

RESOLUTION NO. 10-001

A RESOLUTION AFFIRMING THE CITY COUNCIL'S APPROVAL FOR SITE PLAN NUMBER 379-08 FOR PACLAND, TO DEVELOP LOT #2 OF SUBDIVISION #62-08, WITH A 150,000 SQUARE FOOT BUILDING, PARKING, LANDSCAPING, AND UTILITIES FOR A WAL-MART RETAIL STORE

WHEREAS, on March 9, 2009, the City Council adopted Resolution No. 09-013, affirming the Planning Commission's decision to approve the site plan review application of Pacland to develop a 150,000 square foot building on Lot #2 of Subdivision #62-08, which application is referred to as SPR #379-08, with certain modifications to the conditions of approval recommended by the Planning Commission; and

WHEREAS, Citizens for Responsible Development in The Dalles, Luise Langheinrich, John Nelson, and Michael Leash filed an appeal of the City Council's decision of March 9, 2009, with the Land Use Board of Appeals; and

WHEREAS, on October 8, 2009, the Land Use Board of Appeals issued a Final Opinion and Order remanding the City's decision of March 9, 2009, back to the City; and

WHEREAS, on November 23, 2009, the City Council considered the written request submitted pursuant to ORS 227.181 by the Applicant to proceed with the remand hearing; and

WHEREAS, following the presentation of testimony from the public, the applicant, and the petitioners who filed the LUBA appeal, the Council voted to establish the scope of the remand hearing, to be limited to the issues as identified by LUBA in its Final Opinion and Order related to the Chenoweth Interchange, as set forth in the Applicant's written request to proceed; and

WHEREAS, on November 23, 2009, the Council also determined the Applicant would be allowed to present new evidence as set forth in the Applicant's written request to proceed with the remand, and that interested parties would be allowed an opportunity to testify regarding any new evidence related to the 30<sup>th</sup> highest hour volume which would be presented at the December 14, 2009, public hearing, and that interested parties would be provided an opportunity to present testimony and evidence related to the 30<sup>th</sup> highest hour volume using Saturday as the weekend day for purposes of calculation; and

WHEREAS, on December 14, 2009, the City Council conducted a public hearing to consider the remanded decision; and

WHEREAS, the City Council granted a request made prior to the close of the hearing for an opportunity to present additional evidence, arguments or testimony concerning the application by voting to keep the record open for seven (7) days pursuant to ORS 197.763(6)(c); and

WHEREAS, additional testimony, evidence and arguments were submitted by the Applicant on December 21, 2009; the opponents submitted a response to this additional testimony, evidence and arguments on December 28, 2009; and the Applicant submitted a written closing statement on January 4, 2010; and

WHEREAS, following the close of the public hearing and the closure of the record, on January 11, 2010, the City Council deliberated and voted \_\_\_\_\_ to \_\_\_\_\_, to affirm the City Council's approval of the application of Pacland to develop a 150,000 square foot retail building upon Lot #2 of Subdivision #62-08, referred to as Site Plan Review #379-08, with the twenty conditions of approval, as set forth in Resolution No. 09-013; and

WHEREAS, the City Council has reviewed the proposed findings of fact and conclusions of law, attached to this Resolution as Exhibit "A", and incorporated herein by this reference;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

1. The City Council hereby adopts and approves the Findings of Fact and Conclusions of Law set forth in Exhibit "A". The City Council acknowledges the City's prior Findings of Fact and Conclusions of Law adopted by the City Council on March 9, 2009, in Resolution No. 09-013 are still valid, except for the portion related to the 30<sup>th</sup> Highest Hour issue which is the subject of the Findings of Fact and Conclusions of Law set forth in Exhibit "A". Based upon those Findings of Fact and Conclusions of Law from Resolution No. 09-013 identified as still being valid, and the Findings of Fact and Conclusions of Law set forth in Exhibit "A", the City Council hereby affirms its decision of March 9, 2009, to grant approval for the application of Pacland to develop a 150,000 square foot retail building upon Lot #2 of Subdivision #62-08, referred to as SPR#379-08, with the following conditions:

**CONDITIONS OF APPROVAL:**

1. All development must be completed according to the Land Use and Development Ordinance. (LUDO). The LUDO can be found online at [www.ci.the-dalles.or.us](http://www.ci.the-dalles.or.us).
2. Applicant must comply with all the conditions of approval for Subdivision 62-08 that pertain to this lot or the access to this lot.
3. Applicant must get approval from the City Engineer for construction plans for all public improvements. Both the design and details must be approved by the City Engineer. All public improvements will be required to submit as built upon completion.
4. Public improvements on the public street running north and south will include a sidewalk on the west side from River Road to the southern boundary of this property, curbs on both sides,

and full street paving. A sidewalk on the east side of the public street may be deferred until time of development of adjoining properties. All public improvements shall be built to City standards, and the costs for such improvements shall be paid for by the Applicant.

5. Sanitary sewer will be provided with the use of a lift station proposed to be located on lot 1 of subdivision 62-08. The proposal for sanitary sewer as contained in the subdivision application meets minimum City standards, but is not the preferred location. Applicant and City will continue to examine other possible locations. Until such time as other locations have been reviewed, no final decision on the location of the lift station will be made. If the lift station is constructed to accommodate property which is located beyond the lots in Subdivision #62-08, the Applicant will be required to pay their proportionate share of the costs of the improvements associated with the lots in Subdivision #62-08.

6. Applicant will need to connect to the City water main on River Road and extend an eighteen inch line along the frontage of the public street unless a different route, acceptable to the City, is selected as part of the subdivision development. Applicant will need to coordinate exact location of water lines with City Engineer. The Applicant will be responsible for paying for the costs of connecting to the water main and installing the eighteen inch line.

7. On site stormwater from the parking area can be retained on site or piped to an approved point of disposal. Applicant will need approval from all agencies with jurisdiction for disposing of stormwater. The proposed use of bioswales and Tract A as a private disposal system meets City regulations. The drainage from the building will need to be piped into a public system along the public road. Those portions of the paved areas not piped to Tract A shall be provided with an oil/water separator according to Section 7.020.100.

8. The applicant shall submit and obtain approval from the City Engineer for as built construction plans for all public improvements.

9. All development must meet the provisions of section 8.050. Cuts and/or fills over 50 cubic yards require a physical constraints permit. Cuts and/or fills over 250 cubic yards require engineered plans. Ground disturbance of one acre or more require a 1200-c permit from DEQ.

10. Disturbed topsoil must be revegetated according to the provisions of 8.050.030 A.

11. The recommended traffic mitigation elements as set forth in the Traffic Impact Study (TIS) prepared by DKS Associates, dated September 2007, shall be completed according to the schedule in the TIS listing the elements to be accomplished by the day of opening and those to be completed by the year 2027 or earlier. Prior to issuance of any building permits for the proposed development, the City and Applicant shall enter into a development agreement, which will include detailed provisions for implementing construction of the traffic mitigation elements in accordance with the schedule outlined in the TIS.

The development agreement will identify the mitigation elements to be constructed at the Applicant's expense by the date of opening of the proposed retail store. For those mitigation

elements to be completed by the year 2027, or earlier as warranted, including those at West 6<sup>th</sup> Street/River Road, I-84 Eastbound Ramp Terminal/River Road, I-84 Westbound Ramp/River Road, Webber Street/West 6<sup>th</sup> Street, and West 6<sup>th</sup> Street (Highway 30) River Road, the development agreement will include a provision that the full cost of installing these improvements will be at the Applicant's expense, and the Applicant will be provided with two options: First, to construct the improvements at the time the City gives notice to the Applicant to proceed with construction of the improvements; or Second, the Applicant will provide a financial guaranty for future construction of the improvements, which guaranty could take the form of payment into a City fund, or a letter of credit, or other form of guaranty approved by the City. Installation of the traffic signals at the two I-84 Interchange off ramps will occur upon confirmation that warrants for the traffic signals exist, and approval for the installation by ODOT has been obtained. The mitigation elements for Webber and 6<sup>th</sup> Streets listed in the schedule shall be installed upon the giving of notice from the City to the Applicant, in the manner to be set forth in the development agreement.

For the mitigation element for the I-84 Westbound Ramp Terminal/Highway 197, the development agreement shall include provisions consistent with the recommended proportionate share mitigation on page 5 of the Memorandum from DKS Associates to ODOT Region 4, dated September 5, 2007. The development agreement will include provisions giving the Applicant a choice between two options, similar to those provided for the other mitigation elements to be constructed by 2027 or earlier; i.e., to pay for the actual proportionate share of the costs of the mitigation element at the time of construction, or to provide some form of financial guaranty approved by the City assuring the Applicant will pay their proportionate share of the cost of constructing the improvement in the future.

12. A detailed landscaping plan for both the parking area and for general landscaping will be required at the time of the building permit application. The detailed site plan will need to include provisions for consideration of buffer plantings along the west side of the property, taking into account the view of the subject property from the residential area across Interstate 84, while providing a view of the proposed retail building and any signage on the subject property from Interstate 84.

13. A total of 745 parking spaces is allowed, with a minimum of 15 accessible spaces, two of which must be van accessible. Signage for accessible spaces will be reviewed after construction.

14. A total of 25 bicycle spaces is required on a temporary basis. The City will review the adequacy of this amount at the end of one year after the store has opened. If more bicycle spaces are needed, City will inform the applicant who will have 90 days to provide additional spaces.

15. If any public improvements are located on private property, the City will require easements.

16. A detailed lighting plan meeting the requirements of Section 7.030.120 will be submitted at the time of the building permit application.

17. In the event the City is able to secure an easement or other right-of-way to provide access from River Road to the existing Riverfront Trail system, on or before the time when Applicant requests their final certificate of occupancy, the Applicant shall pay for the costs of providing a paved connection from its property to the nearest point on the Riverfront Trail in order to provide access to the existing Riverfront Trail system.

18. Applicant shall pay for the costs of constructing a fence along the boundary line of its property with the right-of-way for the Union Pacific Railroad track line.

19. Applicant shall be responsible for the cost of installing a bike lane to connect to the adjacent bike lane on River Road.

20. Subject to approval by ODOT, and prior to obtaining its final certificate of occupancy, Applicant shall pay for the costs of installation of a sidewalk from the I-84 Exit 82 Interchange overpass to the intersection with Highway 30, to facilitate pedestrian access from Highway 30 to the site of the development. The sidewalk shall be required only on the south side of the connection between the overpass and Highway 30.

2. Effective Date. This resolution shall be considered effective as of January 11, 2010.

PASSED AND ADOPTED THIS 11<sup>TH</sup> DAY OF JANUARY, 2010.

Voting Yes, Councilor: \_\_\_\_\_  
Voting No, Councilor: \_\_\_\_\_  
Absent, Councilor: \_\_\_\_\_  
Abstaining, Councilor: \_\_\_\_\_

AND APPROVED BY THE MAYOR THIS 11<sup>TH</sup> DAY OF JANUARY, 2010.

\_\_\_\_\_  
Nikki L. Lesich, Mayor

Attest:

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Julie Krueger, MMC, City Clerk