

Hannah Elliott

From: Lisa Andrach <lisa@fitchandneary.com>
Sent: Wednesday, September 8, 2021 9:33 AM
To: Hannah Elliott; Katie McDonald
Cc: Brent Bybee; Will VanVactor
Subject: Bartels - 2nd Supplemental BOP
Attachments: 2nd Supplemental BOP with Exhibits.pdf

CROOK COUNTY
SEP 08 2021
PLANNING DEPT

Sorry for the late submittal of this as I just received the documents that are included.

Since the Site Plan scanned light, I will have extra copies with me at the hearing tomorrow.

Thank you.



Lisa Andrach, Attorney



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VESTED RIGHTS
2nd Supplemental Burden of Proof Statement

ORIGINAL DECISION – CROOK COUNTY FILE NUMBER: C-CU-2229-04

Date: September 7, 2021

OWNER: Richard Bartels

APPLICANT: Same

APPLICANTS ATTORNEY: Fitch & Neary, PC
c/o Lisa Andrach, OSB #040012
210 SW 5th Street, #2
Redmond, OR 97756

PURPOSE: The applicant is requesting vested right approval concerning C-CU-2229-04

CROOK COUNTY
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The applicant submits the following in support of the application for a Vested Right:

1. Budget based upon current cost

Applicant submits the attached “Mini Market Budget” document to demonstrate how the cost to complete the project has substantially increased since the original application was approved. Currently, the total cost is 3 times the original budget. The total expenditures of approximately \$300,000 constitutes a 30% investment toward the current total project cost. Under the common law vested rights jurisprudence, 30% is a considerable ratio towards completion. While the ratio factor is not the only factor, or the predominant factor in the analysis, it does provide an objective quantification of the investment.

2. Site Plan Drawing

Attached is the site plan drawing of the site improvements.

3. Applicant’s Communication with Crook County Community Development Director, Ann Beier, in May 2021

Prior to the expiration of the permit extension, Applicant did apply for an extension, but Ms. Beier informed him that the County Code did not allow for additional extensions. She advised him of various alternatives that might allow him to continue with the development of the property. Mr. Bartels also inquired about what other potential uses the Code might allow for the site.

The applicant never abandoned the idea of completing the minimarket and gas station. Rather, he was asking about what other uses might be allowed on the site. As Ms. Beier pointed out, the uses that he identified would require conditional use approval. Any of the other uses that he was discussing with Ms. Beier would be subject to separate land use approval and budget analysis. The consideration of additional

uses for the subject property does not make the investment by the applicant any less substantial or negate his efforts under the relevant factors of the analysis.

Mr. Bartels has always intended the primary use of the property to be for a minimarket and gas station. His wife currently operates the drive-thru market on-site – albeit on a smaller scale until the bigger building is assembled.

4. When did the applicant acquire a Vested Right? - 2014

Once the applicant did enough toward completion of the project, he acquired a vested right to complete the project. As depicted in the exhibits and aerial photographs in the record, by 2014 applicant had made substantial changes to the site and had invested a substantial sum towards development. The ledger demonstrates that a majority of the improvements and a substantial sum of the expenses were incurred by the end of 2014. Since that time, applicant has continued to operate the smaller scale minimart that was established on-site. He has also continued to work on various other required improvements each year.

In 2014, Central Oregon was still suffering from the economic effects of the recession. The total project cost at that time would have been substantially less. Based upon the analysis, by the end of 2014, the applicant had arguably acquired a vested right.

Once a vested right is acquired, that right cannot be revoked without just compensation. The basis for the common law right is to determine whether revocation would amount to a taking of an acquired property right that gives rise to just compensation under Constitutional law principles. The right is a property right that cannot be revoked without just compensation. Here, the applicant arguably acquired the vested right by at least the end of 2014.

Thank you for your consideration of this matter.

FITCH & NEARY PC

Lisa Andrach

LISA ANDRACH, OSB #040012

Of Attorneys for Applicant

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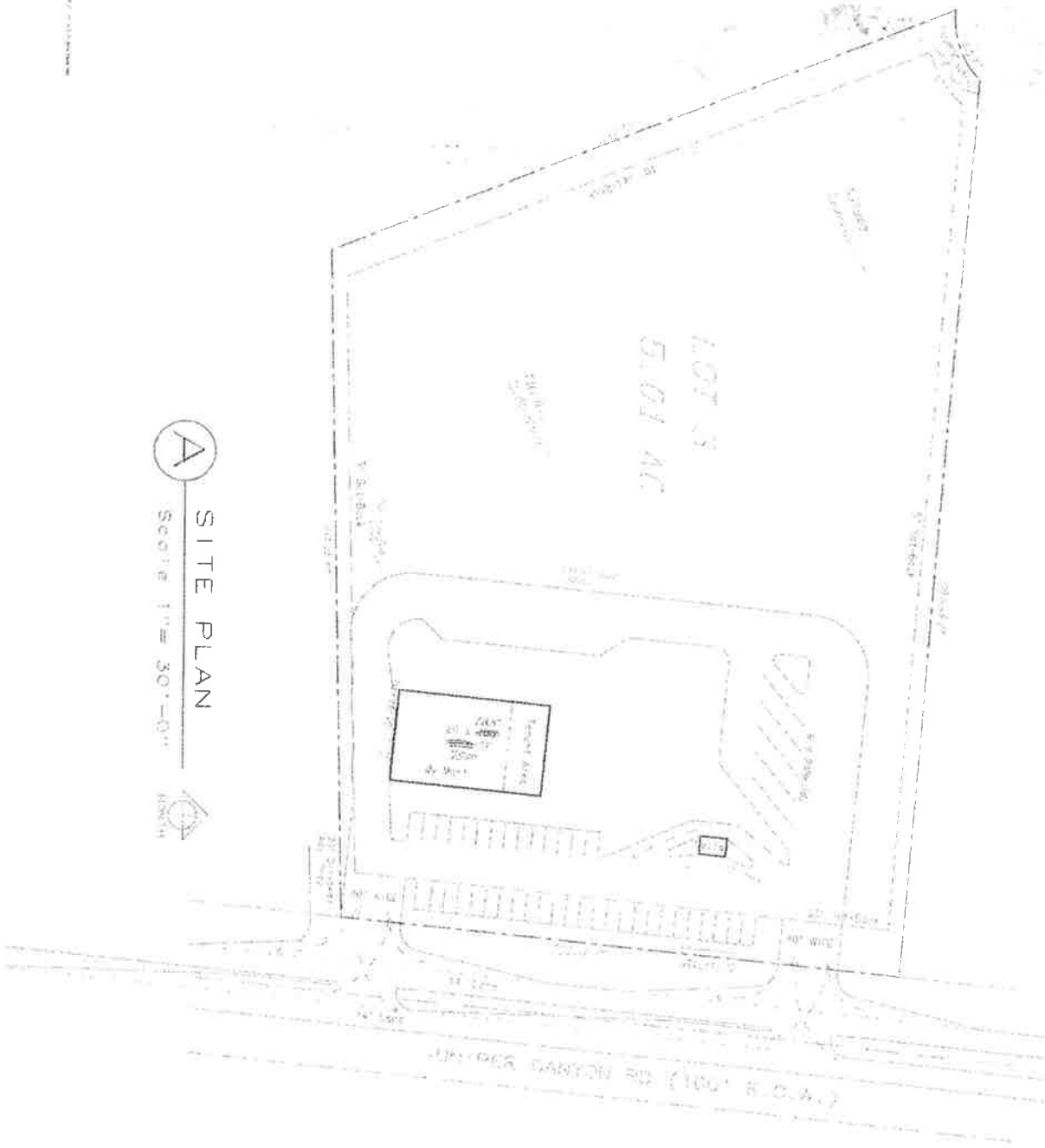
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MINI-MART Budget

Building Concrete Pad 6"-5 Sack	7500 SF @ 7 ⁵⁰	576250.00
Building Erection	EST	86000.00
METAL ROOF 8000 SF	Ends & Metal Sides 5740 SF = 13140 SF @ 2 ⁶⁰	34164.00
INSTALL METAL ROOF & SIDING	EST	18000.00
INSULATION - ROOF 15" R-38	8000 SF @ 1.26	10,080.00
Ends & Sides 6" R-19	5740 SF @ .86	4480.96
INSTALL INSULATION	EST	12000.00
HVAC 2 ex in slope @ 2000.00	5ea OFFICE STORAGE @ 4500 ⁰⁰	38500.00
Electric - Plan Drawing for permit (General Electric)		8500.00
Wiring & install Electric for Plan (General Electric)		185,000.00
Central Electric - INSTALL 110V to main panel		25,000.00
General Siding 1/2" 2500 SF @ 5.00 (140) SF	4593 SF @ 3.50	16415.00
INSTALL Siding	EST	3000.00
Windows 25 ea @ 400.00	INSTALL 300 ea 120.00 X 50	14000.00
DROPS INSULATION 3ea @ 2000.00	5ea @ 1000.00 5ea @ 500.00	12300.00
Cold Cases Tins 19 ea @ 3200.00		60800.00
Misc INTERIOR HARDWARE - shelving	HOT OFFICE VARIOUS CASES Equip Equip CATCH BASIN 5EA @ 2000 = 4500.00	40000.00
Storm DRAIN 8" 3034 pipe	600 4/F @ 21.00 = 14490.00	18990.00
CONCRETE CURB 6" REVEAL	1530 4/F @ 8 ⁰⁰	12240.00
A/C IMPROV. CUR RD IMPROVE 1/2" LEVEL 2-4"	10500 SF @ 2.41	25305.00
A/C PARKING 3" " "	70,000 SF @ 1.66	116200.00
Grading FOR A/C		45,000.00
Septic System		30000.00
LAND SCAPE		6500.00
Fuel Site 15 K TANK - Double Wall - 3 compartment	Fire Approved	852581.40
CANOPY - Elec CARD Reader		
CONC TANK PAD - CONC PUMP PAD		160391.10
70% Contingency	101,295.55	1,012,955.50



A

SITE PLAN

Scale 1" = 30'-0"



A-1

Juniper Canyon Convenience Center
 New Market & Convenience Center
 Owner: Richard Barreto
 Site Address: Juniper Canyon Rd
 Prineville, OR, Oregon



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