



STAFF REPORT

HEARING DATE: April 10, 2019

REPORT DATE: April 3, 2019

TO: Planning Commission

STAFF: Steve Regner, Senior Planner

PROPOSAL: **APP2019-0001** Appeal of a Director's decision to approve a Design Review Type Two related to the installation of a segment of an underground regional water line. The length of the waterline corridor is approximately 5,480 linear feet.

SUMMARY: The subject water line corridor is located along SW Scholls Ferry Road between SW 175th Avenue and SW Tile Flat Road, and SW Tile Flat Road between SW Scholls Ferry Road and SW Kobbe Drive. Tax Lots 101, 200, 203, 204, 300, 400, and 500, 1000, 1100, and 1300 of Washington County Assessor's Map 2S106B; and Tax Lots 400, 500, 4100, 4200, 4300, and 4400 of Washington County Assessor's Map 2S2010 and Right of Way. The applicant, Willamette Water Supply Program, submitted a Design Review Two application for the installation of an underground regional water line. The water line corridor and adjacent areas for construction are in the right of way or on private property abutting the right of way.

APPELLANT: Ed Bartholemy
18485 SW Scholls Ferry Road, Beaverton, OR 97007

APPELLANT'S REPRESENTATIVE: Dave Hunnicutt
PO Box 230637, Tigard, OR 97281

APPLICANT: Tammy Cleys, Willamette Water Supply Program
11175 SW Ellson Lane, Tigard, OR 97223

APPLICANT'S REPRESENTATIVE: Shayna Rehberg, Angelo Planning Group
921 SW Washington Street, Suite 468, Portland, OR 97205

Tommy Brooks, Cable Huston
1001 SW Fifth Avenue, Suite 2000, Portland, OR 97204

DECISION CRITERIA: Appeal of the Planning Commission's decision is reviewed under Section 50.65 and Sections 50.80 through 50.83 of the Development Code. Design Review Two approval criteria are identified in Section 40.20.15.2.C of the Beaverton Development Code.. Facilities Review approval criteria are identified in Section 40.03.

RECOMMENDATION: Affirm the Planning Director's decision to approve with conditions as stated in the Notice of Decision issued February 28, 2019.

**APP2019-0001 – Willamette Water Supply Program Appeal
(DR2018-0134)**

Background

On February 28, 2019, the Planning Director issued an approval for the installation of a segment of an underground regional water line along SW Scholls Ferry Road and SW Tile Flat Road, both in the right of way and private property abutting the right of way. Two land use applications were part of the Decision:

1. Design Review 2 (case file LD2016-0134) and
2. Tree Plan 2 (case file TP2018-0010)

After issuing the Notice of Decision the City received an appeal of the Design Review Two decision on March 12, 2018 from Ed Bartholemy, an owner of property at 18485 SW Scholls Ferry Road. The Tree Plan 2 decision was not appealed. A portion of the water line and associate construction area are located on the southern edge property owned by Mr. Bartholemy. On March 13, 2019, the Community Development Director determined the appeal to be valid, having addressed the requirements identified in Section 50.65.2 of the Development Code. Notice of appeal was issued on Friday, March 16, 2019 in accordance with the procedure identified in Section 50.65 of the Development Code.

Portions of the waterline are located on or abutting properties zoned Washington County Interim Zone. The Washington County Interim Zone is applied when property has been annexed into the City of Beaverton from Washington County, but city zoning has not yet been applied. The appellant's property is zoned Washington County Interim Zone. In cases where land use applications are applied for properties zoned Washington County Interim Zone, the city must apply relevant Washington County Development Code provisions, consistent with BDC Section 10.40.1. The subject property was zoned AF-20 in Washington County prior to annexation.

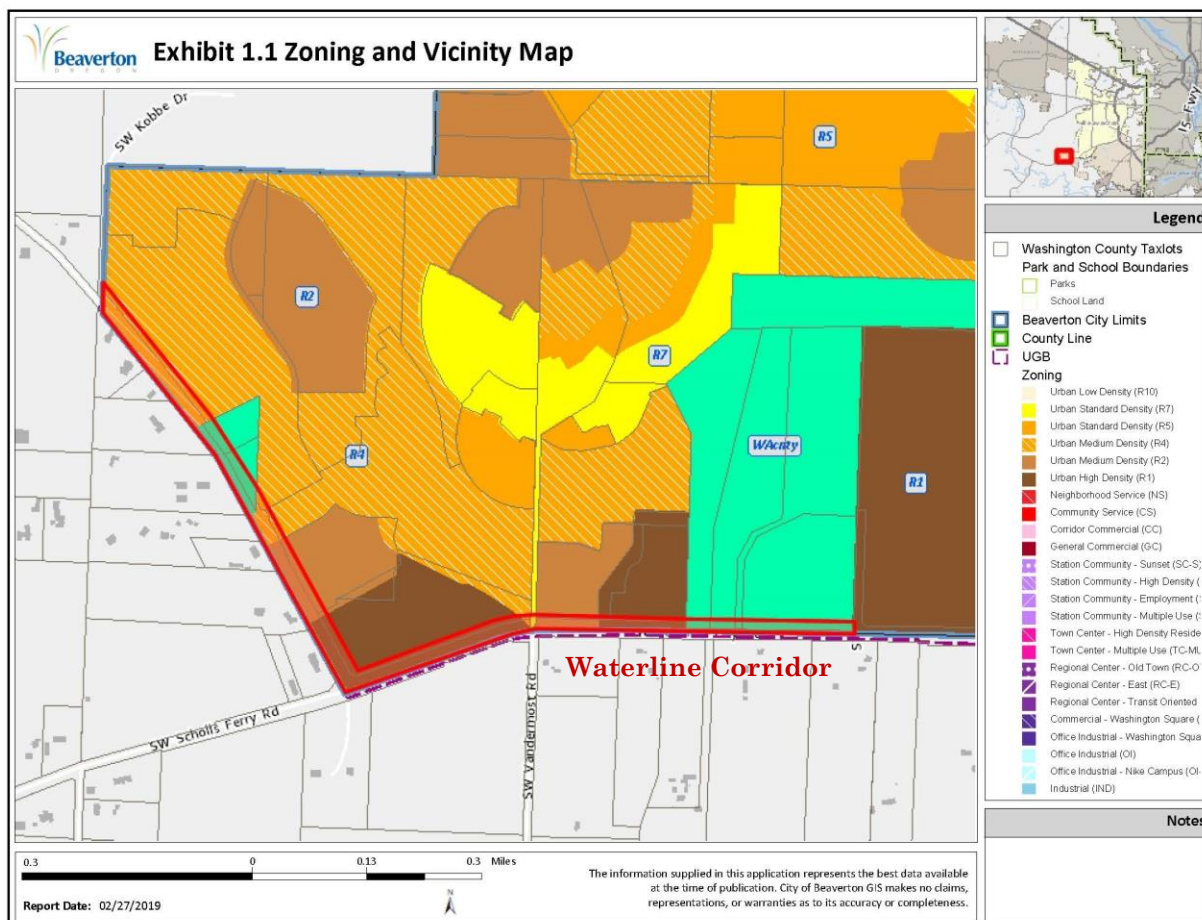
Hearing Type

Pursuant to Section 50.65.4 of the Development Code, the appellate decision making authority on appeal of Type 2 decisions is the Planning Commission. The appeal hearing for Type 2 decisions shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted in the manner specified in Sections 50.80. through 50.83. The decision of the appellate decision making authority for appeal of Type 2 decisions shall be the final decision and shall not be subject to further appeal to the City Council.

ATTACHMENTS	PAGE
A. Analysis and Findings related to Appeal of Willamette Water Supply Program Appeal	APP1-APP7
Analysis and Findings, Summary	APP1-APP7
Recommendation	APP-7

EXHIBITS

1. Zoning and Vicinity Map
2. Appellant Statement of Appeal from Ed Bartholemy, date stamped March 12, 2019
3. Notice of Director’s Decision, approving the waterline segment (DR2018-0134 / TP2018-0010)
4. Applicant’s plans and materials submitted for approval
5. Applicant’s responses to the Appellant’s claims, date stamped April 1, 2019
6. Applicable Washington County Development Code



ANALYSIS AND FINDINGS
APP2019-0001 APPEAL OF WILLAMETTE WATER SUPPLY PROGRAM

In considering the matter of appeal, Section 50.65.2.E.of the Development Code (Item E) instructs the appellant to identify the specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.

The appellant identifies five code criteria in the applicable Washington County Development Code zoning as not being satisfied. Below are the five criteria that staff found in review of the appeal statement:

- Criterion 1 – CDC 344-4.1(R)(5): The appellant states that it has not been demonstrated that it is necessary to site the facilities in the AF-20 zone, as opposed to siting the facilities in the right of way
- Criterion 2 – CDC 403-3: The appellant states that responses to CDC 404-419, 421-423, 427, and 429 should be included in the decision, and that no findings are provided.
- Criterion 3 – CDC 416-1.4: The appellant states the applicant has not demonstrated that the design, installation, and maintenance would be carried out with minimum feasible disturbance, specifically the appellant’s ability to secured adequate sewer and storm water to the property from SW Scholls Ferry Road.
- Criterion 4 – CDC 430-105.5: The appellant states that the applicant has not demonstrated that the siting of the proposed utility facility will be compatible with existing surrounding uses and uses allowed by the plan designation.
- Criterion 5 – ORS.275(2)(d): The appellant states that the applicant has not demonstrated why the proposed utility facility cannot be sited in SW Scholls Ferry Road right of way, thus eliminating the need to site the facility in the AF-20 zone.

Staff references specific statements from the appellants’ documents referred to above. Following the contention is the staff response thereto.

Criterion 1 – CDC 344-4.1(R)(5): The appellant states that it has not been demonstrated that it is necessary to site the facilities in an exclusive farm zone, as opposed to siting the facilities in the right of way

Staff Response to Contention 1

Six (6) properties within the water line corridor are zoned AF-20 (Washington County Interim Zone) as described above in the project background. The AF-20 zone implements the Exclusive Farm Use Zone (EFU). A Utility Facility, such as the proposed water line, is permitted in an Exclusive Farm Use Zone by ORS 215.213 (1). Additionally, CDC 344-4.1(R)(5) expressly permits

“Utility Facilities necessary for public service” in the AF-20 zone. CDC 344-4.1(R)(5) state the following:

“A facility is necessary if it must be situated in an agricultural district in order for the service to be provided. For required standards, see Sections 430-105.3 through 430-105.7. Application findings must demonstrate compliance with ORS 215”

The appellant states that analysis has not been provided demonstrating the need for the facility to be located within the AF-20 zone, when it could be located in the abutting right of way. Staff notes that Beaverton Development Code Section 10.35 states that “when bordering a public right-of-way, all zoning district boundaries shall extend to the centerline of the right-of-way as shown on the Comprehensive Plan.” There is no distinction between locating the water line on private property versus the right of way abutting the private property, since both locations are in an EFU zone.

Furthermore, the applicant asserts that it has completed the required alternatives analysis to explore alignments that avoid EFU zoned sites. That analysis can be found in Exhibit C of the applicants original materials.

Finally, staff notes that the opposing (south) side of Scholls Ferry Road is under the jurisdiction of Washington County, and is zoned AF-20. Therefore, locating the water line on the south side of Scholls Ferry Road would also place the line in an EFU zone.

Conclusion:

There is no distinction between siting the water line on private property or the abutting right of way, as both locations are in an EFU zone. The applicant’s analysis properly evaluated alignments outside of EFU zones. For the reasons stated above, staff finds the appellants’ contentions do not show that an error occurred as a matter of fact law or both.

Criterion 2 - CDC 403-3: The appellant states that responses to CDC 404-419, 421-423, 427, and 429 should be included the decision, and that no findings are provided.

Staff Response to Contention 2

The appellant cites specific CDC regulations that are not evaluated in staff’s findings. While staff acknowledges that Washington County zoning still applies, the city does not apply specific development standards from the county. Per BDC Section 10.40.1:

“Any area annexed to the City shall retain the zoning classification of its former jurisdiction until changed by the City. In the interim period, the City shall enforce the zoning regulations of the former jurisdiction along with any conditions, limitations or restrictions applied by the former jurisdiction as though they were a part of this Code, except that the provisions of Chapters 30 through 80 of this Code shall supersede comparable provisions of the zoning regulations in force in the former jurisdiction at the time of annexation.”

According to the above provision, any development standard in County Development Code that is superseded by Beaverton’s Development Code in Chapters 30 through 80 is not applicable. The County Development Code provisions are development standards, superseded by provisions in Chapter 60 of Beaverton’s Development Code. Therefore, they are not applicable and do not require analysis or findings.

In the event that Planning Commission disagrees with staff's interpretation, staff has included the following findings for the above referenced criterion.

Site Development Standards			
<u>Washington County Standard</u>	<u>Superseding City Standard</u>	<u>Staff Findings</u>	<u>Standard Met?</u>
CDC 404 Master Plan	No City Standard	County Master Plan provisions outline minimum analysis required for development, including site analysis and written findings	YES. See analysis in remainder of table and applicant's initial materials.
CDC 405 Open Space	No City Standard	Project is limited to underground pipeline with limited above ground appurtenances. No open space preservation is required.	N/A
CDC 406 Building, Siting, Architectural Design	BDC 60.05.15-30 Design Standards	Project is limited to underground pipeline with limited above ground appurtenances. Applicable standards limited to grading. See page DR-3 of original staff report for analysis.	YES
CDC 407 Landscape Design	BDC 60.05.15-30 Design Standards	Project is limited to underground pipeline with limited above ground appurtenances. Applicable standards limited to grading. See page DR-3 of original staff report for analysis.	YES
CDC 408 Neighborhood Circulation	BDC 60.05.15-30 Design Standards; BCD 60.55 Transpiration Facilities	Project is limited to underground pipeline with limited above ground appurtenances. Transportation criteria not applicable.	N/A
CDC 409 Private Streets	BDC 60.05.15-30 Design Standards; BCD 60.55 Transpiration Facilities	Project is limited to underground pipeline with limited above ground appurtenances. No Private streets are proposed.	N/A
CDC 410 Grading and Drainage	No City Standard	Staff responds to CDC 410. See page WC-15 of original staff report.	YES

CDC 411 Screening and Buffering	BDC 60.05.15-30 Design Standards	Project is limited to underground pipeline with limited above ground appurtenances. Above ground appurtenances do not require screening.	N/A
CDC 412 <i>PROVISION DOES NOT EXIST</i>	N/A	N/A	N/A
CDC 413 Parking and Loading	BDC 60.05.15-30 Design Standards	Project is limited to underground pipeline with limited above ground appurtenances. No parking or loading berths are required.	N/A
CDC 414 Signs	BDC 60.40	No signs are proposed with the development.	N/A
CDC 415 Lighting	BDC 60.05.30, Technical Lighting Standards	Project is limited to underground pipeline with limited above ground appurtenances. No lighting is required.	N/A
CDC 416 Utility Design	No City Standard	Applies to distribution lines providing service to development. Proposed project is transmission line, not providing service to development. See findings for Criterion 3 for more analysis.	N/A
CDC 417 Irrigation	No City Standard	Landscape plantings limited to replanting of disturbed natural areas. No irrigation is required.	N/A
CDC 418 Setbacks	No City Standard	Project is limited to underground pipeline with limited above ground appurtenances. No setbacks apply to these structures.	N/A
CDC 419 Height	No City Standard	Project is limited to underground pipeline with limited above ground appurtenances. No setbacks apply to these structures.	N/A
CDC 421 Flood Plain and Drainage Hazard Area	60.10 Flood Plain Regulations	Staff responds to CDC 421 See page WC-16 of original staff report.	YES

CDC 422 Significant Natural Resources	60.67 Significant Natural Resources	Staff responds to CDC 422 See page WC-16 of original staff report.	YES
CDC 423 Environmental Performance Standards	No City Standard	Staff responds to CDC 423 See page WC-16 of original staff report.	YES
CDC 427 Solar Access	BDC 60.45 Solar Access Protection	Project is limited to underground pipeline with limited above ground appurtenances. No solar access requirements apply	N/A
CDC 429 Bicycle Parking	BDC 60.30.10 Off Street Parking	Project is limited to underground pipeline with limited above ground appurtenances. No bicycle parking requirements apply	N/A

Conclusion:

For the reasons stated above, staff finds the appellants' contentions do not show how an error occurred as a matter of fact, law or both.

Criterion 3 – CDC 416-1.4: The appellant states the applicant has not demonstrated that the design, installation, and maintenance would be carried out with minimum feasible disturbance, specifically the appellant's ability to secure adequate sewer and storm water to the property from SW Scholls Ferry Road

Staff Response to Criterion 3

County Development Code Section 416-1.1 clearly states that the entirety of CDC 416 is intended for distribution lines, installed for the purpose of supplying service to development:

"All utility distribution facilities supplying electric, communication, or similar or associated service, installed in and for the purpose of supplying such service to any development shall be placed underground; provided however, that the word "facilities" as used herein shall not include standards used for street lighting, traffic signals, pedestals for police and fire system communications and alarms, pad-mounted transformers, pedestals, pedestal-mounted terminal boxes and meter cabinets, concealed ducts, substations, or facilities used to carry voltage higher than fifty thousand (50,000) volts."

The applicant asserts that the proposed water line is exempt from this provision, as the line is limited to the transmission of water from the Willamette River near Wilsonville to Hillsboro, and is not being designed to distribute water directly to any development. Staff notes that a recent Washington County decision reinforces this interpretation. The Washington County staff report for Casefile 18-314-SU/D/FP, dated January 8, 2019, and identified as Exhibit 1 of the applicant's response materials (within Exhibit 4 of this report), provides analysis and findings for a separate water line segment of the regional water line. These findings deemed the proposed regional water

line a transmission line, and not a distribution line, and therefore exempt from the provisions of CDC 416.

Conclusion:

The referenced criterion is not applicable. For the reasons stated above, staff finds the appellant's contentions do not show how an error occurred as a matter of fact law or both.

Criterion 4 – CDC 430-105.5: The appellant states that the applicant has not demonstrated that the siting of the proposed utility facility will be compatible with existing surrounding uses and allowed uses by the plan designation.

Staff Response to Contention 4

Section 430-105 of the County Development Code expressly states that a project such as the proposed underground water line segment within the City of Beaverton's jurisdiction is exempt. Section 430.105.6 states:

“Exemptions from the Requirements of Section 430-105:

Exempted from these regulations are:

- A. Underground pipes and conduits except where such pipes or conduits would introduce an urban service outside the Urban Growth Boundary.”*

As the proposed waterline project in Beaverton's jurisdiction is an underground water line within the Urban Growth Boundary, this criterion is not applicable to the proposed project.

Conclusion:

For the reasons stated above, staff finds the appellant's contentions do not show how an error occurred as a matter of fact, law or both.

Criterion 5 – ORS.275(2)(d): The appellant states that the applicant has not demonstrated why the proposed utility facility cannot be sited in the SW Scholls Ferry Road right of way, thus eliminating the need to site the facility in the AF-20 zone.

Staff Response to Criterion 5

As noted in the analysis in response to Criterion 1, zoning extends to the centerline of the right of way. As such, there is no distinction between locating the water line on private property or in the abutting right of way when considering impacting EFU zones.

Conclusion:

For the reasons stated above, staff finds the appellant's contentions do not show an error occurred as a matter of fact, law or both.

SUMMARY

For the reasons explained herein, staff finds that the appellant's arguments fail to show error in fact, law, or both, and that the applicant conducted proper analysis for siting the water line, and provided findings for applicable development standards.

RECOMMENDATION

Staff recommends that Planning Commission affirm the Planning Director's decision to approve the Design Review Two for Willamette Water Supply Program, with conditions as stated in the Notice of Decision dated February 28, 2019, thereby denying the appeal (APP2019-0001).