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June 4, 2020

**VIA EMAIL**

Mr. Lane Shetterly  
City Attorney – City of Dallas  
189 S.W. Academy St.  
Dallas, OR 97338

Mr. Scott Whyte, Planning Director  
Mr. Chase Ballew, Planner  
City of Dallas Planning Dept.  
187 S.E. Court St.  
Dallas, OR 97338

*Re: Jenrae, LLC / Comp. Plan Amdt #CPA-20-01 and Zone Change #ZC-20-01  
Dolan & the RCTS*

Gentlemen:

As you know, the city has adopted comprehensive plan maps that show the Rickreall Creek Trail System (RCTS) traversing the subject property, which we refer to herein as “tax lot 14900.” The subject property is a part of what the city is calling “Phase 6” of the RCTS. We understand that the City will ultimately ask the developer to donate the land to the City either free of charge or in exchange for SDC credits. This case raises the issue of where on the subject property the trail should be located.

The subject property presents a number of challenges from a design standpoint. First, it is an oddly shaped lot that limits the potential design solutions for internal circulation. Second, because it is completely surrounded by existing development, the access locations are both limited and predetermined.

The City’s desired location for the RCTS is problematic from a design standpoint, because it results in up to six fewer lots being created. For this reason, the landowner is seeking to locate the RCTS in an alternative location which does not compromise the internal circulation or potential density of the site.

Ltr to: Messrs. Shetterly, Whyte, & Ballew  
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To the extent that the City seeking to acquire the land needed for the trail as a development exaction, any such demand raises constitutional concerns. See *Nollan v. California Coastal Comm'n*, 483 US 825, 831-32, 107 SCt 3141 (1987); *Dolan v. City of Tigard*, 512 US 374, 384, 114 SCt 2309 (1994). The Oregon Court of Appeals has explained that *Nollan* and *Dolan* together establish a two-part test for assessing the constitutionality of a government exaction of a dedication of private property:

"First, the exaction must substantially advance the same government interest that would furnish a valid ground for denial of the development permit-also known as the 'essential nexus' prong of the test. *Nollan*, 483 US at 836-37, 107 SCt 3141. Second, the nature and extent of the exaction must be 'roughly proportional' to the effect of the proposed development. *Dolan*, 512 U.S. at 385, 114 S.Ct. 2309."

*Brown v. City of Medford*, 251 Or App 42, 51, 283 P3d 367 (2012).

In *Dolan*, a landowner was attempting to obtain building permits to build a hardware store. The City demanded that the landowner dedicate a bike path and greenway/floodplain easement to the city in exchange for the building permit. The United States Supreme Court struck down the building permit condition on the grounds that it violated the 5<sup>th</sup> and 14<sup>th</sup> Amendments. The Court held that the government must show that the exaction it demands is "roughly proportional" to that part of the problem that is created or exacerbated by the landowner's development. The *Dolan* Court posed the question: "[W]hat is the required degree of connection between [1] the exactions imposed by the city and [2] the projected impacts of the proposed development."

In *Dolan*, the Court concluded that the proposed hardware store would generate some additional traffic, and that a bike path was a potential solution to alleviate that problem because it provides an alternative means of transportation. However, the court concluded that any argument that the development "anticipated to generate additional vehicular traffic thereby increasing congestion" on nearby streets, was simply not "constitutionally sufficient to justify the conditions imposed by the city on petitioner's building permit."

Applying the "rough proportionality" test to the *Dolan* hardware store property, the United States Supreme Court concluded that the City of Tigard demanded too much to pass the rough proportionality test. Simply concluding that a bikeway easement could offset some of the traffic demand which the new hardware store would generate did not constitute sufficiently quantified findings for the taking of an easement. The Court stated:

"[Although the Court has] no doubt that the city was correct in finding that the larger retail sales facility proposed by petitioner will increase traffic on the streets . . . the city has not met its burden of demonstrating that the additional number of vehicle and

bicycle trips generated by the petitioner's development reasonably relate to the city's requirement for a dedication of the pedestrian/bicycle pathway easement. The city simply found that the creation of the pathway "could offset some of the traffic demand . . . and lessen the increase in traffic congestion . . . ." [T]he city must make some effort to quantify its findings . . . beyond the conclusory statement [quoted above].

Oregon case law provides some examples of how the rough proportionality analysis is undertaken. In *McClure v. City of Springfield*, 39 Or LUBA 329 (2001), *aff'd*, 175 Or App 425, 28 P3d 1222 (2001), LUBA stated that a demand to *dedicate* (but not improve) 4,371 s.f. of right-of-way was "roughly proportional" to the impact that 19 cars will have on a particular street corridor. The percentages worked out as follows: the impact of new development on the road was 1.83% of the total capacity of the road, whereas the exaction was 1.59% of total "trip load" on the corridor. LUBA cautioned that "the quantification of impacts does not, in and of itself, establish that the extent of the proposed exaction is roughly proportional to the extent of the proposed impacts." *Id.* at 339. Ultimately, LUBA held that the safety concerns and benefits to the property tipped the scales in favor of affirming the exaction in that case, though LUBA said it was a "very close question."

Another example is provided by *Schlutz v. City of Grants Pass*, 131 Or App 220, 884 P2d 569 (1994). As LUBA described the result in *Schlutz*: "the Court \* \* \* appeared to consider a ratio of eight new vehicle trips per day to an exaction of 20,000 sf [of road dedication] to be manifestly unsupportable under *Dolan*." *McClure*, 39 Or LUBA at 231.

In this case, RCTS is a facility that is used by the entire City. The 2017 population of the City of Dallas is approximately 15,570 persons. The City currently has a "persons per household" figure of 2.51, which is also based on 2017 data. The RCTS is planned to be 4.2 miles long at completion, which equates to 22,176 linear feet. (4.2 x 5280 ft). Thus, the proportional share of the trail on a person-by person basis is 1.42 ft per person (22,176 ft ÷ 15,570 persons = 1.42 ft of trail per person). The proposed 29-lot development will result in 73 residents, using the "persons per household" assumption of 2.51. Thus, a proportional land dedication is 103.36 linear feet of trail (29 homes x 2.48 PPH x 1.55 feet per person = 103.36 linear feet.). However, the City's TSP shows at least 350 feet of trail needed across the subject property. This is more than 3x the proportional amount of land the City can require under *Dolan*. When combined with the fact that the City's preferred RCTS location will result in a loss of up to six (6) dwellings, the result is even more significant: (23 homes x 2.51 PPH x 1.42 feet per person = 82 linear feet.).

The fact that LUBA struggled with its *McClure* decision to conclude that 1.83% and 1.59% are roughly proportional – even going so far as to admit their decision was a close call should give the City of Dallas some reason to pause in this case. Viewed on a per-person basis, 82-103 feet (proportional impact of development) and 350 feet (desired exaction) are not even remotely proportional.

Ltr to: Messrs. Shetterly, Whyte, & Ballew  
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Furthermore, the City should find no solace in the fact that it has a 6% open space requirement in its Code. In this case, the Applicant has a choice as to which land it will select to meet that requirement. Nonetheless, the rough proportionality analysis applies regardless of the fact that the dedication requirement is expressed via legislation. Moreover, the fact that the landowner may be entitled to SDC credits does not constitute “just compensation” under *Dolan. Carver v. City of Salem*, 42 Or LUBA 305, 337-38 (2002), *aff’d w/o op.*, 184 Or App 503 (2002).

Finally, we wish to point out that the RCTS Pamphlet found on the city’s website lists twelve reasons “why trails and greenways are good for the community.” Those reasons are as follows:

- Provide alternative modes of transportation to relieve congestion
- Improve recreational opportunities
- Improve health through exercise
- Reduce stress
- Provide stream buffers and protect water quality
- Preserve wildlife travel corridors
- Increase property values
- Increase economic viability and business opportunities
- Provide natural classrooms for children
- Provide access opportunities for all ages, physical abilities, and economic standing
- Help create a safe, livable community
- Establish a sense of place and trust in each other and provide a great place to meet your neighbors

<https://www.ci.dallas.or.us/DocumentCenter/View/978/RCTS-Information-Facts?bidId=>

In this case, the Applicant’s proposed location checks all of these boxes except one (stream buffers). To insure that that goal is met, the Applicant is also willing to consider the dedication of the bed and banks of Rickreall Creek as part of any Agreement the City may reach regarding this issue. This would ensure that (1) the primary wildlife travel corridor along the river is preserved, and (2) the development would provide the necessary stream buffer and protection of water quality.

Sincerely,

**ANDREW H. STAMP, P.C.**

*Andrew H. Stamp*

Andrew H. Stamp

AHS:ahs  
Paul Trahan  
Client

Ltr to: Messrs. Shetterly, Whyte, & Ballew  
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City of Dallas Planning Commission

City Hall

Dallas OR

RE: Application #CPA-20-01 – ZC-20-01, Applicant: JENRAE Properties LLC

Submitted on June 1, 2020 by:

Dale Derouin

497 SE Walnut Ave.

Dallas, OR 97338

I have been a resident of Dallas for over 40 years and served on citizen committees which reviewed the Comprehensive Plan when the trail was added. I have watched its gradual extension with interest and pleasure and am probably one of the heaviest users. I live on the creek, downstream from the site subject to this application. I do not live within the 150 foot notification zone, but heard about it and want to comment as an interested citizen. I don't necessarily disagree with the possibility of rezoning the subject property, and its subsequent development as residential. I doubt that it will be affordable housing given the creek frontage, but understand that is not part of this hearing.

I submit the following points as testimony concerning Application #CPA-20-01 – ZC-20-01, Applicant: JENRAE Properties LLC

1. There appear to be some inaccuracies in information submitted on behalf of the applicant.
  - a. Map shows the proposed new location of the trail in the wrong location, based on the line of cedars described in the application.
  - b. Applicant states that the slope between the existing light industrial developments on Mill St and the intended RM zone area is too steep for any road access, when there is already a road, with a barrier, leading from the dairy business location to the lower property.
  - c. The proposed relocation of the trail does not come up to Mill Street between two residences but to industrial properties. Given the maps presented, it is difficult to tell where it will meet Mill Street, nor what the slope of the trail stretch would be.
  - d. There is a continual reference to Tax Lot 100, or just tax lot in one instance. None of the maps presented have tax lot numbers showing.
2. Given the inaccuracies noted above it is difficult to judge exactly what applicant envisions in this proposal.
3. The Rickreall Creek Trail System (RCTS) makes one of the city's best natural assets available to all citizens, and was envisioned as being along the creek as much as possible. The original site through the subject property was intended to follow the creek as far as possible and then connect to SE Academy Street which is obviously still possible since applicant intends that Academy Street would be one of two access points to the envisioned RM subdivision.

Connection to Academy would be easy between two lots, after the trail follows the creek as far as possible, as can be seen on the Barberry stretch of the RCTS.

4. Continuation of the RCTS along the creek whenever possible gives the city the ability to maintain the riparian area of the creek, without reliance on private owners. You can observe the wide variation of private riparian areas by observing our property and our neighbors.

In summary, it is not clear what applicant intends from the information presented, since there are questions about accuracy and consistency of said information. If I were on the planning commission, I would ask the applicant to resubmit the application with corrections and a response concerning why connecting to Academy Street as in the Comprehensive Plan is not feasible.

Chase Ballew  
City Planner

June 1, 2020  
Re: 149-687-8336 mtg.

Dear Sir,

My wife, Diane Engstrom, and I want to convey our support to amend the Comprehensive Plan to change the zoning from Industrial to Residential (RM). We are in favor of Mr. Edwardson's intention to develop single residential homes in our area rather than industrial buildings and opportunities. The noise from industrial property around us already is almost too much. We are also in favor of Mr. Edwardson's proposal for the Dallas Rickreall Creek Trail as he explained it to us. Thank you for the opportunity to share our opinion.

Tim + Diane Engstrom  
279 SE Academy  
Dallas, OR 97338  
503-623-6527

(transcribed by city staff)

CHASE BALLEW  
CITY PLANNER

JUNE 1, 2020  
RE: 149 687 8336 mtg.

Dear Sir,

My wife, Diane Engstrom, and I want to convey our support to Amend the Comprehensive Plan to change the zoning from Industrial to Residential (RM).

We are in favor of Mr. Edwardson's intention to develop single Residential Homes in our area rather than Industrial buildings and opportunities. The noise from industrial process around us already is almost too much.

We are also in favor of Mr. Edwardson's proposal for the Dallas Rickreall Creek trail as he explained it to us.

Thank You for the opportunity to share our opinion.

Tim + Diane Engstrom  
279 SE ACADEMY  
DALLAS OR 97338  
503 623 6527

RECEIVED  
6/3/2020 MP

Chase Ballew, City Planner

6/5/20

As a landowner at 391 SE Walnut Ct, Dallas, directly across the creek from the subject property, I am in support of the zoning from industrial to residential. Industrial would diminish the value of my property, view + quietness and I would be extremely unhappy!

I also support the relocating the creek trail designation to the street, away from the creek. This would allow a trailhead path to a larger area, Mill St. Oak St. and Academy St. would all have entry points.  
Thanks.

Mary E. Hague

transcribed by  
city staff

Chase Ballew, City Planner.

6/5/20

As a landowner at 391 SE Walnut Ct, Dallas directly across the creek from subject property, I am in support of the zoning from industrial to residential. Industrial would diminish the value of my property, view + quietness and I would be extremely unhappy!

I also support relocating the creek trail designation to the street, away from the creek. This would allow a trail head path to a larger area, Mill St, Oak St, and Academy St would all have entry points. Thanks.

Mary E. Hague

RECEIVED  
6/8/2020 MPT

Chase Ballew  
City Planner

6-5-20

As land owners at 379 SE Walnut Ct., Dallas, we are in support of the zoning from Industrial to Residential request. We also support relocating the Creek Trail designation to the street, away from the creek. This would allow a trailhead to access the path from a larger area. Mill St., Oak St., and Academy St. would all have entry points. There has not been an opportunity to help complete this path for the last 50 years. This is a generous offer from a willing land owner. The current plan is only about 200 feet of creek frontage that would be lost.

James + Gloria  
Marion

*transcribed by city staff*

Chase Ballew  
City Planner

6-5-20

As land owners at 379 SE Walnut Ct., Dallas, we are in support of the zoning from Industrial to Residence request. We also support relocating the Creek Trail designation to the street, away from the creek. This would allow a trailhead to access the path from a larger area. Mill st., Oak st., and Academy st. would all have entry points. There has not been an opportunity to help complete this path for the last 50 years. This is a generous offer from a willing land owner. The current plan is only about 200 feet of creek frontage that would be lost.

RECEIVED  
6/8/2020 MP

James L. + Gloria  
Marion



CHASE BALLEW <chase.ballew@dallasor.gov>

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## JENRAE application #CPA-20-01 - #ZC-20-01

1 message

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**Debbie McCullough** <bendeb1975@yahoo.com>  
To: chase.ballew@dallasor.gov

Mon, Jun 1, 2020 at 10:11 AM

Mr. Ballew,

I have concerns regarding the proposed relocating of the Rickreall Creek Trail away from the creek and onto city streets. This property is directly across the creek from our property at 461 SE Walnut Avenue. We observe wildlife on a daily basis, from the deer that practically live on the property, to eagles, herons, raccoons and other assorted wildlife. If this property is rezoned to residential and they build the multi family units and single family units they are planning close to the creek we will lose the wildlife that are in abundance now. If the trail stays where it has been planned, the general public will be able to walk along the creek and enjoy the wildlife.

I utilize the Rickreall Creek Trail on a daily basis and know that there is a buffer between the backyards of the residences and the trail, also there is a buffer between the trail and the creek. This is ideal for all parties concerned, the home owners, the trail users and the wildlife. This matches one of the goals of the Dallas City plan.

On another topic regarding the zoning change, there is a statement that the road from the business area on Mill street to the lower property is too steep to use. I see this road being used frequently by the ATVs that are currently using this property as a ATV track. I also observe a silver pickup, presumably the owners, use this road frequently. So that statement does not seem to be entirely accurate.

Rezoning to residential will put a strain on the infrastructure of police, fire, water and sewer, the city does not have enough to meet the city's current need. How is it going to meet the needs of this this new development? In the summer the creek is reduced to a minimal flow. We as home owners are charged an extra fee on our water bills to help pay for police and fire.

Wouldn't it make more sense to bring business to Dallas rather than continuing to build more homes?

Please do not allow this proposal of relocating the Rickreall Creek Trail.

Sincerely,

Ben and Debbie McCullough  
461 SE Walnut Avenue  
Dallas, Oregon 97338  
503 580 3538

To the Dallas Planning Commission:

June 1st, 2020

We have lived at 473 SE Walnut Avenue in Dallas for 30 years. Our home is right on the bank of Rickreall Creek. We had no idea we would get to experience the lives of so many types of wildlife. We have watched the deer population grow. We have watched a mallard hen take care of a nest of 13 eggs in our ferns on the creek bank. Quail have strutted by on the stones close to our back door. A pheasant rooster pranced along the bank across the creek in the early mornings. Eagles fly up the creek. Ospreys catch fish from the creek. Beavers chop down trees and carry them away limb by limb. Many different kinds of birds spend time in our trees. We would like the residents of Dallas and the visitors to our city to be able to experience some of these happenings as they walk the trail as it was planned. We do not want the plan changed.

Trent + Lucille Newcomb  
473 SE Walnut Avenue  
Dallas, Oregon 97338

RECEIVED  
6/1/2020 MP  
1:30 pm

June 1st 2020

*transcribed by city staff*

To The Dallas Planning Commission:

We have lived at 473 SE Walnut Ave in Dallas for 30 years. Our home is right on the bank of Rickreall Creek. We had no idea we would get to experience the lives of so many types of wildlife. We have watched the deer population grow. We have watched a Mallard hen take care of a nest of 13 eggs in our ferns on the creek bank. Quail have strutted by on the stones close to our back door. A Pheasant Rooster pranced along the bank across the creek in the early mornings. Eagles fly up the creek. Ospreys catch fish from the creek. Beavers chop down trees and carry them away limb by limb. Many different kinds of birds spend time in our trees. We would like the residents of Dallas and the visitors to our city to be able to experience some of these happenings as they walk the trail as it was planned. We do not want the plan changed.

Trent + Lucille Newcomb  
473 SE Walnut Ave  
Dallas, Oregon 97338



CHASE BALLEW <chase.ballew@dallasor.gov>

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**Notice of Public Hearing App # CPA-20-01 - #ZC-20-01**

1 message

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Debbie Pauls <oakvilla2@gmail.com>

Sat, May 30, 2020 at 7:36 PM

To: "chase.ballew@dallasor.gov" <chase.ballew@dallasor.gov>

Dear Chase—could you please forward this, our response to the public notice we received, to the Dallas Planning Department—thank you

May 30, 2020

Dear Members of the Dallas Planning Department:

We are writing in response to the notice we received regarding the property at 365 SE Academy/492 SE Mill St requesting amending the comprehensive plan to eliminate Creek trail designation and to relocate the Rickreall creek trail away from the creek and onto city streets.

We are not opposed to changing the zoning to residential as we see that as a good thing—keeping the density of the residential community intact. We are opposed to eliminating creek trail designation and moving the trail away from the creek onto city streets. We see the Rickreall Creek Trail System as a wonderful benefit to the livability to our community. We use the current trail system often and see it well used by others. Walking and biking along the creek trail provides serene beauty and experiences that are different than walking along city streets and neighborhoods.

We have reviewed the statements outlined in Chapter 4 regarding parks and open spaces in the Dallas Comprehensive Plan and agree with the concepts for encouraging the development of an integrated trail system to provide recreational opportunities. We feel that moving the creek trail to city and neighborhood streets do not meet the intent of this goal.

We hope that you will strongly consider these livability issues when you make your decision.

Thank you,

Debbie and Ron Pauls

Dallas

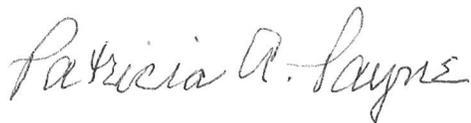
June 5, 2020

Chase Ballew  
City Planner

Dear Mr. Ballew,

I am a land owner and resident at 409 SE Walnut Avenue. I moved here seven years ago because of the peace and quiet it afforded me as well as the privacy and quality of life. Industrial zoning would deminish the value of my property and residential zoning would keep the neighborhood as is. I cherish my home and neighborhood and would hate seeing anything change.

Cordially,



Patricia A. Payne

RECEIVED  
6/8/2020



CHASE BALLEW <chase.ballew@dallasor.gov>

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## JENRAE Properties LLC

1 message

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dusterjim <dusterjim@hotmail.com>

Mon, Jun 8, 2020 at 1:33 PM

To: "chase.ballew@dallasor.gov" <chase.ballew@dallasor.gov>

As a property owner adjacent to the subject property, I would like to offer my support of Chris Edwardson's plan to allow high-end single-family housing to be built on the subject property. The subject property has remained dormant since the Friesen core factory closed over 50 years ago. With the mill closure there is a lot of industrial area more suited for development with rail service, utilities, and better traffic access available. Traffic congestion on Lower Academy is already a growing problem. Just getting onto, or across Jefferson st can already be a challenge at certain times during the day, and to add industrial or multiple family housing traffic into the equation would compound the problem.

Thank you for your consideration,

Jim Plummer  
(property owner @ [295 SE Academy st](#))

Sent from [Outlook](#)



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