

**AGENDA**

**PLANNING COMMISSION**

September 7, 2023

5:30 p.m.

City Hall Council Chambers

313 Court Street, The Dalles, Oregon

Via Zoom

<https://us06web.zoom.us/j/82327794645?pwd=cld2UGhUb1BoVithR0tFUzczcWtXQT09>

Meeting ID: **823 2779 4645** Passcode: **001537**

Dial: 1-669-900-6833 or 1-253-215-8782

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. APPROVAL OF MINUTES – August 3, 2023 and August 17, 2023
6. PUBLIC COMMENT – During this portion of the meeting, anyone may speak on any subject that does not later appear on the agenda. Five minutes per person will be allowed.
7. QUASI-JUDICIAL PUBLIC HEARING
  - A. APL 033-23, J.R. Zukin Corp. d/b/a Meadow Outdoor Advertising, 747 W. 2<sup>nd</sup> Street, 1N 13E 4 AA tax lot 200  
Request: Appeal of the ministerial denial on February 27, 2023 of Sign Permit 2589-23, Meadow Outdoor Advertising, to replace an existing 8' x 16' billboard with a new, larger 8' x 24' billboard in a similar location.
8. RESOLUTION
  - A. Resolution PC 618A-23: Denial of APL 033-23, J.R. Zukin Corp. d/b/a Meadow Outdoor Advertising
  - B. Resolution PC 618B-23: Approval of APL 033-23, J.R. Zukin Corp. d/b/a Meadow Outdoor Advertising
9. STAFF COMMENTS / PROJECT UPDATES

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**CITY OF THE DALLES**

"By working together, we will provide services that enhance the vitality of The Dalles."

10. COMMISSIONER COMMENTS / QUESTIONS

11. ADJOURNMENT

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Meeting conducted in a room in compliance with ADA standards.

Prepared by/  
Paula Webb, Secretary  
Community Development Department

**MINUTES**

**PLANNING COMMISSION MEETING**

August 3, 2023  
5:30 p.m.

City Hall Council Chambers  
313 Court Street, The Dalles, Oregon 97058  
Via Zoom / Livestream via City Website

**PRESIDING:** Cody Cornett, Chair

**COMMISSIONERS PRESENT:** Addie Case, Philip Mascher, Nik Portela

**COMMISSIONERS ABSENT:** John Grant, Maria Pena, Mark Poppoff

**ADVISORY COMMITTEE  
MEMBERS PRESENT:** Alan Easling, Cole Goodwin

**ADVISORY COMMITTEE  
MEMBERS ABSENT:** Kenny LaPoint, Dave Peters, Carrie Pipinich, Nate Stice

**STAFF PRESENT:** Director Joshua Chandler, Secretary Paula Webb

**CALL TO ORDER**

The meeting was called to order by Chair Cornett at 5:37 p.m.

**PLEDGE OF ALLEGIANCE**

Chair Cornett led the Pledge of Allegiance.

**APPROVAL OF AGENDA**

It was moved by Portela and seconded by Case to approve the agenda as submitted. The motion carried 4/0; Cornett, Case, Mascher and Portela voting in favor, none opposed, Grant, Peña, and Poppoff absent.

**APPROVAL OF MINUTES**

It was moved by Case and seconded by Portela to approve the minutes of July 20, 2023 as submitted. The motion carried 4/0; Cornett, Case, Mascher and Portela voting in favor, none opposed, Grant, Peña, and Poppoff absent.

## **PUBLIC COMMENT**

None.

## **DISCUSSION ITEM**

### **The Dalles Housing Needs Analysis: Planning Commission/Community Advisory Committee Meeting**

Director Chandler stated the City, with Matt Hastie of MIG, Inc. and Johnson Economics, will conduct a series of discussions on a regional Housing Needs Analysis (HNA). This is a critical tool for making informed decisions and developing strategies to address citywide housing issues more effectively. The last HNA was completed in 2016.

Director Chandler introduced Matt Hastie, Project Manager, MIG, Inc. Mr. Hastie's presentation is Attachment 1.

Commissioner Mascher asked for an explanation of the grey areas on the map (Slide 7, BLI Step 2: Adjust for Environmental Constraints). Director Chandler replied some parcels are under ownership of Northern Wasco County Parks & Recreation or North Wasco County School District 21. He noted the street outlines create a shadowing effect. Hastie added he would return with further clarification.

Dan Spatz, City of The Dalles (COTD) Economic Development Officer (EDO), inquired about the wetland area at W. 7<sup>th</sup> and Snipes Streets (Slide 8, BLI Step 2: Adjust for Environmental Constraints). Mr. Hastie replied these wetlands are found on either a national wetlands inventory map, or in the City's local wetland inventory map. Mr. Hastie will return with further information.

In response to Chair Cornett's inquiry, Mr. Hastie replied the supply of buildable land has reduced since the 2016 HNA. This data will be converted to capacity for homes. Since 2016, Code changes for lot size and new development allowances will impact capacity for home development on available land.

Advisory Committee (AC) Member Goodwin asked for the exact number of buildable acres. Goodwin determined there are 329.5 buildable acres. Hastie replied the number was correct, but may change slightly based on further review. He was unsure if that figure was gross buildable acres or net buildable acres (less space for roads and utilities).

Mr. Hastie stated based on demographic trends, development of housing units have not kept up with growth of households. The average growth rate since 2010 has been approximately 0.8%. Portland State University's (PSU) estimated future growth rate is 0.3%.

Commissioner Mascher asked if these trends were representative. Hastie replied it varies greatly across the state, but probably below the average.

EDO Spatz inquired about PSU's population study methodology. Hastie believed it is based primarily on historic trends and conversations with city and county staff. This study is performed for all counties and cities in Oregon.

Commissioner Portela asked why 2010 census data, rather than 2020 data, was used. Hastie replied the 2010 data reflects the changes over a longer time; the 2020 data is available.

AC Member Goodwin noted 2017-2021 census data stated the current median household income is \$56,598.00 per year.

EDO Spatz asked for the data source of demographic and housing trends. Hastie replied census data was used.

AC Member Goodwin stated the City has 303 buildable acres, and needs 505 new housing units. How much space does a single-family dwelling require compared to a 5-unit or apartment? Is there some average to use in projecting growth needed now, and growth needed in 50 years? Hastie replied the next step of the HNA would determine, on average, how many houses can be built on an acre, with different types of housing, and different zoning designations. The Analysis will then determine what 500 houses equal in terms of land need, and the amount of land necessary to develop 500 units in different zoning designations. Hastie felt it unlikely the forecast will show an overall deficit of land.

AC Member Goodwin asked, when considering the amount of space between units, how much effort goes into the sociology of land use. Now, in America, we are seeing falling birth rates. The drop is directly correlated to people living too close together. How much research is done into a holistic view when creating a HNA? Are we strictly using land use codes and land, or are we considering the type of culture we want to build as a community?

Mr. Hastie replied the HNA primarily looks at the what types of housing will be in demand and affordable, the cost of housing (land, materials), what can be reasonably placed on a specific property.

Mr. Hastie stated the next steps will:

- Compare the projected need for specific types of housing and the supply of land associated with that housing.
- Review Comprehensive Plan Policies and what the City is trying to achieve to meet housing needs in The Dalles.

Mr. Hastie will return at the next meeting with additional information.

Director Chandler stated more information is available on the City's website: [Housing Needs Analysis](#).

#### **STAFF COMMENTS / PROJECT UPDATES**

None

#### **COMMISSIONER COMMENTS / QUESTIONS**

None

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**ADJOURNMENT**

Chair Cornett adjourned the meeting at 7:06 p.m.

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Submitted by/  
Paula Webb, Secretary  
Community Development Department

SIGNED: \_\_\_\_\_

Cody Cornett, Chair

ATTEST: \_\_\_\_\_

Paula Webb, Secretary  
Community Development Department

# The Dalles Housing Needs Analysis

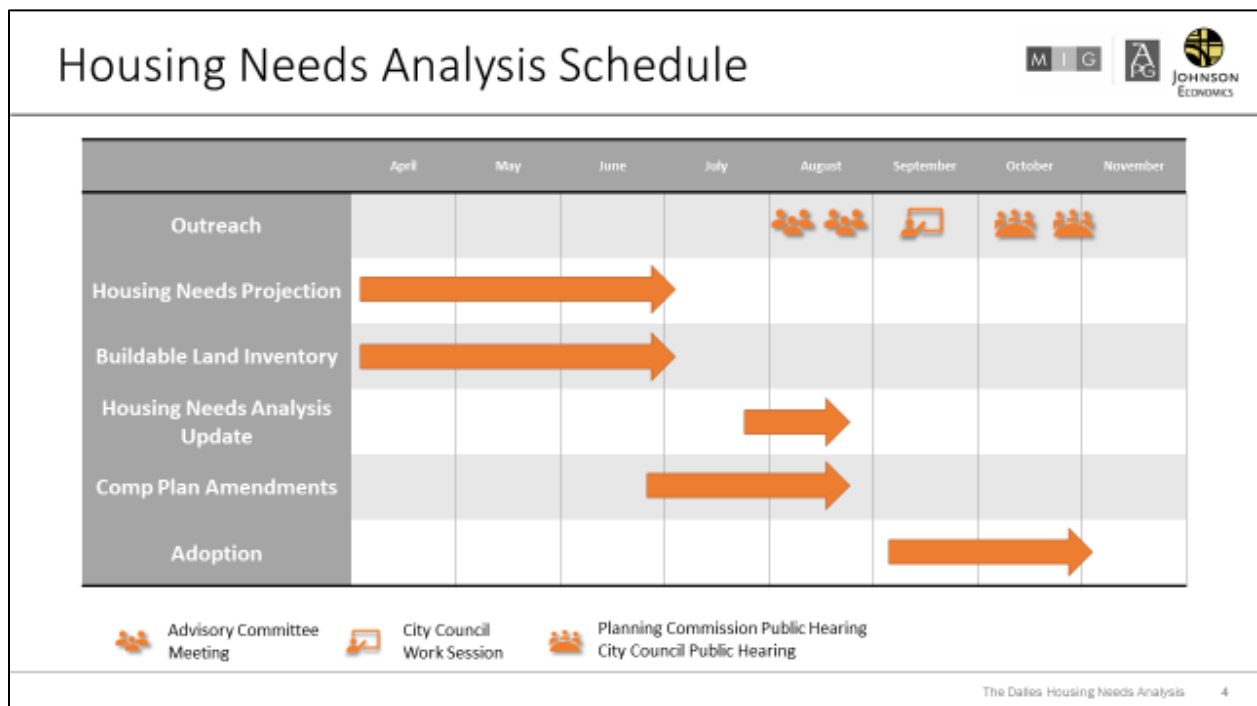
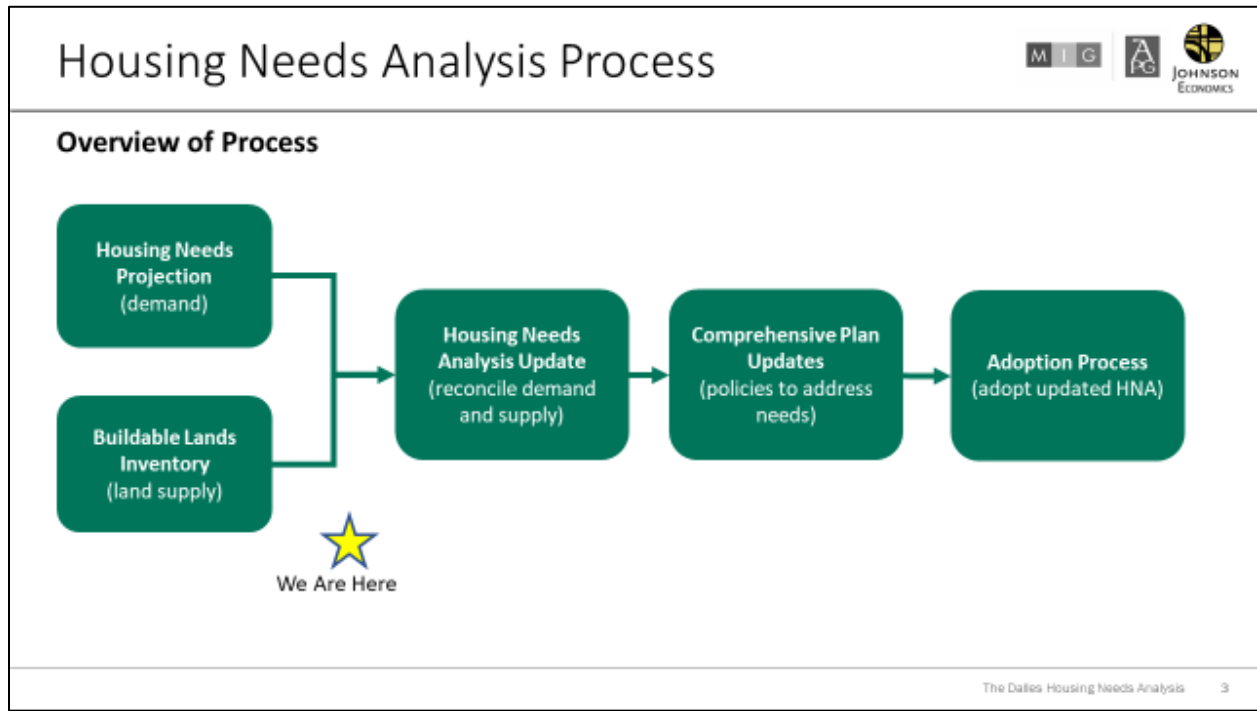
Advisory Committee Meeting  
August 3, 5:30 – 7:30 pm



## Agenda






1. Welcome & Introductions
2. Housing Needs Analysis Overview
  - a) Housing Needs Analysis Process
  - b) Schedule
  - c) Advisory Committee Roles and Responsibilities
3. Buildable Lands Inventory
4. Housing Needs Projection






## SAC Roles and Responsibilities




- Attend meetings regularly and ask questions
- Review and provide feedback on work products and recommendations
- Advise on local housing conditions, issues, and objectives
- Help encourage other community members to participate in the project




The Dallas Housing Needs Analysis

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## BLI: Land Supply Funnel

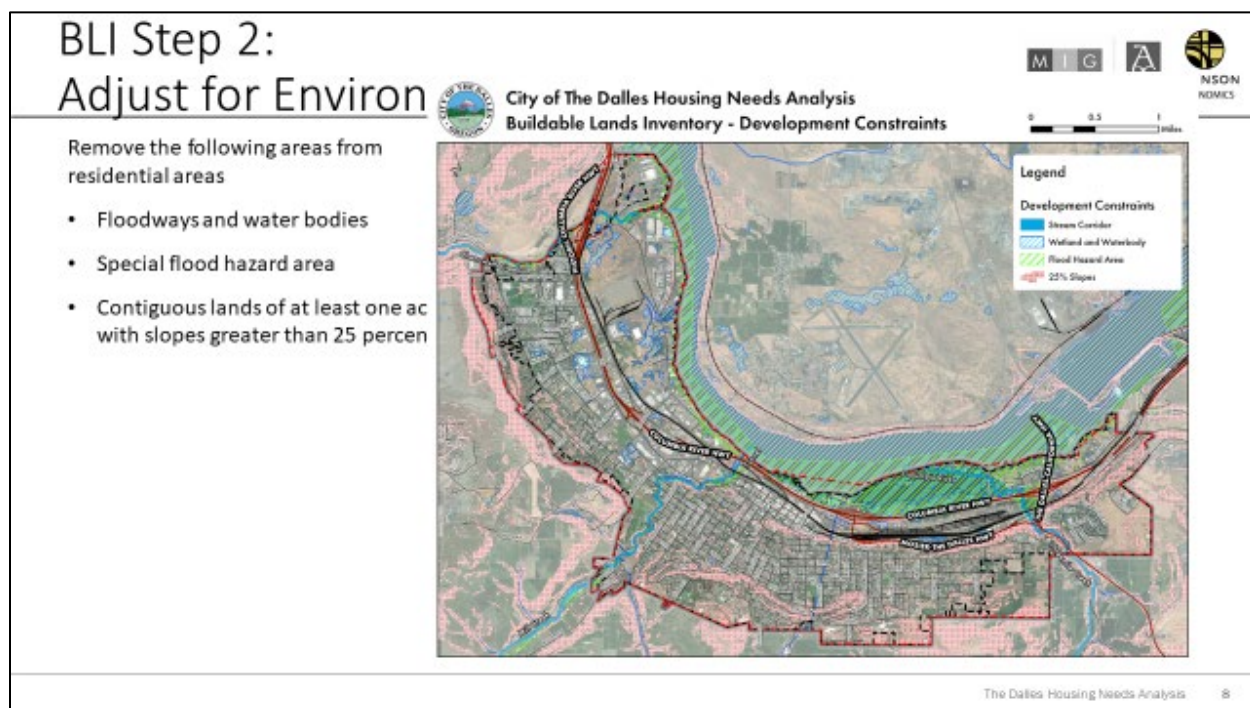
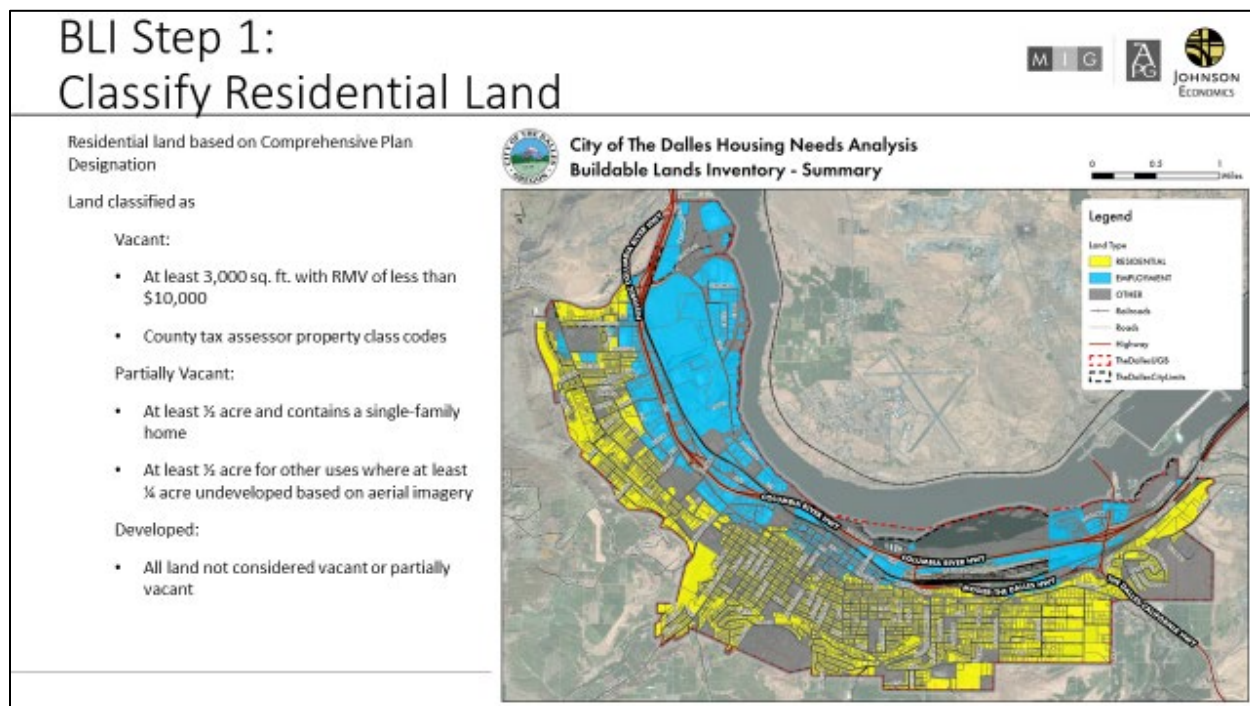




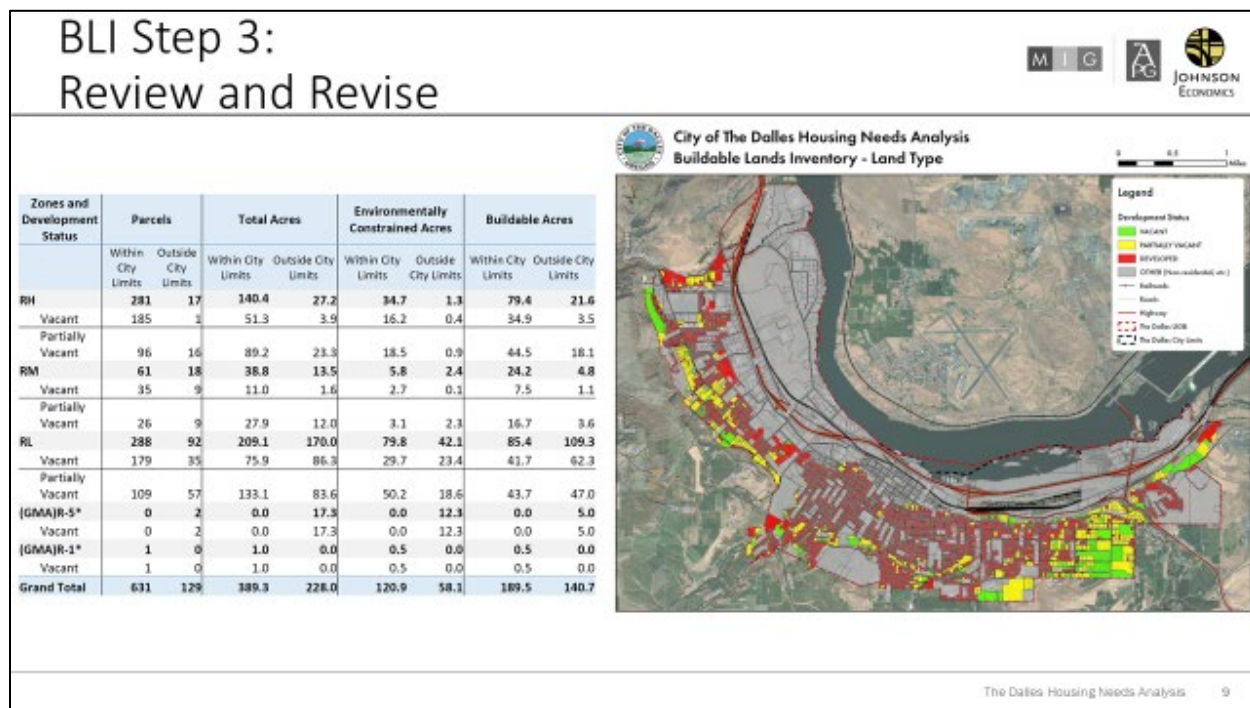


All Land in UGB	REMOVE	Land zoned for employment, institutional, etc.
Residential Lands	REMOVE	Land that is developed or committed for public facilities.
Vacant, Infill, Redevelopable	REMOVE	Wetlands, floodplains, slopes, etc.
Unconstrained Land	REMOVE	Land needed for streets and infrastructure.
<b>Net Buildable Acres</b>	=	Residential Land Supply for Purpose of Housing Needs Analysis
Infrastructure Constraints	<div style="font-size: 2em; color: orange;">}</div>	Develop strategies to overcome these barriers and open land for development.
Property Owner Willingness		
Market Drivers		




The Dallas Housing Needs Analysis

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## Buildable Lands Inventory

### Questions and Discussion




The Dalles Housing Needs Analysis 10

## Housing Needs Projection

M I G A PG JOHNSON ECONOMICS

### Components of the HNA report

- Demographic Trends
- Housing Conditions
- Estimate of Current Housing Need (2023)
- Estimate of Future Housing Need (2043)
- *Next Step: Comparison to Land Supply*




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## Housing Needs Projection

M I G A PG JOHNSON ECONOMICS

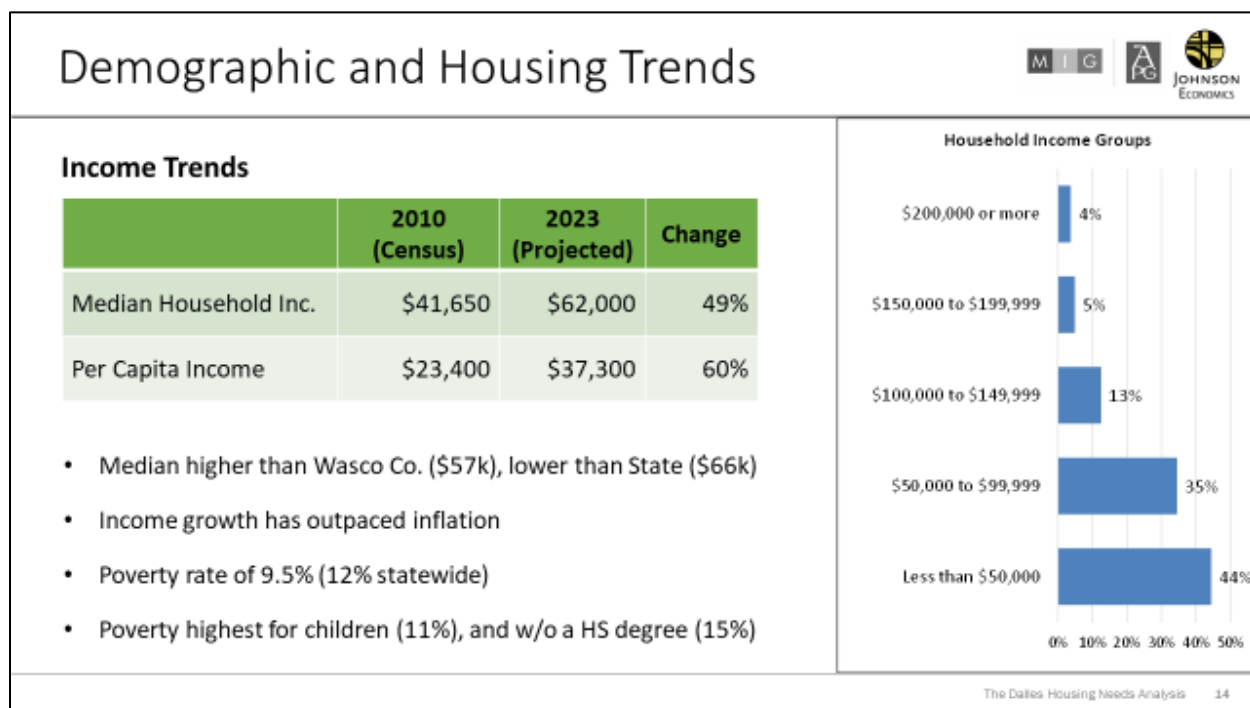
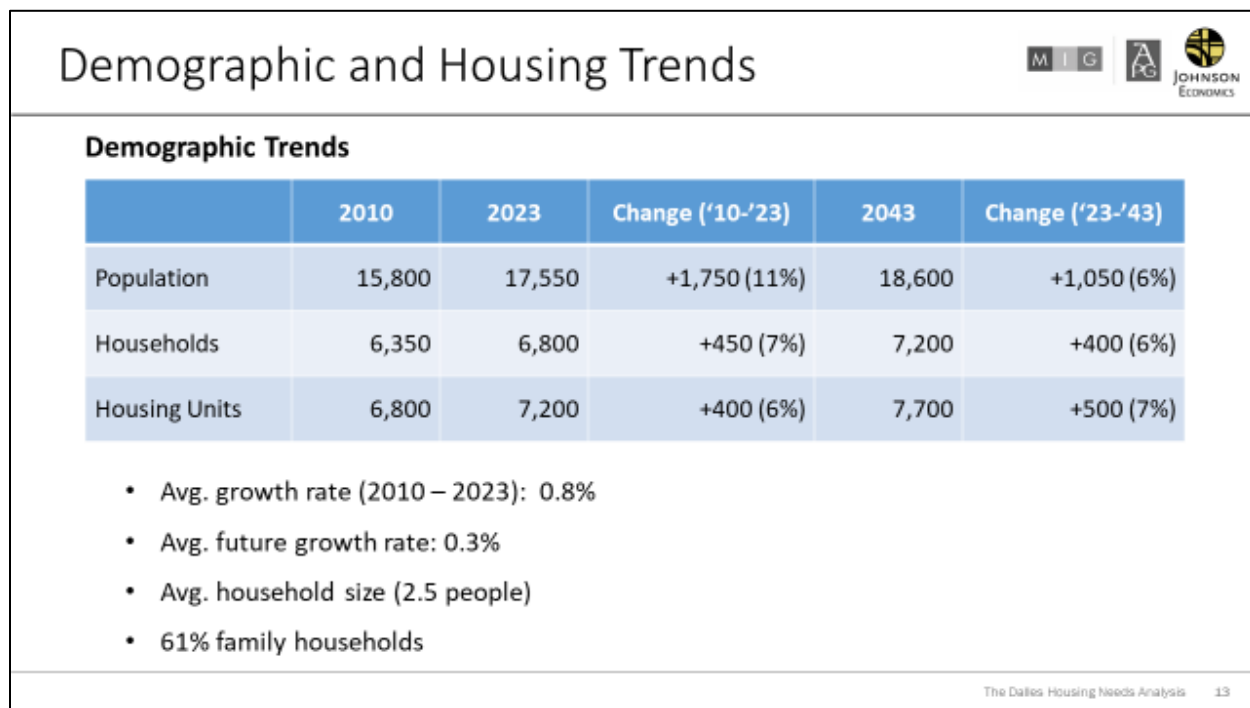
### Data Sources

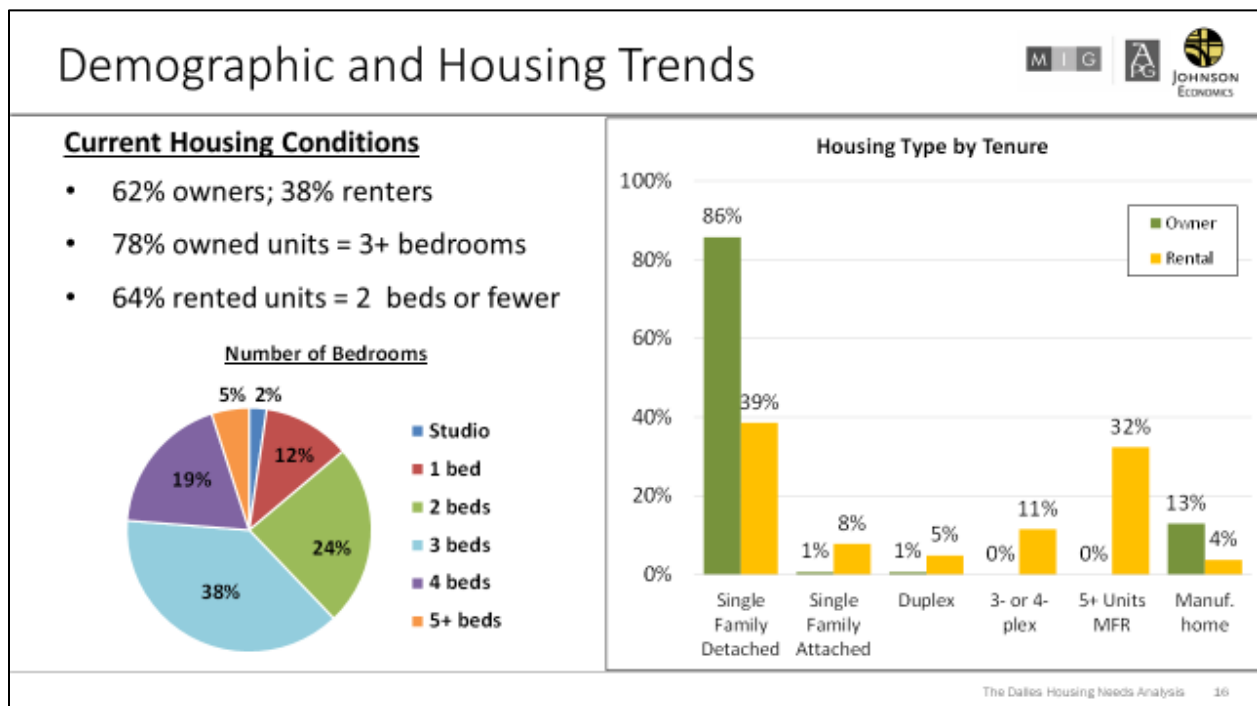
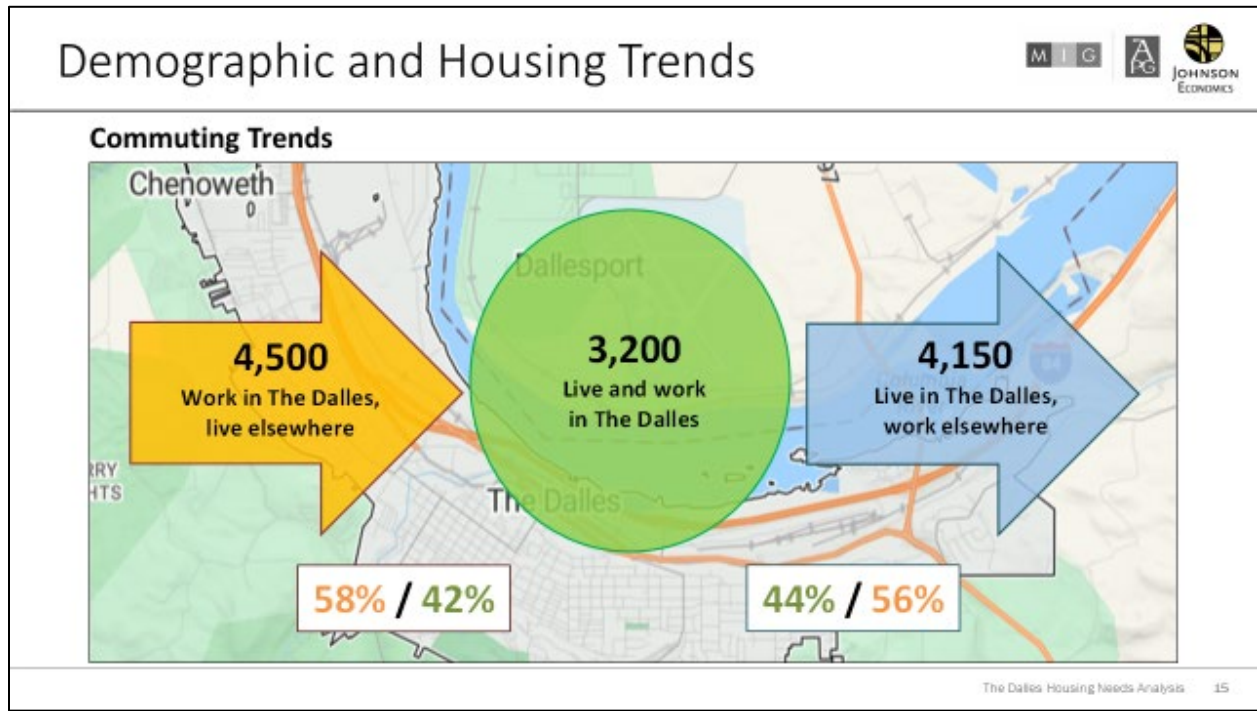
<u>Population and Growth</u>	<u>Market and Other Data</u>
<ul style="list-style-type: none"><li>• 2020 Census</li><li>• American Community Survey</li><li>• PSU Population Center</li><li>• PSU Pop. Forecast</li></ul>	<ul style="list-style-type: none"><li>• Regional Multiple Listing Service</li><li>• 3rd Party Rental and Sales providers</li><li>• City/County/State</li><li>• Homeless data</li></ul>

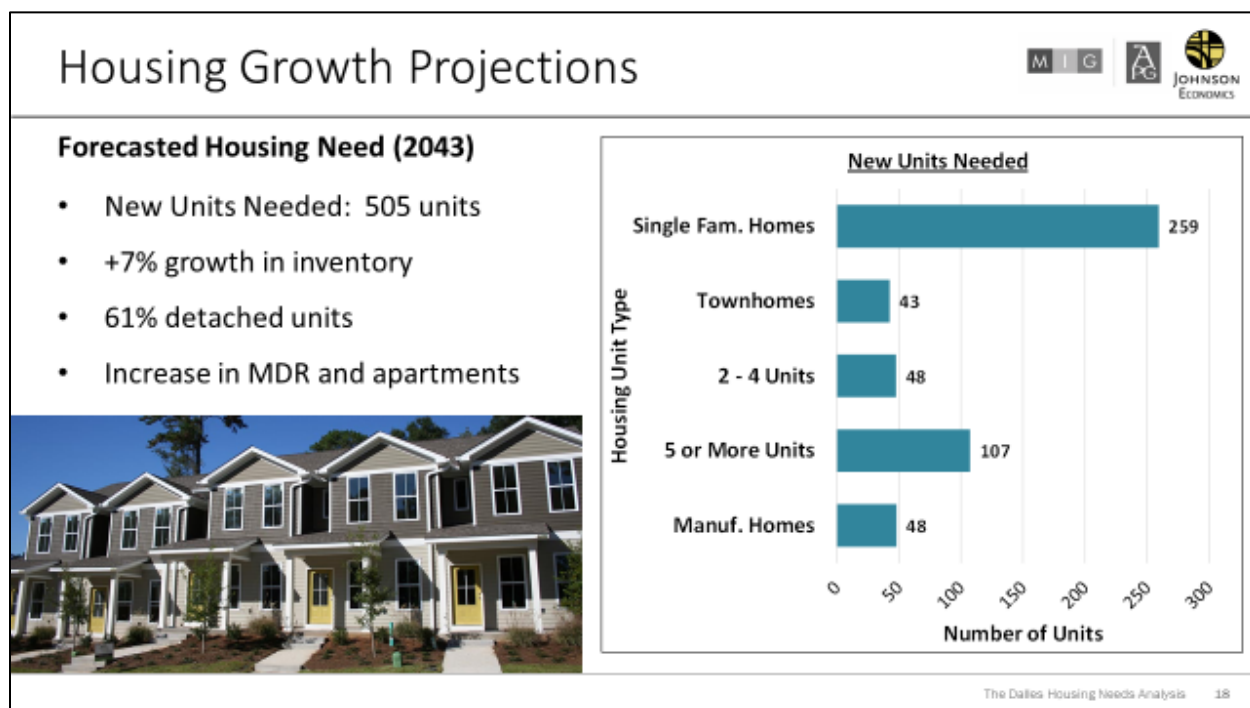
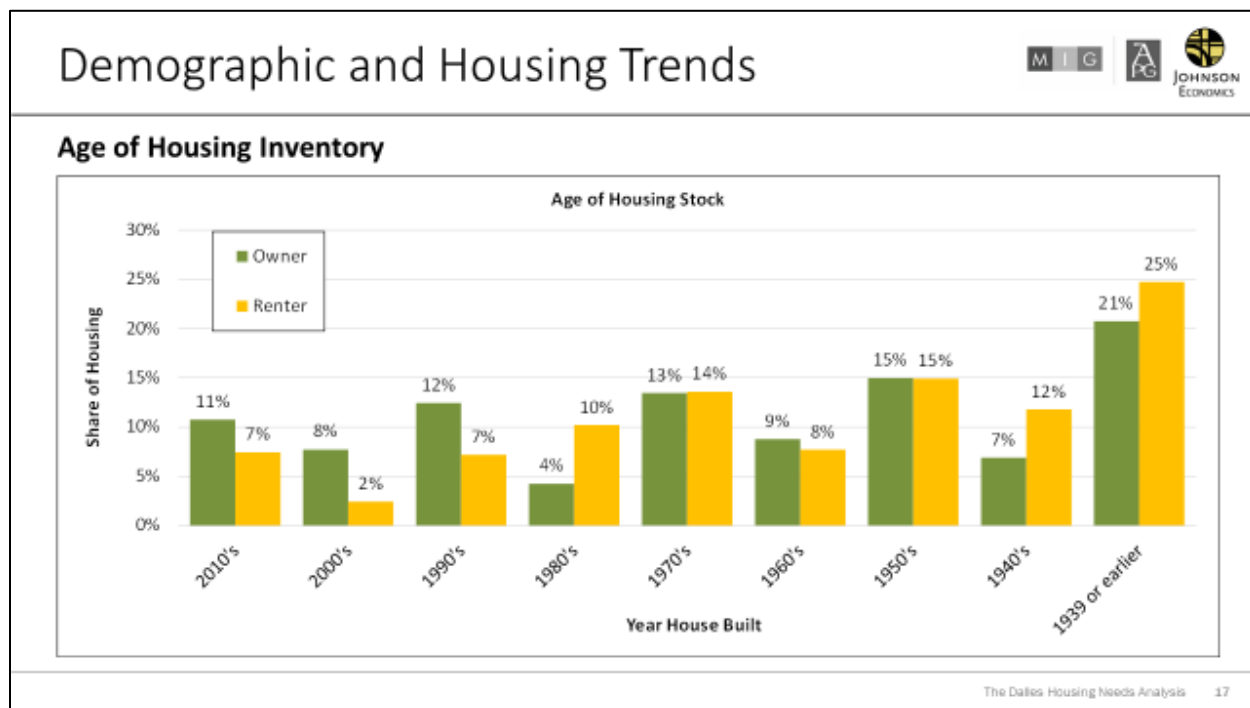





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Housing Growth Projections					  
Forecasted Housing Need (2043)					
Household Income Segment		Income Level (Rounded)*	Total	Share	Common Housing Product
Extremely Low Inc.	< 30% AMI	< \$21,500	64	13%	Government-subsidized; Voucher; Transitional
Very Low Income	30% - 50% AMI	\$21.5k - \$36k	49	10%	Aging/substandard rentals; Government-subsidized; Voucher
Low Income	50% - 80% AMI	\$43.6k - \$57k	94	19%	Market apartments; Manufactured homes; Plexes; Aging single-detached
Middle Income	80% - 120% AMI	\$57k - \$86k	107	21%	Single-family detached; Townhomes; Small homes; New apartments
Upper Income	> 120% AMI	> \$86,000	191	38%	Single-family detached; Condos; New apartments
<b>TOTAL:</b>			<b>505</b>	<b>100%</b>	

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Housing Growth Projections		  
<p><i>Private market development</i></p> <ul style="list-style-type: none"> <li>• Owner and rental housing at a wide range of prices</li> <li>• Typically, does not address needs of households with the lowest incomes (particularly for new housing)</li> <li>• Sells or rents at prices that reflect costs of construction and what market will bear</li> </ul> <p><i>Non-profit/subsidized housing</i></p> <ul style="list-style-type: none"> <li>• Typically, addresses needs of low-income, very-low and extremely low-income households, 60% AMI and lower.</li> <li>• Requires a variety of public subsidies &amp; other strategies to sell or rent at affordable price points</li> </ul>		 


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## Housing Needs Projection

M I G A JG JOHNSON ECONOMICS

### Questions and Discussion




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## Next Steps

M I G A JG JOHNSON ECONOMICS

- Residential Land Need Analysis (Need & Supply Comparison)
- Comprehensive Plan Updates
- Advisory Committee #2 (August 17)
- Revisions to Analysis, Recommendations
- City Council Work Session
- Public Hearings (PC and CC)



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**MINUTES**

**PLANNING COMMISSION MEETING**

August 17, 2023  
5:30 p.m.

City Hall Council Chambers  
313 Court Street, The Dalles, Oregon 97058  
Via Zoom / Livestream via City Website

**PRESIDING:** Cody Cornett, Chair

**COMMISSIONERS PRESENT:** Addie Case, Nik Portela, Mark Poppoff, Nik Portela

**COMMISSIONERS ABSENT:** John Grant, Philip Mascher, Maria Pena

**ADVISORY COMMITTEE  
MEMBERS PRESENT:**

Alan Easling, Dave Peters

**ADVISORY COMMITTEE  
MEMBERS ABSENT:**

Cole Goodwin, Kenny LaPoint, Carrie Pipinich, Nate Stice

**STAFF PRESENT:**

Director Joshua Chandler, City Attorney Jonathan Kara,  
Secretary Paula Webb

**CALL TO ORDER**

The meeting was called to order by Chair Cornett at 5:30 p.m.

**PLEDGE OF ALLEGIANCE**

Chair Cornett led the Pledge of Allegiance.

**APPROVAL OF AGENDA**

It was moved by Poppoff and seconded by Portela to approve the agenda as submitted. The motion carried 4/0; Case, Cornett, Poppoff and Portela voting in favor, none opposed, Grant, Mascher and Pena absent.

### **APPROVAL OF MINUTES**

It was moved by Poppoff and seconded by Portela to approve the minutes of August 3, 2023 as submitted. The motion carried 3/0; Case, Cornett, and Portela voting in favor, none opposed, Poppoff abstained, Grant, Mascher and Pena absent.

[Note: The August 3, 2023 minutes will be presented at the September 7, 2023 meeting. An abstention removed the quorum and precluded the vote.]

### **PUBLIC COMMENT**

None.

### **DISCUSSION ITEM**

#### **The Dalles Housing Needs Analysis: Planning Commission and Community Advisory Committee Meeting – Discussion 2**

Director Chandler introduced Matt Hastie and CJ Doxsee, both with MIG.

Mr. Hastie provided The Dalles Housing Needs Analysis (HNA), Attachment 1.

Chair Cornett asked if a greater need for development is specific to one zone.

Hastie replied, not necessarily. Because of the options allowed by The Dalles Municipal Code (Code) in different zones, unless development or growth substantially increases and exceeds projections, the focus need not be on one particular zone.

Mr. Hastie addressed revisions to the Goals and Policies of the Comprehensive Plan. [Goals and Policies are found on pages 47-54 of the August 3, 2023 PC Agenda Packet.]

Chair Cornett referred to Housing Goal 9, “Adopt standards to protect stream corridors and wetlands and to encourage density transfer in Low Density Residential areas.” Cornett noted recent changes regarding stream corridors were included in the Code. Was this item struck due to its specificity to low density residential?

Mr. Hastie replied it was essentially an action, but an action that was already undertaken. Goal 2 was removed for the same reason.

AC Member Peters referred to Goal 7, “Encourage affordable homeownership opportunities, including multiple family condominiums, row houses, duplexes and other middle housing types, single family residential.” Peters noted this goal seemed to exclude larger apartment buildings, and asked if that was intentional.

Mr. Hastie replied this is existing language, encouraging affordable home ownership opportunities. It includes multiple family condominiums, somewhat like apartment buildings, but with the opportunity to own the unit. He referred to Goal 10, which states, “Continue to provide opportunities for a full range of rental housing.” Goal 1 also refers to an adequate supply of safe, healthy and affordable housing for all members of the community.

AC Member Easling referred to Policy 10, “Develop and/or provide incentives used to encourage development that meets maximum allowable density for all types of residential development. He asked how to be specific.

Mr. Hastie replied there are a few measures under implementation actions or strategies that are more specific. MIG is currently updating the HNA and the goals and policies in the Comprehensive Plan. Next, the City must prepare a Housing Production Strategies (HPS) document. This is a much more specific document identifying strategies and actions the City can undertake to achieve the policy goals in the Comprehensive Plan, and to meet the needs for different types of housing identified in the HNA.

Chair Cornett requested additional information.

Director Chandler replied he reached out to Mr. Hastie when the City applied for a Department of Land Conservation and Development grant to fund the Housing Production Strategies document. The City will move forward on the HPS in 2024. The process will be similar to the HNA, beginning with the Planning Commission and an Advisory Committee, before moving on to City Council. Director Chandler encouraged the Advisory Committee to return for the HPS project.

Director Chandler added the HPS would lay out the process to implement policies put in place through the HNA. A portion of the HPS is to ensure the Development Code is in line with the policies presented through the HNA.

AC Member Easling asked if during the HPS process, it would be the appropriate time to suggest incentivizing multi-family development by a reduction of System Development Charges (SDCs).

Mr. Hastie replied, absolutely. Cities typically consider this type of strategy. Does the City want to provide reductions, waivers or deferrals in payment of SDCs to encourage specific types of housing? Does the City want to apply one of the tax abatement programs authorized by the State for certain types of qualifying housing developments? There are different funding measures, or different approaches to the Code to provide some type of incentives in the form of additional height, reduced parking, etc.

Chair Cornett asked if the addition of Neighborhood Center Overlays (NCOs) was a hurdle to get over, or just a regular process for the City.

Director Chandler replied it is probably a similar process to the Community Facilities Overlay (CFO), a process used recently in establishing a power station near Port of The Dalles, approved through a Conditional Use Permit.

Chair Cornett asked if a Measure 56 notice is required. Director Chandler replied no; a CFO will add to the value of the property. A neighborhood center in the low density zone could allow further uses, i.e., a market.

Economic Development Officer (EDO) Dan Spatz noted the grammar in Policy 27. The first word, “To”, should be removed to read, “Ensure duplex development...”

AC Member Easling referred to Policy XX, “Encourage the use of energy efficient building materials and practices in the design, construction and remodeling of housing.” Easling noted

Wasco County already follows State requirements for additional energy measures. Should that effort be duplicated?

Director Chandler agreed that was a good point, but suggested retaining the policy. Design standards need to be updated; this may open the policy to consider energy measures as a design standard.

Chair Cornett asked if the Goals, Policies and Implementation Measures are part of Comprehensive Plan Goal 10.

Mr. Hastie replied all three are included in Goal 10. Implementation measures are not as binding as goals and policies in the HNA, but will be more binding once included in the HPS. The State's Administrative Rules provide the City's obligations to implement items in the HPS, and processes for State oversight and monitoring.

Chair Cornett expressed concern that the Planning Commission would be bound to the implementation measures in the Comprehensive Plan.

Mr. Hastie replied the measures are written more as suggestions, with less committal verbs. Measure 6 states, "Review the City's System Development Charges (SDCs) and other fees and *consider* implementing tiered fees..."

EDO Spatz asked if it is possible to add "land trust" in Measure 10. Hastie replied, absolutely.

Director Chandler referred to Measure 6. The City of Newport successfully completed an SDC methodology based on square footage. With that methodology, they have seen smaller developments rather than large single-family homes. SDCs based on tiered or square footage is quite beneficial in the addition of housing. Mr. Hastie added the Cities of Prineville and Albany use a similar method.

Director Chandler added the Mid-Columbia Community Action Council to Measure 14.

Chair Cornett referred to page 15 of the HNA [Agenda Packet, page 26]:

**Homelessness:** A Point-in-Time count of homeless individuals in Wasco County conducted in January of 2022 found 194 homeless individuals on the streets, in shelters, or other temporary and/or precarious housing. This was a 73% increase over the prior count.

Chair Cornett asked when the prior count was conducted, and if the increase was similar to state or local levels.

City Attorney Kara replied the Point-In-Time (PIT) count refers to the number of homeless individuals in the jurisdiction. The U.S. Department of Housing and Urban Development recognizes the PIT count as a standard method of counting people experiencing unsheltered homelessness. The count takes place on the same night every year in January. Attorney Kara imagined the numbers provided were from the previous January.

AC Member Peters noted the PIT count does not match the homeless in our area. It was thought 10-15 years ago we were under-counting. A different method of counting could be the difference.

Commissioner Portela added there had been a huge shift in outreach methods. They [Mid-Columbia Community Action Council] collaborated with a number of different organizations that had not previously participated. A large number of bi-lingual people were included. The outreach method was far better, resulting in higher numbers.

AC Member Peters referred to Figure 2.8: Subsidized Housing Units in The Dalles and Comparison Communities [Agenda Packet, page 25]. The figure states 693 subsidized units in The Dalles. Where was that number found?

Mr. Hastie replied the source was the Oregon Housing and Community Services Department. They maintain the number of subsidized units in cities and counties across the state. Mr. Hastie will follow up with Johnson Economics. AC Member Peters disagreed with the number of subsidized units cited.

AC Member Peters referred to Figure 3.6: Comparison of Renter Household Income Groups to Estimated Supply Affordable at Those Income Levels [Agenda Packet, page 31]. Figure 3.6 shows an overabundance of apartments, almost double the amount of apartments needed. Peters doubted the number was accurate. He said the Housing Authority performed a study for increasing their payment standard; the study was completed within the last seven months. The payment standard increased; a two bedroom is \$1,748.00 with utilities. Figure 3.6 may be overestimating the number of affordable units at different income levels.

Chair Cornett asked, for the record, where AC Member Peters works. Peters replied he is employed by the Housing Authority, but is contracted to provide manpower for Columbia Cascade Housing Corp.

Mr. Hastie noted one component of the HPS is to prepare a contextualized housing needs assessment. That process tends to pull recent information from the HNA and later supplement it with data related to homelessness and other factors.

#### **STAFF COMMENTS / PROJECT UPDATES**

Director Chandler stated:

- The Urban Renewal Agency recently funded one of the largest housing developments in many years. The development is a five-story complex downtown with 108 units.
- September 7, 2023 is the next Planning Commission meeting. A quorum is necessary.
- RV Park amendments will return to the Commission, probably in October.
- City Council will review Short Term Rentals.
- Lone Pine is quickly developing.
- The Comprehensive Plan is now available on the City's website.

**COMMISSIONER COMMENTS / QUESTIONS**

Chair Cornett shared Parks & Recreation news. A new section of the skate park is under way and should be complete by the end of October. The mountain bike skills course is done. Sorosis Park improvements continue.

**ADJOURNMENT**

Chair Cornett adjourned the meeting at 6:54 p.m.

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Submitted by/  
Paula Webb, Secretary  
Community Development Department

SIGNED:

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Cody Cornett, Chair

ATTEST:

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Paula Webb, Secretary  
Community Development Department

# The Dalles Housing Needs Analysis

Planning Commission/Advisory Committee Meeting#2  
August 17, 5:30 – 7:30 pm

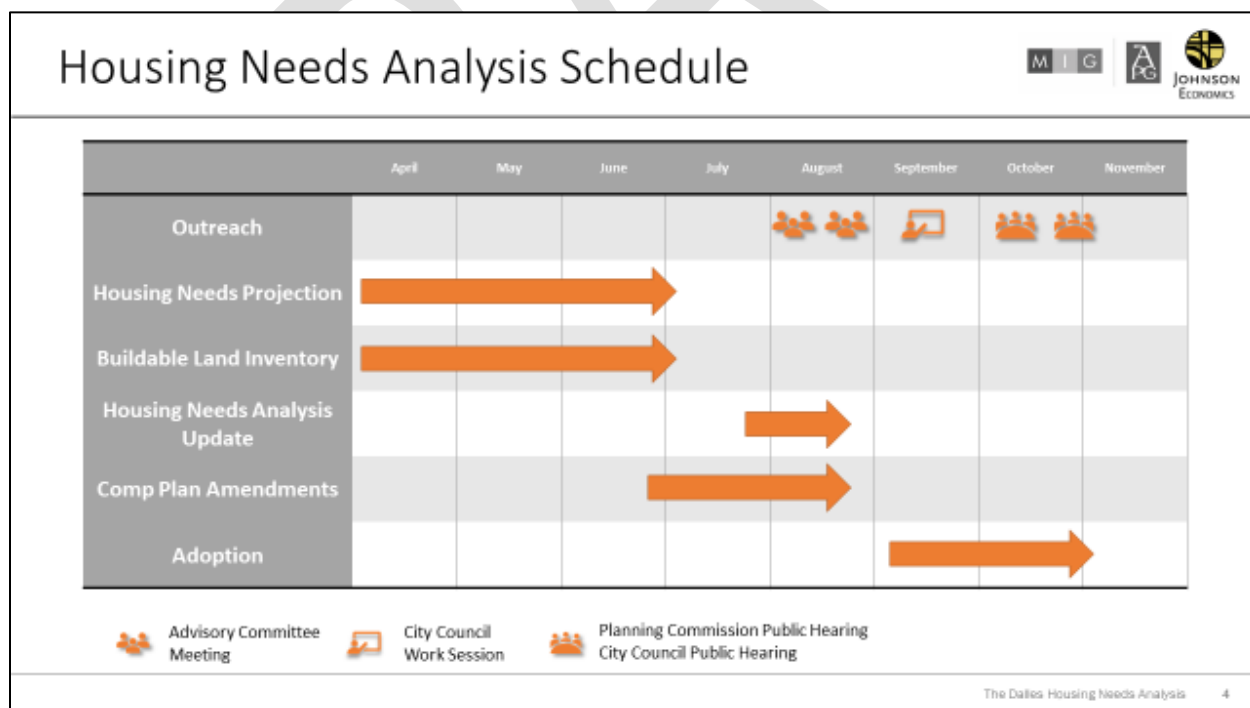
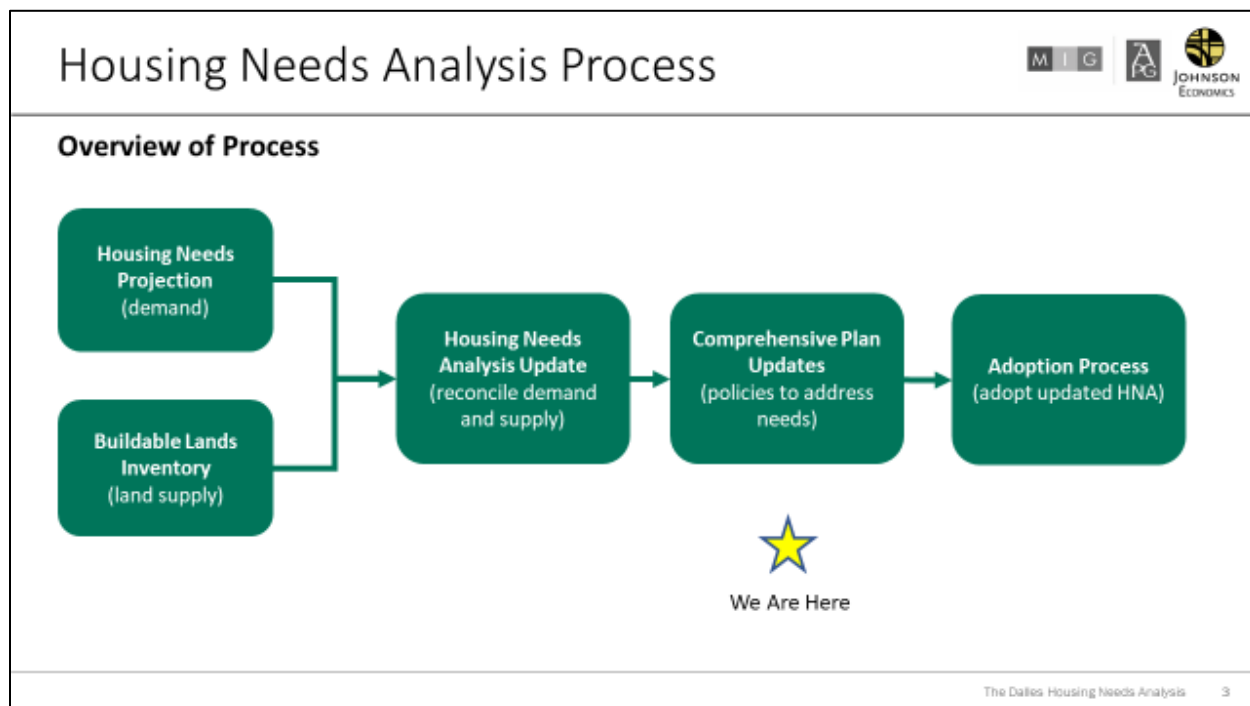


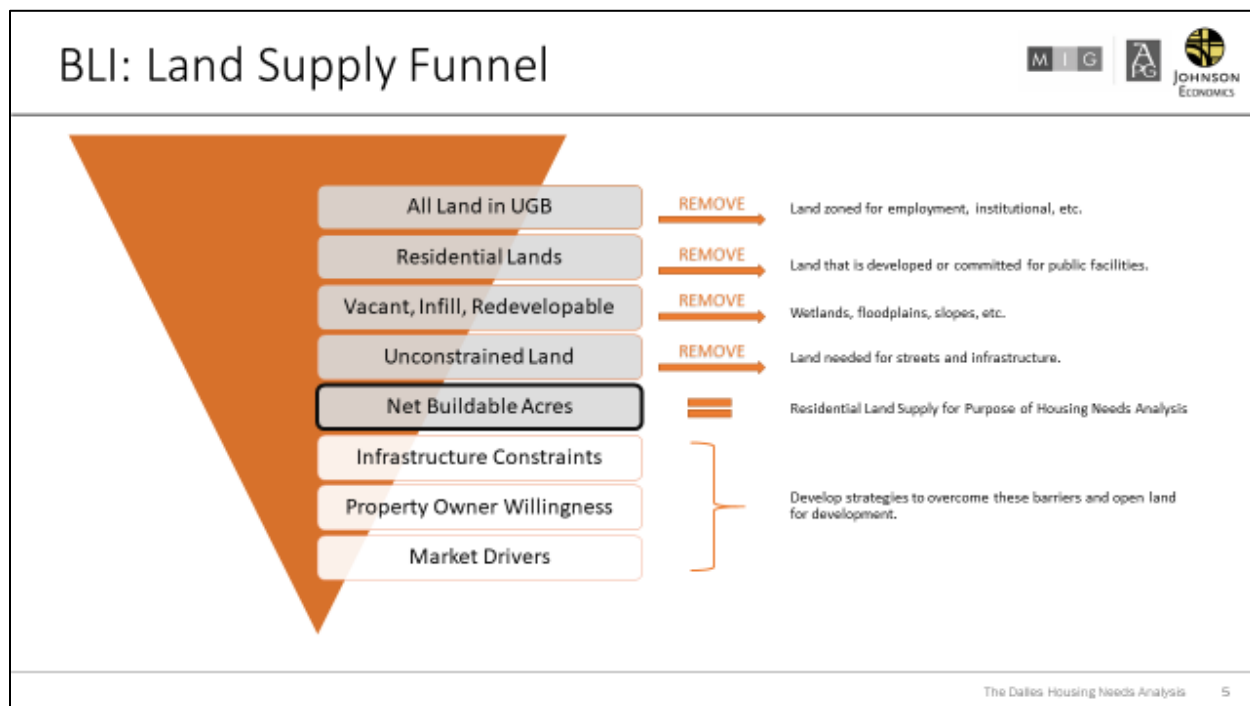
## Agenda



1. Project Update
2. Residential Land Needs Analysis (Demand/Supply Comparison)
3. Draft Comprehensive Plan Amendments
  - a) Background Information & Findings
  - b) Goals and Policies
  - c) Implementation Actions
4. Next Steps







## Housing Needs Projection

### Data Sources

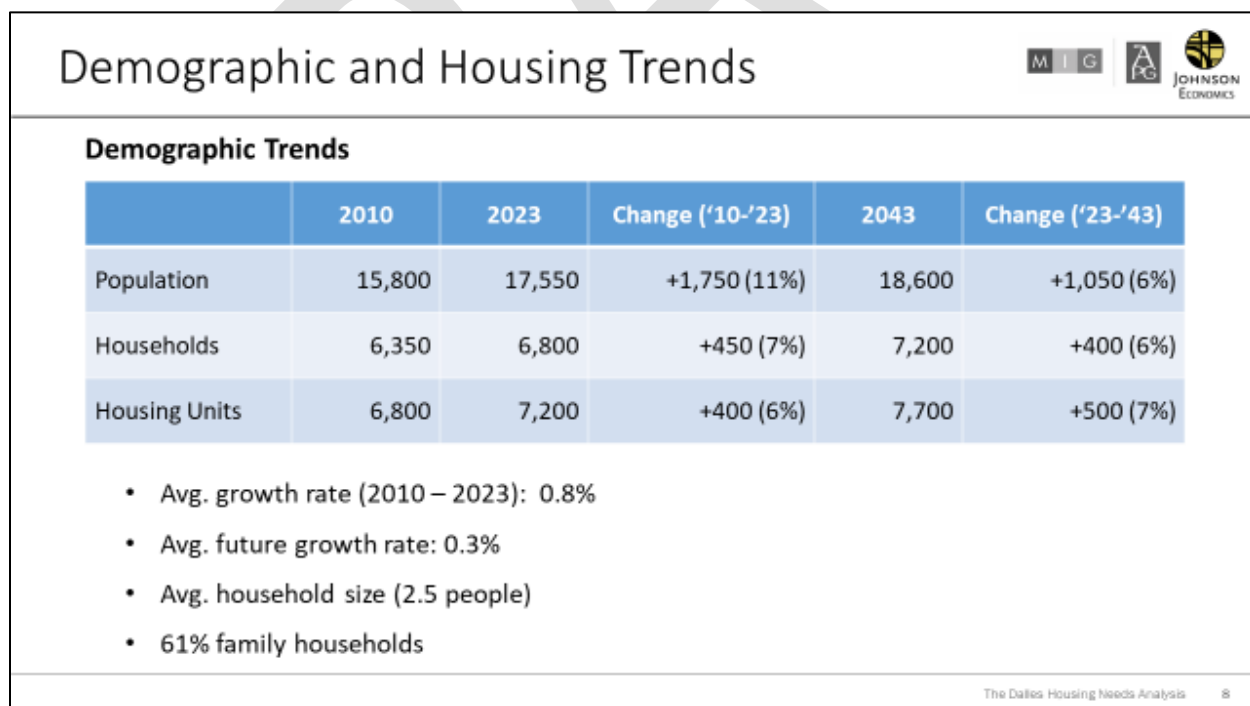
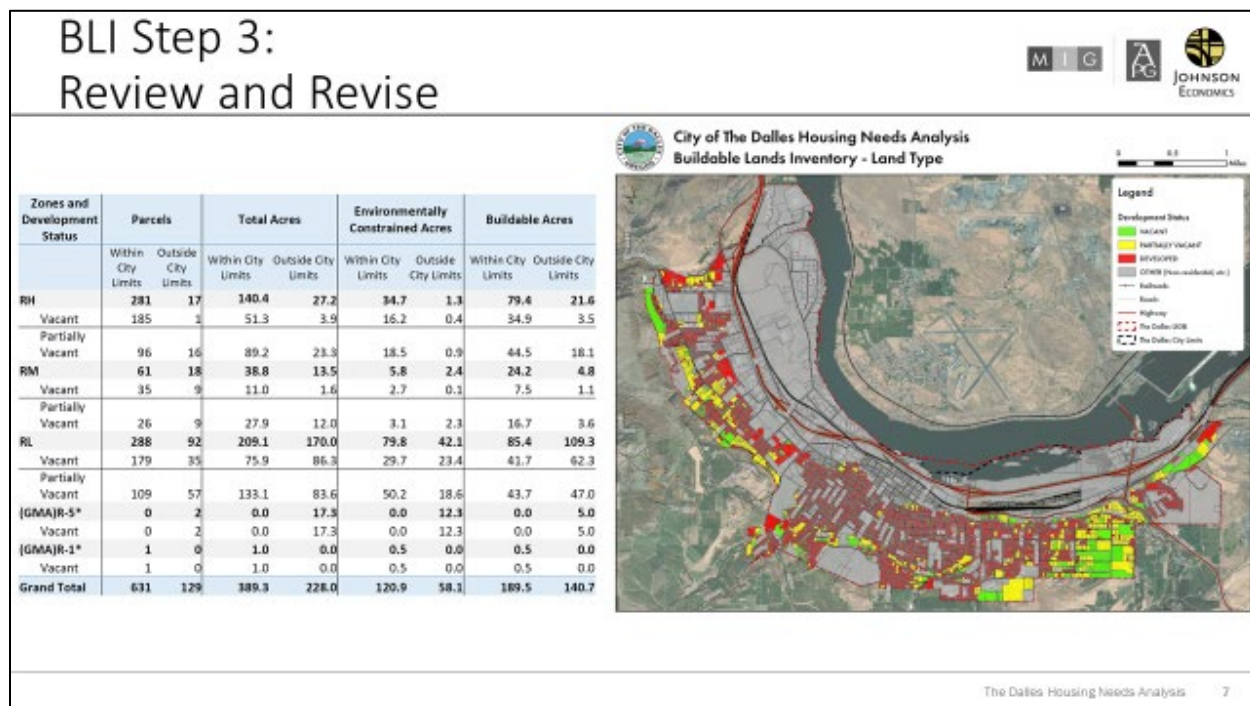
#### Population and Growth

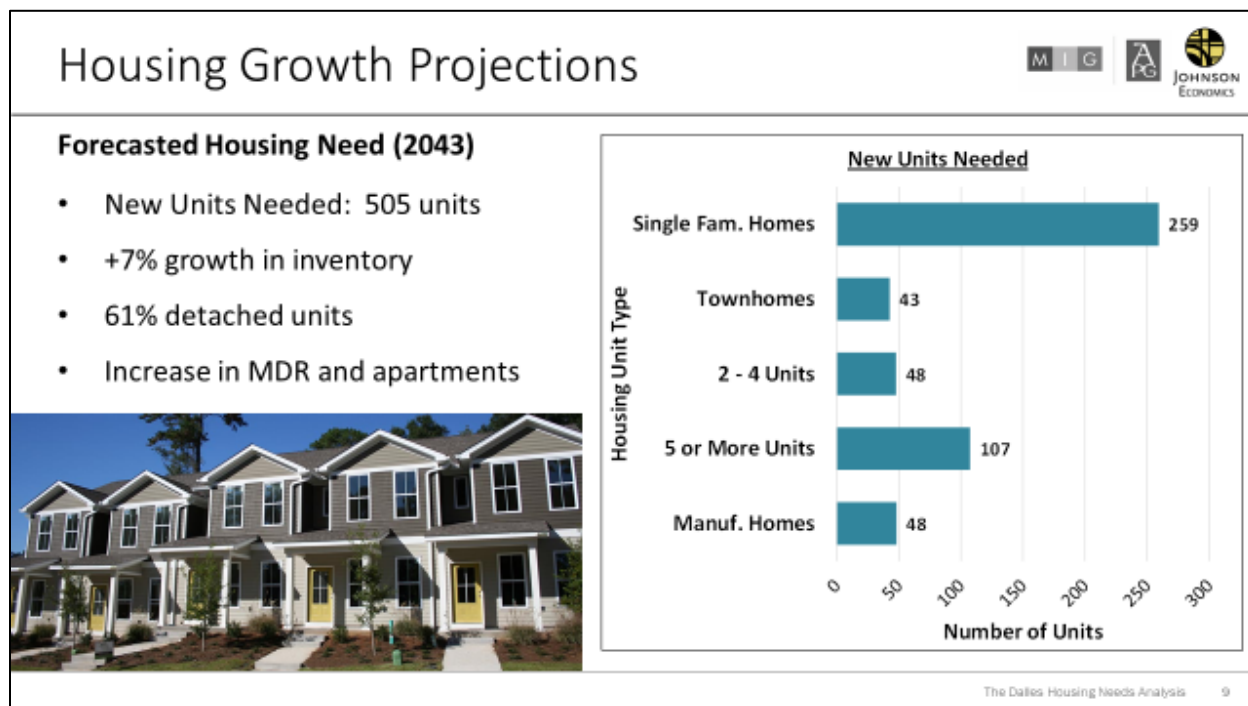
- 2020 Census
- American Community Survey
- PSU Population Center
- PSU Pop. Forecast

#### Market and Other Data

- Regional Multiple Listing Service
- 3rd Party Rental and Sales providers
- City/County/State
- Homeless data

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## Comparison of Land Need & Supply

**FIGURE 5.3: COMPARISON OF FORECASTED FUTURE LAND NEED (2042) WITH AVAILABLE CAPACITY**

WITHIN CITY LIMITS		SUPPLY			DEMAND		
Zone & Plan Category	Typical Housing Type	Land Inventory			Growth Rate (0.3%)		
		Developable Acres	Unit Capacity	Gross Density (units/ac)	New Unit Need (2043)	Surplus or (Deficit)	
					Units	Acres	
RL - Low-Density	Single-family detached and attached; Duplex	194.7	1,095	5.6	267	828	147
RM - Med-Density	Single-family detached and attached; Duplex; Cluster; Multi-family; Mobile Homes	29.0	348	12.0	131	217	18
RH - High-Density	Single-family detached and attached; Duplex; Cluster; Multi-family	101.0	1,894	18.8	107	1,786	95
<b>TOTALS:</b>		<b>324.7</b>	<b>3,337</b>	<b>10.3</b>	<b>505</b>	<b>2,832</b>	<b>261</b>

Sources: MIG/APG, Johnson Economics

The Dallas Housing Needs Analysis 10

## Comparison of Land Need & Supply



### Factors Considered in Estimating Capacity/Densities

- Lot sizes and densities allowed by City code
- Mix of housing types needed
- Typical development practices
- Pattern of existing residential lots



The Dallas Housing Needs Analysis 11

## Buildable Lands Inventory



### Questions and Discussion



The Dallas Housing Needs Analysis 12



## Comprehensive Plan Housing Chapter Update

- Background Information and Findings
- Goals and Policies
- Implementation Strategies



## Comprehensive Plan Housing Chapter Update




### Revisions to Goals and Policies

- Address HNA needs and findings
- Incorporate housing planning best practices
- Eliminate outdated information
- Eliminate duplicative policies
- Ensure policies are “courses of action”
- Eliminate policies that equate to specific standards
- Refer to adopted supporting documents
- Incorporate other community goals and objectives

## Housing Needs Projection

M I G A JG JOHNSON ECONOMICS

### Questions and Discussion




The Dallas Housing Needs Analysis 15

## Next Steps

M I G A JG JOHNSON ECONOMICS

- Refine Findings & Recommendations
- Conduct City Council Work Session
- Hold Public Hearings (PC and CC)



The Dallas Housing Needs Analysis 16



## CITY of THE DALLES

313 COURT STREET  
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125  
COMMUNITY DEVELOPMENT DEPARTMENT

### STAFF REPORT Appeal No. 033-23 of Sign Permit No. 2589-23 – J.R. Zukin Corp. d/b/a Meadow Outdoor Advertising

**Appellant:** Meadow Outdoor Advertising  
**Procedure Type:** Quasi-Judicial  
**Public Hearing Date:** September 7, 2023  
**Assessor's Map:** Township 1 North, 13 East, Section 4 AA  
**Tax Lot:** 200  
**Address:** 747 East 2<sup>nd</sup> Street  
**Zoning District:** "CG" General Commercial  
**Prepared by:** Joshua Chandler  
Community Development Director

#### BACKGROUND:

##### Appeal

On February 27, 2023, the Community Development Department (**CDD**) denied Sign Permit No. 2589-23 (**Application**) submitted by J.R. Zukin Corp. d/b/a Meadow Outdoor Advertising (**Appellant**). The Application proposed to replace an existing off-premises advertising sign (i.e., a billboard) located adjacent to a city street with a new billboard on the property addressed 747 E. 2<sup>nd</sup> Street. Staff's basis for denial was the proposed billboard exceeded the maximum number of billboards allowed per mile pursuant to The Dalles Municipal Code (**TDMC** or **Code**) Section 10.13.050.150(C)(2), which reads (in relevant part):

*The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.*

On July 7, 2023, Appellant submitted and CDD received a Notice of Appeal for Land Use Decision of SP 2589-23 (**Notice of Appeal**). Pursuant to TDMC 10.3.020.080(A), appeals are reviewed by this Commission as a *de novo* hearing, meaning a public hearing allowing for the introduction of additional evidence and issues.



## History

Prior to the denial of Application, Appellant inquired with Staff in October 2022 on the placement of a new billboard located within the City's right-of-way at the corner of West 6<sup>th</sup> Street and Cherry Heights Road: at that time, Staff determined the location of the newly proposed billboard would not comply with the provisions of TDMC 10.13.050.150(C)(2) since its approval would result in an excess of the total number of billboards allowed to be located within one mile under the Code. Furthermore, this location was not approved by Staff due to the proximity of underground utility infrastructure and the intersection of both streets. For additional guidance on the matter, Staff consulted with the City Attorney who reiterated Staff's interpretation in that no more than eight (8) signs may be located within a one-mile radius of one another.

## Interpretation at Issue

Following the October 2022 determination, Appellant notified Staff it disagreed with Staff's interpretation of TDMC 10.13.050.150(C)(2) based on the method of measuring the distance of a mile: specifically, Staff's interpretation is "per mile" is a distance to be measured *radially* (i.e., as the crow flies), and Appellant's apparent interpretation is "per mile" is a distance to be measured *as an arc length* (i.e., along each roadway where a sign is proposed to be or actually is located). A map of Staff's interpretation is included as Attachment 1. To analyze Appellant's interpretation, Staff coordinated with Wasco County GIS to explore what this interpretation could look like on The Dalles landscape; Staff attached the following map for reference (see Attachment 2). For additional context, Staff's presented interpretation of TDMC 10.13.050.150(C)(2) has remained demonstrably consistent since, at least, Staff provided it in response to inquiry the City received from a potential applicant in September 2021 for a new billboard proposal at 2638 West 6<sup>th</sup> Street (see Attachment 3). In addition, Staff included an updated map of the proposal at 2638 W. 6<sup>th</sup> Street as Attachment 4.

## Process

On January 6, 2023, Appellant met with Staff and provided documentation of previous sign permit approvals for billboards in the city limits. Staff determined that information was insufficient to meet the evidentiary threshold required to justify ignoring Staff's interpretation of the Code.

On February 16, 2023, Appellant submitted the Application for review, which was erroneously approved and issued by a former employee on February 24, 2023, who mistook the Application to be for the billboard's routine maintenance (only) and not for the replacement and construction of a new billboard. TDMC 10.13.020.030 provides: "*a sign permit shall not be required for routine maintenance, such as repainting and repair of existing signs... However, a permit is required for a change of business name or any structural alteration to an existing sign.*" TDMC 10.15.030 further provides: "*All departments, officials, and employees of the City vested with the duty or authority to issue permits shall conform to the provisions of this Title, and shall issue no permit for uses, buildings, or any purpose in conflict with the provisions of this Title. Any permit so issued shall be null and void.*"

Following this erroneous issuance, Appellant contacted the Community Development Director (**Director**) on February 27, 2023, to inquire about the Application's approval, at which time the Director identified and corrected the mistake and immediately issued a notification of denial via

email to Appellant on the same day. On March 9, 2023, Appellant contacted the Director to inquire whether the February 27, 2023, email was the City's formal denial of the Application, as well to indicate its intent to appeal the decision. The Director informed Appellant the February 27, 2023, email served as the City's formal denial (since Notices of Decisions are not provided for ministerial applications) and provided Appellant with information regarding the process to appeal a decision.

On June 13, 2023, Appellant once again met with Staff to discuss the interpretation and again expressed its intent to appeal the decision. Appellant provided additional documentation, including some of the information now included in the Notice of Appeal, as well as minutes from the February 4, 1992, Planning Commission meeting where the Commission considered the sign code for adoption. At that time, Appellant's legal counsel requested the Commission specify the measuring distance between signs along "the road mile", consistent with Appellant's current interpretation; however, the Commission did not include Appellant's recommended language and instead adopted the current language as stated in TDMC 10.13.050.150(C)(2).

### **Appeal Timing**

Staff received this information and committed to a response within one week to determine next steps in the process, most notably the ability to file an appeal. It is customary in Oregon land use for appeals to be submitted within a reasonable amount of time from the date of a denied application. As of the date of the June 13, 2023 meeting, the Application had been denied for more than 15 weeks. After further research and consultation with the City's Legal Department, Staff identified multiple inconsistencies between TDMC Chapter 10.13 and other portions of TDMC regarding the right to appeal a sign determination.

On June 22, 2023, Staff informed Appellant of these inconsistencies and the legitimacy of an appeal; however, the City decided to err the side most beneficial to Appellant by allowing them to move forward with its appeal request. Alternatively, Staff offered the option to forego the appeal and work collaboratively with Staff to amend the sign code with a tentative initial discussion at Planning Commission in Autumn 2023 (see Attachment 5). Ultimately, Appellant failed to respond to Staff's request and summarily submitted its Notice of Appeal on July 7, 2023.

### **REQUEST:**

Appellant is requesting approval to replace an existing off-premises sign (i.e., a billboard). The property is addressed 747 East 2<sup>nd</sup> Street and is depicted in Assessor's Map No. 1N 13E 4 AA as Tax Lot 200.

### **NOTIFICATION:**

Property owners within 300 feet, City Departments, and Franchise Utilities.

### **COMMENTS RECEIVED:**

No comments received as of the date this staff report was published (August 31, 2023).

## REVIEW CRITERIA:

### **I. City of The Dalles Municipal Code, Title 10 Land Use and Development**

#### **Section 10.3.010.040 Applications**

##### **A. Acceptance**

**FINDING #1:** On February 16, 2023, Appellant submitted and CDD received Application. On July 7, 2023, Appellant submitted its Notice of Appeal. Both were filed with the CDD during normal business hours and date stamped upon receipt. **Criterion met.**

##### **B. Completeness**

**FINDING #2:** CDD deemed the Notice of Appeal complete on August 4, 2023. **Criterion met.**

#### **Section 10.3.020.050 Staff Report**

##### **A. Decision Type**

**FINDING #3:** Pursuant to TDMC 10.13.070.060 (A), “the Planning Commission shall conduct hearings for appeal and variance matters in the same manner and shall apply the same standards as are used for variance hearings conducted pursuant to this Title”. Within the Code, variance hearings are processed as quasi-judicial actions pursuant to TDMC 10.3.020.050; therefore, this Appeal is processed in the same manner. **Criterion met.**

##### **B. Staff Report**

**FINDING #4:** This document serves as the Staff Report. **Criterion met.**

##### **C. Public Hearings.**

**FINDING #5:** The public hearing is scheduled for September 7, 2023, which is within 45 days from the date the Appeal application was deemed complete. **Criterion met.**

##### **D. Notice of Hearing.**

**FINDING #6:** Appropriate mailings to property owners within 300 feet and notice to affected departments and agencies were made on August 24, 2023, which is 14 days prior the public hearing. **Criterion met.**

#### **Section 10.3.020.070 Public Hearings**

##### **A. Quasi-Judicial Hearing Procedure.**

**FINDING #7:** The public hearing will be held in accordance with the Oregon Public Meeting Law (ORS 192.610 – 192.690 *et seq.*), and the procedures for a quasi-judicial public hearing in ORS 227.175(10) and ORS 197.797. **Criterion met.**

#### **Section 10.3.020.080 Appeal Procedures**

##### **A. De Novo**

**FINDING #8:** This Staff Report also serves as a *de novo* report for APL 033-23. **Criterion met.**

*B. Right to Appeal Decisions.*

**FINDING #9:** Appellant is a party of record to the particular action because it is the original applicant for SP 2589-23 and is therefore eligible to appeal CDD's denial of SP 2589-23. **Criterion met.**

*C. Filing Appeal.*

**FINDING #10:** Upon review of the Code, Staff identified multiple procedural inconsistencies in TDMC Chapter 10.13 (*Sign Regulations*) that conflict with other portions of TDMC. Although TDMC Chapter 10.13 references an appeal process for denied sign permits, TDMC Chapter 10.3 directly contradicts that process – specifically, TDMC 10.3.020.030(D) provides the Director's approval or denial of a ministerial application (e.g., sign permits, building permits, etc.) is the City's final decision: accordingly, under TDMC Chapter 10.3, Appellant actually has no mechanism to appeal a denied sign permit other than by filing an action against the City in Wasco County Circuit Court.

Generally, appeals of administrative and quasi-judicial decisions require the denied applicant to submit a Notice of Appeal within ten (10) days from the date of the City's denial. Here, the City denied the Application on February 27, 2023, more than 18 weeks from the date the Notice of Appeal was submitted. When Appellant met Staff on June 13, 2023, it mentioned the idea of resubmitting the sign permit, waiting for another denial, then appealing more expeditiously; however, TDMC 10.3.010.040(D) bars applicants from resubmitting denied applications for one year from the date of denial. Accordingly, under TDMC Chapter 10.3, Appellant could not have resubmitted its sign permit application until at least February 27, 2024.

Ultimately, Staff determined the procedural contradictions within the Code itself create a gray area for a sign appeal process; therefore, the City decided to err on the side most beneficial to Appellant by allowing this Appeal to move forward without prejudice stemming from the Code's inconsistency. In making this determination, the City Attorney recommended addressing these procedural issues going forward and to work on a comprehensive text amendment to the City's sign code as soon as possible.

Staff informed the Appellant of the ability to move forward with the appeal, but also offered a concession on the matter (see correspondence included in the record as Attachment 5). Rather than moving forward with this Appeal, Staff offered to collaborate with Appellant (along with additional community input) on proposed amendments to TDMC Chapter 10.13 – that compromise would have allowed both the City and Appellant to marshal their resources on beginning a comprehensive sign code amendment with a tentative plan to have an initial discussion with Planning Commission by Autumn 2023. In the alternative, Staff explained that once an appeal is filed, the City is instead required to focus efforts and expend resources to defend the appeal, which further prolongs the opportunity to address these inconsistencies and leaves the City open to future litigation.

Appellant failed to respond to Staff's request and submitted its Notice of Appeal on July 7, 2023. **Criterion met.**

*D. Notice of Appeal.*

**FINDING #11:** TDMC 10.3.020.080(D)(3) provides every notice of appeal shall include the “specific grounds why the decision should be reversed or modified, based on the applicable criteria or procedural error.” The Appellant submitted documentation within the Notice of Appeal supporting its interpretation and requesting the Commission reverse Staff’s previous decision. Staff will address the issues raised in the Notice of Appeal regarding applicable criteria of the Code and/or procedural errors. The Appellant’s legal arguments will be addressed by the City Attorney. **Criterion met.**

*E. Jurisdictional Defects.*

**FINDING #12:** Staff determined no jurisdictional defects exist with the Notice of Appeal request. **Criterion met.**

*G. Notification of Appeal Hearing.*

**FINDING #13:** Appropriate mailings to property owners within 300 feet and notice to affected departments and agencies were made on August 24, 2023. **Criterion met.**

***10.13.020.010 Sign Permit***

*No sign shall hereafter be erected, re-erected, constructed, altered or maintained until a sign permit has been issued, unless no permit is required under Section 10.13.020.030...*

**FINDING #14:** The Application proposes replacing an existing billboard with a new, larger billboard in a similar location. Since the replacement requires structural alterations, a sign permit is required. **Criterion met.**

***Section 10.13.020.030 Permit Exceptions***

*A sign permit shall not be required for routine maintenance, such as repainting and repair of existing signs. Exceptions are also made for exempt signs listed in Section 10.13.030.010. However, a permit is required for a change of business name or any structural alteration to an existing sign.*

**FINDING #15:** See Finding #14. **Criterion met.**

***Section 10.13.020.040 Permit Procedure***

*B. The completed application shall be submitted with the appropriate fee and drawings to indicate the dimension, location, and height of all existing and proposed signs for the subject business.*

*F. The Director will determine when the application is complete. The permit will be approved or denied within 15 days from the submittal date, unless referred to a City Commission as herein provided. Variances and appeals will be processed as set forth in Section 10.13.070.100.*

**FINDING #16:** See Finding #1. Application was denied on February 27, 2023, less than 15 days from the submittal date. **Criterion met.**

### ***10.13.050.150 Off-Premises Advertising Signs***

*Advertising signs shall be located only in General Commercial and Industrial Zones, as designated by this Title.*

**FINDING #17:** The subject property is located within the General Commercial (CG) zoning district and the Highway District for purposes of Chapter 10.13 sign regulations. **Criterion met.**

A. *The maximum height above grade shall be 24 feet, but shall be increased to 40 feet in the Highway District.*

**FINDING #18:** Staff determined from the submitted Application the proposed height above grade for the new billboard is 24'. **Criterion met.**

B. *Outdoor advertising signs shall have metal primary structural members.*

**FINDING #19:** Staff determined the submitted Application did not include information regarding the type of material used for the primary structural members. **Criterion not met.**

C. *Size.*

2. *City Streets. The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented. Sign area shall not exceed 288 square feet, with maximum dimensions of 12 feet vertical and 24 feet horizontal.*

### **FINDING #20-A: City Streets**

The proposed billboard is located on East 2<sup>nd</sup> Street, which is classified within The Dalles Transportation System Plan as an Arterial roadway under the City's jurisdiction.

**Criterion met.**

**FINDING #20-B:** *The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.*

This provision includes three (3) separate requirements for siting a new or replacement billboard:

- **Requirement #1:** **Signs may not exceed eight (8) per mile.**

*The maximum number of advertising signs shall **not exceed 8 per mile** with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.*

Staff understands the main emphasis of the argument raised by Appellant through its Appeal is TDMC 10.13.050.150(C)(2)'s reference to "per mile" requires the City to interpret it as applicable to the distance travelled along a road. However, the Code is clear: TDMC Chapter 10.6 (*General Regulations*) provides the City's regulations applicable to all TDMC Title 10 applications, including the Application and this Appeal. Relevantly, TDMC Chapter 10.6, Article 6.070 (*Measurements*) provides the

City's regulations concerning measurements. TDMC 10.6.070.010 (*Purpose*) plainly indicates TDMC Chapter 10.6, Article 6.070 "explains how measurements are made in [TDMC Title 10]." Specifically, and simply, TDMC 10.6.070.030(A)(1) provides:

1. *Distances are measured horizontally. When determining distances for setbacks and structure dimensions, all distances are measured along a horizontal plane from the appropriate property line, edge of building, structure, storage area, parking area, or other object. These distances are not measured by following the topography of the land.*

For purposes of ensuring accuracy with its land use review, the City employs the use of a Geographic Information System (**GIS**) administered by Wasco County. Within the City's GIS database, Staff compiled a complete inventory of all billboards located within the Urban Growth Boundary (**UGB**) to facilitate the precise measurements of billboard locations and their proximity to one another. By use of a *GIS Buffer* tool, Staff is able to input the location of a billboard and apply a vicinity range of a specified distance. For the purposes of determining billboard proximity (as required by TDMC 10.13.050.150(C)(2)), each proposed billboard location is considered the center point of a radial buffer determined horizontally in all directions equidistant from the center point (i.e., a circle). This GIS generated buffer provides Staff an accurate, useful, and non-discretionary tool when reviewing application requests. A comparable tool, *GIS Select by Location*, is used for purposes of noticing all land use applications, similar to the 300' notice provided for the Notice of Public Hearing for the Notice of Appeal.

Upon submitting the location of the proposed billboard, Staff generated the vicinity map included in the record as Attachment 1. This map demonstrates a total of 23 billboards (24 including the subject billboard) within a one-mile radius of the proposed billboard at issue in this Appeal, 13 of which classified as non-Highway signs (14 including the subject billboard). For the purposes of determining vicinity, "City" and "Highway" billboards are distinguished from one another, although doing so may create clustering of billboards within one area of the City, as shown in Attachment 1.

Without the use of GIS, measuring distances are unreliable, inaccurate, and prone to human error. Appellant provided examples of maps and a previous sign permit with its Notice of Appeal to demonstrate measuring distances; however, neither submittal included a scale or ratio. As such, these distances should not be considered appropriate measures of distance, especially when compared to the pinpoint accuracy of GIS.

In addition to the Code's insistence on measuring distance along a horizontal plane, TDMC 10.6.070.030(A)(1) provides topography may not be a factor in determining distances. Although "topography", is a not term specifically defined in the Code, Staff have provided three of the most widely accepted and available definitions of topography below:

- *The arrangement of the natural and artificial physical features of an area.*<sup>1</sup>
- *The art or practice of graphic delineation in detail usually on maps or charts of natural and man-made features of a place or region especially in a way to show their relative positions and elevations.*<sup>2</sup>
- *Topography is a field of geoscience and planetary science and is concerned with local detail in general, including not only relief, but also natural, artificial, and cultural features such as roads, land boundaries, and buildings.*<sup>3</sup>

All three of these definitions reference “man-made” or “artificial” features, which include roads – accordingly, the consideration of topographical features in the measurement of distances invites subjective, inaccurate, unreliable, and constantly-shifting metrics. Roadways or streets may not be a factor in determining distances, contrary to Appellant’s interpretation of TDMC 10.13.050.150(C)(2).

The Appellant also argues that the City’s interpretation would cause a “taking” of the property. A local regulation does not cause a taking unless it denies effectively all economically viable use of the property. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). The Appellant has not provided any evidence that the existing billboard is no longer economically viable or that the decision to deny the application will deny the property all economically viable use. Absent such evidence, the City’s interpretation of TDMC 10.13.050.150(C)(2) does not cause a taking.

Finally, the Appellant argues that this decision is “indistinguishable” from *Holman v. City of Warrenton*, 242 FSupp2d 792 (2002). In *Holman*, the city approved a conditional use permit for a mini-storage facility, then refused to issue the building permits necessary to build it. In this case, the City denied an application for a permit to *replace* an existing sign; not a new sign that the city approved in a separate decision. As such, the decision in *Holman* is completely distinguishable and does not require the City approve the application.

- **Requirement #2: Of the eight (8) signs per mile, no more than five billboards may be located on one side of the street.**

*The maximum number of advertising signs shall not exceed 8 per mile **with no more than 5 on one side of the street** and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.*

Staff determined more than eight (8) signs are located within one mile of the proposed sign location; therefore, no additional analysis occurred regarding Requirement #2.

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<sup>1</sup> “Topography.” *Oxford Languages*, Oxford University Press, 2023, [https://www.google.com/search?q=topography&rlz=1C1CHBF\\_en&oq=topography&aqs=chrome.69j59j35i39i650j0i131i433j512j0i131i433i457i512j0i402i650j0i402i512j46i175i199i433i512j0i512i3.2039j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=topography&rlz=1C1CHBF_en&oq=topography&aqs=chrome.69j59j35i39i650j0i131i433j512j0i131i433i457i512j0i402i650j0i402i512j46i175i199i433i512j0i512i3.2039j0j7&sourceid=chrome&ie=UTF-8). 28 August 2023.

<sup>2</sup> “Topography.” *Merriam-Webster Dictionary*, Merriam-Webster, Incorporated, 2023, <https://www.merriam-webster.com/dictionary/topography>. 28 August 2023.

<sup>3</sup> West, Terry R.; Shakoor, Abdul (2018-03-19). *Geology Applied to Engineering* (2nd ed.). Waveland Press. pp. 545. ISBN 978-1-4786-3722-6.



- **Requirement #3:** Of the eight (8) signs per mile, billboards must be no closer than 300' from one another. The point of measurement for this distance is measured at right angles from the street centerline where the sign is located.

*The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.*

Staff determined more than eight (8) signs are located within one mile of the proposed sign location; therefore, no additional analysis occurred regarding Requirement #3.

Staff determined the proposed sign exceeds the total number of signs allowed per mile.  
**Criterion not met.**

**FINDING #20-C:** *Sign area shall not exceed 288 square feet, with maximum dimensions of 12 feet vertical and 24 feet horizontal.*

Staff determined from the submitted Application that the total sign area of the proposed billboard is 192 SF, with a vertical dimension of 8' and a horizontal dimension of 24'.

**Criterion met.**

**FINDING #21:** **Criterion met.**

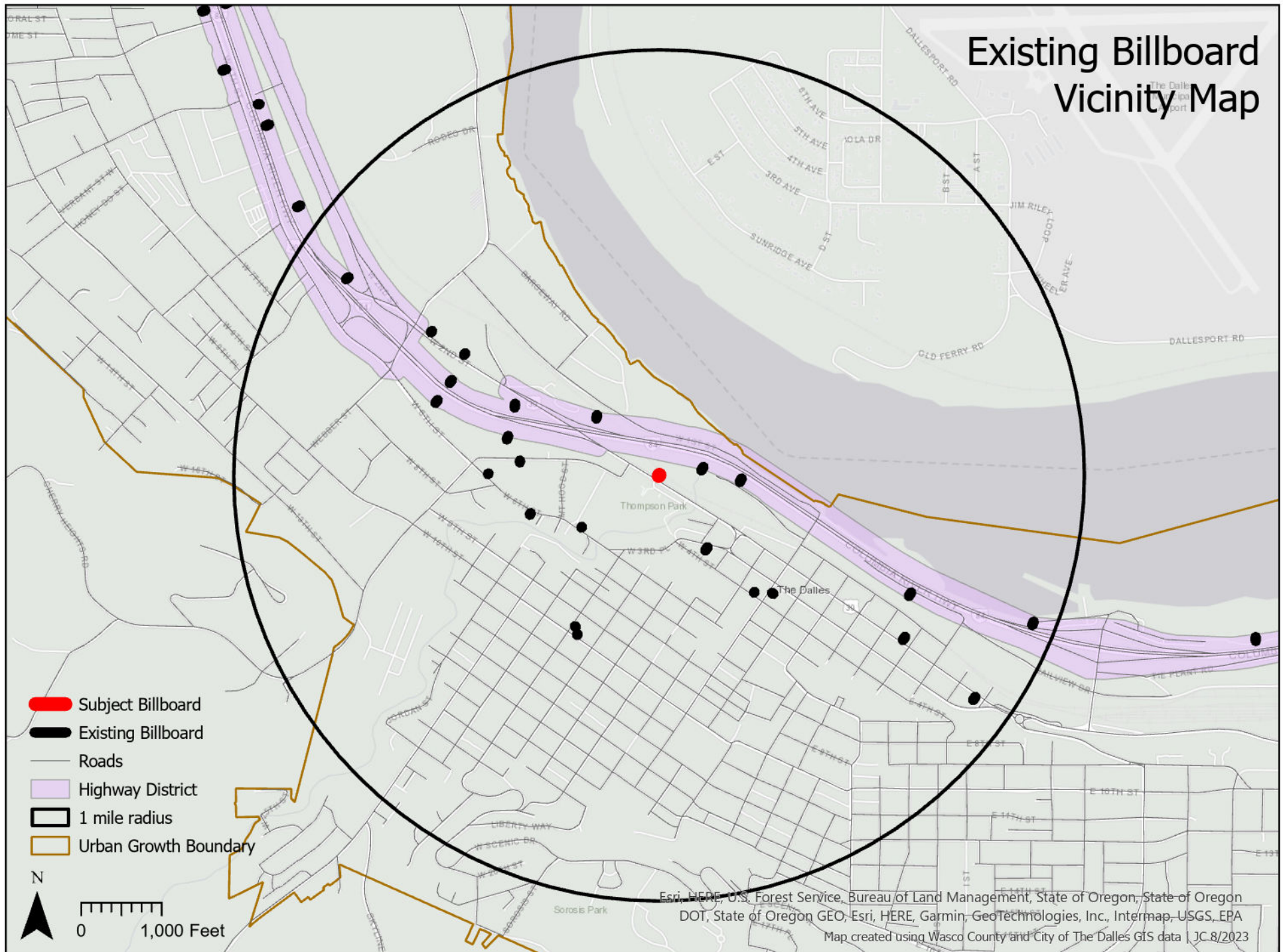
#### **COMMISSION ALTERNATIVES:**

1. **Staff recommendation:** *Move to adopt Resolution No. PC 618A-23, a resolution denying the Appeal and affirming Staff's denial of Sign Permit No. 2589-23, based upon the findings of fact and conclusions of law set forth in the Agenda Staff Report.*
2. Make modifications to then move to adopt an amended Resolution No. PC 601A-23, a resolution denying the Appeal and affirming Staff's denial of Sign Permit No. 2589-23, based upon the findings of fact and conclusions of law set forth in the Agenda Staff Report.
3. Move to direct Staff to adopt Resolution No. PC 618B-23, a resolution granting the appeal and overturning Staff's decision. Under this alternative, the Planning Commission is required to identify the specific criteria supporting its decision against Staff's Recommendation.

#### **ATTACHMENTS:**

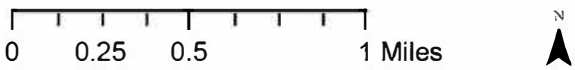
*A comprehensive list of all attachments pertaining to Appeal No. 33-23 have been provided below.*

- Attachment 1 – Existing Billboard Vicinity Map
- Attachment 2 – Potential Billboard Locations
- Attachment 3 – Billboard Inquiry: 2638 W. 6<sup>th</sup> Street – correspondence, September 2021
- Attachment 4 – Billboard Inquiry: 2368 W. 6<sup>th</sup> Street – map
- Attachment 5 – City correspondence with Appellant, June 22, 2023

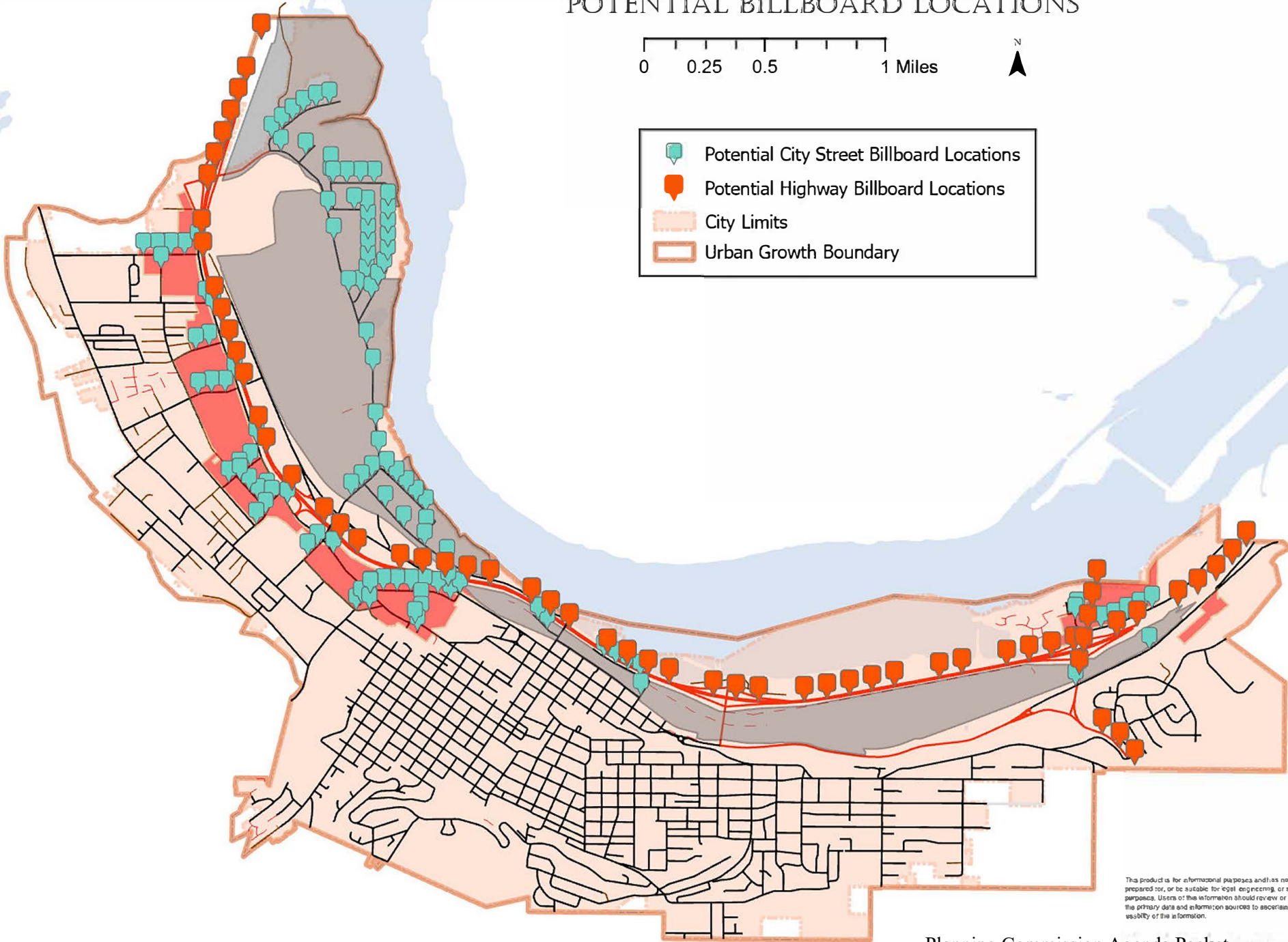




POTENTIAL BILLBOARD LOCATIONS



-  Potential City Street Billboard Locations
-  Potential Highway Billboard Locations
-  City Limits
-  Urban Growth Boundary



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**From:** [Scott McKeown](#)  
**To:** [Joshua Chandler](#)  
**Subject:** Re: Off-Premises Sign  
**Date:** Friday, September 10, 2021 7:48:21 AM

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Good morning Joshua,

Se la vie. Thank you for your analysis.

Best regards,  
Scott

On Sep 9, 2021, at 3:34 PM, Joshua Chandler <[jchandler@ci.the-dalles.or.us](mailto:jchandler@ci.the-dalles.or.us)> wrote:

Good afternoon Scott,

Unfortunately, it appears that we would not be able to approve an off-premises sign at your location due to the proximity to other off-premises signs in the vicinity. Staff has provided a map for reference. Your property is detailed in red with the yellow circles signifying 500' buffers from existing billboards in town. In addition, Staff determined that within 1 mile of your property there are nine billboards to the north and eleven billboards to the south.

Please let me know if you have any additional questions.

**Joshua Chandler**

Associate Planner  
City of The Dalles  
Office: 541-296-5481 x1121  
Cell: 541-993-9583

**PUBLIC RECORDS LAW DISCLOSURE:**

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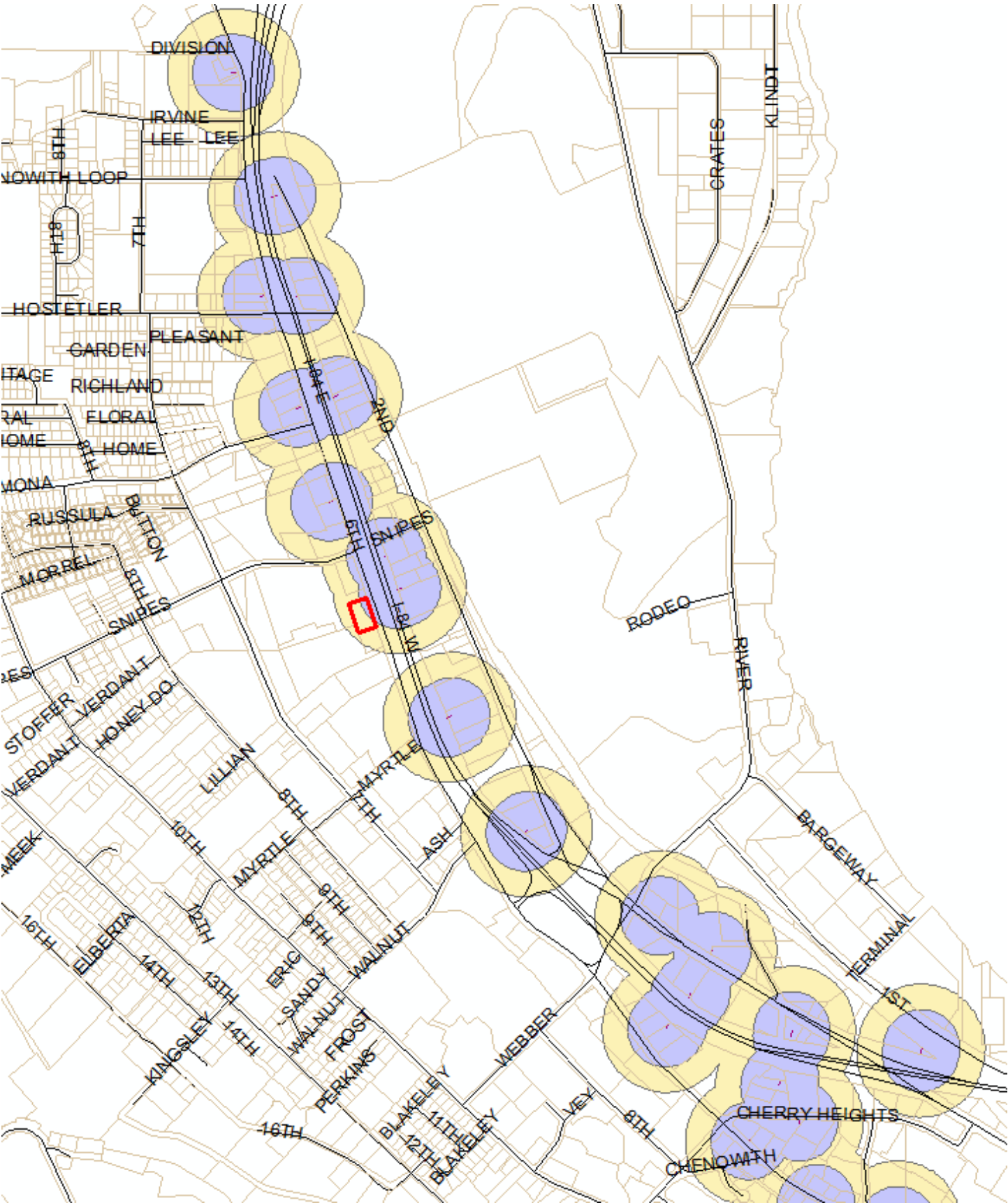
**From:** Scott McKeown <[scottmckeown@comcast.net](mailto:scottmckeown@comcast.net)>  
**Sent:** Thursday, September 09, 2021 8:13 AM  
**To:** Joshua Chandler <[jchandler@ci.the-dalles.or.us](mailto:jchandler@ci.the-dalles.or.us)>  
**Subject:** Off-Premises Sign

Good morning Joshua,

I hope to apply for an off-premises sign permit to locate a billboard near the south end of the 6th Street Station lot. I have already run underground conduit for lighting the sign. I read the statute as requiring no more than 8 off-premises signs per mile. The distances are close in my case. As a 1/2 mile is 2,640' by Google Maps we meet your requirement with 48' to spare. Is this drawing acceptable for sign permit permit documentation?

Best regards,  
Scott

<Billboard map.pdf>

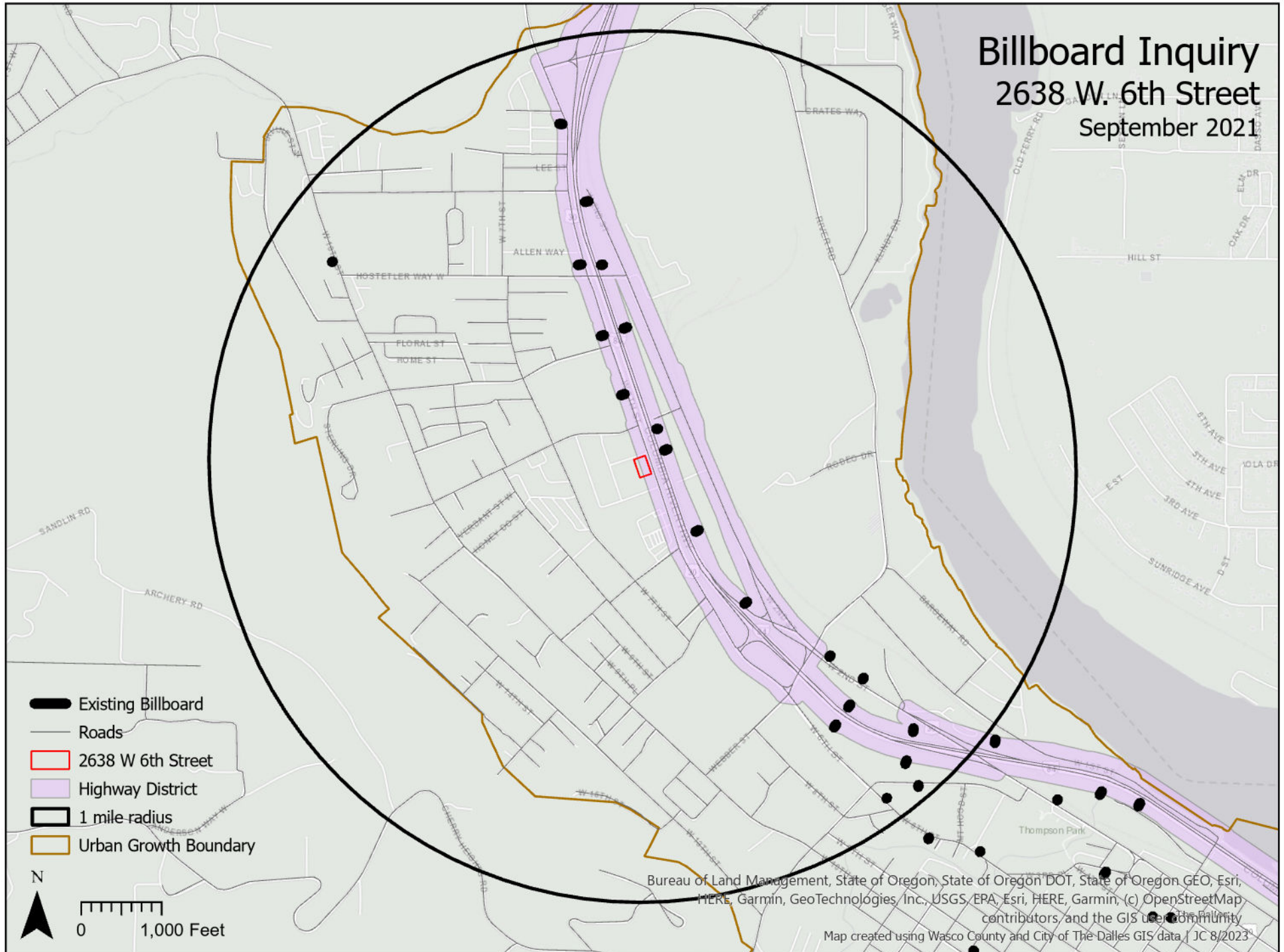




# Billboard Inquiry

## 2638 W. 6th Street

### September 2021



**From:** [Joshua Chandler](#)  
**To:** ["Chris Zukin"](#)  
**Cc:** [Matthew Klebes](#)  
**Bcc:** [Jonathan Kara](#); [Kaitlyn Cook](#)  
**Subject:** Follow Up: Sign Code Discussion  
**Date:** Thursday, June 22, 2023 11:53:11 AM

---

Good morning Chris,

Thank you for your patience. Since we last spoke, I was able to touch base with our legal department to discuss your potential Notice of Appeal (**NA**) to appeal the denied sign permit at 747 W. 2nd Street, denied on February 27, 2023.

In looking through The Dalles Municipal Code (**TDMC**), it appears there are some procedural inconsistencies with Chapter 10.13 (*Sign Regulations*) conflicting with other portions of TDMC. Although Chapter 10.13 references an appeal process for denied sign permits, Chapter 10.3 directly contradicts this process and provides the Community Development Director's approval or denial of a ministerial application (e.g., sign permits, building permits) is the City's final decision [TDMC 10.3.020.030(D)]. Therefore, currently, there is no apparent mechanism to appeal.

Generally, appeals of administrative and quasi-judicial decisions require applicants to submit a NA within 10 days from the date of initial denial. Your sign permit was denied on February 27, 2023, almost four months ago. I vaguely mentioned this when we met last week – at that time, you mentioned resubmitting the sign permit, waiting for the denial, then appealing more expeditiously. Unfortunately, Chapter 10.3 prohibits applicants from resubmitting denied applications for one year from the date of denial [TDMC 10.3.010.040(D)]; therefore, it seems you would need to wait until at least February 2024 before resubmitting an application for this sign permit.

Overall, the procedural inconsistencies within TDMC create a gray area for a sign appeal process; therefore, the City is intending to err on your behalf and allow you to move forward with your appeal request if you choose to do so.

Although we may not agree on the substance of TDMC 10.13.050.150(C)(2), I think we can both agree the inconsistencies and ambiguities currently existing in Chapter 10.13 create unneeded headaches. Our legal team has recommended, now more than once, to address these procedural issues and work on an overall amendment to the sign code sooner than later.

As a result, I wanted to provide two options moving forward:

**Option 1:** *Move forward with the appeal process.* If you elect to appeal, you'll need to submit the \$500 appeal fee at your earliest convenience and Staff will work on scheduling the appeal at an upcoming Planning Commission meeting (likely one of its August meetings). Following the appeal, Staff would rededicate its resources to begin working on a comprehensive sign code amendment. Depending on the level of Staff involvement in defending the appeal, the City could tentatively plan on an initial discussion with Planning Commission on the sign code by winter.

**Option 2:** *Forego the appeal process.* If you elect to waive an appeal here, Staff can

marshal its resources on beginning a comprehensive sign code amendment now and the City could tentatively plan on an initial discussion with Planning Commission by autumn.

In either case, Staff is committed on making these amendments a priority and plan on beginning the amendment process within the calendar year. To assist in the process, Staff intends on encouraging citizen involvement in the adoption process and would value Meadow's contribution.

Please let me know if you'd like to discuss further and your preferred direction moving forward. Thank you.

**Joshua Chandler** (he/him/él)  
Community Development Director  
*City of The Dalles*  
541-296-5481 x1121

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RECEIVED

JUL 7 2023



**City of The Dalles**  
**Community Development Dept**

313 Court Street  
The Dalles, OR 97058  
(541) 296-5481, ext. 1125  
www.thedalles.org

Application #: APL 33-23

Filing Fee: \$500

Receipt #: 485734

Received: 7/7/23

Deemed Complete: 8/4/23

## Notice of Appeal for Land Use Decision

Appellant's Name: J.R. Zukin Corp d/b/a Meadow Outdoor Advertising  
Address: PO Box 331  
The Dalles, OR 97058  
Phone: (541) 296-9684  
Email: jlehman@meadowoutdoor.com

Please state the reasons why the appellant qualifies as a party entitled to file a notice of appeal:

The Appellant is the applicant for a sign permit that was denied by the City and therefore is an "aggrieved party" with standing to appeal pursuant to 10.13.070.060D. Please see Ex. A (Application)

Please provide the date and a brief description of the decision being appealed:

Appellant is appealing the Planning Director's February 27, 2023 denial of sign permit application filed February 16, 2023. Please see Ex. B (Denial)

Please cite the specific grounds why the decision should be reversed or modified, and cite the applicable criteria or procedural error which supports the grounds for appeal:\*

Please see the attached Ex. C (Grounds for Reversal) setting forth in detail why the Planning Director's interpretation of the Sign code is wrong and the permit denial must be reversed.

Jesse Lehman  
Appellant Signature

July 7, 2023  
Date

\*Attach additional sheets as necessary.



**City of The Dalles**  
Community Development Dept  
313 Court Street  
The Dalles, OR 97058  
(541) 296-5481 ext. 1125  
www.thedalles.org

**RECEIVED**

FEB 16 2023

Received \_\_\_\_\_

City of The Dalles

Community Development Dept

Application #: SP 2589-23  
Filing Fee: \$120.00  
Receipt #: 485639  
Deemed Complete: 2/24/23  
Ready to Issue: 2/24/23  
Date Issued: 2/24/23

## Sign Permit Application

### Applicant

Name: John Lehman for Meadow Outdoor Advertising

Address: P.O. Box 331  
The Dalles, OR 97058

Phone #: 541.296.9684

Email: jlehman@meadowoutdoor.com

Business Name: Meadow Outdoor Advertising  
P.O. Box 3331, The Dalles, OR 97058

### Installer Information

Name: Meadow Outdoor Advertising

Address: P.O. Box 331  
The Dalles, OR 97058

Phone #: 541.296.9684

Email: jlehman@meadowoutdoor.com

Oregon CCB License #: 118370  
Expiration Date: 11-5-2025

### Sign Information

Business Address: 747 W. 2nd Street

Type: ☒ Freestanding ☐ Projecting

☐ Principal ☐ Secondary

Illumination: ☒ Direct ☐ Indirect

Horizontal Dimension: 24 feet

Map and Tax Lot: 01N13E04AA TL#200

Zoning District: CG - General Commercial

☐ Hanging ☐ Flush

☐ Temporary

☐ UL #: \_\_\_\_\_

Vertical Dimension: 8 feet

Sign Area: 192 sq. ft. Building Frontage: n/a Street Frontage: n/a

(NOTE: THIS SIGN WILL REPLACE EXISTING 8'X16' SIGN CURRENTLY IN THIS LOCATION.)  
Electrical connection and all supply circuits to be made by a licensed electrical contractor and subject to the provisions of the State Electrical Code. A structural permit is required for certain sign installations.

**SIGN INSTALLATION TO BE COMPLETED WITHIN 60 DAYS AFTER PERMIT HAS BEEN ISSUED**

Signature of Applicant

John Lehman

2-16-23

Date

Signature of Property Owner

LEASE COPY ATTACHED WITH SIGNATURE

Date

See Reverse Side >>>

1 of 2

**Additional Application Requirements:**

- ☒ A scaled elevation drawing of your proposed sign complete with dimensions, location, and color scheme.
- ☐ A complete inventory of existing property sign(s) complete with dimensions and location(s).

*The purpose of a sign permit is to verify that the amount of signage requested does not exceed the amount of signage allowed. In order to do this, an inventory of existing signs is required. This includes signs for your business plus any other businesses that are at the same location. Signage is not based on the business, but on the building. Additionally, the ordinance makes distinctions based upon types of signage used. This is why the inventory must include information on sign type and location.*

---

**Decision**

☒ Approved

☐ Denied

Community Development Department



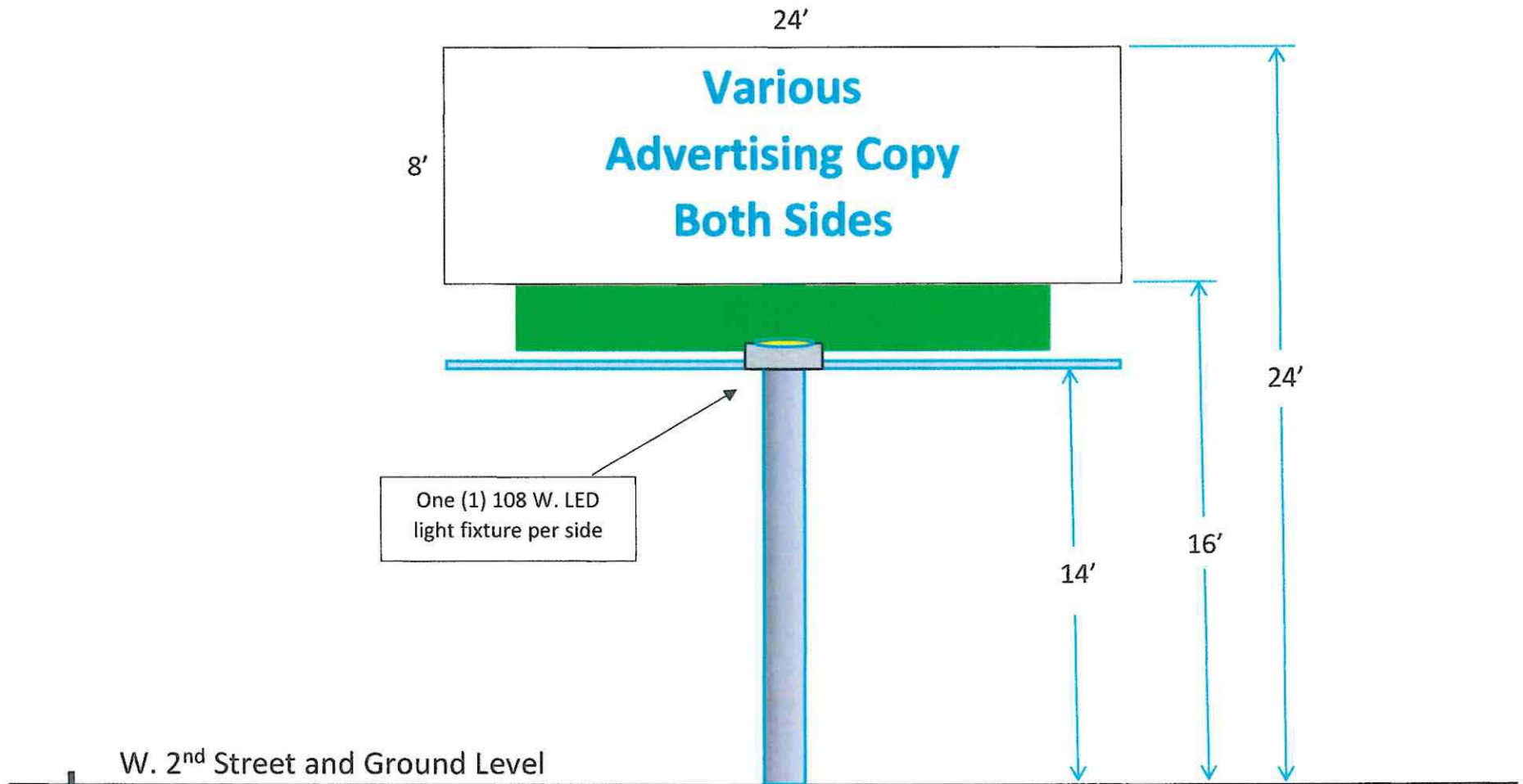
2/24/23

Date

2 of 2

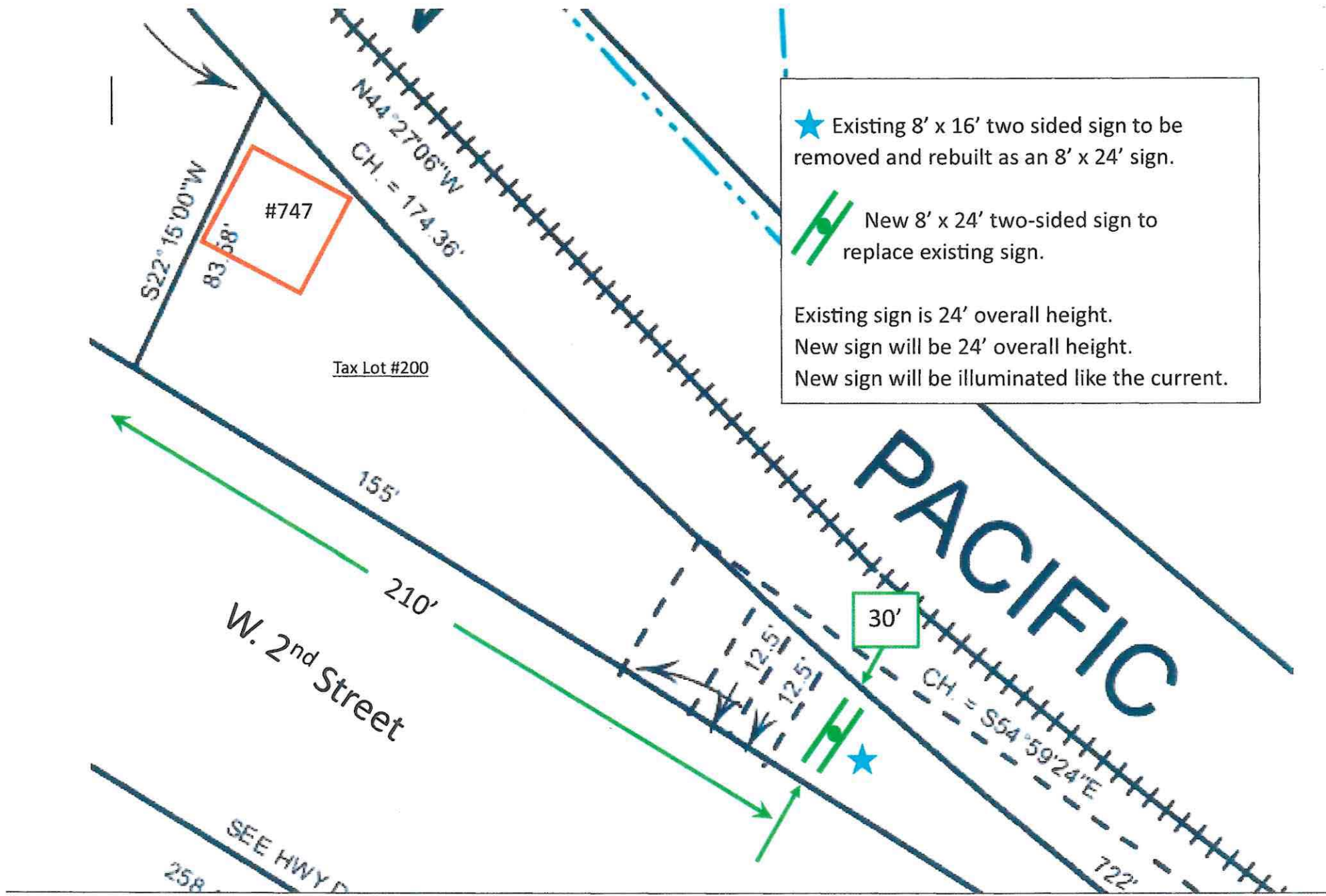
Sign complies with zone requirement and setbacks from other off premises advertising signs. Nearest sign is approximately 520 ft.

## 8' x 24' Back-to-Back Billboard Elevation Sketch



Proposed Rebuilt Sign to Replace Existing 8' x 16' Sign @ 747 W. 2<sup>nd</sup> Street, The Dalles





Plot Plan for New 8' x 24' Billboard Sign to Replace Existing 8' x 16'

Located at 747 W. 2<sup>nd</sup> Street, The Dalles, Oregon – 01N13E04AA TL#200



OUTDOOR ADVERTISING P.O. Box 331 • The Dalles, Oregon 97058 • 541-296-9684

# AGREEMENT OF LEASE

Lease # 98017

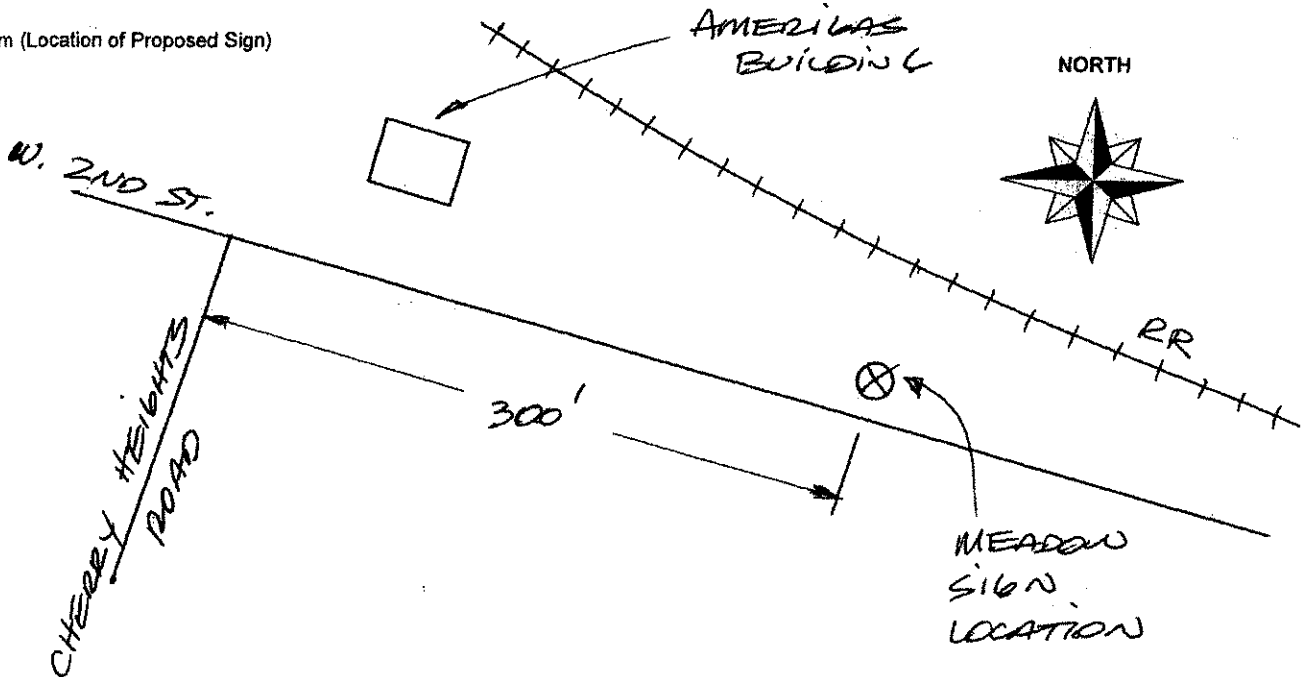
This agreement is made this 6TH day of AUGUST, 2003 by and between AMERIGAS PROpane, LP hereinafter called "LESSOR" and Meadow Outdoor Advertising hereinafter called "LESSEE".

In consideration of \_\_\_\_\_ dollars per year, payable in advance annually beginning upon the date the sign structure is completed, Lessor hereby leases to Lessee a portion of Lessor's real property and thereupon grants exclusive permission to Lessee to erect and maintain an outdoor advertising sign structure on the leased property located at and described as:

TOWNSHIP 1 N., RANGE 13 E. W.M., SECTION 4 NE 1/4 NE 1/4,  
TAX LOT 200 IN THE CITY OF THE DALLES, COUNTY OF WASCOW, STATE  
OF OREGON; W. SECOND ST. NORTHLINE 300' EAST OF  
CHERRY HEIGHTS ROAD

Lessor further grants to Lessee the unrestricted right to travel across Lessor's property for free access to sign structure and use of the real property described herein as Lessee requires to construct, maintain, post, paint, illuminate, repair and otherwise deal with Lessee sign structure including the placement and maintenance of support structures, service ladders, illumination facilities, devices, power poles, power lines and connections.

Diagram (Location of Proposed Sign)



The term of this lease is \_\_\_\_\_ years commencing on the date of this agreement. All advertising signboards and structures placed on the leased property under this lease shall remain the property of the Lessee. The Lessor represents that he is the owner of the above-described real property and has the authority to grant the leasehold estate and to execute this lease for the term thereof. The word Lessor as used herein shall include all joint owners of the real property. This lease is binding upon and inures to the benefit of the heirs, executors, successors, and assigns of the Lessee and the Lessor.

The provisions on the reverse side of this agreement are incorporated into and made a part of this agreement by reference.

ACCEPTED BY MEADOW OUTDOOR

By [Signature]  
 Date 8-13-2003

ACCEPTED BY LESSOR

By [Signature]  
 Print Name JIM STEIN

Address 747 W. 2ND STREET

City, State, Zip THE DALLES OR 97058

Tax ID/SS# 23-2787917

## Aaron Noteboom

---

**Subject:** FW: Approved Sign Permit, SP 2589-23

**From:** Joshua Chandler <[jchandler@ci.the-dalles.or.us](mailto:jchandler@ci.the-dalles.or.us)>  
**Sent:** Thursday, March 9, 2023 3:37 PM  
**To:** John Lehman <[jlehman@meadowoutdoor.com](mailto:jlehman@meadowoutdoor.com)>  
**Cc:** Paula Webb <[pwebb@ci.the-dalles.or.us](mailto:pwebb@ci.the-dalles.or.us)>  
**Subject:** RE: Approved Sign Permit, SP 2589-23

Good afternoon John,

The denied permit and associated email serve as the formal denial to the sign permit. Sign permits are processed as ministerial applications and follow a different process than land use applications; therefore, a "Notice of Decision" is not provided.

Please find the Notice to Appeal form included with this email. The fee to appeal is \$500. Pursuant to Section [10.13.070.060](#), the Planning Commission shall conduct hearings for sign permit appeals and variances in the same manner and shall apply the same standards as used for variance hearings. The review criteria for variances can be found [here](#). When submitting the Notice of Appeal, you'll also want to provide a narrative that specifically addresses each of these criterion (A-F).

Material submission and payment may be coordinated with our Planning Secretary Paula Webb. She can be reached at 541-296-5481, x1125 or [pwebb@ci.the-dalles.or.us](mailto:pwebb@ci.the-dalles.or.us). The next available Planning Commission meeting will be held on April 20 and requires all material to be submitted no later than March 29.

Please let us know if you have any questions.

Thanks.

**Joshua Chandler** (he/him/él)  
Community Development Director  
*City of The Dalles*  
541-296-5481 x1121

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**From:** John Lehman <[jlehman@meadowoutdoor.com](mailto:jlehman@meadowoutdoor.com)>  
**Sent:** Thursday, March 09, 2023 2:18 PM  
**To:** Joshua Chandler <[jchandler@ci.the-dalles.or.us](mailto:jchandler@ci.the-dalles.or.us)>  
**Subject:** RE: Approved Sign Permit, SP 2589-23

WARNING: Email from external source. Links and attachments could pose security risks. Investigate sender and think before you click.

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Josh,

Is this the formal denial of our sign permit application or were you going to send me something else? I have not seen anything in the mail or in my e-mails.

Either way, Meadow would like to appeal your denial of this sign permit application. We strongly disagree with your interpretation of this portion of the sign code. We would like to get on the schedule for the next planning committee meeting for this appeal.

Please let me know.

Thanks you,

John Lehman  
Lease Manager  
Meadow Outdoor Advertising  
*Growing the best little billboard company in the world.*

Desk: 541.296.9684  
Cell: 541.993.0045  
[www.meadowoutdoor.com](http://www.meadowoutdoor.com)  
Follow us [Instagram](#)



**From:** Joshua Chandler <[jchandler@ci.the-dalles.or.us](mailto:jchandler@ci.the-dalles.or.us)>  
**Sent:** Monday, February 27, 2023 3:35 PM  
**To:** John Lehman <[jlehman@meadowoutdoor.com](mailto:jlehman@meadowoutdoor.com)>  
**Subject:** RE: Approved Sign Permit, SP 2589-23

Good afternoon John,

Thank you bringing this to my attention. It appears this permit was approved erroneously and I've discussed this error with the appropriate planner.

All new signs, even replacement signs, must meet be reviewed to determine compliance with Chapter 10.13. Staff determined more than 8 signs currently exist within 1 mile of this location; therefore, this sign does not comply with code and is unable to be approved as presented.

We apologize for any confusion this may have caused. A full refund for this permit will be issued shortly.

Please feel free to reach out with any questions.



**Joshua Chandler** (he/him/él)  
Community Development Director  
City of The Dalles  
541-296-5481 x1121

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**From:** John Lehman <[jlehman@meadowoutdoor.com](mailto:jlehman@meadowoutdoor.com)>  
**Sent:** Monday, February 27, 2023 1:22 PM  
**To:** Joshua Chandler <[jchandler@ci.the-dalles.or.us](mailto:jchandler@ci.the-dalles.or.us)>  
**Subject:** FW: Approved Sign Permit, SP 2589-23

WARNING: Email from external source. Links and attachments could pose security risks.  
Investigate sender and think before you click.

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Josh,

I received this approved application last week to rebuild one of our billboard signs to a larger sign face size. The permit says that the new sign complies with the sign code. According to your interpretation, this sign does not comply with the City of The Dalles sign code. Also, according to your interpretation, the existing sign location would be non-conforming due to more than 8 signs within a mile. Meadow's interpretation, based on past city approvals and documentation, is that there are less than 8 other billboards within a 1 mile stretch of W. 6<sup>th</sup> Street at this location.

Please let me know your thoughts on this permit.

Thanks,

John Lehman  
Lease Manager  
Meadow Outdoor Advertising  
*Growing the best little billboard company in the world.*

Desk: 541.296.9684  
Cell: 541.993.0045  
[www.meadowoutdoor.com](http://www.meadowoutdoor.com)  
Follow us [Instagram](#)



**From:** Paula Webb <[pwebb@ci.the-dalles.or.us](mailto:pwebb@ci.the-dalles.or.us)>  
**Sent:** Friday, February 24, 2023 4:18 PM  
**To:** John Lehman <[jlehman@meadowoutdoor.com](mailto:jlehman@meadowoutdoor.com)>  
**Subject:** Approved Sign Permit, SP 2589-23

Hi John,

Your approved sign permit is attached. Please check in with Building Codes in case you need a permit.

Best,

*Paula Webb*  
Secretary  
Community Development Department  
City of The Dalles  
313 Court Street  
The Dalles, Oregon 97058  
Office: 541-296-5481 x1125

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June 1, 2023

Community Development Department  
ATTN: Planning Commission  
313 Court St  
The Dalles, OR 97058

**Re: Appeal of Sign Permit Denial | Appellants Written Statement of Support**

Dear Planning Commission:

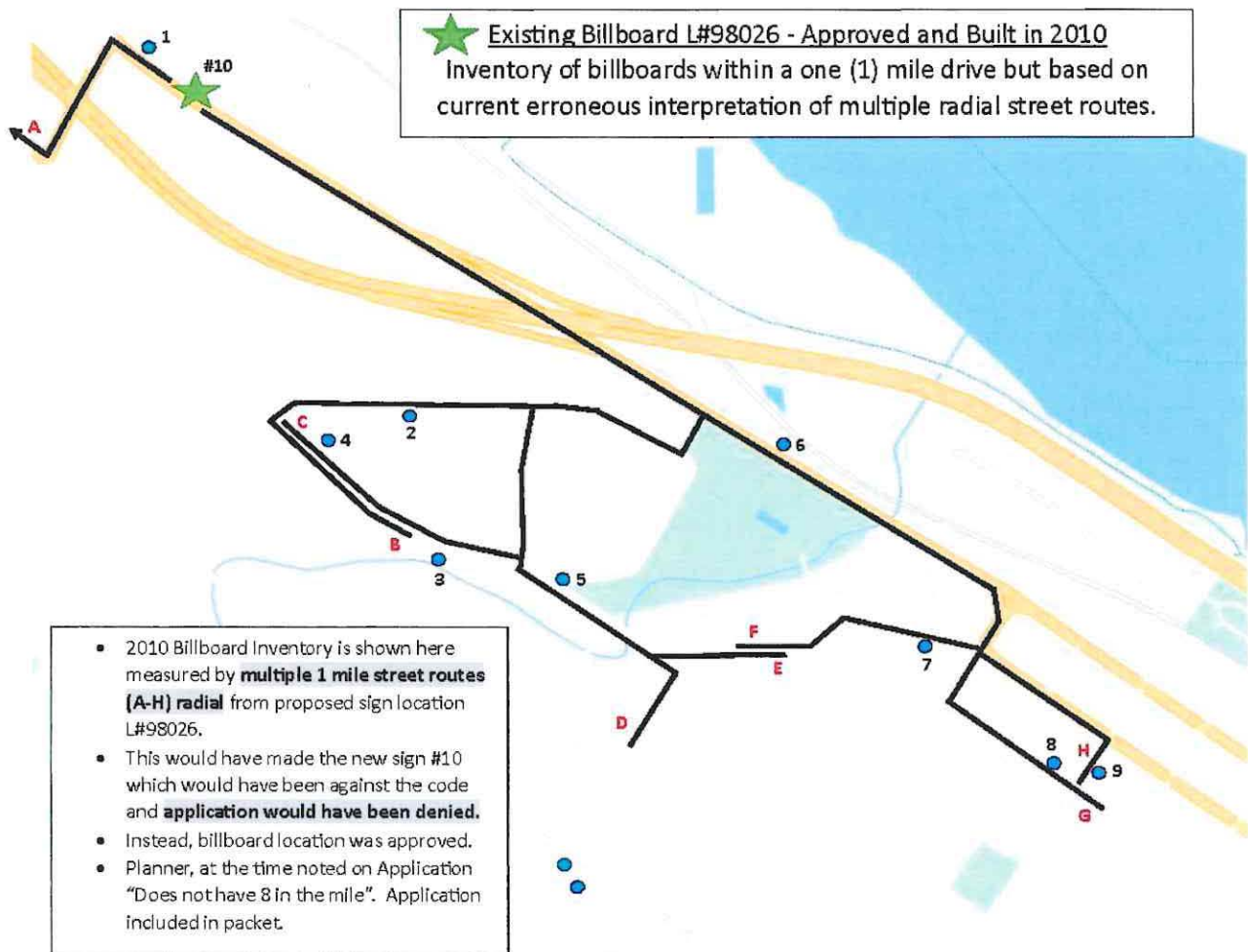
I represent JR Zukin Corp d/b/a/ Meadow Outdoor Advertising ("Meadow"). Please accept this letter as Meadow's written statement in support of its appeal of the Planning Director's denial of Meadow's application for a replacement sign within the city of The Dalles. For the reasons that follow, the Planning Commission should reverse the Planning Director's decision and interpretation of The Dalles' sign code.

As you may know, Meadow is an outdoor advertising sign company headquartered in The Dalles and which owns, constructs, maintains and operates over 700 billboards throughout Oregon, Washington, Idaho and California. Within the city of The Dalles, Meadow owns and operates 42 billboards, all of which have been previously permitted by the city under its sign code. Those signs are located upon real property which Meadow either owns or leases.

Meadow recently sought to replace one of its existing monopole signs within the city with a larger monopole sign. Planning staff initially approved the replacement sign application as conforming with the City's spacing requirements under the sign code Section 10.13.050.150(C)(2) (i.e. "outdoor advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street . . ."). Since the enactment of its sign code, the city has interpreted and applied its spacing requirement to apply to not more than 8 signs per mile of the same street on which the sign is located. Sign owners constructed their signs and entered into long term leases or purchased property in reliance upon that long standing interpretation and application. The Planning Director, however, reversed staff's approval and subsequently denied Meadow's application based on his *new* interpretation of the city's code. No previous planning director or staff have ever interpreted or applied the sign code in the manner in which the Planning Director

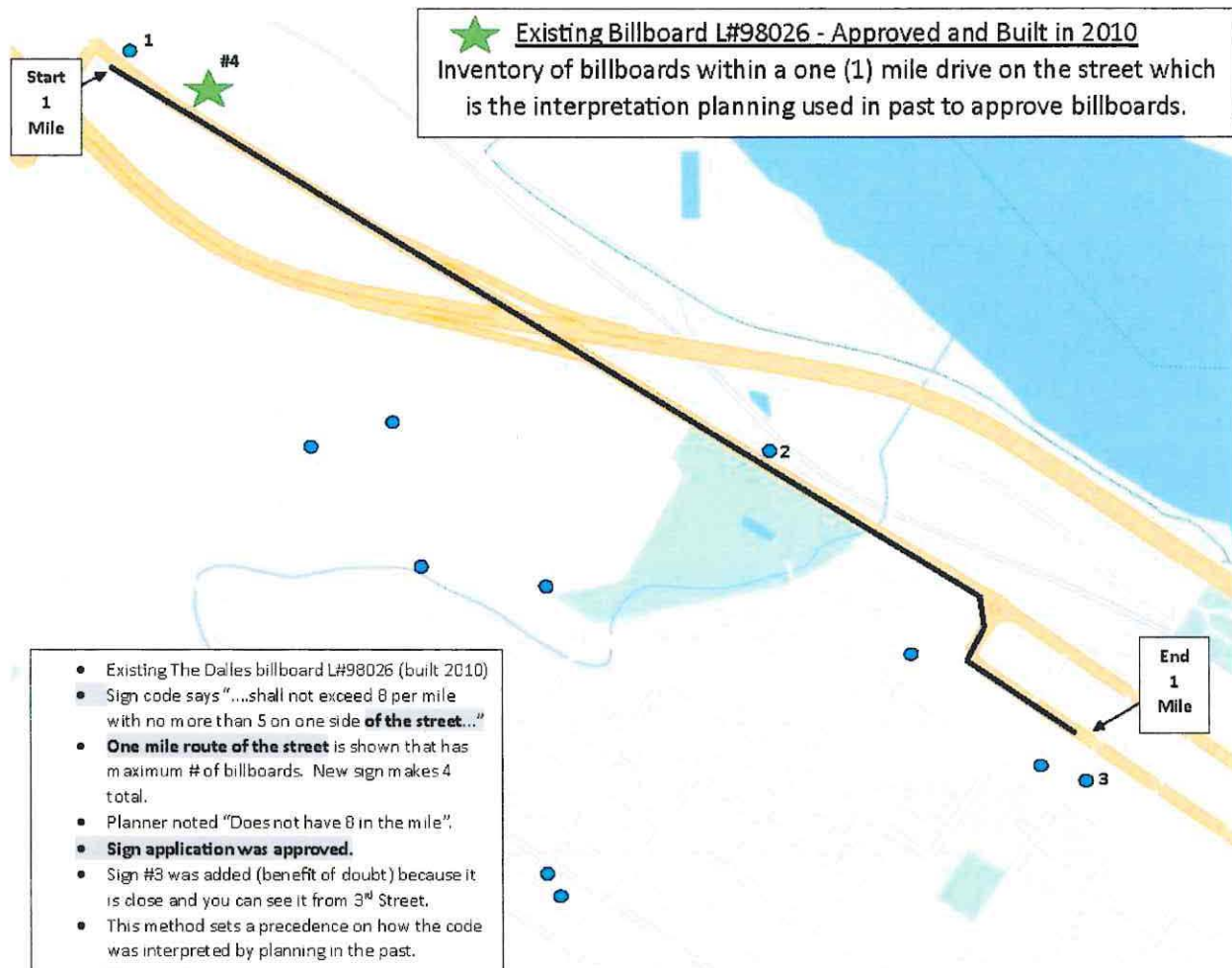
is now proposing. The Planning Director advised Meadow that the City's prior approvals were based upon what the Planning Director views as a "mistake". Under the Planning Director's new interpretation, there cannot be more than 8 signs on all streets within one mile of the subject sign when measured radially. The following diagrams illustrate this new and much more restrictive interpretation as compared to the prior interpretation.

### New Interpretation:



Radial Interpretation – Incorrect, sign would have been denied



**Old Interpretation:****Actual Interpretation – Correct, sign application was approved; sign was built**

The Planning Director will no doubt take the position that under his newfound interpretation, the majority, if not entirety, of Meadow's (and other sign owners) signs within the city should be considered legal but non-conforming signs. The effect of such a change would be monumental. As a result, no existing sign, which violates the spacing requirement as interpreted by the Planning Director, could be structurally altered, relocated or replaced. See 10.13.070.010(C). Any structure alteration, relocation or replacement would make the sign "non-conforming" and subject to removal and an enforcement action under the code.

Moreover, the City's interpretation makes property that is currently eligible to erect a sign ineligible stripping the property owner of its common law right to use and develop its property to include leasing it for the erection of a sign. The Planning Director's interpretation abrogates a portion of Meadow's and all property owners' with the City common law rights of ownership including the right to keep and maintain billboards on their property or leasehold estate and the

right to exercise their leasehold interest free of contractual interference by the government. No compensation has been paid to Meadow or any other owner for this taking. See *Bergford v. Clack. Co. Trans. Serv.* 15 Or App 362, 367 (1973) ("To summarily prohibit a lawfully established use of land "would constitute a taking without compensation.")

**a. The Planning Director's Interpretation Is Inconsistent with Law.**

When determining whether a city's interpretation of its code is correct, Oregon courts apply the analytical framework set out in *Portland General Electric v. Bureau of Labor and Industries*, 317 Or 606 (1993) as modified by *State v. Gaines*, 346 Or 160 (2009). The purpose of the analysis is to determine the legislature's intent behind the provision at issue. Under that framework, the courts consider the text in context, then any legislative history and finally, if the intent remains unclear, applies general maxims of construction.

The Planning Director's interpretation is inconsistent with the text and context of the code. The plain text of Section 10.13.050.150(C)(2) provides:

"2. City Streets. The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented. Sign area shall not exceed 288 square feet, with maximum dimension of 12 feet vertical and 24 feet horizontal."

The plain language references a singular street - "the Street." It does not mention multiple and connecting streets as the Planning Director interprets. The context also supports that the measurement is along a single street. To wit, the phrase "with no more than 5 on one side of the street" is not a standalone requirement to be applied to each connecting street but rather qualifies the phrase "8 per mile." In other words, of the 8 signs within one mile of each other, no more than 5 of those can be on the same side of the street. Likewise, the phrase "no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented" also qualifies the phrase "8 per mile." In other words, of the 8 signs within one mile of each other, they cannot be closer than 300 feet as measured on the street to which the sign is oriented. The Planning Director's interpretation ignores this important context.

The Planning Director's interpretation is also counter to the legislative history behind the Sign Code's "8 per mile" limitation. The limitation was originally adopted in 1992. Planning staff had originally proposed a limitation similar to what the Planning Director now seeks to impose through his interpretation - no more than 8 signs per "square" mile. Meadow objected to that limitation at the time and suggested alternate language that there be no more than 8 signs per "road mile". The Planning Commission and City Council agreed with Meadow and adopted the language found in the current code. See attached Exhibit D. Meadow has spoken with both Dan Durow, the former Community Development Director and Jim Foster, who represented Meadow at the time and both confirmed that the adopted code imposed a linear single road mile requirement and not the radial multi-road requirement the Planning Directors seeks to impose.

Both parties are willing to testify to the same. That fact that the codes imposes a linear requirement is evident by the number and location of signs throughout The Dalles. If the Planning Director's interpretation were correct, then there would be no more than 7 or 8 total signs in all of The Dalles. In sum, the Planning Director's current interpretation was rejected by the city thirty years ago when it adopted the Sign Code. The legislative history and City's application of the Code runs directly counter to the Planning Director's proposed interpretation.

The Planning Director's interpretation also runs counter to well-established law. Ownership of the sign structure and the permit is personal property. The right to utilize and construct a sign on real property (or lease to a third party to do the same) is an inherent common law right in real property.<sup>1</sup> The Oregon Supreme Court held over a century ago in *Morton v. Wessinger*, 58 Or. 80, 85 (1911) that laws in encroaching on a party's property rights are to be strictly construed against the government and in favor of the property owner presuming that a statute is not intended to interfere with or prejudice a private right or title.

All statutes which encroach on the personal or property rights of the individual, are to be construed strictly, and in the absence of express words or necessary intendment or implication, it will be presumed that a statute is not intended to interfere with or prejudice a private right or title. 26 A. & E. Ency. 661.

Lastly, when interpreting statutory language, the Courts look to maxim's of construction to resolve any remaining doubt. *State v. Gaines*, 346 Or 160 (2009). ORS 174.030 is one such maxim and provides that,

Where a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to prevail.

The Oregon Supreme Court determined in *Bileu v. Paisley*, 18 Or 47, 52 (1889) that property ownership is a "natural right." See also *Kosiolek v. Portland R.L. & P Co.*, 81 Or 517, 522 (1916)("The natural rights of a person at common law are the right of personal security in the legal enjoyment of life, limb, body, health, and reputation, the right of personal liberty, and the right of private property.") Consequently, when choosing between the Planning Director's interpretation and Meadows, the court will choose Meadow's as it favors the natural right of property ownership whereas the Planning Directors interpretation is against it.

**b. The Planning Director's Interpretation is an Impermissible Collateral Attack on a Previously Approved, Constitutionally Protected Land Use Permit.**

The Planning Director advised Meadow that its prior sign approvals (including the sign at issue) were approved by "mistake." What the Planning Director fails to appreciate is that even if incorrectly approved, they were nevertheless approved and the city failed to timely challenge its

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<sup>1</sup> It should be noted that billboards have existed across the US since as early as 1830. They were not regulated nationally until the passage of the Lady Bird Johnson Highway Beautification Act in 1965 and were not regulated across Oregon until the passage of the Oregon Motorist Information Act in 1971.

own decision. As such, the prior approvals stand as final land use decisions and validly issued, constitutionally protected permits which cannot be subsequently collaterally attacked by the city by denying Meadow's application to reconstruct the sign. *Gansen v. Lane County*, 2021 WL 1964624, at \* 5 ("the county's attempt to correct what the county has essentially concluded was a mistake in the 2002 Building Permit is nothing short of a collateral attack on the correctness of that decision.")

The Oregon District Court's decision in *Holman v. City of Warrenton*, 242 FSupp2d 792 (2002) is on point and instructive. In *Holman*, a property owner sought and obtained a conditional use permit to construct a mini storage facility in downtown Warrenton. The application was approved by the planning commission. The approval was not appealed within the time allotted for appeal and the decision became final. Thereafter, the owner applied for a building permit to construct the facility in accordance with the CUP approval. That request was routed to the City engineer. The City engineer became concerned the CUP did not comply with the City's general ordinance regarding safe streets and instructed the city planner not to approve the building permit request. The planner refused to "sign off" on the permit request and instead directed the owner, at the advice of the City attorney, that they would need to seek a variance.

The owner filed a mandamus action in Circuit Court seeking to compel the City to issue the building permit in accordance with the approved CUP. The court granted the mandamus and ordered the city to issue the building permits holding that the Planning Commission determined that the CUP met all zoning and land use requirements when it approved the application and that decision was binding on the City after the period for appeals passed without objection. The owner then sued the City, including the City engineer and planner, in federal court alleging a deprivation of due process and a temporary taking in the delay of the building permit. The district Court found for the owner on its due process claim, while denying the defendants' claim of qualified immunity, and on summary judgment, awarded over \$30,000 in compensatory damages to the owner against the City engineer and planner individually.

Defendants argued, unsuccessfully, that the owner "did not have an absolute right to the issuance of the building permits because the [owner's] project did not meet the City's planning and zoning code requirements with respect to off-street parking" arguing that the code allowed them to "reexamine" their prior decision for conformance with the code. The District Court rejected that argument agreeing with the Circuit Court's holding that the City could not reexamine the decision after the time for appeal had passed and that the City was precluded from collaterally attacking the approval in a later proceeding citing *Doney v. Clatsop County*, 142 Or App 497, 503 (1996)(a party who had the opportunity to participate in a land use decision may not collaterally attack that final decision in a later proceeding.)

The District Court found that the property owner "as a matter of law" had a constitutionally protected property interest to develop his property in a manner consistent with the CUP and in the issuance of a building permit consistent with that CUP. Defendants further argued that they did not deny the building permit but merely delayed the issuance of the permit. The District Court rejected that argument citing to the Ninth Circuit's holding in *Perkins v. City of West Covina*, 113 F3d 1004, 1010 (9th Cir 1997) that even "a temporary, nonfinal deprivation of



property is nonetheless a 'deprivation' in the terms of the Fourteenth Amendment."

The situation here is indistinguishable from *Holman*. Meadow previously obtained an approval from the city of its land use application for an outdoor advertising sign permit. After the time had passed for the city (or any other party) to challenge that decision, it became final and binding on the city; it became a constitutionally protected property interest. The city cannot subsequently collaterally attack its prior decision by denying Meadow's current application to reconstruct the sign. The sign is lawful and Meadow has all rights to do with its sign as any other permitted sign owner has including the right to relocate, alter or reconstruct.

**c. The Planning Director's Interpretation is a Policy Decision that Should be Made through Legislative Enactment Done in Conformance with Law.**

Meadow has signs located in municipalities throughout Oregon. Each of those municipalities has a spacing requirement. None of them have interpreted their spacing requirement to apply in the way the Planning Director proposes. All of them apply it along a single street on which the sign is located. The Planning Director's interpretation stands as an outlier and inflicts substantial harm on the sign and property owners upon which the signs are located. Moreover, it is an abrupt 180 degree turn from how the city has interpreted and applied its code since its inception. Attached hereto as Exhibit E is a letter from John Lehman to the Planning Director setting out in detail how the City has previously approved Meadow's billboards using the prior interpretation. Now, without any direction from the Planning Commission or City Council to do so, the Planning Director has taken an about face and adopted an interpretation that casts a cloud over the legal status of virtually all signs within the city. That purported sea change in the law should not be undertaken by a single, unelected staff member who is unaccountable to the public. That type of policy change should only be undertaken as a legislative change enacted by the elected officials of the local government made in conformance with applicable law.

For the reasons stated above, the Planning Commission should reject the Planning Director's new but erroneous interpretation and reverse the Planning Director's denial of the permit application. Meadow reserves all rights, remedies, claims, privileges and defenses it may have including the right to bring suit under 42 USC 1983 seeking damages and nothing herein is or should be construed as a waiver of such.

Sincerely,

**NOTEBOOM LAW LLC**



Aaron J. Noteboom

**MEADOW OUTDOOR ADVERTISING**



John Lehman

Cc: Client

SEP 6 1992

# LEWIS, FOSTER & PEACHEY

ATTORNEYS-AT-LAW  
508 WASHINGTON STREET  
THE DALLES, OREGON 97058  
TELEPHONE (503) 296-5474  
FAX NO. (503) 296-5570

JOHN T. LEWIS  
JAMES R. FOSTER

THOMAS C. PEACHEY  
KATHERINE YOUNG

February 4, 1992

The Dalles Planning Commission  
City Hall  
313 Court Street  
The Dalles, OR 97058

Re: Revised Sign Code  
Our file #91-1041

Dear Commissioners:

Since I have to be out of the City at the time of this meeting, I would request that you take the following into consideration in your deliberations on the proposed sign code revisions.

As you are aware, I represent Meadow Outdoor Advertising, Inc., and thus will deal only with those matters affecting billboards.

The Planning staff's proposed revisions in Section 5.180 make fairly dramatic changes in the existing code. At your last meeting you requested that I meet with Scott to see if we could come up with a common proposal. At that time, the staff was concerned about over-sized signs in the areas outside the highway zone. The existing code allowed 648 square foot signs to be placed every 500 feet in those areas. I proposed a reduction in the sign size to 288 square feet and a reduction in the distance between those signs to 300 feet. Given the substantial reduction in size, we felt it was appropriate to allow the signs to be somewhat closer together. The 300 foot requirement is identical to state law requirements. I am not persuaded that in non-highway zone areas, the City needs to be more restrictive than the state.

The second and final concern I have is the new sentence added at the end of the first paragraph of Section 5.180. The inclusion of that language would dramatically reduce the number of signs currently in use by my client. It creates a limitation based on one square mile rather than one

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The Dalles Planning Commission  
February 4, 1992  
Page Two

road mile. I believe the historical, as well as the current intent of the City is to limit billboards on a road mile basis. We believe this is appropriate both aesthetically and from a business standpoint, however, the square mile proposal severely curbs my client's ability to maintain signage on one street that is not visible as well as separate and distinct from another street or highway.

I enclose a proposed revision of Section 5.180 that I would ask you to adopt in lieu of the staff proposal. It removes the square mile sentence and allows 300 foot intervals on the small signs outside the highway zone. I believe it is a fair and equitable resolution of this matter and allows my client to continue to serve this area while at the same time reducing the potential impact of larger signs in areas where they should not be.

John Lehman, manager of Meadow, and my associate, Katy Young, will be happy to answer any questions that you might have.

Very truly yours,

**COPY**

James R. Foster

JRF:kt

cc: Meadow Outdoor Advertising ✓

PROPOSED REPLACEMENT OF SIGN CODE SECTION 5.180

5.180 Off-Premise Advertising Signs (Billboards). Advertising signs shall be located only in General Commercial and Industrial Zones, as designated by the City Zoning Ordinance. The maximum number of advertising signs shall not exceed 8 per road mile with no more than 5 on one side of the street and no closer than 500 feet apart on primary or secondary highways or closer than 300 feet on non-primary or non-secondary highways when measured at right angles to the street or highway centerline to which the sign is oriented.

- (1) No sign oriented to a primary or secondary highway shall be more than 14 feet high nor more than 48 feet long. Non-primary or secondary highway signs shall not exceed 12 feet in height and 24 feet in width. Sign area shall not be greater than 672 or 288 square feet, respectively, with a maximum height above grade of 24 feet. The height limitation shall be increased to 40 feet in the Highway District.
- (2) In measuring to determine sizes within the requirements of this section, border and trim shall be included; but foundations, supports and stringers shall not be included.
- (3) Outdoor advertising signs shall have metal primary structural members.

500 ft, Always has been

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Ordinance No. 92- 1153  
THE DALLES AREA SIGN ORDINANCE

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- 6.010 MAINTENANCE AND APPEARANCE
- 6.020 DESIGN AND CONSTRUCTION
- 6.030 CLEARANCE AND SAFEGUARDS



Underwriters Laboratories, Inc. seal of approval. All electrical signs shall be installed in accordance with the National Electric Safety Code as regards distances from electrical line. Electrical equipment used in connection with display signs shall be installed in accordance with the City ordinances regulating electrical installations.

5.170 Animated Signs: Except for message signs of the type giving time and temperature information, or signs rotating at a speed not to exceed 7 rpm's, no sign which has any mechanical moving, revolving, rotating, or animated parts are allowed.

5.180 Off-Premise Advertising Signs. Advertising signs shall be located only in General Commercial and Industrial Zones, as designated by the City Zoning Ordinance.

(1) The maximum height above grade shall be 24 feet, but shall be increased to 40 feet in the Highway District.

(2) Outdoor advertising signs shall have metal primary structural members.

(3) Size

A. Primary and Secondary Highways. The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 500 feet apart when measured at right angles to the street or highway centerline to which the sign is oriented. Sign area shall not exceed 672 square feet, with maximum dimensions of 14 feet vertical and 48 feet horizontal.

B. City Streets. The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented. Sign area shall not exceed 288 square feet, with maximum dimensions of 12 feet vertical and 24 feet horizontal.

## CHAPTER VI: MAINTENANCE, CONSTRUCTION, AND SAFEGUARDS

### 6.010 MAINTENANCE AND APPEARANCE

### 6.020 DESIGN AND CONSTRUCTION

### 6.030 CLEARANCE AND SAFEGUARDS

6.010 MAINTENANCE AND APPEARANCE. All signs and the site on which they are located shall be maintained in a neat, clean, and attractive condition.

SIGN ORDINANCE REVISIONS  
AUGUST, 1992

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## CITY of THE DALLES

313 COURT STREET  
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125  
PLANNING DEPARTMENT

### RESOLUTION NO. PC 618A-23

Denial of **Appeal Application 033-23, J.R. Zukin Corp. d/b/a Meadow Outdoor Advertising** and affirming the Community Development Director's denial of Sign Permit 2589-23, requesting to replace an existing off-premises advertising sign (i.e., a billboard) located adjacent to a city street with a new billboard. Property is located at 747 East 2<sup>nd</sup> Street, in The Dalles, Oregon, as depicted in Assessor's Map No. 1N 13E 4 AA as Tax Lot 200. Property is zoned "CG" – General Commercial.

#### I. RECITALS:

- A. On September 7, 2023, the Planning Commission of the City of The Dalles conducted a public hearing to consider the above appeal. A staff report was presented and stated findings of fact, conclusions of law, and a staff recommendation. Testimony and other evidence was submitted and entered into the hearing record.
- B. The staff report and its attachments, the evidence presented at the public hearing, and all other components of the hearing record provide the basis for the Planning Commission's decision and this Resolution and are incorporated herein by reference.

#### II. RESOLUTION:

Now, therefore, be it FOUND, DETERMINED, and RESOLVED by the Planning Commission of the City of The Dalles as follows:

- A. In all respects, as set forth in Recitals, Part "I" of this Resolution:  
Appeal 033-23 is hereby **denied**.

#### III. APPEALS AND CERTIFICATION:

- A. Any party of record may appeal a decision of the Planning Commission to the City Council for review. Appeals to the Planning Commission's final decisions on quasi-judicial planning actions must be made according to Section 3.020.080 of the Land Use and Development Ordinance.
- B. The Secretary of the Commission shall (a) certify to the adoption of this Resolution and (b) transmit a copy of this Resolution with the notice of appeal decision to all parties participating in the appeal.

APPROVED AND ADOPTED THIS 7<sup>th</sup> DAY OF SEPTEMBER, 2023.

\_\_\_\_\_  
Cody Cornett, Chair  
Planning Commission

I, Joshua Chandler, 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 the 7<sup>th</sup> day of September, 2023.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Joshua Chandler  
Community Development Director, City of The Dalles  
Planning Commission Secretary





## CITY of THE DALLES

313 COURT STREET  
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125  
PLANNING DEPARTMENT

### RESOLUTION NO. PC 618A-23

Approval of Appeal Application 033-23, J.R. Zukin Corp. d/b/a Meadow Outdoor Advertising and reversing the Community Development Director's denial of Sign Permit 2589-23, requesting to replace an existing off-premises advertising sign (i.e., a billboard) located adjacent to a city street with a new billboard. Property is located at 747 East 2<sup>nd</sup> Street, in The Dalles, Oregon, as depicted in Assessor's Map No. 1N 13E 4 AA as Tax Lot 200. Property is zoned "CG" – General Commercial.

#### I. RECITALS:

- A. On September 7, 2023, the Planning Commission of the City of The Dalles conducted a public hearing to consider the above appeal. A staff report was presented and stated findings of fact, conclusions of law, and a staff recommendation. Testimony and other evidence was submitted and entered into the hearing record.
- B. During that hearing, the Planning Commission challenged staff's recommendation to deny Appeal Application 033-23 and to affirm the Community Development Director's denial of Sign Permit 2589-23, citing inconsistencies with staff's findings of unmet criterion; specifically, the Planning Commission identified the following criteria to validate its determination:
  1. **Section 10.13.050.150(B):** *Text to be inserted following Planning Commission deliberations.*
  2. **Section 10.13.050.150(C):** *Text to be inserted following Planning Commission deliberations.*
- C. The staff report and its attachments, the evidence presented at the public hearing, and all other components of the hearing record provide the basis for the Planning Commission's decision and this Resolution and are incorporated herein by reference.

#### II. RESOLUTION:

Now, therefore, be it FOUND, DETERMINED, and RESOLVED by the Planning Commission of the City of The Dalles as follows:

- A. In all respects, as set forth in Recitals, Part "I" of this Resolution:  
Appeal 033-23 is hereby approved.

#### III. APPEALS AND CERTIFICATION:

- A. Any party of record may appeal a decision of the Planning Commission to the City Council for review. Appeals to the Planning Commission's final decisions on quasi-judicial planning actions must be made according to Section 3.020.080 of the Land Use and Development Ordinance.
- B. The Secretary of the Commission shall (a) certify to the adoption of this Resolution and (b) transmit a copy of this Resolution with the notice of appeal decision to all parties participating in the appeal.

APPROVED AND ADOPTED THIS 7<sup>th</sup> DAY OF SEPTEMBER, 2023.

---

Cody Cornett, Chair  
Planning Commission

I, Joshua Chandler, 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 the 7<sup>th</sup> day of September, 2023.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Joshua Chandler  
Community Development Director, City of The Dalles  
Planning Commission Secretary