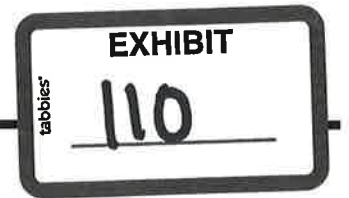


Hannah Elliott



From: Rory Isbell <rory@colw.org>
Sent: Wednesday, May 15, 2024 10:30 AM
To: Katie McDonald; Plan
Subject: Comments on Application File No. 217-24-000020-PLNG
Attachments: COLW_DollarGeneral_PC_5.15.24.pdf

CROOK COUNTY
MAY 15 2024
PLANNING DEPT

Dear Katie and Planning Commissioners,

Please find attached comments from Central Oregon LandWatch on application file no. 217-24-000020-PLNG in advance of this afternoon's public hearing.

Regards,

Rory Isbell

Rory Isbell (he/him)
Staff Attorney & Rural Lands Program Director
Central Oregon LandWatch
2843 NW Lolo Drive, Suite 200
Bend, Oregon 97703
541-647-2930 x804
*On the ceded homelands of the Wasq'u (Wasco)
and Tana'nma (Warm Springs) people*

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May 15, 2024

Filed via email: Katie.McDonald@crookcountyor.gov

Crook County Planning Commission
Attn: Katie McDonald, Senior Planner
300 NE 3rd Street, Room 12
Prineville, Oregon 97754

Re: 217-24-000020-PLNG; Dollar Store Conditional Use Permit in the RRM-5 Zone

Dear Chair Warren, Vice-Chair Williamson, and Commissioners:

Thank you for the opportunity to provide comments on the above-referenced application. Central Oregon LandWatch (“LandWatch”) submits these comments in opposition to this conditional use permit (“CUP”) application.

I. Introduction

This application seeks approval of an application for a CUP to site a dollar store along Juniper Canyon Road in the County’s Residential Recreational Mobile Zone (RRM-5). This application fails to meet several of the applicable criteria: the proposed use is not allowed in the zone, the application does not justify an exception to the County’s approach and intersection spacing standards, and the proposed use is not appropriate or desirable under the County’s conditional use criteria. Our specific concerns follow.

II. The proposed use is not allowed as a “commercial activity directly related to recreation”; CCC 18.40.020(6)

The requested use is a “commercial activity directly related to recreation” which is a conditional use in the RRM5 zone. CCC 18.40.020(6). The county code describes what constitutes a commercial activity directly related to recreation by listing examples:

“Commercial activity directly related to recreation, including but not limited to motel, food and beverage establishment, recreation vehicle gasoline service station, recreation vehicle rental and storage facility and gift or sporting goods store.” (CCC 18.40.020(6))



The county code does not define “recreation” but does define “commercial event or activity”:

“‘Commercial event or activity’ means any meeting, celebratory gathering, wedding, party, or similar use consisting of any assembly of persons and the sale of goods or services. It does not include agritourism. In CCC 18.16.055, a commercial event or activity shall be related to and supportive of agriculture.” (CCC 18.08.030)

In its CUP application form, the application described its request as a “grocery and general goods store for nearby residents:”

“In reference to code section 18.40020, Section 6. Dollar General will act as a grocery and general goods store for nearby residents. It will serve their home needs and provide for their recreational activities. Dollar General's products cater to the community both in rural and populated areas by providing reasonably priced goods for all. To add this store in the area we are proposing will be a wonderful addition for customers to stop by to pick up any necessary items on their way to bike, play sports hike and ski. We kindly request a conditional use permit to allow the Dollar General store.” (Conditional Use Application form dated March 21, 2024)

In its revised CUP narrative statement, the applicant attempts to argue that its dollar store is a “commercial activity directly related to recreation,” but still concedes that the store would act as a general goods store for “nearby residents.” (Revised Conditional Use Narrative Statement at page 3)

As its name implies, Dollar General is a general store, and is not “directly related to recreation.” The applicant’s website proudly describes itself as “America’s neighborhood general store” with “more than 19,000” stores that sell “everyday low prices on items including food, snacks, health and beauty aids, cleaning supplies, basic apparel, housewares, seasonal items, paper products and much more[.]” Exhibit 1 (Applicant website www.dollargeneral.com/about-us).

The proposed general store is not akin to any of the examples of a “commercial activity directly related to recreation” listed in CCC 18.40.020(6). All of those examples (motel, food and beverage establishment, recreation vehicle gasoline service station, recreation vehicle rental and storage facility and gift or sporting goods store) directly serve the specific needs of recreation. In contrast, a general store, by definition, serves the general needs of the general public, and not specifically recreation.



Nothing about the proposed use is “directly related to recreation.” “Directly” is defined as “exactly; precisely.”¹ A general store is not exactly or precisely related to recreation; it is, at best, incidentally related to recreation because some of the many items it may stock could be used as part of a recreational activity, e.g. groceries, napkins, ice, band-aids. Recreation is not the focal activity of a general store. We direct the Planning Commission to LUBA’s analysis of what constitutes a recreational activity in *Central Oregon LandWatch v. Deschutes County*, 72 Or LUBA 61 (2015).² In that case, a county approved an event venue as a “private park,” a use conditionally allowed in the zone. On review at LUBA, LUBA first noted that the term “park” “is intended to mean a tract of land set aside for public recreational use.” *Id.* slip op 7. In answering the question of whether events are “recreation,” LUBA provided an extensive analysis, concluding that any recreational activities associated with the event venue are not the “focal” activity and that the proposed event venue use was not a recreational use:

“Stated simply, the county’s analysis represents the tail wagging the dog. As we understand the proposed use, the public is not coming to intervenor’s property to engage in recreational activities on intervenors’ lawn. The public is coming to the property (and paying for the right) to conduct some focal event (a wedding, wedding reception, family reunion, fundraiser, charitable ball, etc.,) that is the entire reason for being on the property in the first place. The only basis the county cites for concluding that a wedding or other event is “incidental” to the above-listed activities (eating, dancing, lawn games, etc.) is the temporal brevity of ceremonial aspects of the focal event compared to the amount of time spent celebrating the focal event through eating, dancing, etc. However, comparing the amount of time spent on the ceremonial aspects of the focal event versus the amount of time spent on alleged “recreational” activities does not accurately reflect the relationship between the focal event and those activities. Clearly, it is the focal event that is the primary use, and any associated activities (eating, dancing, lawn games, etc.) are, at best, incidental to the focal event. No party argues on appeal that the focal events (weddings, wedding receptions, family reunions, fundraisers, charitable balls, etc.) themselves constitute “recreation” or “recreational activities,” and they do not. Thus, even if some of the incidental activities associated with the focal event (eating, dancing, etc.) could be described as “recreational activities,” such incidental activities cannot convert the proposed primary event venue use into a recreational use that is essential to constitute a “private park” for purposes of ORS 215.283(2)(c).” (*Id.* slip op 8-9)

¹ <https://www.dictionary.com/browse/directly>

² <https://www.oregon.gov/luba/Docs/Opinions/2015/08-15/15034.pdf>



The same analysis and conclusion apply here. Any commercial activity occurring at the proposed general store is not the focal activity; it is merely incidental to the general commercial activity of the proposed general store. The focal commercial activity is to serve the local community with general goods. This is the primary use proposed. That the general store would occasionally also sell items to tourists who might engage in recreation is incidental. Just as in the event venue in *Central Oregon LandWatch*, those “incidental activities cannot convert the primary [] use into a recreational use that is essential to constitute a” commercial activity directly related to recreation. *Central Oregon LandWatch v. Deschutes County*, 72 Or LUBA 61, slip op 9 (2015). The proposed use is not directly related to recreation and is not allowed in the RRM-5 zone.

III. An exception to statewide land use planning Goal 3 must be taken to allow uses not allowed by Goal 3 on the subject property.

The subject property is included in the “South of Prineville” area (area #21) discussed in the goal exceptions statement section of the Crook County Comprehensive Plan (“CCCP”). CCCP Appendix B at 179. While the County has taken goal exceptions for many other areas of rural residential development throughout the County, the County has specifically *not* taken a goal exception to allow nonresource uses for the “South of Prineville” area, including the subject property. To the contrary, the comprehensive plan states that “The amount of vacant land available would not allow a committed or irrevocably committed Exception to be taken.” CCCP Appendix B at 179. Without an acknowledged exception to Goal 3 applicable to the subject property, and in the absence of any evidence in the record showing that a goal exception has been taken to allow any nonresources uses, the proposed use is in conflict with Goal 3 and is not allowed on the subject property.

IV. Approach and intersection spacing standard; CCC 18.176.010(4)(b)

The applicant concedes that its application does not meet the criteria at CCC 18.176.010(4)(b) which requires a minimum distance of one-half mile between approaches and street intersections. Revised CUP narrative statement at page 28. Many neighbors in the community have commented against this application, citing safety concerns with high-speed



traffic that would be turning in and out of the proposed store location. We agree with these concerns and request the county roadmaster and Planning Commission not approve any adjustment to the spacing standards of CCC 18.176.010(4)(b) under CCC 18.176.010(6). It does not appear that any mitigation measures can “alleviate all traffic operations and safety concerns,” CCC 18.176.010(6), of the many concerned residents of the area. Any demonstration for how the applicant might propose to meet the criteria for an exception to CCC 18.176.010(4)(b) must be provided during the current land use review process so that the public may evaluate and comment on its adequacy, and cannot be deferred via a condition of approval where there would be no public review. *Gould v. Deschutes County*, 227 Or App 601 (2009).

V. The proposal is not appropriate or desirable at the location proposed; CCC 18.160.020(1)-(5)

Given the overwhelming opposition to this application from neighbors in the community, the application will not “have minimal adverse impact on the livability, value and appropriate development of abutting properties and the surrounding area” compared to the residential and noncommercial uses allowed outright in the zone. CCC 18.160.020(2).

Area residents cite the dangerous traffic concerns, aesthetic impacts, and negative economic impacts of a dollar store in their neighborhood. We agree with these many concerns and request the Planning Commission find that the application fails to meet the discretionary criteria at CCC 18.160.020(1)-(5). The proposal will not “be as attractive as the nature of the use and its setting warrant” and will not “preserve assets of particular interest to the county” when the neighboring community does not see the proposed use as attractive or of particular interest to the county. CCC 18.160.020(3), (4).

VI. Conclusion

Thank you for your consideration of these views. For the reasons stated above, we respectfully request the Planning Commission deny this application. Please keep us informed of any additional opportunities for comment or hearings on this application.

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2843 NW Lolo Drive, Ste. 200 | Bend, OR 97703

Phone (541) 647-2930

www.colw.org

Regards,

A handwritten signature in black ink that reads "Rory Isbell".

Rory Isbell
Staff Attorney & Rural Lands Program Director
Central Oregon LandWatch
2843 NW Lolo Dr Ste 200
Bend, Oregon 97703

Attachments

Exhibit 1 Screenshot of applicant website (www.dollargeneral.com/about-us)



- About Us
- Careers
- Press
- Social Responsibility
- Locations
- History
- Here For What Matters

DG is proud to be America's neighborhood general store.

We strive to make shopping hassle-free and affordable with more than 19,000 convenient, easy-to-shop stores in 48 states. Our stores deliver everyday low prices on items including food, snacks, health and beauty aids, cleaning supplies, basic apparel, housewares, seasonal items, paper products and much more from America's most-trusted brands and products, along with high-quality private brands.

From serving our customers with value and convenience and our employees with career opportunities to serving the communities we call home through literacy and education, Dollar General has been committed to its mission of **Serving Others** since the company's founding in 1939.

