

RESOLUTION NO. PC 472-08

A RESOLUTION APPROVING CONDITIONAL USE PERMIT NO. 145-08 OF FATHER LUKE HARTUNG FOR DORMITION OF THE THEOTOKOS ORTHODOX CHURCH FOR A CONDITIONAL USE PERMIT AND COMMUNITY FACILITY OVERLAY TO CONVERT AN EXISTING BUILDING INTO A CHURCH, FELLOWSHIP HALL, AND OFFICE

WHEREAS, on April 3 and June 19, 2008, the City Planning Commission conducted public hearings on an application submitted by Father Luke Hartung for the Dormition of the Theotokos Orthodox Church for Conditional Use Permit No. 145-08, and a Community Facility Overlay, to convert an existing building into a church, fellowship hall, and office; and

WHEREAS, following the close of the public hearing on June 19, 2008, the Planning Commission voted 4 to 0 to approve the requested conditional use permit, subject to certain conditions of approval; and

WHEREAS, the Planning Commission has reviewed a resolution prepared by the City Attorney setting forth the findings of fact and conclusions of law in support of the Planning Commission's decision;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission adopts the following findings of fact:

1. The subject property is located at 1520 Webber Street in The Dalles, and is further described as Assessor's Map No. 1N 13E 4BB Tax Lot 5700. The property is zoned "R-L" Low Density Residential. The existing structure on the property was formerly used as a dance studio. Since 2004, the structure has been used as a church, office, and fellowship hall. The City's Land Use and Development Ordinance (LUDO) allows the use of churches in all residential zoning districts, subject to approval of a conditional use permit. The applicant, Father Luke Hartung, submitted an application for a conditional use permit for the continued operation of a church. The application was determined to be complete on March 17, 2008, and the necessary copies of the application were submitted as required by the City's LUDO ordinance, and the required notices of the public hearings were provided.
2. The existing building meets all interior property line setbacks. The height of the existing building is less than 32 feet, which is the maximum height limit for structures in the "R-L" zoning district. Based upon aerial photographs of the subject property, City staff asserted that it appeared that the actual existing road for Webber Street adjacent to the

subject property was not in the existing right-of-way. The staff recommended as a condition of approval that the applicant dedicate that portion of the existing roadway that was located upon the subject property, plus an additional five feet for sidewalk for both the property at 1520 Webber Street and the property to the north addressed as 1518 West 13<sup>th</sup> Street.

3. The City's staff report indicated that since the portion of the right-of-way adjacent to the subject property was not paved, that the generation of dust by traffic traveling to and from the subject property created an impact which needed to be addressed. City staff proposed to mitigate the dust problem by recommending paving of the street, driveways, and parking area. The staff report indicated that besides the members of the church congregation, approximately a half dozen other residences used the road, including a residence which included the use of construction vehicles.
4. The applicant presented testimony that the congregation currently attending the church was small in size, consisting of approximately 8 families. Testimony was presented on behalf of the applicant that the current use generates approximately 6 to 10 vehicles traveling on the adjacent road on Sundays, plus a few vehicle trips generated during the weekdays. The church does not provide seats or pews for use in their religious ceremonies. The applicant had initially proposed 28 parking spaces in their site plan. The staff report noted that 4 of the spaces could not be allowed, because of insufficient room for the spaces based upon the location of Webber Street, and the fact that the location of the spaces would result in vehicles backing onto Webber Street, which is not allowed for the type of proposed use. The staff report recommended that the proposed parking lot would have to meet the standards of Chapter 7 of the LUDO, including provision of one van accessible parking space. The staff report also recommended that if the parking lot provided 25 or more parking spaces, or contained 10,000 or more square feet of paved surface, an oil/water separator would be required.
5. The staff report noted the City had received a request from the County Roadmaster to not require that Webber Street be paved due to the fact that 13<sup>th</sup> Street, into which Webber Street drops down, does not have an existing storm water system that can handle the runoff. In accordance with current City policy, as reflected in Section 6.110 of the LUDO and Resolutions No. 07-007 and 07-021, when installation of certain public improvements is not feasible, the applicant shall pay into the City's development fund. The staff report recommended a condition of approval that in lieu of installing improvements for Webber Street, the applicant either pay into the City improvement fund the sum of \$26,436, which would be allocated in the sum of \$7,380 for storm water improvements and \$19,056 for street and sidewalk improvements, or sign a waiver of remonstrance and delayed improvement agreement for these improvements.
6. The City staff prepared an analysis to establish the proposed exactions complied with the "rough proportionality" requirements, as set forth in the Dolan v. City of Tigard and

McClure v. City of Springfield cases. A copy of that analysis set forth in the memorandum dated June 19, 2008, prepared by Senior Planner Dick Gassman, is attached to this Resolution and incorporated herein by this reference. The trip generation figures were calculated from the ITE Trip Generation Manual, 6<sup>th</sup> Edition. The figures for right-of-way widths and frontages on the relevant streets were obtained from Wasco County Assessor maps.

7. The analysis noted the beginning trip generation was zero since there was no existing legal use. The analysis asserted the average trip generation for a church, which was 13.1 per thousand square feet, would better reflect the overall impact of the proposed use than the peak trip generation, which was 36.63 per thousand square feet. Since the applicant had not provided information as to the size of current use, the analysis assumed that 3,000 square feet would be an approximate estimate.
8. The analysis determined the change in trip generation was 40. A map showing the impact area is attached to Mr. Gassman's June 19 memorandum. The total vehicle trips in the impact area was 578.12 daily trips, and the impact ratio was calculated to be .692. The total exaction area was calculated to be 2,495.40 square feet. The area of right-of-way within the impact area was calculated to be 147,338.30 square feet. The exaction ratio was calculated to be .0169. Mr. Gassman's memorandum noted that in order to meet the proportionality test, the impact ratio must be more than the exaction ratio. The impact ratio of .692 is more than the exaction ratio of .0169. The memorandum noted that the area of exaction (2,495.40 square feet) was less than the impact ratio (.0692) times the total area of frontal improvement (147,338.30 square feet) or 10,195.81 square feet. The memorandum also noted that if the peak generation numbers were used, the calculations would yield 26,668.23 square feet of allowable exaction area, which exceeded the exaction area of 2,495.40 square feet. The memorandum concluded the proposed exactions complied with the "rough proportionality" requirement.
9. Isa Ann Taylor, an attorney representing the applicant, submitted a memorandum to the Planning Commission on June 19, challenging the authority of the City to impose the recommended exactions. Ms. Taylor asserted the staff's analysis failed to analyze each exaction separately, as required by the McClure v. City of Springfield case. Ms. Taylor asserted the City had failed to establish that a "rational nexus" existed between the impact generated by the proposed use and the exaction which was intended to mitigate that impact. Ms. Taylor asserted the requirement for the dedication of a portion of Webber Street lacked the required nexus, because the City's need for the dedication was totally unrelated to the conditional use permit. The City's need to fix the problems with the location of the Webber Street right-of-way would exist whether or not the church was established.
10. Ms. Taylor asserted the City's rough proportionality analysis failed to establish particular relationship between the impacts generated by the proposed use, and the proposed

exactions. Ms. Taylor also asserted the analysis should have assumed the subject site would generate the same number of trips as a single family dwelling, and compared that number to the number of trips which the church generated. Ms. Taylor also asserted the estimate of 3,000 square feet for the size of the church was inaccurate. Ms. Taylor also questioned the City's use of the frontage foot fees used to determine the costs to be paid into the City's development fund, asserting the amounts were arbitrarily determined, and did not correctly reflect the impact of the actual proposed use. Ms. Taylor also questioned the required conditions recommended by staff concerning landscaping, paving the parking area, and requiring a traffic study.

**BASED UPON THE FOLLOWING FINDINGS OF FACT, THE PLANNING COMMISSION ADOPTS THE FOLLOWING CONCLUSIONS OF LAW:**

1. The application for Conditional Use Permit No. 145-08 of Father Luke Hartung for Dormition of the Theotokos Orthodox Church for a Conditional Use Permit and Community Facility Overlay to convert an existing building into a church, fellowship hall, and office, is approved with the following conditions:
  - a. All development to be completed according to the provisions of the Land Use and Development Ordinance 98-1222, and this approval. The LUDO can be viewed online at [www.ci.the-dalles.or.us](http://www.ci.the-dalles.or.us).
  - b. Provide landscaping equal to first floor area of all buildings.
  - c. Provide 12 parking spaces, one of which will be a van accessible parking space.
  - d. Pave parking spaces with material approved by City Engineer.
  - e. If 25 or more spaces are provided, or if the parking area is 10,000 square feet or more, install an oil/water separator in parking area and comply with provisions of LUDO Section 7.020.100.
  - f. Provide on site storm water drainage and retention for the parking area.
  - g. In lieu of improvements for Webber Street at this time either pay into the City improvement fund a total of \$26,436 to be split \$7,380 for storm water and \$19,056 for street and sidewalk improvements, or sign a waiver of remonstrance and delayed development agreement for these improvements. The delayed improvement agreement shall include a provision limiting the applicant's responsibility for payment into the fund to an amount not to exceed \$26,436.
  - h. Install hard surface walkway from parking area to the church.
  - i. Contact Fire Marshal at 298-8830 and arrange for inspection. Meet all Fire Marshal requirements. Provide City with approval from Fire Marshal for this use.
  - j. Obtain and meet all the requirements for a building permit for the use of the building as proposed.
  - k. Meet provisions of LUDO 8.050 for cut and fill permits.
  - l. Provide address easily visible from Webber.
  - m. Dedicate a five foot public utility easement adjacent to Webber Street.
  - n. Submit detailed plans and get City approval for the plans for the parking area.

2. Section 3.050.040 of the LUDO provides approval of a conditional use permit requires compliance with the following criteria:
  - A. Permitted Conditional Use. The proposed use is conditionally permitted in the zone district where it is proposed to be located.
  - B. Standards. The proposed use conforms to all applicable standards of the zone district where the use is proposed to be located. The proposed use will also be consistent with the purposes of this ordinance, applicable policies of the Comprehensive Plan, and any other statutes, ordinances, or policies that may be applicable.
  - C. Impact. The proposed structure(s) and use(s) shall be designed and operated in such a way as to meet the standards of this section. Impacts caused by the construction of the conditional use shall not be considered regarding a decision on the validation of the application.
    1. Noise impacts across the property line shall not exceed 60 decibels. Noise related to traffic impacts shall not be included in this determination. Nothing in this section shall modify other noise ordinance standards as adopted by the City.
    2. Lighting impacts across the property line shall not exceed 0.5 foot-candles (a foot-candle is the amount of light falling upon a 1-square-foot surface which is 1 foot away from a 1-candlepower light source.)
    3. Dust and other particulate matter shall be confined to the subject property.
    4. The following odors shall be completely confined to subject property:
      - a. industrial and/or chemical grade chemicals, solvents, paints, cleaners, and similar substances;
      - b. fuels, and
      - c. fertilizers, manure, or other animal waste products, other than for landscape installation and maintenance.
    5. Vibrations shall not be felt across the property line.
    6. The transportation system is capable, or can be made capable, of supporting the additional transportation impacts generated by the use. Evaluation factors shall include, but are not limited to:
      - a. Street designations and capacities; and

b. On-street parking impacts.

7. In areas designated as Historic Districts, proposed development and redevelopment shall first require review and approval of the Historic Landmarks Commission in accordance with the procedures of the Historic Resources Ordinance (General Ordinance No. 94-1194.)

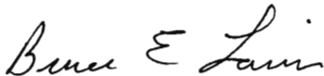
3. The Planning Commission finds and concludes the proposed use is conditionally permitted in the "R-L" Low Density Residential Zone and that the criteria in Section 3.050.040(A) has been met. The Planning Commission finds and concludes that Section 5.010.030 of the LUDO provides Community Facilities are subject to the provisions of Section 5.010 concerning Community Facilities Overlay (CFO) District. The CFO District has no minimum requirements for lot size, width or depth. There are no minimum set backs other than vision clearance on the corners. The Commission finds that the existing building complies with all interior property line setbacks and with the minimum height requirements for the "R-L" zoning district. The Planning Commission finds the existing landscaping on the site will likely comply with the requirements for landscaping set forth in Section 6.010.070 of the LUDO. The Planning Commission concludes that the criteria set forth in Section 3.050.040(B) have been met.
4. Concerning the criterial in Sections 3.050.040(C), the Planning Commission concludes the proposed use does not present any issues that require the elements in subsections 1, 2, 4, 5 and 7 to be addressed. Dust created by traffic trips generated by the proposed use has been addressed by including conditions of approval (g) concerning the installation of public improvements and (d) requiring paving of the parking area with material approved by the City Engineer. The Planning Commission finds and concludes that the City's transportation system is capable of supporting the additional transportation impacts generated by the proposed use. The Planning Commission concludes that the criteria in Section 3.050.040(C) has been met.
5. Policy No. 1, Goal 11 of the City's Comprehensive Plan concerning Public Facilities and Services provides as follows:

"Encourage the development of the public and private facilities that meet the community's economic, social, cultural, health and educational needs."

The Planning Commission finds and concludes the proposed application to continue the church's operation will provide another resource to benefit the social and cultural needs of the community, and that the application is consistent with the provisions of the City's Comprehensive Plan.

6. The Planning Commission finds and concludes that a rational nexus exists between condition of approval (g) requiring payment of the sum of \$26,436 into the City's development fund for storm water and street and sidewalk improvements, or execution of a waiver of remonstrance and delayed development agreement, in lieu of installing the improvements. The nexus is reflected in supporting the City's stated policy of ensuring that applicants seeking to develop their land either install the necessary improvements to mitigate impacts generated by their proposed uses or pay their proportionate share of the costs of the improvements into the City's development fund. The Planning Commission finds and concludes the proportionality analysis conducted by Mr. Gassman, as shown in his June 19 memorandum, establishes that the exactions imposed by the City, as reflected in condition of approval (g), are roughly proportional to the impacts generated by the proposed use.

APPROVED AND ADOPTED THIS 3<sup>RD</sup> DAY OF JULY, 2008.



Bruce Lavier, Chairman  
Planning Commission

I, Dan Durow, Community Development Director for the City of The Dalles, hereby certify that the foregoing Resolution was adopted at the regular meeting of the City Planning Commission, held on July 3, 2008.

AYES: Lavier, Ahlberg, Wilcox, Zukin

NAYS: None

ABSENT: Poppoff, Hiser

ABSTAIN: Hoey

Attest:



Dan Durow, Community Development Director  
City of The Dalles



## CITY of THE DALLES

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Community Development Dept.

# Memorandum

**To:** Planning Commission  
**CC:** Dan Durow  
**From:** Dick Gassman, Senior Planner  
**Date:** June 19, 2008  
**Re:** Proportionality Analysis

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## BACKGROUND

Father Luke Hartung as the pastor of the Dormition of Theotokos Orthodox Church has applied for a Conditional Use Permit to establish a church at 1520 Webber Street. The City staff has reviewed the application and is recommending to the Planning Commission that certain public improvements be required and because it is not feasible to install these improvements at this time, that the estimated costs of these public improvements be paid into the City's development fund. The applicant has asked for more information to support the City's authority to impose these requirements. This analysis is made to determine whether the City meets the rough proportionality tests as presented in the Dolan case and more specifically in the McClure case. This analysis is based on a McClure model.

To complete the mathematical analysis several different calculations are required. Before the calculations are made we must first find trip generation statistics for the use of the property before and after the change in use, the area of impact, the trip generation in the impact area, the impact ratio, the area of exaction, the right of way area of the impact area, and the exaction ratio. After these calculations we can then compare the impact ratio with the exaction ratio.

The trip generation figures are calculated from the ITE Trip Generation Manual, 6<sup>th</sup> Edition. The figures for right of way widths and frontages on the relevant streets were obtained from Wasco County tax assessor maps.

## A. IMPACTS

### 1. Trip Generation.

At the time the Church purchased the property the previous use of the church building had ended more than a year before. There was no existing legal use so the beginning trip generation is zero. To determine the new trip generation, we have chosen to use an average trip generation rather than a peak trip generation. The peak for a church is 36.63 per thousand square feet on Sundays. The average is 13.1 per thousand square feet. We do not have the square footage from the applicant so we have used 3,000 square feet as an estimate. It is believed that the average trip generation better reflects the overall impact of this type of use.



## 2. Change in Trip Generation.

Since we have used zero as the base trip generation, the change is the total trip generation by the new use, or an estimate of 40.

## 3. Impact area.

For the impact area of this church we looked at the location of the site and the most likely ways to get there, and get out. Since West 13<sup>th</sup> is a one way street, there are two main ways of getting to this site, go west on West 13<sup>th</sup> from Cherry Heights to the site, or go through the Blakely Street area from West 10<sup>th</sup>. For exiting, it would be back through the Blakely area or continue west on West 13<sup>th</sup> at least to Perkins. Based on this street pattern and proximity to the site, we set the impact area as West 13<sup>th</sup> from Cherry Heights to Perkins, the west side of Blakely and 12<sup>th</sup> from West 10<sup>th</sup> to Webber, and Webber from West 12<sup>th</sup> to the far side of the property. A map showing the impact area is attached.

## 4. Trip Generation in Impact area.

The last calculation needed to get the impact ratio is to find the number of vehicle trips from the development in the impact area. For trip generation within the impact area we ignored vacant properties and the cemetery on the north side of West 13<sup>th</sup>. We added the trip generation figures for all the other uses in the impact area. These were only single family homes and one apartment. I used average trip generation rates as we did for the church. There are 20 single family homes on Blakely and 12<sup>th</sup>, 21 single family homes and one apartment with 23 units on West 13<sup>th</sup>, and four homes on Webber, plus the church. Total average vehicle trips in the impact area was 578.12 daily trips.

5. Impact ratio. The impact ratio is the difference in trips generated at the site (40) divided by the total number of trips generated within the impact area (578.12). The impact ratio is .0692.

## B. EXACTIONS.

### 1. Exaction area.

The exaction area is the area of the required offsite improvements. For this site that is the 124.77 feet of frontage on Webber times the area of public improvements or 20 feet counting five feet of sidewalk and 15 feet of paving. Normally we would require 16 feet of paving for a residential street, but Webber at this location has only 40 feet of right of way. This applicant is only responsible for a half street improvement, thus only 20 feet. The total exaction area is then 2,495.40 square feet.

### 2. Area of ROW within impact area.

For this analysis the figures used were Blakely and 12<sup>th</sup> with 50 feet ROW width times 762.95 feet in length from W 10<sup>th</sup> to Webber, or a total of 38,147.50 square feet; West 13<sup>th</sup> 40 feet of ROW times 2,393.70 feet from Cherry Heights to Perkins for a total of 95,748 square feet; Webber 40 feet of ROW width times 336.07 feet in length for a total of 13,442.80 square feet. This yields a grand total of 147,338.30 square feet.

### 3. Exaction Ratio.

The exaction ration is determined by dividing the square footage of the area required for public improvements by the total square footage of the impact area. The area of exaction: frontage of the church property, 124.77 feet, times the area of public improvements, 20 feet (5 for sidewalk and 15 for street) which equals 2,495.40 square feet. The exaction ratio is the area of exaction divided by the ROW in the impact area, or 2,495,40 square feet divided by the total of the ROW frontage area, 147,338.30 square feet. This equals a ratio of .0169.

## C. COMPARISON

In order to meet the proportionality test, the impact ratio must be more than the exaction ratio. The impact ratio of .0692 is more than the exaction ratio of .0169. Another way to test the amount of exactions is to see if the area of exaction, 2,495.40 square feet is equal to or less than the impact ratio times the total area of frontal improvement, or .0692 times 147338.30 or 10,195.81 square feet. The area of exaction is less.

If we used the peak trip generation for all uses rather than the average, we would get the following results: Impact ratio of .181. 109.89 trips from development site (36.63 times estimate of 3,000 sf) divided by  $(6.63 \times 23 = 152.49)$  plus  $(10.09 \times 45 = 454.05)$  for a total of 606.54 trips from impact area equals an impact ratio of .181. Based on impact ratio of .181 times the total area of frontage development, 147,338.30 square feet = 26,668.23 square feet of allowable exaction area. This is far in excess of the exaction area of 2,495.40 square feet.

#### D. CONCLUSION

Based on this analysis the exactions required meet the proportionality test.

#### E. COSTS

There is nothing in these court cases or in the models that factor in the costs associated either with the improvements to the site or the cost of the exactions requested for offsite improvements. However, The City of The Dalles has always tried to keep the costs of the offsite improvements at or below the costs of the on site improvements. In this particular case it is difficult to ascertain the on site improvements as we do not have those figures. The applicant has spent considerable time and effort in cleaning up the site and in making certain improvements. The church has added a front porch, has made changes in the sanitary and water connections, and has made a property line adjustment. Some of this work may have been donated so the value of the work may not be reflected in a summary of the costs. The applicant has several items yet to do, including one major on site improvement – the parking lot. Based on informal estimates from City staff, the cost of improving the parking area alone would be in excess of the exactions required.

The City has reviewed the proposed improvement costs to the church in an effort to keep the overall figure as low as possible. The fee for the stormwater system remains at \$7,380. However in preparing this analysis we have discovered that the right of way width on Webber south of West 13<sup>th</sup> is not 50 feet as indicated in the adopted Transportation System Plan but only 40 feet in width. This reduced right of way means that a design different from the standard design for residential streets would have to be used and allows the City to reduce the payment requirements for street and sidewalk from \$21,940 to \$19,056. This plus the storm water fee equals a total of \$26,436.

#### ITE trip generation stats (6<sup>th</sup> Edition)

1. Apartments: Average of 6.49 per unit. Peak 6.63 weekdays, 6.30 Saturdays, 5.86 Sundays.
2. Single family homes: Average of 9.53 per dwelling. Peak 10.09 Saturdays, Sunday 8.78, Weekdays 9.57.
3. Churches: Average of 13.1 per thousand square feet of gross floor area. Peak 36.63 Sundays, 9.70 Saturdays, 9.11 Weekdays

