100 ft to not operate during certain hours, and he would not do that. He would have to push back on that.
- He would also push back on the water storage. When a new property was built, water must be stored and cleaned for a certain time. He asked for the water storage and cleaning to be put underground and the City said that he could not do that. Yet, he had done this in Tualatin, as had another builder, so he knows it was probably a City of Wilsonville decision.
 - He agreed to put the facility above ground. The City of Wilsonville gives credit for the above ground to be considered landscaping, but Tualatin did not so that made it revenue neutral. The water storage area was drawn up to be on the south side of the property and City Staff wanted it spread throughout the property. His engineers said that most municipalities were getting away from that because they were very expensive to maintain. After raising this issue at the meeting, Staff said it was in the Code, and it was a requirement of Clean Water Services. He asked that since other places were doing it, why Wilsonville could not do it, and he never got an answer. He did advise Staff last month that he would protest or push back on the water line, the storm conveyance, but not on this since it was revenue neutral.
- Being a civil engineer, he understood why the City wanted the closed loop, but he did not think he should have to pay for it, legally or ethically. The one month delay would probably push the project out until next year because if the dirt could not be done before the rain started, the project would have to wait, which was disappointing, but not the end of the world.
- He wanted to make sure those issues were on the record, and that they were going to push back on them, which he specifically stated one month ago, but no one ever got back to him. He noted the Board had a letter from his attorney regarding these issues. Otherwise, he was looking forward to building.
- He had asked if he could get a dirt or earth moving permit so they could get the grading done before the rain started, then the rest could be done during the winter. But, he was told they could not do two things at once. Staff could not issue a grading permit until he had the

Public Works Permit. As an entrepreneur, that did not make any sense to him. As an administrative city it might, but he was capable of doing two things at once as were most people. All the other issues would be resolved, maybe in the next month, but he believed the City should give him an earth moving permit so they could get going.

- In order to put the 8-in water line, he had to give a 20-ft easement on the south side, which bothered him because in the next phase, he might want to build right over top of it, and then he would have to move it. Nobody wanted to spend \$5 million and be told they had to make the City's water line more efficient, and pay for it, and run it right through their property.
- He concluded that while there were things he did not like, Staff had been really great to work with.

Tara Lund, CIDA Architects & Engineers, 15875 SW 72nd Ave, Ste 200, Portland, OR, echoed Mr. Nicoli's comments regarding Staff being very accommodating, and hoped to be able to resolve the issues that were raised. There was a reference on Condition PFA 6 to detail RD-1025, which was a cross-section for Boones Ferry Rd, and it referenced that same detail for Boberg Rd, which the Applicant believed was incorrect. The section should be less than that. She stated the list of plan set corrections were relatively minor and could be easily addressed.

Gavin Russel, CIDA Architects & Engineers, added it had been a pleasure to work with the City, as well as Staff. He invited questions from the Board.

Mr. Pauly noted City Engineer Patty Nelson and Civil Engineer Dominique Huffman were available to answer any engineering related questions.

Fred Ruby asked for clarification on Condition PDA 2 regarding the 100-ft prohibition of loading and unloading and the proposed area of the outdoor storage yard. He asked if the 100-ft limitation or definition was an appendage to the noise ordinance.

Mr. Pauly clarified they were separate. The noise ordinance was more permissive to loading operations during nighttime hours and the community had numerous warehouses and truck operations. The condition was in response to a specific industrial performance standard for outdoor operations within a certain distance of residential. If the Applicant had open storage within that 100 ft, the main concern would be noise, primarily, particularly if the operation produced odor or dust. The condition was an attempt to meet that requirement and use the outdoor storage for most operations, but also meet the intent of the industrial performance standard.

Mr. Ruby confirmed the noise ordinance did not specify how many feet a noise-generating activity had to be from residential areas and exempted truck loading operations. He asked where the standard of 100-ft distance was derived from.

Mr. Pauly replied it was specifically stated in the industrial performance standards of Section 4.135.

Mr. McKay asked how far back from the property line the proposed entryway would be on the southwest part of the parcel.

Ms. Lund responded it was 25 ft.

Chair Linville confirmed the prohibition of the 100 ft did not have anything to do with a storage facility, but rather hours of operation.

Mr. Nicoli asked if the hours of operation were for every industrial property in that strip, or because the subject site affronted that low-income housing.

Mr. Pauly replied it regarded any residential. The condition was specifically crafted so that if the mobile park converted to another non-residential use if the future, that requirement would go away.

Mr. McKay asked if the same requirement were being placed on the excavation rental equipment parcel south of the mobile home property.

Mr. Pauly noted that was approved a long time ago and not under the current standards. He was not certain if there were any specific requirements, but he could review that in the interim.

Chair Linville asked Mr. Nicoli how frequently the business would be generating truck noise from loading and unloading after 10:00 pm.

Mr. Nicoli stated hardly ever, but a portion of the building would be leased out and some businesses work 24/7. He was being limited from leasing the property to someone who might meet the zoning due to this requirement. While his business was not very noisy, there would be some amount of noise, but the 6-ft wall would be installed. He cited a past example, noting an emergency request required his company to work 24/7 for three days, but under this requirement, he would not be able to respond to such emergency requests, which would affect his business and was unworkable.

Chair Linville asked if that was a new requirement that he had not had an opportunity to discuss with Staff.

Mr. Nicoli confirmed he was not aware of it prior to the meeting.

Mr. McKay asked how much of the storage yard would be within the 100 ft area.

Ms. Lund replied approximately 50 ft of storage yard, and the driveway would also be included in that area.

Mr. Nicoli said he would have proposed not using the south entrance during that time, although it was possible there could be inventory there that he would need to access. After a certain time, the south entrance could be closed down and the two north entrances could be used. There were more reasonable ways to attach this than to basically just take his property.

Chair Linville noted the communication the City received from Hathaway Larson suggested that Nicoli and the City schedule a meeting or conference call to determine how to proceed. She asked if that had taken place. (Exhibit B3)

Mr. Nicoli replied it had not. He did not believe the City had responded yet. It would eventually go to the attorney since it was a legal matter.

Chair Linville inquired about Mr. Nicoli's comments regarding the water line and the storm sewer conveyance for the City, and asked for further comments regarding that.

Mr. Pauly stated both the City Attorney and City Engineer were not available last week, but they did plan on reviewing and addressing those issues. There had not been sufficient time to prepare it for tonight's hearing.

Chair Linville noted the earth moving permit Mr. Nicoli referenced and asked if the application had to be approved by the Board for this stage, and then also approved by the City Council before the Applicant could move forward with anything.

Mr. Pauly explained that was typically the process to avoid a site being left with just bare dirt if for some reason the project did not get approved. Staff was willing to continue talking with the City Building Official, who issued the grading permits, about alternatives, such as if any rough grading could occur. Because the site was relatively flat with planted grass, it could be replanted fairly easily if the project did not move forward for some reason.

Chair Linville confirmed the City was in favor of the project moving forward.

Mr. Pauly added the City anticipated it doing so, but it was common practice in the industry and out of respect for the process to not issue construction permits prior to approval.

Ms. Lund stated the Applicant had submitted for a grading permit, understanding it would not be released until an agreement had been reached.

Mr. Nicoli noted if the Applicant could not get a grading permit until mid-August, it would push the whole project off. Once the concrete pad was poured for the building, they would work year round, but that involved storm, water, plumbing, etc. He hoped the issues could be resolved.

Mr. McKay understood Mr. Nicoli would build the stormwater requirements on his property, and that he was contesting the things in excess that were not part of serving his property.

Mr. Nicoli pointed out Boones Ferry Rd would need to be widened, and storm sewers added, and they were required to do a half-street improvement, and put the storm in for that, but in his and his attorney's opinion, he was not required to provide the conveyance from that to wherever it went. He had told Staff a month ago that if his attorney believed it was in excess, he would push back. His attorney did not think the requirement was legal. So, the discussion had occurred for more than a week, but officially, it came in this last week.

Chair Linville called for public testimony in favor of, opposed and neutral to the application. Seeing none, she noted the Applicant had no rebuttal.

Mr. Pauly confirmed Staff recommended continuing the hearing to the next meeting on August 12, 2019, but if additional time was warranted, the hearing could be continued until September. He confirmed no conditions of approval required any further coordination from other service districts in the region.

Fred Ruby moved to continue Resolution No 367 to August 12, 2019 date certain. Daniel McKay seconded the motion, which passed unanimously.

VII. Board Member Communications

- A.** Results of the May 30, 2019 DRB Panel B meeting
- B.** Results of the June 24, 2019 DRB Panel B meeting
- C.** Recent City Council Action Minutes

Kimberly Rybold, Senior Planner, highlighted that on May 6, 2019, City Council passed the ordinance adopting the Town Center Plan which included an amendment to both the Development Code and Comprehensive Plan, integrating that planning effort, which took a couple years and a lot of community outreach. The ordinance's effective date was June 5, 2019. She noted a development application was received prior to that date, which the DRB might be reviewing in the future. At the second May City Council meeting, Council also adopted its goals for the next two years. Council's goals, which were posted on the City website, guide Staff's other planning activities outside application review.

VIII. Staff Communications

Kimberly Rybold, Senior Planner, announced several staffing changes, noting she was excited to be taking on the role of Senior Planner. Planner Charles Tso would be relocating to New York, so the City was recruiting for another Associate Planner. She noted that at the August 12, 2019 meeting, the DRB would also be reviewing a Class III Sign Permit for a digital reader board sign for the Bullwinkle's project.

Chair Linville congratulated Ms. Rybold on behalf of the Board, adding she looked forward to working with her and meeting the new Staff members.

IX. Adjournment

The meeting adjourned at 7:37 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for
Shelley White, Planning Administrative Assistant