

November 12, 2023

Mr. Franz Goebel
Wallowa County Director of Planning
101 S River Street #105
Enterprise, Oregon 97828
Mr. Goebel:

This letter is a formal request by Frontage Road property owners, to appeal the decision approving zone permit ZP#23-13 issued on March 30, 2023 by the Wallowa County Planning Department. This permit is for construction of a Dollar General retail store at 902 W Hwy. 82, T1N R42E S11, Tax Lot 1300.

Wallowa County Land Use Development Ordinance (WCLDO) 7.020 states that an adversely affected party has the right to appeal such a decision. We were surprised to realize the property had sold and a zone permit issued when we observed heavy equipment and evidence of excavation on the subject property. Our initial awareness ranged from October 26 to November 4, 2023 depending on when we individually traveled past the site. Based on this timeline, our request for appeal is within 21 days of the date “we knew or should have known” of the land use decision.

Per ORS 215.416, this zone permit application is subject to discretionary approval standards in the Wallowa County Comprehensive Land Use Plan, as well as WCLDO and City of Wallowa Zoning Ordinance 330-01, and as such, is a permit “*decision*” as defined by ORS 215.402(4).

Except as provided in ORS 215.416(11), the Planning Director was required to hold at least one public hearing on this application. Applications may be approved or denied without hearing if notice of the decision is given and an opportunity for appeal is provided to any person adversely affected or aggrieved. No public notice of an opportunity for appeal was provided. ORS 215.416(11) requires public notice of an opportunity for appeal.

At minimum, approval for this permit application should have triggered an Administrative Review with notices to affected landowners. WCLDO 4.010 requires an Administrative Review “...for uses and developments which may impact neighboring properties and developments, but not to the extent of requiring a public hearing review”. WCLDO 4.020.01 requires written notice of review to owners within specified distances of the subject property. It also requires that the review authority “...provide the notice to other parties should it be determined...their interests may be affected by the proposal...”. No required written Notice of Review, which would also include notice to affected parties of their right to appeal the decision, was provided by the Planning Department.

We own single family residences and small farms ranging in distance from 150 feet to 1200 feet from the subject property and are within sight and sound of the development. The only access to our properties is along Frontage Road, a single-lane, dead-end road with no public turn-arounds. The zone permit application clearly affects our interests with negative impacts to the use and enjoyment of our properties.

Specifically, this development has potential to affect us through:

1. Increased traffic affecting:
 - a) Access to our properties.
 - b) Increased numbers of drivers using our private driveways as turn-arounds.
 - c) Increased driveway maintenance costs due to the lack of public turn-arounds on Frontage Road.

2. Decreased safety at intersection with Hwy. 82.

a) The school bus stop for our kids is located here because there are no adequate turn-arounds along Frontage Road.

b) Lack of adequate turning space required for typical farm equipment such as trucks, livestock trailers and other farm equipment.

3. Potential harm to fishing and other recreational opportunities in Bear Creek that we currently enjoy.

4. Negative effects to our use of Frontage Road for safe recreation purposes such as dog walking and bike riding.

5. An increase in light and noise pollution.

6. A decrease in visual quality from our properties.

The Planning Department should have reasonably foreseen that our proximity to the subject property, and associated access issues would clearly result in a condition where our “...*interests may be affected...*”. Notice of review and the opportunity to comment is therefore required by WCLDO Article 4.

Although the type of use listed on the application may be generally consistent with the City of Wallowa Ordinance 330-01 for the Commercial/Industrial zone, requirements found in WCLDO Articles 5, 12 and 36 should have triggered a Public Hearing Review. This application is for a Dollar General retail store of 10,332 square feet with 39 parking spaces, sited prominently along the primary access route into Wallowa County. This location is not within the core business district of the city of Wallowa. The parking lot contains more designated spaces than any other location within either the City of Wallowa or its Urban Growth Boundary, and the building will be larger than any other existing retail store in Wallowa. The only retailers with comparable size in Wallowa County are Safeway and Wallowa County Grain Growers. Finally, the application includes use within approximately 130 feet of Bear Creek, an area of concern identified in the Wallowa County Salmon Habitat Recovery Plan, as adopted by Wallowa County (p.56-58).

The scope, scale, complexity and location of the Dollar General Application should have required review in an open, transparent, and public process. WCLDO 5.010 requires a Public Hearing Review process for applications “...*which may have a significant impact on neighboring uses and developments; ...the health, safety, or welfare of the citizens; or on the provision of public services; therefore, they require review in an open and public forum.*” The Dollar General application meets these criteria as it will clearly have a significant impact on:

- Citizen safety associated with the transportation system and pedestrian access at the proposed development.
- The provision of public services due to potential effects on water quality and riparian habitat of Bear Creek.
- Locally-owned businesses in both the city and county that will suffer revenue loss and potential closure due to the unfair purchasing and pricing tactics of Dollar General.

Consequently, a Public Hearing Review process is required by WCLDO Article 5.

Furthermore, the decision to approve this application using the Ministerial Review process does not comply with WCLDO 12.015 which requires the application be referred to the public hearing review authority “...*if the proposal may conflict with the purposes and intent of this ordinance or land use plan.*”

Additionally, WCLDO 12.020 requires that the application satisfy criteria in Article 36, Salmon Habitat Restoration and expressly prohibits Ministerial Review when:

- Excavation or fill exceeds 50 cubic yards.
- The proposed use is less than 300 feet from surface water.
- Road construction will be required in conjunction with the proposed use.

Additional project proposal elements that should have resulted in the Planning Department determining that a Public Review process was warranted, include:

- Site preparation for a 10,000+ square foot building, parking areas and access roads, large storm drainage pond, septic field and associated utility trenches should have alerted staff that far in excess of 50 cubic yards of excavation or fill would be required. This is the equivalent of less than five dump truck loads.
 - o Transportation of fill in excess of 50 cubic yards has been observed between October 30 and November 3, 2023.
- Sheet EX1.0 on the application clearly shows that much of the access road, parking spaces, building and other developments are located within 300 feet of Bear Creek.
- The Preliminary Site Plan on the application identifies a “Project Entrance” and parking access road of approximately 280 feet.

Lastly, WCLDO Article 36 creates a “...system for plans on lands within Wallowa County that will restore and maintain habitat for Chinook salmon and, potentially, other salmonoid fish.” WCLDO 36.015 requires management plans “...prior to approval of watershed...applications.” WCLDO 36.020 specifies that development plans include consideration of the following key elements and numerous sub-criteria:

- Provisions for protection of water quality.
- Provisions for protection of habitat.

Despite the close proximity to Bear Creek with potential effects to Chinook salmon habitat maintenance and restoration, the application does not include any of the required management or development plans. There are no references to compliance with these criteria identified in the files provided to us by Planning Department staff on November 1 and November 9, 2023. WCLDO Article 12 and its associated criteria require a Public Hearing Review process before the Planning Department makes such a land use decision.

The approval of this application is in conflict with the purposes and intent of the WCLDO and Comprehensive Land Use Plan Goals. WCLDO 1.020.03 states that “A use or development shall be approved only...in accordance with the provisions of this ordinance.” The primary objective of Goal 1—Citizen Involvement is “To develop a citizen involvement program that insures [*sic*] the opportunity for citizens to be involved in all phases of the planning process.” Policy 2 of Goal 1 includes the statement that “Notification of planning activities be made in newspapers and by radio as well as other means, in an attempt to make affected residents aware of up-coming decisions.”

Although there were numerous requirements stipulated in the WCLDO to provide notice of review to affected parties either through the Administrative Review or Public Notice Review process, this application was approved with neither sufficient public notification nor public involvement. Citizen involvement objectives as identified in Goal 1 have not been met. In accordance with WCLDO 7.015.01, we are exercising our right to appeal the decision made using the Ministerial Review process to approve Zone Permit ZP#23-13. Due to the lack of comprehensive review of the many complex issues associated with this application, per 7.025.02 we are requesting a *de novo* hearing on the merits of the application, with new evidence allowed to be submitted and considered, in order to ensure that the requirements of both Wallowa County and the City of Wallowa are met.