

From: [Elizabeth Powell](#)
To: [BOC Land Use Appeals](#)
Subject: File #LU-25-067
Date: Monday, August 3, 2026 8:37:29 AM

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To whom this may concern:

First thank you for your consideration. My name is Elizabeth Powell and I live on 2768 Amble Side St NW Albany, OR 97321, just a few blocks away from the Powers property. I also attend Northside church and have since it began several years ago. I grew up in a neighborhood in Eugene with a church as a neighbor directly behind and beside my house. The experience was nothing but great. They were kind, they would share their parking lot with us when we needed extra parking. I learned to drive and to ride my bike in their parking lot. There was also a sense of peace I experienced knowing that there were safe adults in that building in case I ever needed help. Their basketball court was a meeting place for different neighbors to meet and play together. There was never a time when my parents or I disliked having a church for a neighbor. This is just one reason I believe that Northside should be allowed to build their church building on Powers.

Thank you for your consideration,

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Via Email

Benton County Board of Commissioners
c/o Bob Richardson,
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Re: Testimony on behalf of Cary Hoffer Testimony before the Board of Commissioners on Appeal of a Denial of a Conditional Use Application for a Church, Daycare Center, Gymnasium, Offices, Storage Area, Playground, *etc.* in the RR Zone (File # LU-25-067, Northside Christian Church)

Dear Board of Commissioners,

Please accept this testimony on behalf of Cary Hoffer in support of the Planning Commission's denial and in opposition to the application (File # LU-25-067, Northside Christian Church). I respectfully request that the Board of Commissioners affirm the Planning Commission's denial¹ for the reasons set forth below, in the testimony of affected constituents, and the Greenlight Engineering Report. I am available to prepare or assist County staff in preparing findings in support of a denial of the application.

¹ During their deliberation, the Planning Commission commented that the proposed development would introduce an institutional use with a building footprint, parking area, and level of activity that differs from the current surrounding pattern of residential and agricultural development, and discussed whether this introduction would be compatible with the established character of the surrounding rural residential neighborhood. In addition, they spoke to the burden of the proposal on Powers Road from the influx of traffic and other issues.

The Applicant Submitted Inconsistent Factual Information in Support of the Requested Uses

The applicant has submitted inconsistent factual information in support of its revised application. Inconsistent factual information fundamentally undermines the analysis performed by staff and frustrates review by opponents and the Board of Commissioners. The Board of Commissioners should not accept these glaring contradictions in basic factual information from an applicant, and the Board of Commissioners is well within its authority to deny the application based upon the inconsistent factual information because it undermines satisfaction of the applicable criteria.

Significant discrepancy in square footage

The applicant alleged to have scaled back its proposal from an 18,902 square foot gymnasium/temporary sanctuary/ multi-use facility (phase 1) and approximately 54,000 square foot sanctuary (phase 2) (as well as daycare center, amphitheater, pickleball courts, recreational fields, *etc.*) to just the alleged 18,902 square foot church/gymnasium/daycare center/offices/playground and roughly 2,000 square foot storage building.² The applicant has repeatedly emphasized this reduction and its alleged oversized parking lot to accommodate for overflow parking. The problem, however, is that the plans submitted and relied upon by the applicant show that the square footage will exceed the alleged 18,902 square feet by as much as approximately 10,000 square feet.³ That is a significant change in the building's size and capacity that, in and of itself, should require a revision in the application, resulting in an approximately 28,536 square foot multi-use building, including a sanctuary/gymnasium/day care center/offices/flex rooms/*etc.*

One may simply add up the square footage of each room in the applicant's submitted plans, though even those plans omit the square footage for certain rooms. Doing so leads to a figure well in excess of the alleged square footage. One may also use the applicable Benton County Code and Oregon Structural Specialty Code provisions. *See* BCC 11.155 (adopting the Oregon Structural Specialty Code); Oregon Structural Specialty Code (2025 ed), Chapter 2, § 202 ("FLOOR AREA, GROSS. The floor area within the inside perimeter of the exterior walls of the building under consideration,

² A gymnasium is not an activity that is "customarily associated with the practices of the religious activity." ORS 215.441(1).

³ The reason for these inconsistent figures is not known, but it is certain that they are inconsistent.

exclusive of vent shafts and courts, without deduction for corridors, stairways, ramps, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above."). See Josanna Biddle-Croco and Andrew Biddle submission, dated July 23, 2026: "Using the definitions in the code, the gross floor area includes the first floor (110'-3" by 171'-7" = 18,917 square feet) and the second floor (110'-3" by 87'-3" = 9,619 square feet). $18,917 + 9,619 = 28,536$ square feet gross floor area." Regardless of what method is used, the conclusion is the same: the applicant has not been candid with the public or the Board of Commissioners, and the Board of Commissioner should reject an application that has repeatedly miscalculated basic figures that are central to the application.

Aside from getting a basic understanding of the proposal's size and scope, the problem with dramatically underestimating the square footage is that it undermines compliance with the approval criteria. See BCC 91.605(5) ("A place of public assembly including church, stadium, arena, club, lodge, auditorium, meeting room, and undertaking establishment shall provide 1 space for each 100 square feet of gross floor area or 1 space for each 8 seats, whichever is greater."). As it stands now, the applicant is out of compliance with BCC 91.605 now that the inconsistent figures have been identified. Instead of lauding itself for providing extra parking (for what will be major events that cause overflow parking), the applicant has actually undersized its parking lot, contrary to the Benton County Code. In addition, the underestimating the square footage can underestimate the number and frequency of daily automobile trips to and from the site, an important issue for the public and neighbors. See BCC 53.215(2); ORS 215.441(2)(b).

Significant discrepancy in the number of "attendees"

In addition to the square footage inconsistencies, the applicant's site plans demonstrate that the multi-use building has a much greater capacity than the applicant is presenting (which is 500 seats⁴) to the Commissioners. This makes sense when understanding that the multi-use building has a far greater square footage than has been disclosed. When accounting for the capacity identified in the applicant's site plans and architectural renderings, the number of attendees for the church and its many rooms and uses is far greater than what has been proposed. First, adding up the seating and capacity that is disclosed (and many rooms do not disclose a capacity), the result is 829, which is

⁴ Again, the applicant has not been clear. While at times the applicant alleges 500 seats, the figure in the initial architectural drawings lists 478 seats. See Staff Attachment at K.61.

far greater than the 500 presented to the Board of Commissioners. *See* Staff's Attachment K.61-62. However, the most recent architectural renderings at Staff's Attachment B.122-123 rarely disclose capacity, which further obfuscates the Board of Commissioner's review of the application. Second, accounting for the number of toilets proposed for the structure, the building can accommodate 1,300-2,250 persons and likely more.⁵ Third, just looking at the day care center's capacity, the number is far greater than what has been disclosed. The applicant alleges that the maximum number of enrollees at the daycare center is 35, yet the capacity is for, at least, 81 persons.⁶ *See* Staff Attachment K.61. If the applicant wants a 500-person building or a day care center for 35 enrollees, then the applicant should do so, instead of an oversized building that will undercount attendees and traffic impacts, which results in inadequate levels of service, undue burdens on the facilities, inadequate septic system capacity, and impacts to neighbors. *See* BCC 53.215(2); ORS 215.441(2)(b).

As with the case above, some figures related to traffic counts can be estimated based upon the square footage of the church or the number of seats or capacity of the church. However, this is no ordinary church because it includes a day care center, flex spaces, offices, a playground, a gymnasium, and so forth. There is more to this proposal than a modest church. The DKS traffic report based its traffic count on 500 people, but the reality is closer to 829 people (or even thousands of people based on how many people can be accommodated by the number of toilets), not counting the many rooms that were unaccounted for in terms of capacity. Again, the applicant has not set forth realistic estimates for this project when compared to the site plans and architectural renderings that the applicant is relying upon.

⁵ Depending on how the space is used under the Oregon Structural Specialty Code, 30 toilets can support roughly 1,300 to 1,500 people in a business office, about 2,250 people in a restaurant or assembly space, or 1,500 students in a school. This proposal contains 37 toilets. Again, there is no apparent reason to oversize the proposal and present inconsistent figures.

⁶ This assumes the day care center is consistent with the initial architectural renderings, which showed a nursery room, toddler room, preschool room, and elementary room, with a collective occupancy for 81 people. In the revised renderings, there is only a nursery with a host of other "flex rooms" and "offices," yet the applicant alleges that it will accommodate 35 enrollees. The "nursery" room is not big enough to accommodate 35 enrollees, as indicated in the architectural drawings. Again, the applicant is not providing candid information in its submissions. This serves to further obfuscate a clear picture of what the applicant is requesting, and it is yet another reason why the code requires new applications after revisions.

The applicant champions its own “oversized” parking lot, but, when accounting for the increased square footage and capacity, the number of parking spaces is inadequate to satisfy the standard. *See* BCC 91.605(5) (“A place of public assembly including church, stadium, arena, club, lodge, auditorium, meeting room, and undertaking establishment shall provide 1 space for each 100 square feet of gross floor area or 1 space for each 8 seats, whichever is greater.”); BCC 91.605(6) (“A day care center, residential facility, residential home, preschool nursery or kindergarten shall provide 2 spaces for each teacher or supervisor.”). The applicant alleges that it “proposes approximately 261 parking stalls for the proposed capacity of up to 500 attendees, exceeding the minimum parking requirement of 189 parking stalls.” 261 parking spots, however, is only an exceedance based upon 18,902 square feet, but that is not what the evidence submitted by the applicant demonstrates. To the contrary, the applicant would be required to have 285 parking spaces and then disclose the number of teachers or supervisors⁷ so that two spaces could be provided for each teacher or supervisor. The number of parking spaces required, therefore, would be closer to 300 than 261. The applicant also alleges that “[b]ecause the proposed Phase I parking supply satisfies the applicable minimum parking requirement, no parking variance is requested or required for the revised proposal.” In fact, it appears that the applicant is implementing its own parking variance by dramatically underestimating the square footage of the building and the number of attendees.

Next, the skewed figures also affect the necessary septic capacity. The applicant received septic feasibility permit approval from the Benton County Environmental Health Division for a 650-seat church, but, again, this is more than a church – in fact, a lot more than a church. The applicant alleges that their proposed septic is “oversized,” but that ignores the inconsistent numbers and oversized church and related requests (including day care center, gymnasium, playground, offices, flex spaces, vestibule, *etc.*). The applicant’s contradictory information undermines the sufficiency of the septic feasibility permit. Condition of Approval P-7 requires approval “to support the authorized structure(s) proposed for construction.” Here, the oversized structure will require much more than that which is sufficient for a 650-seat church. Instead, it will require enough for closer to 850-900 people or even thousands, depending on which figures are used.

⁷ This raises another issue for the applicant because in the first site plans/architectural renderings, for the day care center, the applicant includes the nursery room, toddler room, pre-school room, elementary room, but, in the revised submission, the applicant includes only a “nursery” but many “flex rooms” and offices” while alleging 35 enrollees.

Regardless of the reason for these inconsistent figures, the errors undermine the evidence purporting to satisfy approval standards, including the number of vehicle trips, the number of parking spaces, the adequacy of septic capacity, right-of-way improvements, and so forth. If the Board of Commissioners and the public cannot be given accurate information, then the Board of Commissioners should deny this application.

The Applicant's Request is Inconsistent, Unclear, and Omits Applications for Additional Conditional Uses and Uses not Clearly Permitted as Conditional Uses

Not only is the factual information for the applicant's request inconsistent but the requests themselves are inconsistent and unclear. Obviously, this frustrates the Commissioners and the public in evaluating and reviewing the proposal.

Inconsistent request regarding the playground

The applicant is presenting conflicting information on the proposed uses. On one hand, the applicant alleges that it is not seeking a variety of uses that it previously sought, yet some of those are still listed on the site plan and architectural renderings. For example, the applicant alleges that it is not seeking a playground, but a 3700 square foot playground is still included on their site plan. See Staff's Attachment B 119-120 (showing playground adjacent to the southwest of the main building); compare Staff's Attachment K.145 (showing playground to be 3700 square feet). It is not clear what other outdoor activities the applicant could anticipate putting into the "playground," such as recreational fields or even pickleball courts that it alleges it is no longer pursuing, but it is beyond dispute that the applicant is taking contradictory positions regarding the playground. For example, the applicant alleges in their revised materials that

"[r]eferences in the original application materials to the Phase II sanctuary, full campus buildout, amphitheater, pickleball courts, playground, expanded outdoor recreational amenities, or parking variance should be treated as background only. Those elements are not included in the approval request now before the Board."

Staff's Attachment B.3. Here, however, the applicant continues to include a 3,700 square foot playground in its site plans for its revised request. The applicant has also retained the same general footprint for the sanctuary/gymnasium building and it is not clear whether other amenities that were allegedly excluded are, in fact, excluded from the revised application. Again, the applicant is not setting forth a consistent story, which

deprives both the County and applicant of a full and fair opportunity to present their case.⁸ Finally, if the applicant is not presenting consistent information with regard to the playground, then it remains to be seen what other information and requests are inconsistent.

Multiple Sunday services and other activities that are unaccounted for in terms of effects

The applicant alleges that there will be “two Sunday morning services, currently scheduled for 8:30 a.m. and 10:15 a.m., with Sunday traffic generally spread between approximately 7:00 a.m. and 11:40 a.m.”⁹ Without evidence in support, the applicant alleges that there will 390 attendees at a service, without any further information as to the number of staff, day care enrollees, and so forth. That number, however, will be doubled with two services. The applicant alleges that “Sunday evening activities may include middle school youth group at approximately 4:00 p.m. and high school youth group at approximately 6:00 p.m.” Again, this just means more traffic, not even based upon the services. The applicant includes other actions that will occur at the church:

“Other anticipated activities include occasional adult meetings, four to five staff members on site Monday through Thursday from approximately 9:00 a.m. to 5:00 p.m., occasional evening classes or meetings two to three times per week with approximately 6 to 20 people, limited leadership meetings, men’s and women’s events, classes or seminars, and occasional weddings or memorials limited to the capacity of the building. Weekday daycare may be pursued in the future and would operate during normal business hours.”

This does not include weddings and funerals and “major events” referenced by the application but creates additional “attendees,” additional automobile trips, the necessity for additional parking spaces. As has been the tradition of the applicant at its current location, numerous high-volume major events, including ast events held at the existing

⁸ The Board of Commissioners actually anticipated such problems when promulgating the Benton County Code because once a land use application changes, BCC 51.525 requires the applicant to withdraw the application and submit a new application. The applicant has violated that particular provision, and, had it complied with the provisions, much of the inconsistencies could have been resolved.

⁹ Greenlight Engineering Report at 4 (“This statement demonstrates that the proposed use will generate recurring peak periods throughout the year.”); *id.* (“Additional events identified in written comments, including weddings and memorial services and other events, will further contribute to concentrated traffic conditions.”).

location, such as Holiday Bazaar, Trunk or Treat, and so forth. The applicant is also omitting the many non-Sunday masses that will also occur, including Christmas (and even midnight mass), Ash Wednesday, All Saints Day, and so on. Also, conspicuously, the applicant has not identified any uses for the gymnasium, which would draw crowds and athletes in numbers similar to Sunday services.¹⁰ If the applicant is requesting a gymnasium (which has no apparent connection to the religious activities), then the applicant will use that gymnasium, but the applicant is not candid about the use. The applicant is simply not being candid about what it proposes, which skews the impacts to the area and the requirement of the applicant.

Unaccounted for major events

At various times in its revised application, the application references “major events,” but it is not clear what these “major events” entail. For example, the applicant also alleges “operational and parking management measures” to address: “peak parking demand, including on-site parking management, volunteer parking coordination during peak services or major events,”¹¹ The applicant must disclose these “major events.” Past major events that the church has held, which drew overflow crowds and parking, include various holiday events, such Trunk or Treat, Holiday Bazaar, and so forth. If the traffic and attendee counts are not addressed, then the full effects to the transportation facilities and level of service¹² are then not accounted for. Indeed, “[t]he applicant has not provided any roadway or intersection level of service analysis, nor any operational analysis demonstrating the level of service at affected intersections.” Greenlight Report at 7 (“Without these analyses, the record does not demonstrate that the transportation system provides an adequate level of service for the proposed development.”). Simply put, the applicant has not disclosed the number and type of “major events,” which will have a major impact on traffic numbers and the number of attendees. This application creates more questions than answers.

¹⁰ A gymnasium is not a use customarily associated with the practices of the religious activity, and the applicant did not submit a request for a conditional use application.

¹¹ The applicant also references “major events” at staff’s Attachment B.4, K.41, and K.42. Despite these references to “major events,” it is altogether unclear what “major events” constitutes.

¹² ORS 215.441(2)(b) (a local government may “[p]rohibit or restrict the use of real property by a place of worship described in subsection (1) of this section if the county finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.”).

Unaccounted for Use: Gymnasium

In addition to a church, the applicant is requesting a gymnasium, as demonstrated by the outlined basketball hoops and basketball court within the area serving as the church. A gymnasium is not a permitted use and is not an explicit use provided for as a conditional use in the code. *See* BCC 63.105 (permitted uses); 63.205 (conditional uses). It is not clear that a “recreational facility” includes a gymnasium. If not, then a gymnasium is not a use allowed in the zone, and the request for a gymnasium must be denied. If a gymnasium is a “recreational facility,” then the applicant was required to submit a conditional use and account for the impacts from the use of the proposed building as a gymnasium. There is nothing in state or local law that allows the applicant to avoid submitting an application for a use that is listed as a conditional use. Despite including a gymnasium in its request, the applicant has not included *any allegations associated with the use of the gymnasium*, including frequency or numbers of attendees. Not only does the day care center increase the number of attendees¹³ for the overall church, but it also increases the traffic impacts, parking requirements, and septic capacity. Finally, there is nothing inherent in a gymnasium that would imply that it is customarily associated with the practices of the religious activity, and, and therefore, a conditional use application for a gymnasium was necessary, assuming it is even conditionally permitted. *See* ORS 215.441(1).

Unaccounted for conditional use: Day care center

The applicant has not included an application for a day care center, though the applicant alleges it is seeking a day care center for up to 35 children.¹⁴ While a day care center is permitted in conjunction with a church under state law, that does not mean the applicant is absolved from submitting a land use application for the conditional use, which affects the number and frequency of vehicle trips, number of attendees, capacity, and so forth. For a day care center with more than 13 attendees, a conditional use is required. *See* BCC 63.205 (listing “Day care center” as a “conditional use” in the Rural Residential zone); BCC 63.105 (listing “Day care center for fewer than 13 children” as a “permitted use” in the Rural Residential zone). There is nothing in state or local law that allows the applicant to avoid submitting an application for a use that is clearly listed as a

¹³ For example, while the sanctuary/gym area is intended to accommodate 500 attendees, there will also be children/enrollees and presumably staff operating the daycare center at the same time. As such, the 500-attendee figure is illusory because this is not just a church, it is much more than that, and that must be accounted for in the applicant’s materials.

¹⁴ The capacity appears to far exceed that which is necessary for 35 children.

conditional use. Not only does the day care center increase the number of attendees¹⁵ for the overall church, but it also increases the traffic impacts, parking requirements, and septic capacity because it means that the building will be used more frequently, just like the use of the gymnasium.

The application violates BCC 53.215(1) and (2)

BCC 53.215 provides criteria for conditional uses. Though the application does not include all conditional uses, even what is conceded violates the standards based upon the scope and size of the proposal, the traffic impacts and other undue burdens on public facilities, as well as the serious interference with adjacent uses and character of the area. ORS 53.215 provides as follows:

“The decision to approve a conditional use permit shall be based on findings that:

- (1) The proposed use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone;
- (2) The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area; and
- (3) The proposed use complies with any additional criteria which may be required for the specific use by this code.”

Central to BCC 53.215 are the traffic-related concerns expressed in written and oral testimony of those within the area and most affected by the proposal.¹⁶ The traffic

¹⁵ For example, while the sanctuary/gym area is intended to accommodate 500 attendees, there will also be children and presumably staff operating the daycare center at the same time. As such, the 500-attendee figure is illusory because this is not just a church, it is much more than that, and that must be accounted for in the applicant’s materials.

¹⁶ Greenlight Report at 3 (“Benton County Code (BCC) 53.215 requires that the proposed use not impose an undue burden on public improvements, facilities, utilities, or services available to the area. The current transportation record does not demonstrate that this criterion has been satisfied.”). Where a local government’s TSP “identifies both average daily traffic and Design Hour Volume as important considerations when evaluating roadway function” and the “[t]he proposed development exceeds both measures,” an undue burden is obvious on its face. Greenlight Report at 5.

impacts include a clear reduction in safety for those using Powers Ave, especially for bicyclists and pedestrian activity (jogging, walking dogs, *etc.*). The traffic impacts also increase wear and tear on the road itself, which increases County maintenance costs, as well as contributing to the serious interference with the character of the area. Powers Avenue NW, Scenic Drive, and Oak Grove are rural, two-lane roads not designed to accommodate higher traffic volumes that would be generated by the proposed church. These issues are identified in more detail below.

Serious Interference with the Character of the Area, Adjacent Uses, and Purpose of the Zone

As for subsection (1), those that live in the area are the most affected, and they are the ones best capable of describing the serious interference with the character of the area, adjacent uses, and the purpose of the zone. Through written and oral testimony, the public identified serious interference with their uses and with the character of the area as it relates to the subject site's size, location, and surrounding uses, building height and square footage, sewage disposal, landscaping and separations, lighting, road access, parking, and noise. The visual character – size and scope – is unmatched on Powers Avenue and in the area (and that assumes that the size and scope of the proposal is supported by accurate figures, which they are not). Increased traffic introduces additional safety hazards, such as conflicts between vehicles and bikes and pedestrians. The volume of traffic is not consistent with the character of the area. Indeed, weekend church traffic will coincide with the time the residents of the surrounding neighborhood are using Powers Avenue, and there are “major events,” gymnasium use, weddings and funerals, and so forth that have not even been disclosed in relation to the frequency and intensity of traffic.

Apart from the extensive written and oral testimony from those in the affected area, I will address one particular example. Staff presented a chart comparing churches in various zones and their proximity to dwellings. Of the two rural residential zoned churches included, the proposed church is within 1,000 feet of roughly 100 dwellings and the other is within 1,000 feet of roughly 20 dwellings¹⁷. Of the other 4-5 zones, where uses were allowed outright and in urban residential zones, there were high numbers of

¹⁷ This second church in rural residential areas is removed from residences as compared to the proposal and it also abuts a busy road (Highway 99) and near train tracks, unlike the subject property. For the subject property, each abutting parcel contains a single-family dwelling. On the north side of Powers Ave are six parcels, four of which contain single-family homes accessed from Powers Ave.

dwellings. The subject proposal is unique in that it exists within a relatively high residential density, though the use is not permitted outright and not in an urban setting. This demonstrates that the proposal is anomalous and interferes with surrounding, predominantly residential uses. Staff's conclusion that religious institutions exist in areas "with both lower and higher surrounding densities supports the conclusion that a church use can be compatible with residential development patterns" misses the point. This proposal is unique in that it is situated amongst significant residential development that would normally occur in an urban residential zone or where the use is permitted outright. That is the lesson of Staff's residential density chart, and it reinforces the conclusion that this proposal would seriously interfere with the character of the area and adjacent uses.

Undue Burden on public improvements, facilities, utilities, or services available to the area

For subsection (2), the proposal will place an undue burden on public improvements, facilities, utilities, and services available to the area. Most importantly are the burdens on the transportation system. Notably, staff has not assessed the transportation improvements necessary to accommodate the increased traffic in the context of the inconsistent figures and unaccounted for uses. It is difficult to understand how the applicant has failed to set forth consistent figures and applications for all conditional uses at this point. These failures cannot be overlooked, and they undermine the applications' attempt to satisfy the criteria.

Given the size, scope, and capacity of the request, the transportation impacts are significant. The project will exceed the level of service for the road classification, and the Board of Commissioners have the authority to deny the application on those grounds under state and local law. *See* ORS 215.441(2)(b); BCC 53.215(2). Powers Avenue is classified as a Primary Local Road in the Benton County Transportation System Plan. Primary Local Roads are expected to have a maximum of 700 Average Daily Trips (ADT), and the horizontal design standard is two 2-ft wide gravel shoulders and two 10-ft wide paved drive lanes within a 50-ft right-of-way. Powers Avenue is currently deficient in terms of design standards, and the proposed uses will introduce such significant traffic that Powers will experience much greater than 990 ADT. *See* Greenlight Report at 2 ("the daily volume cap of 700 vehicles per day would be exceeded, with projected traffic volumes reaching approximately 990 vehicles per day on the east end of NW Powers Avenue. This finding demonstrates that the proposed development would generate traffic volumes beyond the level anticipated for the roadway based on its adopted functional classification."). The Greenlight Report notes that:

“the daily volume cap represents the level of traffic anticipated for the roadway based on its existing classification and intended function. A development that causes the roadway to exceed this threshold requires evaluation of whether the proposed use is consistent with the planned transportation system.”

Greenlight Report at 4; *id.* (“The proposed church also exceeds the roadway’s DHV threshold per Benton County’s analysis. Based on the trip generation estimates prepared by DKS Associates, the proposed church is expected to generate approximately 270 vehicle trips during the Sunday peak hour alone. This exceeds the 100 vehicles/hour DHV threshold associated with the local road classification of NW Powers Avenue.”). Based on these figures alone, the applicant is placing an undue burden on the transportation facilities, which conflict with the County’s adopted TSP. However, that does not even account for the uses not requested in separate applications, including the gymnasium and day care center, and the actual traffic figures from the dramatically increased square footage and number of attendees.

Public Works staff evaluated both traffic reports and concluded 505 trips will move through the west intersection and 990 trips will move through the east intersection. *See* Greenlight Engineering Report at 1 (“the proposed development would generate traffic volumes exceeding the adopted assumptions for the roadway classification of NW Powers Avenue, including both the roadway’s daily traffic volume cap and Design Hour Volume (DHV) threshold.”). As noted, the proposed development will increase traffic on Powers Avenue to levels that exceed what is expected for a Primary Local Road. The proposal will also increase wear and tear on the road compared to residential development. This means major pavement maintenance will be required more frequently, which causes an undue burden on the physical structure of the road, and those impacts will be borne by the County and the public.

The applicant alleged that the proposal would not contribute traffic that would exceed the 700 ADT threshold. County staff, however, submitted a June 17, 2026, memo, identifying multiple weaknesses in the applicant’s traffic analysis.¹⁸ To assist staff, DKS Associates were retained to provide a trip generation report to estimate the number of trips that would be generated by the proposed use. Analysis in the DKS report is based on the proposed 500-seat church as compared to the Sandow study which was

¹⁸ Greenlight Report at 9 (“The applicant’s trip generation methodology has changed throughout the review process. This issue is significant because the trip generation estimate forms the foundation for evaluating the transportation impacts of the proposed development.”).

based on the square footage of the church. However, as noted above, because the capacity is far greater than 500 persons for the church and its multiple, proposed uses and the square footage is dramatically incorrect, neither the DKS study nor the Sandow study accurately reflects the traffic impacts.

Public Works also found that the proposed development will likely accelerate deterioration of Powers Avenue due to the added traffic generated by the use. The existing pavement on Powers Avenue is a combination of oil mat, asphalt overlay, and chip seal overlay. The pavement depth varies widely between three and six inches. Both the pavement shoulder and travel lane widths do not meet current standards, and the traffic resulting from the proposed use exceeds volumes that would be generated by residential development according to the current zoning. The above impacts will impose an undue burden on the public improvements that must occur and the transportation facilities. Moreover, Public Works staff noted that a variety of utilities will have to be relocated to address the substandard road width.

To mitigate these impacts, staff recommended a condition of approval that requires the applicant to provide a 24-foot-wide paved section with 2-foot aggregate shoulders on Powers Avenue from the west property line of the subject parcel to Scenic Drive given the existing right-of-way and other constraints elsewhere in the corridor. The asphalt and base rock thickness section for this widening shall follow Primary Local Standards (Condition of Approval P-12).¹⁹ This condition is not only proportional but it has a clear nexus with the application and its effects. Importantly, staff recommend denial of the application if this, or a similar Condition of Approval is not applied to enhance safety for pedestrians and bicyclists along Powers Avenue in response to the increased amount of vehicle traffic the church/gymnasium/day care center/major events/*etc.* would generate. Regardless of this condition, the application imposes undue burdens on transportation improvements and facilities because the remainder of Powers Avenue will still be subject to volumes of traffic far above its level of service and classification. Furthermore, it is not clear that such a condition is the correct consideration because “[t]he issue is whether NW Powers Avenue should be reclassified through the County’s transportation planning process.” Greenlight Report at 5. Where a

¹⁹ Greenlight Engineering notes that increasing classifications should not be done through an *ad hoc* process but rather the TSP update process: “If the roadway requires a higher classification and associated improvements to serve the proposed development, those changes should occur through the Benton County Transportation System Plan (TSP) update process rather than through a condition of approval for a single development.” Greenlight Report at 1-2.

development would implicate the “transportation planning process” through an updated TUS, that is exactly the type of undue burden contemplated in BCC 53.215(2).

For utilities, existing mailboxes, utility pedestals, and a power pole along Powers Ave and the subject property’s frontage, these will have to be relocated in conjunction with the required road improvements, further imposing undue burdens on the County and the transportation facilities and utilities. A City of Albany fire hydrant is also located on the south side of Powers Avenue NW at ~MP 0.48. The hydrant is currently placed a foot off the pavement, in a location where it constitutes a roadside hazard based on the posted speed limit. This hydrant must be relocated at the time of required road improvements associated with the proposed development. There are also at least two water meter boxes and one air release valve that must also be relocated as outlined in Condition of Approval P-5. Clearly, these improvements to utilities impose an undue burden on the County, the transportation system, and public utilities. The relocation costs could be significant.

As indicated throughout this testimony, my client employed the services of Greenlight Engineering, a transportation engineering firm, to review the application and appeal.²⁰ Greenlight concluded that “the transportation materials submitted by the applicant do not provide sufficient technical evidence demonstrating that the proposed Northside Christian Church development can be approved consistent with Benton County transportation standards.” Greenlight Report at 1 (referencing BCC 53.215). Specifically, the Greenlight Report notes that this record omits the transportation documentation typically associated with the applicant’s conclusions, including “intersection operational analysis; queue analysis; left-turn lane analysis; crash analysis; or a comprehensive safety evaluation.” *Id.* at 3. Other issues such as compliance with Benton County access management standards and safety issues and site distance at the NW Powers Avenue/NW Oak Grove Drive intersection have not been evaluated.²¹ *Id.* Finally, the applicant has wholly failed to evaluate whether “a left-turn lane or other

²⁰ This testimony adopts and incorporates the Greenlight Report as if set forth here fully.

²¹ Greenlight Report at 10 (“The applicant’s transportation materials do not evaluate whether the proposed main driveway complies with this access spacing standard. However, based on the submitted site plan, the proposed driveway appears to be located within the required spacing distance of an existing residential access point on the north side of NW Powers Avenue. As shown on the site plan, the distance between the proposed church driveway and the existing residential driveway is approximately 30 feet when measured from edge to edge. When measured from driveway centerline to driveway centerline, the separation is approximately 65 feet. Both measurements are less than the 100 foot minimum access spacing standard identified in the Benton County TSP.”).

operational improvements may be warranted at Scenic Ridge Drive/NW Powers Avenue.” *Id.* If these failures are unaccounted for, then the applicant – with its proposal – will be imposing undue burdens on the County and the taxpayers to address the problems in violation of BCC 53.215(2).

Greenlight, at page 8 of its report, also notes that the TSP contains new

“tools [that] provide a metric for assessing the impacts of new development on the existing transportation system and for identifying where capacity improvements may be needed to sustain the transportation system as growth and development occur... All roadways and intersections owned by Benton County must operate at or below the following mobility targets.”

The TSP adopted specific standards, including the following:

“Two-way Stop and Yield Controlled Intersections: All intersection approaches serving more than 20 vehicles during the highest one-hour period on an average weekday (typically, but not always the evening peak period between 4 p.m. and 6 p.m. during the spring or fall) shall operate with a v/c ratio not higher than 0.90. Mobility targets do not apply to approaches at intersections serving 20 vehicles or fewer during the peak hour.”

The applicant’s traffic analysis, however, failed to “provide evidence demonstrating that the applicable Benton County mobility standards are met at affected intersections,” including “intersection operational analysis or volume-to-capacity calculations demonstrating that affected intersections will operate within the adopted mobility targets.” Without any such analysis, the applicant hollowly alleges that the “proposed development will not create congestion or operational deficiencies.” The applicant’s failures will cost the County dearly in terms of traffic improvements, relocation of utilities, and analysis, imposing the undue burden identified in BCC 53.215.

Off-Street Parking Standards have not been Satisfied for the Capacity of the Structures

Under BCC 91.605, the applicant must include the requisite off-street parking for particular uses. *See* BCC 91.605(5) (“A place of public assembly including church, stadium, arena, club, lodge, auditorium, meeting room, and undertaking establishment shall provide 1 space for each 100 square feet of gross floor area or 1 space for each 8 seats, whichever is greater.”); BCC 91.605(6) (“A day care center, residential facility, residential home, preschool nursery or kindergarten shall provide 2 spaces for each

teacher or supervisor.”). The applicant must account for the church, the day care center, the gymnasium, the offices, the flex rooms, and the playground, as well as the *actual figures related to the square footage and number of attendees*. Without accurate and consistent information, it is impossible to identify the correct number of off-street parking spaces. However, when using the correct square footage and number of attendees (though it still remains unclear), the applicant would need more than 280 parking spaces and likely more than 300 parking spaces. This requires that one account for the square footage and some unknown number of additional spaces for the day care center (and the gymnasium, which has not been addressed at all) because the applicant has not disclosed the number of teachers or supervisors or the frequency and types of uses associated with a gymnasium. Because the applicant has not provided consistent factual information to satisfy the standards, the application cannot be approved.

The applicant failed to submit a new application upon revision of the application

The applicant failed to submit a new application upon revision of its application before the Planning Commission. Under BCC 51.525, “[i]f the applicant proposes a revision to the application that changes the type of land use action or limited land use decision requested in the initial application, the applicant shall withdraw the initial application and shall file a new application for the revised request.”²² Withdrawal of an application is governed by BCC 51.530(1), which allows for the applicant to:

“submit a written request to the Planning Official to withdraw an application prior to a decision to approve or deny the application. The Planning Official may refund all or part of the application fee based upon the amount of County staff work completed prior to the withdrawal.”

Here, as noted above, the applicant dramatically changed the type of land use action from phase 1 and 2 to only phase 1. Phase 2 included a variety of land use requests, including a gymnasium, a sanctuary, an amphitheater, a day care center, pickleball courts, recreational fields, and more. The applicant, therefore, “change[d]” its land use action and failed to withdraw its existing application. The BCC plainly requires withdrawal and submittal of a new application. My client was required to expend funds and prepare further testimony for an application that should no longer be active. This prejudices my client’s substantial rights to a full and fair hearing, requiring him to expend funds, spend

²² Importantly, this standard only requires a “change,” not an increase in the scope of the application.

time reviewing a changed application, and attend hearings that should not be occurring under BCC 51.525. The application should be denied on this failure alone.

The Subject Property is not Lawfully Established

County staff concede that the subject property was unlawfully divided in 2006:

“Benton County records confirm the subject property was lawfully created by deed (deed 2006-407551; Benton County Deed Records) in 1953. A subsequent deed recorded in 2006 describes the property as two separate parcels; however, there is no record of land division approval allowing the property to be divided. Therefore, the 2006 deed constitutes an unlawful division of land, and the property owner must record a corrected deed description (regardless of approval or denial of the current request).”

The 2006 deed was an unlawful division, resulting in two unlawfully created units of land. *See LandWatch Lane County v. Lane County*, 80 Or LUBA 415 (2019). Staff proposes a corrected deed description, but a corrected deed description does not and cannot undo an unlawful division of land. *See Yamhill County v. Ludwick*, 294 Or 778, 663 P2d 398 (1983); *Maxwell v. Lane County*, 178 Or App 210, 35 P3d 1128 (2001) (“a local government entity must determine the legal status of a lot or parcel ‘in connection with’ a current proceeding involving the parcel if required to do so by ‘applicable legislation.’”). In fact, an alleged corrected deed would be contrary to and violate ORS 92.017(1) (“A lawfully created lot or parcel remains a discrete lot or parcel unless the lot or parcel lines are vacated or the lot or parcel is further divided as provided by law.”). Therefore, the proposed action and condition of approval requiring consolidation through a deed correction will violate state law because a deed correction cannot remedy an unlawfully established unit of land.

When a local code provision includes the requirement for a “lot or parcel,” caselaw has established that the lot or parcel have been lawfully established. *See Friends of Yamhill County v. Yamhill County*, 229 Or App 188, 211 P3d 297 (2009) (that a reference to “lot” or “parcel” implied a “legal lot” or legal parcel” i.e., a lot or parcel that was lawfully established). Here, the definition of “property line” includes reference to “lots or parcels.”²³ “Property line,” in turn, is identified in both the definition of

²³ “‘Property Line’ means the exterior boundary of a lot or parcel. For contiguous lots or parcels held in common ownership and combined for development purposes, the property

“setback,”²⁴ which is applicable, and Official Zoning Map²⁵. Therefore, any standards, such as setbacks, or use of or interpretation of the Official Zoning Map requires that the subject property have been lawfully established. Here, there is no dispute that the subject property was lawfully established by the 2006 deed.

The County Board of Commissioners are authorized to impose conditions

The County Board of Commissioners is authorized to impose conditions of approval, pursuant to BCC 53.220, for a host of subjects. BCC 53.220 (size and location of site; road capacities in the area; number and location of road access points; location and amount of off-street parking; internal traffic circulation; fencing, screening and landscape separations; height and square footage of a building; signs; exterior lighting; noise, vibration, air pollution, and other environmental influences; water supply and sewage disposal; law enforcement and fire protection). Neighbors have identified numerous proposed conditions to address the impacts of the proposal, but some of these impacts cannot be conditioned away, such as volume and frequency of traffic.

line for purposes of setbacks shall be the exterior boundary of the combined lots or parcels. Unless otherwise specified, setbacks set forth in this code shall be measured to the property line.” BCC 51.020(51).

²⁴ “‘Setback’ means the minimum allowable horizontal distance from a given line of reference (usually a property line) to the nearest vertical wall of a structure. BCC 61.020(69)

²⁵ The Official Zoning Map is interpreted as follows, according to BCC 51.110(4):

“(4) Interpretation of the zoning map shall comply with the following:

- (a) Zone boundaries are generally intended to coincide with discernable geographic features or property lines. In cases where a zone line crosses a lot or parcel without reference to a specific landmark (such as a road or stream), it may be necessary to consult the record of hearings that led to adoption of the Zoning Map, or other relevant information, in order to determine the precise location of the zone line.

* * * *

- (c) Zone boundaries that are indicated as approximately following city limits, urban growth boundaries, or property lines shall be construed to follow those lines.”

The Board can Deny the Application without Violating RLUIPA

The applicant has alleged that denial of the application will violate the Religious Land Use Institutionalized and Persons Act (RLUIPA). The applicant, however, is mistaken, and the applicant is misconstruing RLUIPA and its caselaw. RLUIPA prohibits local governments from asserting regulations that impose a “substantial burden,” which is “one that pressured someone to forgo or modify the expression of a religious belief. *Corp. of the Presiding Bishop v. City of West Linn*, 338 Or 453, 111 P3d 1123 (2005). In *Westchester Day School v. Village of Mamaroneck*, 386 F.3d 183 (2d Cir. 2004), at issue was a denial of permit to allow the school to construct a new building and renovate others, and the Court determined that it did not create a substantial burden on the school’s religious exercise because the local government denied “only the application submitted, leaving open the possibility that a modification of the proposal, coupled with the submission of satisfactory data found to have been lacking in the earlier proceedings, would result in approval.” If, on the other hand, a denial seems disingenuous, then that could result in a “substantial burden” but “a mere denial, without more, d[oes] not constitute a substantial burden.” *City of West Linn*, 111 P3d at 1129.

This case is similar to *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004), where the applicant submitted “inconsistent” information as to the number of students. Here, the applicant has submitted inconsistent information as to square footage, attendees, and traffic counts, as well as failed to submit all the necessary conditional use applications. The requirement to submit a “complete application” and accurate factual information does not impose a “substantial burden,” according to *San Jose Christian College*. Here, the County can feel secure in its denial given the similar failures in *San Jose Christian College*. Consistent with these cases, the Oregon Supreme Court, in *City of West Linn*, concluded that “a government regulation [] imposes a substantial burden on religious exercise only if it ‘pressures’ or ‘forces’ a choice between following religious precepts and forfeiting certain benefits, on the other hand, and abandoning one or more of those precepts in order to obtain the benefits, on the other hand.” 111 P3d at 1130. Submitting a new application that is complete, accurate, and consistent does not impose a substantial burden under RLUIPA. In fact, that is required of all applicants if they want their application approved. Finally, where there is no substantial burden, as is the case here, there is no need to even entertain whether the government has a compelling interest that supports the denial and whether the denial is

the least restrictive means to further that interest. Here, regardless, the local government has a compelling interest in requiring consistent factual information for purposes determining traffic impacts, numbers of attendees, and so forth for purposes of complying with local and state criteria. *See* BCC 53.215 and ORS 215.441(2)(b).

There is also no evidence to demonstrate that a road exaction would treat the applicant on less than equal terms to similarly situated nonreligious uses. Any required improvement through a condition has no relation to the religious institution but rather impacts to the roadway. If a school were to result in similar levels of traffic, then the condition would be the same. In other words, there is no evidence to demonstrate that the condition would only be aimed at a religious institution.²⁶

For the above reasons, the Board of Commissioners have the authority to deny the application because the applicant has presented inconsistent information about the square footage of the building – undercounting by roughly 1/3 – and the number of attendees, *inter alia*. These failures skew the alleged evidence in support of the approval criteria, and it fundamentally frustrates the ability of the public and the Board of Commissioners to review and evaluate the application. Therefore, I respectfully request that the Board of Commissioners affirm the Planning Commission’s denial and deny the appeal. I am available to prepare or assist in preparing findings in support of a denial.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sean Malone". The signature is fluid and cursive, with a large initial "S" and "M".

Sean T. Malone
Attorney for Cary Hoffer

Cc:
Client

²⁶ Again, the applicant includes uses that are not customarily associated with religious practices, such as a gymnasium.

**Josanna Biddle-Croco, Jamie Harper, Vesper Biddle-Croco,
Matthew Croco, Andrew Biddle, & Ambrose Biddle-Croco**

4853 NW Dumbuck Ave
Albany, OR 97321

04 Aug 2026

Benton County Board of Commissioners

landuseappeals@bentoncountyor.gov.

LU-25-067

Dear Commissioners,

LU-25-067 is missing important information regarding the septic system that should be resolved prior to approval.

The Septic Site Evaluation Approval (Staff Report Attachment B.108-111) states that septic demands for this large multipurpose facility exceeds the 2500 gallon per day limit, and will require a Water Pollution Control Facility Permit from ODEQ and is subject to Oregon Administrative Rules Chapter 340 Division 71.

OAR 340-71 requires both an “adsorption area” and a “replacement adsorption area”. Looking at the latest site plan from Udel Engineering (Staff Report Attachment B.37), they have the septic field shown encroaching on required property boundary setbacks and did not designate space for the required “replacement (repair) absorption area”. The septic studies show that the only place to put the absorption area is on the wooded hill (Staff Report Attachment B.111).

The applicant's engineers were clearly aware of the requirements. If you look at the original proposal (Staff Report Attachment B.114) you can see that both absorption area and replacement adsorption area were marked. Unfortunately, they were nestled between two seasonal streams in wetlands per the State of Oregon Department of Lands Statewide Wetlands Inventory <https://maps.dsl.state.or.us/swi/> (**Exhibit 1**). Per the Oregon Department of State Lands:

These soils often exhibit characteristics (e.g. “routinely flooded”) that meet the definition of, and are designated as “hydric soils.” (**Exhibit 2**)

OAR 340-071-0520 requires that effluent from large systems be distributed to an adsorption area divided into multiple relatively equal cells by means of at least two pumps per system. It also notes that the replacement (repair) absorption area must be divided into relatively equal units, with a replacement absorption area unit located adjacent to an initial absorption area unit. Effluent distribution must alternate between the absorption area units (**Exhibit 3**).

The proposed septic system will require around half an acre cleared down to grass for the 'absorption area' and 'replacement absorption area'. Additionally, they will need to clear a

corridor to bury piping from the septic storage tanks to the absorption area on the hill. Electrical will need to be run for the pumping stations to move the effluent up the 30-50 foot tall hill and for the adsorption area switching station. This work will necessitate moving large equipment up the hill which likely widens the clearance corridor.

The submitted landscaping plan (Staff Report Attachment B.118-122) indicates “existing landscaping to remain” and “existing trees to remain”. This is clearly impossible.

The submitted site plan is missing major elements that should be considered prior to approval:

1. Corrected placement of the adsorption area to comply with setbacks
2. Placement of the required adjacent “replacement (repair) absorption area”
3. Location of the piping and electrical corridor (under a stream and up a hill)
4. Placement of pumping stations and the adsorption area unit switching facility
5. Access road(s)
6. Updated landscaping plan accounting for clearing the forested area
7. Updated water management (runoff) plan for the newly cleared hillside

Please do not approve LU-25-067 until adequate information is provided.

Sincerely,

**Josanna Biddle-Croco, Jamie Harper, Vesper Biddle-Croco,
Matthew Croco, Andrew Biddle, & Ambrose Biddle-Croco**

P.S. We are concerned that the wetlands situation has not been adequately addressed. The multi-use building is sited on top of the Statewide Wetlands Inventory’s designated area of predominantly hydric soils. Per Redmond Geotechnical Services (Staff Report Attachment B.69) ground water is located 1-5 feet beneath existing surface grades and “ponding of surface water” was observed across the lower southerly portion of the site. This septic system will increase runoff from the hillside both by clearing trees and by adding effluent to the soil.

Exhibit 1:

State of Oregon Department of Lands Statewide Wetlands Inventory <https://maps.dsl.state.or.us/swi/>



Exhibit 2:

<https://www.oregon.gov/dsl/wetlands-waters/Documents/DSLWILayerLimitationsFinal.pdf>



Aquatic Resource Management

Statewide Wetlands Inventory

The SWI web map provides state-recognized wetlands, waters, and certain soils mapping in one location.

It includes multiple sources of aquatic resource mapping because DSL regulates wetlands and waters.

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Predominantly hydric soil map units

Some soils naturally retain water longer than others, especially when they occur on certain parts of the landscape, such as in depressions. These soils often exhibit characteristics (e.g. “routinely flooded”) that meet the definition of, and are designated as “hydric soils.” (NRCS Hydric Soils List Criteria <https://www.nrcs.usda.gov/publications/query-by-state.html>) Because of these characteristics hydric soils are often found on the landscape where wetlands occur.

The SWI shows soil map units that are comprised of predominantly (greater than 50%) hydric soil components. This means that a user can expect more than half of that soil map unit to include soil components that have been designated as hydric by NRCS. These map units indicate places across the landscape with a higher likelihood for wetland occurrence. Displaying predominantly hydric soil map units in the SWI is especially helpful in recognizing potential wetland areas in places where only the NWI wetland mapping is available.

Exhibit 3:

OAR 340-071-0520 Large Systems

Unless DEQ authorizes otherwise, large systems must comply with the following requirements.

- (1) Large system absorption facilities must be designed with distribution to the cells by means of pumps.
- (2) The absorption area must be divided into relatively equal units. Each unit may receive no more than 1300 gallons of effluent per day.
- (3) The replacement (repair) absorption area must be divided into relatively equal units, with a replacement absorption area unit located adjacent to an initial absorption area unit.
- (4) Effluent distribution must alternate between the absorption area units.
- (5) Each system must have at least two pumps.
- (6) The applicant must provide a written assessment of the impact of the proposed system on the quality of public waters and public health, prepared by a registered geologist, a certified engineering geologist qualified as a hydrogeologist, or a subordinate under the direction of either, except as specifically exempted in ORS 672.535.
- (7) The owners of all new and existing large systems must register those systems with DEQ as Underground Injection Control (UIC) systems under OAR chapter 340, division 044. Large systems receiving domestic waste are regulated under this division. Drainfields receiving nondomestic waste are also regulated under the UIC rules.

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