



Proposal: The applicant is proposing to modify the approved land use application for SP 18-02 to alter the office location; specifically, to abandon the use of the existing office structure and instead use a series of 3 modular shipping containers combined to form one office building of 960 square feet with new parking spaces and parking lot landscaping. A Conditional Use Permit (CUP) application was also submitted because the proposed structure does not meet the requirements of the commercial design standards listed in the Development Code, Chapter 3.26. That section allows an applicant to propose alternatives through a CUP.

I. BACKGROUND

- A. Applicant: Linn Economic Development Group
- B. Location: 3251 NE Old Salem Road
- C. Review Type: The CUP is processed as a Type III which requires a hearing before the Planning Commission. The proposed Site Development Review modification can be either a Type III, Type II, or Type I review depending on the complexity of the proposed modification. The thresholds are listed in the Millersburg Development Code Section 5.16.060(3) a through f. This case is considered a Type I by staff for the reasons listed below; however, because it is part of the CUP, both go to the Planning Commission for an action using the Type III process.
- D. Public Notice and Hearing: Notice was mailed to all property owners within 200 feet of the proposed location, posted in City Hall on December 21, 2021, and posted on the City's website here - <http://cityofmillersburg.org/planning-commission/>
- E. Review Criteria: Chapter 5.16.060- Modifications to Approved Plans and Conditions, and 5.04.050- Conditional Use Decision Criteria.
- F. Current Zoning: General Industrial (GI)
- G. Proposed Zoning: N/A
- H. Property Size: 63.71 Acres
- I. Background: The Intermodal Facility was approved in 2018 on the old paper mill site. Most of the structures from the old mill had been removed. One exception was an office building. The original approval had planned to use the office building for the intermodal project. The intermodal project was approved to primarily move shipping containers from truck to rail and vice-versa. The office is planned to be used for administrative functions related to the business. The applicants have since changed their minds and would rather not use the existing office building and instead install a 960 square foot modular office building on the site. This change would leave the existing

building unused and mark the structure on the plans for SP 18-02 as 'not part of this project.' Demolition of the structure is not proposed. The existing structure would just not be used. Any use of the existing office building would require a separate land use approval in the future.

As explained in the project description, the City Development Code has standards in Chapter 3.26 that all new office buildings must comply with. The applicant is proposing a very unique office building, because it is in the form of three shipping containers retrofitted for office use. As such, it does not meet any of the commercial design standards. However, the Code also states:

As an alternative, an applicant who wishes to use a design that differs from these requirements may apply for a Conditional Use Permit.

The applicant has filed the CUP in an effort to gain approval from the Planning Commission for an alternative design.

II. AFFECTED AGENCY, PUBLIC NOTICE, AND PUBLIC COMMENTS

Agencies:

- Albany Fire responded with no new comment but updated information.

Public:

At the time the staff report was drafted there were no comments from the public.

III. CRITERION

CITY OF MILLERSBURG DEVELOPMENT CODE

Chapter 5.04.050 Conditional Use Decision Criteria and 5.16.060 Modifications to Approved Plans and Conditions are reviewed below. The modification requirements are reviewed first to demonstrate that the correct application type is used.

5.16.060 Modifications to Approved Plans and Conditions.

(2) Applicability. This Section applies when an applicant proposes to modify an approved application or condition of approval.

ANALYSIS: The original application was approved by the Planning Commission in 2018. The request is to eliminate the existing office building from the use and add a new modular office of 960 square feet with landscaping and parking.

FINDING: Section 5.16.060 is applicable to the project.

(3) Major Modification. The Planning Commission reviews applications for major modifications through the Type III procedure under Section 5.19. Any one of the following changes constitutes a major modification:

- a. **A change in land use, from a less intensive use to a more intensive use, as evidenced by parking, paved area, an estimated increase in automobile or truck trips (peak and/or average daily trips), an increase in hours of operation, an increased demand for parking, additional paved area, or similar factors, where the increase is 10 percent or more, provided the standards of Article II and Article III are met;**

ANALYSIS: The applicant is proposing to change the office location. The change will not result in an increase in the intensity of the use. The existing office structure is large; the proposed modular office is much smaller. The size of the office will not impact the intensity of the use, because the use is primarily the shipping containers transfer from truck to rail and vice-versa. Parking demand will not change; the same amount of staff will be using the new offices. The new location will require additional paved areas, but not more than 10% of any standard.

FINDING: This does not trigger a major modification review.

- b. **A reduction in required setbacks, or an increase in lot coverage, by 10 percent or more, provided the standards of Article II and Article III are met;**

ANALYSIS: All setbacks will remain satisfied with the new location. No standards from Articles II (the zoning requirements for the General Industrial Zone) or Article III (other general standards) will be exceeded by 10%.

FINDING: This does not trigger a major modification review.

- c. **A change in the type and/or location of vehicle access points or approaches, driveways, or parking areas affecting off-site traffic when the roadway authority determines the change could cause a significant adverse impact on traffic operations or safety (i.e., requiring mitigation);**

ANALYSIS: The parking area is changing; the access is not. The change will only impact the office use and not the shipping, which is the primary use on the site. This new parking location is not going to have a negative impact on the operations, because it only impacts the office staff and not truck traffic on the property.

FINDING: This does not trigger a major modification review.

- d. **A reduction to screening, or a reduction to the area reserved for common open space or landscaping by 10 percent or more;**

ANALYSIS: Screening and/or open space is not required for the project. The applicant has not requested a reduction in landscaping.

FINDING: This does not trigger a major modification review.

- e. **Change to a condition of approval, or a change similar to subsections a-d, above, that could have a detrimental impact on adjoining properties. The City Manager shall have discretion in determining detrimental impacts triggering a major modification; or**

ANALYSIS: The applicant is not requesting any changes to conditions of approval. The applicant's narrative carefully walks through all the conditions of approval and demonstrates how all aspects of the project will still function for the redesigned version of the project offices.

FINDING: This does not trigger a major modification review.

- f. **Other changes similar to those in subsections a-e, above, in scale, magnitude, or impact to adjacent properties, as determined by the City Manager.**

ANALYSIS: The change proposed is not a significant change because it is not proposing to alter operations of the facility and will have no impact on the number of trucks or shipping containers that will be moved using the facility.

FINDING: This does not trigger a major modification review.

- (6) **Minor Modification. The Planning Director through a Type I or II procedure, depending on whether the proposal involves the exercise of discretion, shall review proposals for minor modifications. Minor modifications include technical corrections to comply with codes and regulations, and changes that fall below the thresholds in 5.16.060(3) as determined by the Planning Director. A minor modification is a change to an approved plan or condition of approval that does not meet any of the thresholds for a major modification listed in Section 5.16.060(3).**

ANALYSIS: The project has been deemed a minor modification. However, the project is using the Type III process because it has been submitted with a CUP as well. Pursuant to Chapter 5.16.010 multiple land use requests involving different processing types shall be heard and decided at the higher processing type. A CUP is a Type III process heard by the Planning Commission.

FINDING: The project meets the requirements for a minor modification.

- (8) **Minor Modification Approval Criteria. The Planning Director, or the Planning Commission in the case of an appeal of a Type II decision, shall approve, deny, or approve with conditions an application for minor modification based on findings of compliance or noncompliance with the applicable requirements of the Development Code and the conditions of approval of the original decision.**

ANALYSIS: The criteria requires that the project continue to meet the standards listed throughout the Development Code. The change also has to continue to meet the conditions of approval for the original project. The narrative details how the change still meets the conditions of approval. Staff concurs with the analysis in the narrative regarding the conditions of approval. The analyses for the pertinent standards are

included below in Section IV of this staff report (the review of the Development Code Standards). It should be noted that while the project was approved under the old version of the Development Code, the proposed revision has been analyzed under the new Development Code requirements since those were in effect at the time of the application for the revision. Only the proposed revision has been analyzed using the new Code.

FINDING: As demonstrated in the applicant's narrative, in the analyses shown below in Section IV of this staff report, and with the conditions of approval, the project meets this criterion.

5.04.050 Conditional Use Decision Criteria

A conditional use shall be approved if the applicant provides supporting evidence that all the requirements of this Code relative to the proposed use are satisfied, and demonstrates that the proposed use also satisfies the following criteria:

- (1) The use is listed as a conditional use in the underlying zone and complies with the development requirements of the underlying zone.**

ANALYSIS: The use is not changing from the previous approval. The proposed use is not listed as a CUP in the General Industrial Zone—it is permitted with a site development review; however, Chapter 3.26.030 explains that an applicant can propose alternative designs that may not comply with the Commercial Design Standards if they apply for a CUP. The new office location and structure meet all zoning requirements—specifically setbacks (the project is not adjacent to residential) and height requirements (there is none). Additional setbacks apply along NE Old Salem Road. The new office location meets these. See Section 2.10.050. The proposed office building location is about 450 feet from NE Old Salem Road.

FINDING: Based on the analysis above, the project meets the required criteria.

- (2) The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and location of improvements and natural features.**

ANALYSIS: The characteristics of the site are suitable for the proposed use, the office building, because the site is flat, there are no wetlands, flood plains or other natural concerns affecting the proposed office location. Access is provided via the same driveway used for the project (truck and passenger vehicles).

FINDING: Based on the analysis above, the project meets the required criteria.

- (3) The proposed development is timely, considering the adequacy of transportation systems, public facilities, and services, existing or planned for the area affected by the use.**

ANALYSIS: SP 18-02 has been approved. The proposed change in the office location does not have any impact on the intensity of the use on the site. All streets are designed to accommodate the proposed use.

FINDING: Based on the analysis above, the project meets the required criteria.

- (4) **The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying zone.**

ANALYSIS: The area surrounding the site is industrial in nature. The LEDG Intermodal project sits on a large parcel of land. The proposed office is located near the center of the site. As such, there are no close neighbors to the north or south. I-5 is located to the east of the site. To the west are a number of industrial facilities—the closest is



Highline Warren. All neighboring facilities are using permanent structures with offices located within the existing industrial buildings on site. While none of the existing neighboring facilities are using shipping containers, they do have an industrial character, as seen in the image to the left (this

is the view directly across the street from the applicant's site). While shipping containers are not specifically used in the neighboring facilities, they do blend with the character of the industrial area. The proposed office location is about 450 feet from NE Old Salem Road, well interior to the project. The proposed office location will be visible from NE Old Salem Road and I-5. The aesthetics of the structure are unique in the City of Millersburg in that we have no other offices that were previously shipping containers; however, they will blend with the character of the area. The proposed shipping container office will not limit, impair, or preclude neighbors from employing uses permitted in the General Industrial Zone because it will not be visually inconsistent with the train cars, trucks, external tanks, and other industrial features which are highly prevalent in the area surrounding the site.

The Development Code does not specifically address the use of shipping containers as a habitable space. They are specifically not permitted in residential areas, but the Code is silent on the use of them in industrial areas. The Planning Commission gets to ultimately decide if these are consistent with the character of the surrounding area. As a reminder that decision needs to be rooted in the satisfaction of a criteria.

FINDING: Based on the analysis above, the project meets the required criteria.

IV. STANDARDS

The proposed design complies with all the specifications and design requirements of Chapter 2, specifically the GI Zone setbacks and siting requirements, and Chapter 3 General Provisions as shown below. The following analysis is a summary of only the applicable standards or items that required additional explanation and/or additional conditions of approval to show clear consistency.

CHAPTER 3.03 OFF-STREET PARKING AND LOADING STANDARDS

The applicant's narrative walks through the parking requirements. Staff concurs with the applicant's analysis and agrees that the application continues to meet the parking requirements, including covered bike parking requirements. Additionally, all parking lot landscaping requirements (from Chapter 2.10.060(4)) are fully satisfied with the new design.

CHAPTER 3.26 COMMERCIAL DESIGN STANDARDS

Commercial Design standards are intended to create an attractive vista, enhancing the ability to attract business investment and livability. The Development Code includes design standards for office buildings. These are applicable to offices in any zone. As noted, the proposed modular office building does not meet any of these design requirements. The Code allows an applicant to propose alternative standards using a CUP application. It appears that the only criteria that can be used to review the application are those listed in this staff report, specifically Chapter 5.04.050 Conditional Use Decision Criteria and 5.16.060 Modifications to Approved Plans. There does not seem to be a vehicle or tool to entertain the alternative standards outside these criteria. As such, if the project meets the criteria reviewed above and the standards from Article 2 and 3, the project should be approved.

V. RECOMMENDATION

Based on the above findings of fact, and the conditions of approval, the proposed project satisfies the applicable criteria and standards, and staff recommends the Planning Commission approve Application No. SP 18-02 M1 and CUP 21-04.

VI. PROPOSED MOTION

I make a motion that, based on the findings of fact in the staff report and the conditions of approval, the proposed project satisfies the applicable criteria and standards, and the Planning Commission approves SP 18-02 M1 and CUP 21-04 with the conditions of approval.

VII. ALTERNATIVE RECOMMENDATION

Should the Planning Commission not elect to approve the proposed development, they could continue the item for further discussion or deny the application citing the specific criteria not satisfied by the application.

VIII. CONDITIONS OF APPROVAL

All conditions of approval for SP 18-02 remain applicable. All conditions of approval listed below are also applicable to the project.

General Conditions:

1. This land use approval shall substantially comply with the submitted preliminary plans included as Exhibit A. Additional development or change of use may require a new development application and approval.

VII. NOTICES TO THE APPLICANT

The applicant should also be aware of the following standards and processes that are required for development. These are not part of the decision on this land use case and are provided as a courtesy to the applicant. Please contact City Hall with any questions.

1. This approval modification/CUP is valid for the life of the project. The original project is vested and does not expire unless operations cease for a period of more than one year.

VIII. EXHIBITS

- A. Applicant's exhibits including:
 1. SP 18-02M1 Narrative
 2. CUP 21-04 Narrative
 3. Modification plans dated 11/19/21 (4 pages)
 - i. Cover Sheet
 - ii. Existing Site Conditions
 - iii. Site Modification Plan
 - iv. Office Landscape Plan
 4. Elevations dated 12/8/21
 5. Floor Plan dated 12/8/21
- B. Updated Fire Letter dated 1/7/22
- C. Notice

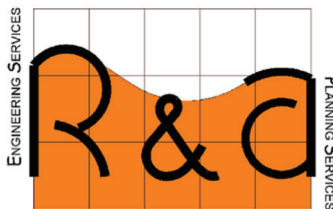
Modification Application

Site Plan Review (SP-18-02)

Prepared for:

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Prepared by:



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November 29, 2021

Project Summary

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|-------------------|--|
| Request: | Application for approval of a Minor Modification to alter the office location and parking area layout approved by Site Plan Review (SP18-02). |
| Location: | 3251 NE Old Salem Road Albany, Oregon 97321 Linn County Assessor's Map No. 10s03w28, Tax Lot 400 |
| Applicant: | Linn Economic Development Group C/O Don Waddell 321 1 st Avenue E, Suite 3a Albany, Oregon 97321 Phone: 503-319-5099 Email: wadsie@hotmail.com |
| Owner: | Albany-Millersburg Economic Development Corporation C/O John Pascone 435 1 st Avenue W Albany, Oregon 97321 Phone: 541-926-1519 Email: pasconj@peak.org |
| Engineer/Planner: | Reece & associates, Inc. 321 1 st Avenue Suite 3A Albany OR 97321 541-926-2428 Engineer: David J. Reece, PE Planner: Hayden Wooton dave@r-aengineering.com haydenw@r-aengineering.com |

Exhibits:

- A – SP18-02 Notice of Decision
- B – Linn County Assessor's Map No. 10s03w28

Plan Set:

- 1.0 – Cover Sheet
- 2.0 – Existing Site Conditions
- 3.0 – Site Modification Plan
- 4.0 – Office Landscape Plan

I. Project Description

Linn Economic Development Group (LEDG), hereafter referred to as “the applicant,” is proposing to modify an approved site development plan (SP18-02) (Exhibit A). The original site plan review application proposed construction of a truck-to-rail/rail-to-truck intermodal facility on Linn County Assessor’s Map No. 10s03w28, tax lot 400 (Exhibit B). Along with intermodal improvements, the application included a proposal to renovate an existing office building and its associated parking area. That plan was approved with conditions by the City of Millersburg Planning Commission on April 16th, 2019. Although the original approval was only valid for a period of two (2) years from the date of the decision notice (Published April 17th, 2019), the land use approval was vested on March 11th, 2021, when the applicant began construction.

Instead of renovating the existing office building and parking facilities, this site plan review modification application proposes to construct a new 960-square-foot office building and seven parking stalls. The existing office and parking areas will be denoted as “not for use.” As such, no improvements or renovations will be made to this area. The new office building and parking will be designed to comply with the appropriate standards in the City of Millersburg Development Code (MDC).

Applications for a Site Plan Review Modification are processed as either a Type III, Major Modification; Type II, Minor Modification; or a Type I, Minor Modification. There are several thresholds listed in MDC 5.16.060(3)(a) through (f) that determine if an application is Major Modification. These thresholds are:

- a. *A change in land use, from a less intensive use to a more intensive use, as evidenced by parking, paved area, an estimated increase in automobile or truck trips (peak and/or average daily trips), an increase in hours of operation, an increased demand for parking, additional paved area or similar factors, where the increase is 10 percent or more, provided the standards of Article II and Article III are met;*
- b. *A reduction in required setbacks, or an increase in coverage, by 10 percent or more, provided the standards of Article II and Article III are met;*
- c. *A change in the type and/or location of vehicle access points or approaches, driveways, or parking areas affecting off-site traffic when the roadway authority determines the change could cause a significant adverse impact on traffic operations or safety;*
- d. *A reduction to screening, or a reduction to the area reserved for common open space or landscaping by 10 percent or more;*
- e. *Change to a condition of approval, or a change similar to subsection a-d, above, that could have a detrimental impact on adjoining properties. The City Manager shall have discretion in determining detrimental impacts triggering a major modification; or*
- f. *Other changes similar to those subsections a-e, above, in scale, magnitude, or impact to adjacent properties, as determined by the City Manager.*

First, this application falls beneath these thresholds because it does not include a change in land use, an increase in average daily vehicle trips, an increase in hours of operations, an increase in parking demand, or an increase in paved area. The site will continue to function as initially proposed. Second, the proposed building will be setback approximately 518 feet from the subject property’s frontage along Old Salem Road. Third, vehicle access points, parking areas, or driveways do not impact off-site traffic circulation on

Old Salem Road. Access points and turning movements will remain identical to the original application. Forth, there will be no reduction in screening or common open space. Finally, this modification does not propose to change a condition of approval or another significant change similar to those listed in MDC 5.16.060(2)(a) through (f) that would have a detrimental impact on adjoining properties. Therefore, this Site Plan Review Modification application will be considered a minor modification.

There is one criterion for a minor modification, MDC 5.16.060(8), which requires: *“The Planning Director, or the Planning Commission in the case of an appeal of a Type II decision, shall approval, deny, or approve with conditions an application for minor modification based on findings of compliance or noncompliance with the applicable requirement of the Development Code and the conditions of approval of the original decision.”* The applicant has provided findings of fact demonstrating compliance with this criterion in the following sections of this burden of proof.

II. Conditions of Approval

As required by MDC 5.16.060(8), the proposed modification must be in compliance with the conditions of approval associated with the original decision.

1) *This land use approval shall substantially comply with the submitted preliminary site plans included as Exhibit C, except as indicated in the following conditions. Additional development or change of use may require a new development application and approval.*

With the exception of the proposed modifications and alterations necessary to satisfy these conditions of approval, development will occur in substantial conformance with the original approval. Because the proposed modifications do not include additional development or a change of use, this application does not conflict with this condition.

2) *Copies of any required federal or state permits that may be required shall be filed in the Record File of this application.*

The proposed modification does not prevent the applicant or operator from providing copies of any required federal or state permits to City of Millersburg staff. Furthermore, the proposed modification does not alter any of these approvals.

3) *All required public improvement plans shall be approved by the City prior to beginning construction. All utilities shall remain uncovered until inspected and approved by the City. All required public improvements shall be completed and approved by the City prior to construction.*

The proposed modification will not alter the placement of public utilities. The applicant submitted Private Construction of Public Infrastructure (PCPI) plans on November 16th, 2021, for construction of a waterline connection in Old Salem Road. Once construction of these improvements begins, the contractor will notice city staff and leave all utilities uncovered until inspected and approved by city staff. Therefore, this condition has already been addressed and the construction team will continue to comply with this condition.

4) *All new construction of public infrastructure, including roads, water, sewer, and storm drainage, must be submitted for review and approval by the City of Millersburg through a Private Construction of Public Infrastructure (PCPI) permit. All work within the public right-of-way shall be designed by a licensed engineer and performed by a licensed contractor in conformance with the Albany Standard Construction*

Specifications as adopted by the City of Millersburg or the Linn County requirements where within the Old Salem Road right-of-way. The plans shall be in substantial conformance with the tentative map and demonstrate the placement of all existing and proposed utilities underground.

The proposed modification does not affect the construction of public improvements. As previously mentioned PCPI plans were submitted to city staff and approved. This approval serves as an acknowledgement that proposed public infrastructure has been designed by a licensed engineering, will be performed by a licensed contract, and is in conformance with the Albany Standard Construction Specifications.

5) Any public utilities required to serve the site must be constructed by the applicant and accepted by the City. Any lines crossing Old Salem Road must conform to Linn County requirements. All portions of water, sewer, or stormwater utilities construction within public road right-of-ways shall be public.

The proposed modification does not affect the construction of public utilities. A waterline connection will cross Old Salem Road. This improvement was submitted and approved under the previously mentioned PCPI plans.

6) Applicant is required to construct a sidewalk or path along the eastern side of Old Salem Road, consistent with the City of Millersburg Transportation System Plan (TSP).

The City of Millersburg has opted to waive this condition; therefore, it is not relevant to the proposed modification.

7) Any required street signage and street lighting shall be approved by the City Engineer and installed.

The proposed modification does not include any additional street signage or street lighting.

8) All agreements required as conditions of this approval must be signed and recorded.

Any agreements required as conditions of approval will be signed and recorded regardless of the location of the proposed office building and parking area.

9) Install or replace, to Linn County specifications, all sidewalks, curb ramps, or driveways which are damaged, deteriorated, or removed by construction along Old Salem Road frontage.

If during construction of the proposed improvements any sidewalks, curb ramps, or driveways are damaged, deteriorated, or removed, they will be replaced according to Linn County specifications. Therefore, the proposed modification will comply with this condition.

10) Proposed landscape buffers may not be adequate to address all noise concerns. Applicant shall conduct a post construction noise study to demonstrate there are no noise impacts of concern to the City at the interface between the residential and industrial zone caused by this project. Additional noise mitigation measures may be required.

Because construction of the proposed improvements, modified or existing, has not been completed yet, this condition does not apply at this time. It will be enforced after the site is operational.

11) *As recommended by the traffic study, any future project within the undeveloped area near Arnold Lane must relocate the passenger vehicle access currently located to the north of the truck queuing area along Old Salem Road such that the access aligns with Arnold Lane.*

The proposed modifications are not located near Arnold Lane; therefore, this condition does not apply.

12) *All users of the site shall comply with all local, State and Federal rules, regulations and standards for noise and air quality.*

Regardless of the proposed modification, the eventual facilities operator will need to comply with all local, state, and federal regulations relating to noise and air quality.

13) *Prior to the issuance of building or grading permits the applicant shall provide a wetland delineation study and concurrence form the Department of State Lands, to the satisfaction of the City Engineer. The City Engineer has the ability to waive this requirement.*

The applicant submitted a copy of a wetland delineation study and concurrence form from the Department of State Lands on March 16th, 2021. The proposed modification does not affect these documents.

14) *Prior to the issuance of any building permits, the applicant shall submit full, detailed landscape plans for staff review. Said landscape plans shall fully conform with all provisions of Section 5.134 including street trees and parking area landscaping.*

A landscape plan was submitted to city staff; it received approval. The proposed modification will alter parking lot landscaping. Please refer to the applicant's response to MDC 2.10.060(5) for more information.

15) *Prior to the issuance of any building permits, the applicant shall submit full, detailed lighting plans and lighting schedules (cut sheets) for staff review. Said lighting plans shall fully conform with all provisions of Section 5.135.*

A lighting plan was submitted to city staff and was approved. Lighting specific to the proposed modification is addressed later in this application narrative. Please refer to the applicant's response to MDC 3.03.080(4) for more information.

16) *Prior to issuance of building permits, the applicant shall submit for review and approval a revised site plan showing the following:*

A Shared Use Path/Trail shall be added to the site plan, to the satisfaction of the City Planner, that shows a trail spanning the improved property along Old Salem Road, consistent with the Transportation System Plan.

The City of Millersburg has opted to waive this condition; therefore, it is not relevant to the proposed modification.

17) *The applicant shall provide an operations plan for City Staff review. The operations plan shall contain, at a minimum,*

a. the planned procedures for the maximum height of the stacked shipping containers,

- b. *the maximum truck idling times at all locations throughout the site,*
- c. *the security details for the site, including fencing, staff, hours, and lighting details, and details regarding the traffic patterns planned, including planned truck routes that will be required by the applicant for all users of the facility.*

The plan shall be to the satisfaction of the City Planner and the City Engineer.

The applicant has not yet provided a complete operations plan. While this modification is not expected to alter site operations, the plan will account for any changes when it is submitted.

18) *The applicant's engineer is required to provide a site-specific drainage plan to temporarily collect, route, and treat surface water and ground water during each construction phase. The construction plans shall specifically identify how the storm drainage system and erosion sediment control measures will be phased during construction, such that at any time during construction the approved plans shall be capable of provide full erosion and sediment control, collection, routing, and treatment of stormwater runoff and ground water. No site construction will be allowed to take place if the storm drainage system and erosion sediment control measures are not installed per plan and functioning properly.*

The applicant's engineer, Reece & Associates, Inc., submitted a site-specific drainage plan as a portion of an application for a Millersburg Grading permit. The proposed modification does not include alterations to the approved stormwater management systems.

19) *Obtain a 1200C Erosion Control Permit for all the disturbed ground, both on and offsite that is in excess of one acre in addition to meeting all Albany Construction Standards (ACS). The applicant shall follow the latest requirements from the Department of Environmental Quality (DEQ) for NPDES 1200-C Permit submittals. A copy of the approved and signed permit shall be provided to the City prior to any ground disturbing activities.*

The applicant obtained a 1200-C Construction Stormwater General permit and sent a copy to city staff on March 16th, 2021. The proposed modification does not alter erosion control measures and is within the boundaries of the permit area.

20) *Applicant shall design stormwater detention facilities as required to meet city standards. Stormwater calculations shall be submitted to the City Engineer for review and approval. If applicable, design stormwater detention basins per the criteria in the City of Albany Engineering Standards E.8.00 – Stormwater Detention, except "City of Albany" shall be replaced with "City of Millersburg." Maintenance of detention basin shall be the responsibility of the applicant.*

A City of Millersburg Grading permit was approved on September 29th, 2020. This approval indicates the proposed stormwater facilities comply with the design criteria in the City of Albany Engineering Standards E.8.00 – Stormwater Detention. The proposed modification will not affect the approved stormwater detention facilities.

21) *Stormwater from the southern part of the project area discharges to Murder Creek. Stormwater from the northern portion of the project area discharges to an unnamed tributary of Murder Creek that flows beneath Old Salem Road. Applicant shall be responsible for any required industrial stormwater discharge permits.*

The eventual facilities operator will be responsible for obtain any required industrial stormwater discharge permits. The proposed modification does not relieve the operator of this requirement.

22) *Prior to occupancy of the overnight parking area shall have signs posted that express the local, State and Federal idling limits. The number of signs and size of the signs shall meet the satisfaction of the City Planner.*

Prior to occupancy of overnight parking areas, the applicant shall post signs that express the local, state, and federal idling limits. The applicant will submit information describing these signs to city staff prior to installation. The modification does not proposal to alter this condition or the overnight parking requirements. Therefore, the applicant will comply with this condition when it is applicable.

23) *Prior to occupancy the applicant shall construct the Shared Use Path/Trail as required by the City's TSP.*

The City of Millersburg has opted to waive this condition; therefore, it is not relevant to the proposed modification.

24) *Prior to occupancy, pursuant to a recommendation from the traffic study and ODOT, the intersection of Old Salem Road and Century Road shall be reconfigured to a traditional geometry and control. The revisions will eliminate northbound left turning trucks from blocking southbound traffic and eastbound left turning trucks from blocking northbound left turning vehicles. The recommended intersection control and configuration is illustrated in the traffic study on Figure 16. ODOT or the City can waive this requirement.*

The proposed modification will not affect improvements to the intersection of Old Salem Road and Century Road. This striping will still occur prior to occupancy.

25) *All required landscaping shall be installed prior to occupancy.*

All landscaping whether approved through this modification or the original landscaping plan will be installed prior to occupancy.

26) *Prior to occupancy the applicant shall provide a clearance letter form the Albany Fire Department indicating all items listed in their January 4, 2019 letter have been satisfied. Specifically, the following noted items must be addressed:*

a. *The Fire Department has reviewed the above project for conformance to the 2014 Oregon Fire Code (OFC) per your request and has the following comments:*

i. *All newly constructed building 50,000 square feet in size or larger shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the Albany Police and Fire Departments' communication systems the exterior of the building [see OFC Appendix J].*

ii. *Commercial developments which exceed three stories or 30' in height or have a gross building area of more than 62,000 square feet shall be provided with at least 2 means of fire apparatus access. These access points shall be remotely separated by at least ½ the length of the maximum overall diagonal dimension of the property or area served.*

Exception: Projects having a gross building area of up to 124,000 square feet that have a single approved fire apparatus access road when all buildings are equipped throughout with approved automatic sprinkler systems.

- iii. *Approved fire apparatus roadways must extend to within 150 feet of all exterior portions of any structure that will be built on the property as measured by an approved route of travel around the exterior of the structure.*
- iv. *Dead-end fire apparatus roads in excess of 150 in length shall be provided with an approved area for turning around fire apparatus.*
- b. *This proposed project is located within a "Protected Area" as defined by Oregon Fire Code (OFC) Appendix B, Section B102, and this area is currently served by a public water system. The fire flow required for shall be as specified in Appendix B of the Fire Code.*
- c. *The location and spacing requirements for fire hydrants are based on four project-specific criteria:*
 - i. *The distance from the most remote exterior point of the building(s) to the closest available fire hydrant.*
 - ii. *The calculated "fire flow" of the proposed building(s).*
 - iii. *The spacing of the existing fire hydrants along the public and private fire apparatus roads serving the property.*
 - iv. *The location of new required public or private fire apparatus access roads located adjacent to the proposed building(s) to be constructed.*
- d. *The requirements for fire hydrants for this proposed project will be based on the following requirements:*
 - i. *Fire hydrant location: All portions of buildings constructed or moved into the City shall be located within 400 feet (600 feet for fire sprinkler-protected buildings) of a fire hydrant located on a fire apparatus access road using an approved route of travel.*
 - ii. *Required hydrants based on the required fire flow as calculated in accordance with OFC 503.7 and OFC Appendix B. The minimum number of fire hydrants is determined by OFC Table C105.1.*
 - iii. *Required fire hydrant spacing will be based upon applicant's required fire flows as determined by OFC Appendix C105.1 and Tale C105.1. Please note that dead end roads require a reduced spacing.*
 - iv. *Fire hydrant spacing along new/required fire apparatus access roads. In addition, OFC Section C103.1 requires the placement of additional hydrant along all of applicant's required fire access roads that are adjacent to any proposed building (and any future additions) and circulating through applicant's private property with spacing requirements per Appendix C 105.1.*

Prior to occupancy, the applicant will provide a clearance letter from the City of Albany Fire Department indicating all items listed in their January 4th, 2019, letter have been satisfied. This condition will apply to the proposed modification because it will not be enforced until occupancy.

27) *Within 6 months of starting operations of the facility, the applicant shall provide staff with a noise study showing that noise level measurements emitting from the standard operations of the facility, at the nearest residential properties both inside the City, and outside the City (across I-5), are acceptable pursuant to Ordinance No. 94.*

Site operations have not begun, and this condition will remain in effect until the applicant has provided city staff with a noise study demonstrating that noise levels generated by this facility are within the boundaries of Ordinance No. 94 when measured from the nearest residential properties. Compliance with this condition will not be affected by the proposed modification.

III. General Industrial Zone Development Standards

As required by MDC 5.16.060(8), the proposed modification must be in compliance with the applicable development standards.

[2.10.050] *Dimensional Standards. Unless otherwise permitted in this Code, the following minimum dimensional standards shall be required for all development in the GI zone.*

The subject property is zoned General Industrial by the City of Millersburg. This zoning district outlines two dimensional standards that govern the proposed modification. First, there is a 20-foot setback for Yards Adjacent to Old Salem Road. The proposed office building will be located approximately 518 feet from the subject property's Old Salem Road frontage. Second, there is a maximum lot coverage standard of 100 percent. The proposed modification does not increase the project's lot coverage. Therefore, the modification complies with these dimensional standards.

[2.10.060(1)] *Off-Street Parking. Parking, Driveway, and loading improvements shall comply with provisions in Chapter 3.03.*

The proposed modification will construct a new parking area to serve the new office building. The following standards in Chapter 3.03 are applicable to this modification:

[3.03.060(1)] *Vehicle Parking Spaces.*

Office buildings require "1 space per 400 sq. ft. of gross floor area, plus 1 space per 2 employees." The proposed office building will require a total of seven spaces. Two spaces are required to account for its gross floor area of 960 square feet, and five spaces to required for the 10 expected employees. Therefore, this standard is met.

[3.03.060(2)] *Bicycle Spaces.*

Bicycle parking spaces will be provided adjacent to the entrance of the proposed office building. These spaces will be sheltered by an awning extending from the front façade of the office building. Lighting will be provided by a wall light intended to illuminate the entrance. Therefore, this standard is met.

[3.03.080(1)] *Surfacing.*

All proposed parking stalls will be paved in accordance with this standard; therefore, this standard is met.

[3.03.080(2)] *Parking Spaces.*

Each proposed parking stall will be 20 feet long and 9 feet wide. Therefore, this standard is met.

[3.03.080(4)] *Lighting.*

A wall light located on the south building façade will illuminate the proposed parking area, and another wall light on the west building façade will illuminate the entrance and bicycle parking area. Because these lights will be located several hundred feet from the nearest

public right-of-way, they will not cast glare onto moving vehicles or residential areas. Therefore, this standard is met.

[2.10.060(2)] *Signs. Signs in the GI zone shall conform to the standards contained in Chapter 3.06.*

No additional signage is proposed by this modification; therefore, this standard does not apply.

[2.10.060(3)] *Yards and Lots. Yards and lots shall conform to provisions contained in Chapter 3.08.*

This proposal does not include front, side, or rear yard projections that would require compliance with MDC 3.08.030 through 3.08.050. The remaining applicable standard in Chapter 3.08 governs driveway vision clearance. The proposed modification will not alter the existing vehicle entrance-exit points, so existing vision clearance triangles are unaffected by this proposal. Therefore, this standard does not apply.

[2.10.060(4)] *Site Development Review. All new development and expansion of an existing structure or use in the General Industrial Zone shall be subject to the site development review procedures of Chapter 5.05.*

This application is for a site plan review modification; it does not include new development or expansion of an existing structure. Therefore, this standard does not apply.

[2.10.060(5)] *Landscaping. Any required or established yard shall be landscaped with trees, shrubs, and groundcover and maintained pursuant to provisions in Chapter 3.09.*

The proposed modification will create a new parking lot that must be landscaped in accordance with MDC Chapter 3.09. The following standards from this chapter apply to the proposed improvements:

[3.09.030(2)(a)] *Planter Bays.*

Two new planter bays will be constructed on the east and west side of the new parking lot. These landscape planter bays will be 7 feet wide (excluding curb), contain one canopy tree, three shrubs, and attractive ground cover in the form of bark chips. Therefore, this standard is met.

[3.09.030(2)(b)] *Parking Space Buffers.*

The proposed parking area will be separated from the office building by a 7.5-foot-wide pedestrian walkway. Therefore, this standard is met.

[3.09.030(2)(d)] *Landscape Protection.*

Each landscape planter is separated from adjacent gravel areas by protective curbing. Therefore, this standard is met.

[2.10.060(6)] *Residential Screening. Property abutting an RL, RU, or RM zone shall be screened with a sight-obscuring fence not less than six feet in height. This requirement shall not include the front yard.*

The subject property does not abut an RL, RU, or RM zoning district. Therefore, this standard does not apply.

[2.10.060(7)] *Environmental performance standards may limit placement of certain uses in the zone if the site is located within 300 feet of residential zoned land.*

The subject property is not located within 300 feet of residentially zoned land. Therefore, this standard does not apply.

IV. Conclusion

This application narrative and accompanying site plan demonstrate that the proposed minor modification complies with Millersburg Development Code MDC 5.16.060(8) and all other applicable standards.



CITY OF MILLERSBURG, OREGON NOTICE OF DECISION

April 17, 2019

To: Applicants and Participants

RE: NOTICE OF DECISION

This notice is to inform you that the Millersburg Planning Commission, on April 16, 2019 has made a Land Use Decision concerning the following application:

Requested Action: The Mid-Willamette Valley Intermodal Transfer Center (File No. SP 18-02) applicant is proposing a facility that would transfer rail contents in shipping containers to trucks and from trucks to rail.

Action Taken: The Planning Commission approved the application with a unanimous vote of all Commissioners present.

Applicant/Owner: Linn Economic Group
435 First Avenue West
Albany OR, 97321

Property Location: 3160, 3251, and 3435 NE Old Salem Road

Assessor Map: 10 3W 28 Tax Lot 100, 108, 400

Zoning: General Industrial (GI)

The Planning Commission approved the site plan review with conditions. No Commissioners recused themselves. No other ex-parte or conflicts from the Planning Commission were presented except for some site visits.

The decision will not become final until the period for filing a local appeal has expired. An action or ruling from the Planning Commission pursuant to Millersburg Code may be appealed to the City Council within 15 days after the Planning Commission has rendered its decision. If the appeal is not filed within the 15-day period, the decision of the Planning Commission shall be final. A complete copy of the record including the application, staff report and all documents and evidence relied upon by the Planning Commission in making their decision are available for inspection at the Millersburg City Hall at no cost. The City Hall is located at 4222 Old Salem Road, Millersburg, Oregon.

Written notice of an appeal shall be filed with the City. If the appeal is filed, the City Council shall hold a public hearing on the appeal. A party aggrieved by

the City Council final determination in a proceeding for a land use decision or limited land use decision may have the determination reviewed by the Land Use Board of Appeals (LUBA). A notice of intent to appeal a land use decision shall be filed not later than 21 days after the date the notice of decision is made.

Failure of an issue to be raised at the City's review or hearing, in person or by letter, or failure to provide sufficient detail to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue.

For additional information feel free to contact call me at 541-928-4523 or mstraite@cityofmillersburg.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matt Straite", with a stylized flourish at the end.

Matt Straite,
City Planner



Land Use Application Form

Case No.
Date
Type

CUP 21-04
12/20/21
III

Check the Type of Land Use Requested:

- | | |
|--|--|
| <input type="checkbox"/> (PA) Pre Application | <input type="checkbox"/> (VR) Variance |
| <input type="checkbox"/> (SP) Site Plan Review | <input type="checkbox"/> (CP) Comprehensive Plan Amendment |
| <input type="checkbox"/> (SP) Site Plan Review Modification | <input type="checkbox"/> (ZC) Zone Change |
| <input checked="" type="checkbox"/> (CUP) Conditional Uses | <input type="checkbox"/> (AN) Annexations |
| <input type="checkbox"/> (PL) Property Line Adjustment | <input type="checkbox"/> (VA) Vacations |
| <input type="checkbox"/> (SD) Subdivisions/PUD/ Manufactured home park | <input type="checkbox"/> (CI) Code Interpretation |
| <input type="checkbox"/> (PA) Partition (3 or less lots) | <input type="checkbox"/> (AJ) Adjustment |

THIS FORM MUST BE FILLED OUT COMPLETELY



I. Property Owner/Applicant Information


- A. Applicant(s) Linn Economic Development Group c/o Don Waddell
Email Address wadsie@hotmail.com
Mailing Address 321 1st Avenue E, Suite 3a, Albany, Oregon 97321
Phone number 503-319-5099
- B. Owner(s) Albany-Millersburg Economic Development Corporation c/o John Pascone
Email Address pasconj@peak.org
Mailing Address 435 1st Avenue W, Albany, Oregon 97321
Phone number 541-926-1519

II. Property Information

- A. Legal description of property: Township 10s Range 3w Section 28
Tax Lot 400
- B. Additional Properties:
Township _____ Range _____ Section _____ Tax Lot _____
Township _____ Range _____ Section _____ Tax Lot _____
- C. Site Address (if any) 3251 NE Old Salem Road, Albany, Oregon 97321
- D. Zoning designation General Industrial

III. Authorizing Owner/Applicant Certifications

I hereby certify that the statements, attachments, exhibits, plot plan and other information submitted as a part of this application are true and any approval granted based on this information may be revoked if it is found that such statements are false. By submitting this form the Owner, or Owner's authorized agent/ representative, acknowledges and agrees that City of Millersburg employees, and appointed or elected City Officials, have authority to enter the project site at all reasonable times for the purpose of inspecting project site conditions and gathering information related specifically to the project site. I further acknowledge that I have read the applicable standards for review of the land use action I am requesting and understand that I must demonstrate to the City review authorities compliance with these standards prior to approval of my request.

Owner/applicant signature  Date 12/20/21
Owner/applicant signature  Date _____

IV. The following materials must be submitted with your application or it will not be accepted at the counter. Once taken at the counter, the City has up to 30 days to review the materials submitted to determine if we have everything we need to complete the review.

- A **narrative** explaining how the application meets all required criteria shown in City land use Development Code, Article 2 (<http://cityofmillersburg.org/millersburg-land-use-development-code/>)
- At least 3 folded sets of the project **Site plan**. The site plan must be drawn to scale and show existing and proposed locations of buildings, access, parking, loading, landscaping, screening, fencing, drainage, water supply, sewage disposal, public utilities, unique site features (creeks and wetlands) and exterior lighting.¹
- A copy of the **deed** for the subject property.
- A copy of any **easement** granting access to the subject property, if the property does not have frontage on a public road.
- If the applicant for this request is not the property owner, then **authorization** from the owner must be submitted with the application.
- A copy of all permits, licenses, and **authorizations** from other government agencies pertaining to the proposed use, including highway access, water and sewer connections, state or federal discharge permits.
- Land Use Application **Checklist** (separate form)
- Digital versions** of all Site Plans, other plans and/or studies.
- Application **Fee**. The total fee shall be the sum of all individual procedural fees unless adjusted by the City Manager.

¹ Additional copies of all exhibits may be required if the application is deemed complete.



City of Millersburg Land Use Application Checklist

The following information is required pursuant to City Code Section 2.130(5) for all planning applications (additional information may be required during review):

- Copies of all Pre-application information provided by the City.
- A Site Plan/map showing:
 - Total gross and net land areas of the site (net is minus the square footage of any land proposed for dedication to the public, not including easements)
 - North Arrow
 - Neighboring Zoning
 - Date
 - Scale
 - Vicinity Map
 - Dimensions
 - All existing and proposed structures (mark any structures to be removed)
 - Existing and proposed walls and fences (heights, materials)
 - Parking and number of spaces
 - Access (pedestrian, loading, egress, ingress)
 - Proposed surface materials
 - Clear vision areas
 - Existing and proposed lighting (type, height)
 - Existing and proposed streets (with full street sections)
 - Topographic Features including vegetation
 - Water systems, drainage, storm water, sewer and utilities
 - Watercourses, floodplains, and wetlands, including Willamette Greenway and the top of the bank if applicable
 - Proposed Phases (if any)
- Elevation Drawings (if any):
 - Fully dimensioned drawings of each building elevation, including dumpster shelters.
 - Materials and colors proposed for each structure (material samples are not needed)
 - Floor Plans MAY be required if detailed interior spaces are needed to compute parking standards.
- Conceptual Landscape Drawings.
- A Narrative Explaining:
 - The supplemental information below
 - Applicant and landowner information
 - Any previous uses on the site



City of Millersburg Land Use Application Checklist

- Detailed explanations on how the project meets all required findings from **Article 2** of the City Code. This section details different findings required for each type of application.
- Detailed explanations of how the proposed project meets the criteria of the Zone in **Article 4**. Only detail the requirements of the zone (or proposed zone) for the project site.
- Detailed explanations of how the proposed project meets all the required standards from **Article 5**. There are several standards in this section. Not all apply to every project; however, any that *could* apply should be included in the narrative.
- Additionally some projects may be required to include detailed explanations regarding conformance with **Article 7**, these include projects in wetlands, floodways and other site specific requirements.
- A brief explanation of how the project is consistent with the Comprehensive Plan of the City of Millersburg. Usually if the project complies with all of the zoning and code requirements, the project is also consistent with the Comprehensive Plan, however the Plan may have specific requirements regarding the proposal that may need to be discussed.
- **NOTE:** State Law explains that it is the applicant's responsibility to provide detailed explanations of how the project meets the requirements and criteria of the City Code and Comprehensive Plan.
- Supplemental Information:
 - Please provide parking calculations pursuant to City Code Section 5.120
 - Please indicate if a proposed business plans to:
 - store any hazardous materials
 - use hazardous materials
 - generate hazardous materials or hazardous waste
 - Please indicate if any existing business is currently reporting hazardous substances to the State Fire Marshals Office.
- Other permits, applications, plans, or reports that MAY be required:
 - Traffic Study- See Code Section 5.122(7)
 - Staff may request any of the following should they be needed to properly review the site/project:
 - Hydrology Study
 - Geotechnical Study
 - Mitigation plan
 - Illumination Plan



CITY OF MILLERSBURG

AGREEMENT TO MEET COSTS OF DEVELOPMENT REVIEW

This Agreement to Meet Costs of Development Review ("Agreement") is entered into on the last signed date indicated below by and between the City of Millersburg, Oregon (hereinafter the "City") and David Reese (hereinafter "Applicant") in connection with Applicant's land use application as part of Millersburg Planning File No. Cup21-04 (hereinafter "Application").

RECITALS

WHEREAS, Applicant has submitted to the City a Land Use Application pursuant to the Millersburg Code; and

WHEREAS, City is obligated by state law and City Code to review this Application, and determine whether it complies with the approval criteria and standards of state law and City's ordinances and development standards; and

WHEREAS, the parties are uncertain about the total costs of land use planners, engineers or attorneys necessary to review and process the Applicant's Application;

WHEREAS, ORS 227.175 authorizes City to charge Applicant for the actual cost of processing Applicant's Application and the City has elected to do so under Resolution No. 2019-17; and

WHEREAS, if actual costs exceed the deposit, Applicant is responsible for paying the actual costs.

NOW THEREFORE, the premises being generally stated in the foregoing Recitals, the parties agree as follows:

1. Applicant agrees to be responsible for paying the actual costs incurred by City in reviewing the aforesaid Application for compliance with the applicable approval criteria, development design standards and any State requirements.
 - a. Such costs shall include the actual costs of City's land use planners, engineers and attorneys incurred in reviewing that Application including any hearing before the Planning Commission and any appeal.

b. Prior to the City undertaking review of any land use application, the Applicant shall submit a deposit as required by Resolution 2019-17.

2. Applicant agrees to be responsible for paying the actual costs incurred by City in inspecting and verifying Applicant's compliance with any representations made in its Development Applications and with any requirements of City's development and design standards and State requirements.
3. If the costs incurred by the City in processing the Application exceed the amount of the deposit, Applicant agrees to pay the overage prior to the issuance of the final permit and that no development will be allowed under the permit until the amount is paid in full.
4. Applicant agrees that the City will issue an invoice for costs incurred, at a time deemed appropriate by the City, and Applicant is required to remit payment within thirty (30) days of the City-issued invoice date. The City Manager shall be authorized to deem the application void if the invoice is not paid in full within sixty (60) days of the invoice date. Overdue balances remain overdue until paid in full (including all late payment fees and interest charges.) All overdue accounts will be charged a monthly late payment fee of \$50 or 3% of the overdue balance, whichever is greater. Accounts paid in a timely manner will not be charged any late fees. The City may use this document as evidence of a valid agreement between the City and Applicant in order to obtain a judgment against the Applicant and/or a lien on the subject real property. Applicant shall be responsible for City's attorney fees and necessary costs expended to collect the overage amount.
5. Applicant shall raise any dispute about an entry on an invoice in writing within fifteen (15) days of the invoice date. City shall have thirty (30) days to provide a written response to such disputed entry. Applicant shall submit full payment for the invoice with the disputed entry by the agreed upon timeline in section (3) above and City shall credit a subsequent invoice if it determines that the disputed charge should be credited to Applicant. If applicant continues to dispute an entry, it shall request arbitration under section (6) below within fifteen (15) days of transmittal of the City's written response.
6. Dispute Resolution. Applicant or City may at any time request final and binding arbitration of any dispute relating to invoices, costs, or payments due, but in no event does this Agreement extend the statute of limitations under Oregon law. Any party who fails to submit to binding arbitration following a lawful demand by the other party shall bear all costs and expenses, including reasonable attorney fees (including those incurred in any trial, bankruptcy proceeding, appeal or review) incurred by the other party who must seek court

assistance to enforce these arbitration provisions. A party may request arbitration by giving written notice to that effect to the other party, specifying in the notice the nature of the dispute. The dispute shall be heard and determined in the City of Millersburg, Oregon, by a single arbitrator agreed upon by the parties. If an agreement cannot be reached, then the arbitrator shall be appointed in accordance with the rules then pertaining to the Linn County Circuit Court Arbitration Program, except to the extent provided otherwise under Oregon laws on arbitration and as otherwise provided herein.

- a. The prevailing party shall recover fees and expenses of any arbitration under section (5), including all of its attorneys and experts fees.
 - b. The arbitrator shall resolve all disputes in accordance with the substantive law of the State of Oregon. The arbitrator shall have no authority or jurisdiction to award any damages or any other remedies beyond those that could have been awarded in a court of law had the parties litigated the claims in court instead of arbitrating them. The parties shall not assert any claim for punitive damages except to the extent such awards are specifically authorized by statute.
 - c. The parties shall use their best efforts to complete any arbitration within sixty (60) days of the filing of the dispute. The arbitrator shall be empowered to impose sanctions for any party's failure to do so. These arbitration provisions shall survive any termination, amendment, or expiration of the Agreement unless the parties otherwise expressly agree in writing. Each party agrees to keep all disputes and arbitration proceedings strictly confidential, except for the disclosure of information required in the ordinary course of business of the parties or as required by applicable law or regulation. Any time limitation (such as the statute of limitations or laches) that would bar litigation of a claim shall also bar arbitration of the claim. If any provision of this arbitration program is declared invalid by any court, the remaining provisions shall not be affected thereby and shall remain fully enforceable. The parties understand that they have decided that on demand of either of them, their disputes as described herein will be resolved by final and binding arbitration rather than in a court.
7. Should the arbitrator find in favor of the City, the City shall have the right to enforce that right through entry of judgment and seek a lien against any property owned by applicant and applicant waives all objections against the entry of judgment or lien.

IT IS SO AGREED BETWEEN THE CITY OF MILLERSBURG AND:

Applicant: [Signature]

By: David Reice
Title: President

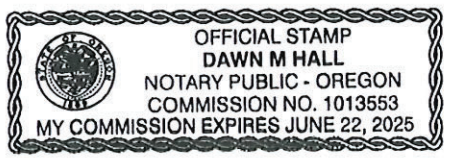
Date: 12/20/21

STATE OF OREGON
County of Linn

This record was acknowledged before me on (date) 12/20/21
by (name(s) of individual(s)) Dawn Hall

[Signature]

Signature of Notary Officer

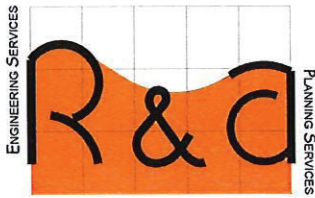


Admin

Title of Office

My commission expires (date): June 22, 2025

December 20, 2021



Reece & Associates, inc.

Matt Straite
City of Millersburg
4222 NE Old Salem Road
Albany, Oregon 97321

Subject: Conditional Use Permit & Site Plan Modification (SP18-02M1)
Reference: LED1901 – Mid-Willamette Valley Intermodal Center Office Building
Location: Linn County Assessor's Map No. 10s03w28, Tax Lot 400

Dear Matt,

This letter is intended to accompany the application materials associated with City File No. SP18-02M1. Because the office building proposed under the site plan review modification application is not predominantly comprised of brick, wood, stone, concrete masonry units, or glass products, the applicant is requesting a Conditional Use Permit under Millersburg Development Code (MDC) 3.26.030(5). Findings of fact demonstrating compliance with applicable decision criteria outlined in MDC 5.04.050 are provided below.

[MDC 5.04.050(1)] *The use is listed as a conditional use in the underlying zone and complies with the development requirements of the underlying zone.*

The subject property is zoned General Industrial (GI) by the City of Millersburg, and the proposed building will be an office for a rail transfer facility. In Section III, General Industrial Zone Development Standards, of the application narrative dated November 29, 2021, the applicant demonstrates the proposed office relocation complies with the applicable development requirements of the underlying zone. Office buildings constructed in the GI zoning district must comply with the Commercial Design Standards as required by MDC 3.26.020(1).

[MDC 3.26.030(1)] *Building with exterior walls greater than 50 feet in horizontal length shall be constructed using the installation of a combination of architectural features and a variety of building materials. Walls that can be viewed from adjacent public streets including Interstate 5 shall be designed with windows totaling a minimum of 10 percent of the wall area and using architectural features and landscaping (abutting the building) for at least 50 percent of the wall length. Other walls shall incorporate architectural features and landscaping for at least 30 percent of the wall length.*

Two walls are visible from adjacent public streets: the east and west elevations. Each of these walls have a horizontal distance of 26 feet and an area of 192 square feet. Walls of this area must contain 19.2 square feet of windows. The east and west façades are each comprised of 20 square feet of window area. Therefore, this standard is met.

The east and west walls are 24 feet in length, so 12 linear feet of architectural features are required. A canopy occupies the full length of the western façade, and a roof project occupies the full length of the eastern façade. The north and south façades are both 40 feet in length and have roof projections occupying their full length. Architectural features occupy the required percentage of wall length. For more information on additional architectural features, please see the applicant's response to MDC 3.26.030(2). Therefore, this standard is met.

[MDC 3.26.030(2)] Architectural features shall include at least three of the following: recesses, projections, wall insets, arcades, window display areas, awnings, balconies, window projections, landscape structures, or other feature that complements the design intent of the structure and are approved in the Site Design Review process.

The north and south façades utilize window projections, roof projections, and either decorative lighting features (south) or landscaping (north) as the three required architectural features. The east façade include window projections, roof projections, and landscaping as its architectural features. The west façade provides its architectural features in the form of a canopy, window projections, and decorative lighting features. Therefore, this standard is met.

[MDC 3.26.030(3)] The predominant building materials shall be brick, wood, stone, and tinted/textured concrete masonry units, or glass products, or a combination thereof. Other materials such as smooth-faced concrete block, undecorated tilt-up concrete panels, or prefabricated street panels shall not exceed 75% of any other wall. All roof types are allowed including metal roofs; however, flat roofs shall be surrounded by a vertical extension of the adjacent wall.

The proposed building materials are not predominantly brick, wood, stone, textured concrete masonry units, or glass products. The applicant is seeking an alternative as permitted by MDC 3.26.030(5). Please review the applicant's response to that standard for more information. Therefore, this standard is met.

[MDC 3.26.030(4)] Exterior colors shall be of low reflectance and shall be earth tone or dark shades of primary or secondary colors. The use of high intensity colors such as black, neon, metallic, or fluorescent for the façade and/or roof of the building is prohibited except as approved for building trim.

The primary exterior color will be a muted yellow. Stone grey will be used as an accent color. These are not highly reflective or high-intensity colors. Therefore, this standard is met.

[MDC 3.26.030(5)] As an alternative, an applicant who wishes to use a design that differs from these requirements may apply for a Conditional Use Permit.

Intermodal facilities, like the approved use, transfer shipping containers from freight trucks to railcars and railcars to freight trucks. While the applicant believes it would be aesthetically fitting for the office to be constructed from repurposed shipping containers, an office constructed in this manner would not be comprised



of the building materials listed in MDC 3.26.030(5). The intention of this standard is to create visually interesting façades well suited to their zoning districts. Repurposing shipping containers will result in interesting façades not found elsewhere in Millersburg and will be visually interesting due to its unique materials. Because shipping containers are an integral part of many industrial uses, repurposed containers would be directly tied to the industrial use this office would serve. Furthermore, constructing the office using shipping containers does not prevent compliance with other design standards listed in this section. Therefore, the applicant should be permitted to construct an office using repurposed shipping containers.

[MDC 5.04.050(2)] *The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and location of improvements and natural features.*

The subject property was approved for an office use under SP18-02. This application is merely to change the style and location of the approved office building. There are no features of the site that would prevent the relocation and redesign of the office building. Therefore, this criterion is met.

[MDC 5.04.050(3)] *The proposed development is timely, considering the adequacy of transportation systems, public facilities, and services, existing or planned for the area affected by the use.*

The proposed development has already been approved under SP18-02. The original land use application demonstrated sanitary sewer and water systems are available to the site, conditioned the appropriate transportation system improvements, and on-site stormwater systems were approved under a Millersburg Grading Permit approved on September 29th, 2020. This land use approval ensured the proposal is timely considering the adequacy of transportation systems, public facilities, and services existing or planned. Therefore, this criterion is met.

[MDC 5.04.050(4)] *The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying zone.*

The proposed use has already been approved under SP18-02; it is an industrial use permitted in the GI zoning district and was concluded to not limit, impair, or preclude the use of surrounding properties. Design changes to the proposed office building will not substantially limit, impair, preclude the use of surrounding properties. Therefore, this criterion is met.

Sincerely,

Reece & Associates, Inc.



Hayden Wooton
Planner



PLANTER #1: LANDSCAPE PLANTING SCHEDULE
 SIZE: 161 S.F.

| COMMON NAME | LATIN NAME | SPACING | CONDITION | QTY |
|---|-------------------|----------------------|-----------|-----------|
| (1 Ten-Foot Tall Tree Per 100 Square Feet) | | | | |
| TREES | SNOWCONE | STYRAX JAPONICUS | 20' O.C. | MEDIUM |
| | JAPANESE SNOWBELL | *F527 SNOWCONE | | |
| (2 PER 100 Square Feet) | | | | |
| SHRUBS | MOCK ORANGE | PHILADELPHUS LEWISII | 48" O.C. | 5-GAL POT |
| | GROUNDCOVER | | | |
| BARK CHIPS TO COVER REMAINING AREA OF PLANTER | | | | |

PLANTER #2: LANDSCAPE PLANTING SCHEDULE
 SIZE: 161 S.F.

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 SIZE: 161 S.F.

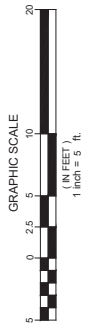
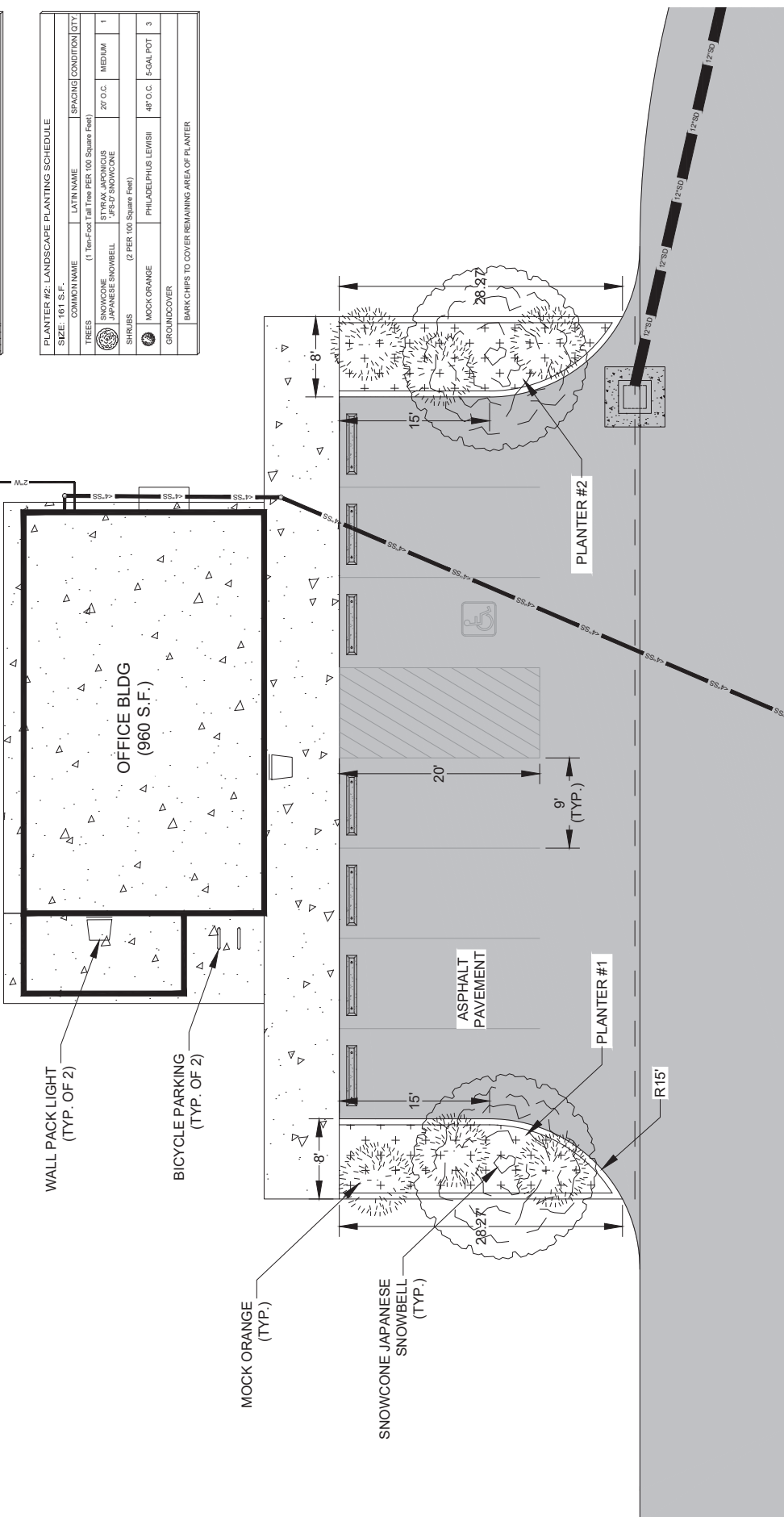
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SITE PLAN
 SCALE: 1" = 5'

PRELIMINARY - NOT FOR CONSTRUCTION

4

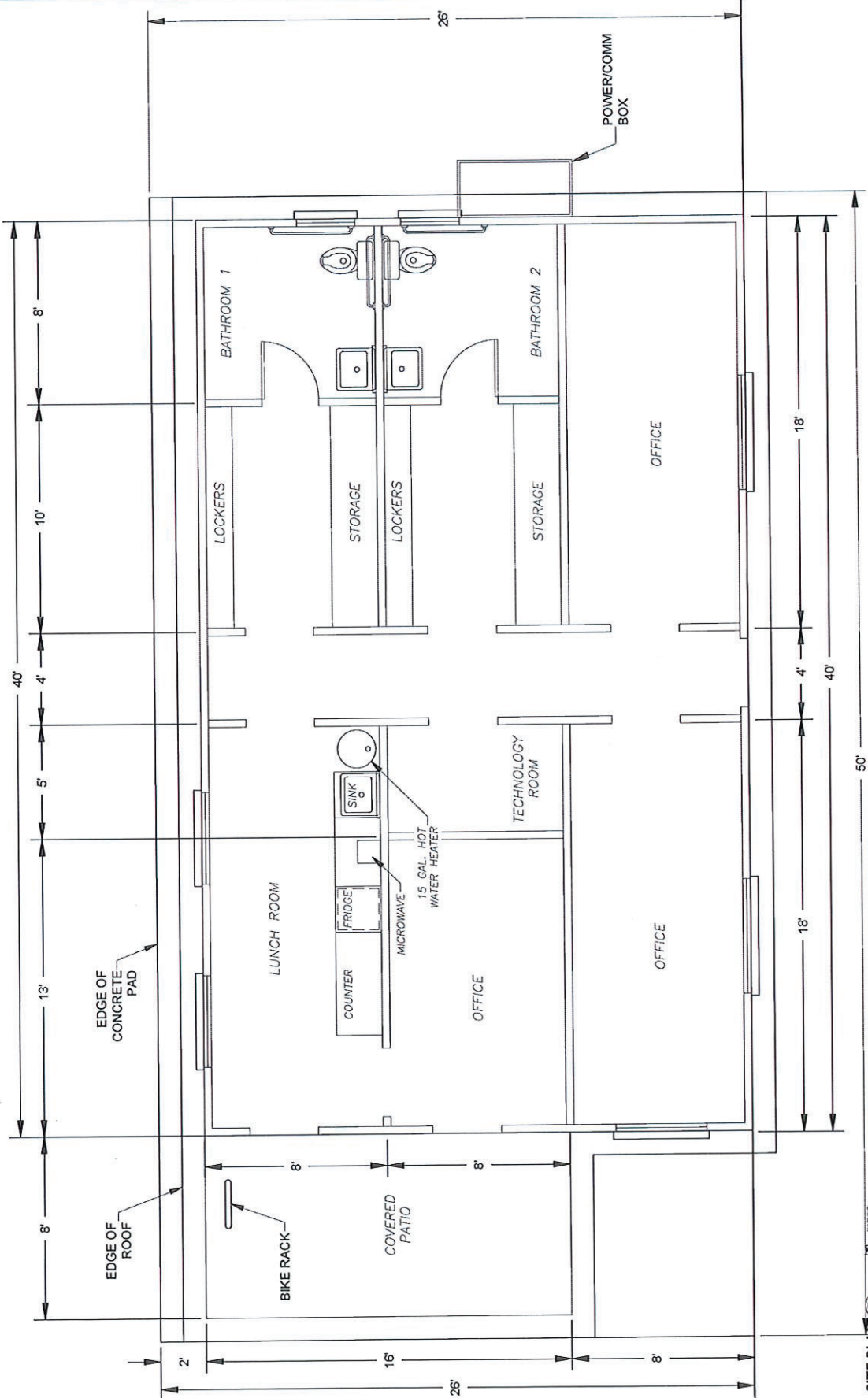
Peace & Associates, Inc.
 321 First Avenue East, Suite 30
 Eugene, Oregon 97401
 Phone: 541-626-4282
 Fax: 541-626-2456

PROFESSIONAL SEAL
 REGISTERED PROFESSIONAL LANDSCAPE ARCHITECT
 11779
 OREGON
 PRELIMINARY
 REVIEW: 12/31/22

MID-WILLAMETTE VALLEY INTERMODAL CENTER
 OFFICE LANDSCAPE PLAN
 LINN ECONOMIC DEVELOPMENT GROUP
 MILLERSBURG, OREGON

NO. _____ PLAN REVISIONS BY _____
 DATE _____

R&A PROJECT NO.
LED1901
 DATE: 11/14/2021
 DESIGNED BY: A. VASQUEZ
 CHECKED BY: M. WOOTEN
 SCALE: AS INDICATED
 SHEET NUMBER: _____



NOT FOR CONSTRUCTION



TO: Matt Straite, Planner

From: Lora Ratcliff, Fire Marshal

DATE: January 7, 2022 (Updated Comments)

SUBJECT: SP-18-02 – 3251/3435 NE Old Salem - New Intermodal Transfer Facility- Albany Fire Department Comments

The fire department has reviewed the above project for conformance to the 2019 Oregon Fire Code (OFC) per your request and has the following comments.

**** NOTE: Addition of a private fire line will result in a quarterly Fire Line Fee***

1. Approved fire apparatus roadways must extend to within 150 feet of all exterior portions of any structure that will be built on the property as measured by an approved route of travel around the exterior of the structure. (OFC 503.1.1)
2. Dead-end fire apparatus roads in excess of 150 feet in length shall be provided with an approved area for turning around fire apparatus (OFC 503.2.5 and D103.4)
3. This proposed project is located within a “Protected Area” as defined by Oregon Fire Code (OFC) Appendix B, Section B102 and this area is currently served by a public water system. The Fire Flow required for shall be as specified in Appendix B of the fire code. (OFC 507.3)
4. The location and spacing requirements for fire hydrants are based on four project-specific criteria:
 - a. Fire hydrant location: All portions of buildings constructed or moved into the City shall be located within 400 feet (600 feet for fire sprinkler-protected buildings) of a fire hydrant located on a fire apparatus access road using an approved route of travel. (OFC 508.5.1)
 - b. Required hydrants based on the required fire flow as calculated in accordance with OFC 503.7 and OFC Appendix B. The minimum number of fire hydrants is determined by OFC Table C105.1.
 - c. Required fire hydrant spacing will be based upon your required fire flows as determined by OFC Appendix C105.1 and Table C105.1. Please note that dead end roads require a reduced spacing.
 - d. Fire hydrant spacing along new/required fire apparatus access roads. In addition, OFC Section C103.1; requires the placement of additional hydrants along all of your required fire access roads that are adjacent to any proposed building (and any future additions) and circulating through your private property with spacing requirements per Appendix C 105.1. (See 2009 ICC Commentary, Appendix C-1, Section C103.1).

LAR/lar

Lora Ratcliff
541-917-7728

Lora.ratcliff@cityofalbany.net



NOTICE OF PUBLIC HEARING
January 18, 2022, 6:00 p.m.
Hearing will be in person,
by phone/computer, or both.
See Agenda for details

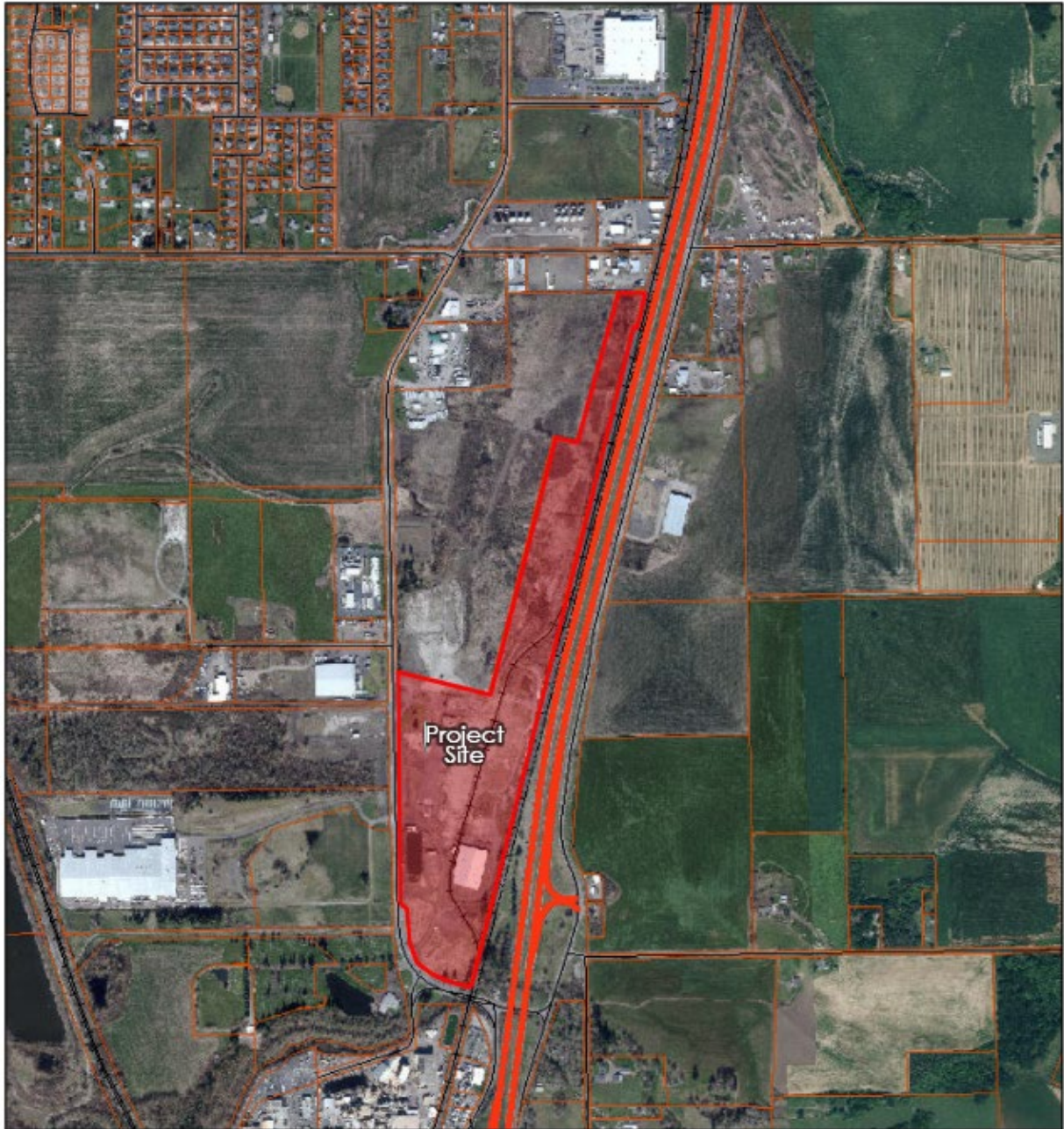
The **MILLERSBURG PLANNING COMMISSION** will hold a public hearing either in person, by phone and online only, or both to consider the request described below. If anyone needs any special accommodations, please let the City know in advance of the hearing. The hearing item may be heard later than the time indicated, depending on the agenda schedule. Interested parties are invited to send in written comment or may testify by phone or online during the hearing. Failure of an issue to be raised in the hearing, in person or by letter, or failure to provide sufficient specific information to allow the Commission an opportunity to respond to the issue will preclude your ability to appeal the decision to the Land Use Board of Appeals based on that issue.

The application, all documents and evidence submitted by or on behalf of the applicant, and the applicable criteria are available for inspection at no cost or copies are available for a minimal cost. Any document request can be made in person, by phone or email, or can be viewed at the following web location- <https://www.cityofmillersburg.org/planning/page/current-planning-applications>. A staff report relating to the applicant's proposal will be available seven days prior to the public hearing at the same web location. For further information, contact Millersburg City Hall at (458)-233-6300.

- APPLICANTS:** Linn Economic Development Group
LOCATION: 3251 NE Old Salem Road
TAX LOT: Township 10 South; Range 3 West; Section 28; Tax Lot 00400
PARCEL SIZE: 63.71 acres
ZONING: General Industrial (GI)
REQUEST: The applicant is proposing a minor change to modify the approved land use application for SP 18-02 to alter the office location; specifically to abandon possible use of the existing structure and instead use a modular shipping-container office of 960 square feet with new parking spaces and parking lot landscaping. The Conditional Use Permit (CUP) was submitted because the proposed structure does not meet the requirements of the design standards listed in the Development Code, Chapter 3.26. That section allows an applicant to propose alternatives through a CUP.
CRITERIA: Chapter 5.04.050 Conditional Use Permit, and 5.16.060 Modifications to Approved Plans and Conditions.
FILE No.: CUP 21-04 & SP 18-02M1






If you need any special accommodations to attend or participate in the hearing, please notify City Hall twenty-four hours before the meeting. For further information, please contact City Hall at (458)-233-6300.

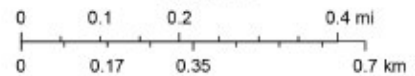
CUP 21-04/SP 18-02M1 Vicinity Map



12/20/2021, 3:50:17 PM

1:18,056

-  Highways
-  Roads
-  Railroad
-  City Boundary
-  Tax Lots



City of Albany, County of Linn, Bureau of Land Management, State of Oregon, State of Oregon DOT, State of Oregon GEO, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, METINASA, EPA, USDA, Linn County GIS, GeoTerra, 2021

AroGIS Web AppBuilder

City of Albany, County of Linn, Bureau of Land Management, State of Oregon, State of Oregon DOT, State of Oregon GEO, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, METINASA,