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Via Email

Benton County Board of Commissioners
c/o Bob Richardson,
4500 Research Way, 2nd Floor
Corvallis, OR 97333
Bob.Richardson@bentoncountyor.gov
landuseappeals@bentoncountyor.gov

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 of the application and in opposition to the appeal (File # LU-25-067, Northside Christian Church). I respectfully request that the Board of Commissioners affirm the Planning Commission's denial for the reasons set forth below, in my letter dated August 3, 2026, in my oral testimony provided to the Board of Commissioners on August 4, 2026, in the testimony of affected constituents, and the two Greenlight Engineering Reports. In short, the applicant has acknowledged that it failed to provide consistent information to the public, the Planning Commission, and the Board of Commissioners. Such failures could be excused if not for the continued failure to account for the number of attendees¹ and frequency of events related to the gymnasium and day care center (two additional conditional uses under the Benton County Code that have not been fully addressed and repeatedly minimized by the applicant), as well as

¹ For example, the applicant concedes that the occupancy of the structure is more than 1,400 but fails to actually use that figure in accounting for transportation impacts.

undefined “major events” and other events. With the continued obfuscation, the applicant has not carried their burden of proof to satisfy BCC 53.215(2)² or ORS 215.441(2)(b)³. The applicant has also plainly violated BCC 51.525, which requires that the applicant “shall withdraw the initial application and shall file a new application for the revised request” when the type of land use action “changes.”⁴ The Board of Commissioners has authority to deny the application based upon these failures, as well as others, and I am available to assist the County in preparing findings in support of denial of the application. Indeed, denial is the only legally defensible outcome, here.

Response to the applicant’s failure to provide basic information to the County and to the public

Consistent and correct information is the foundation of any land use application, and the failure to provide such information reflects poorly on the applicant, calling into question other allegations of the applicant, regardless of the continued failure to provide such information. This repeated failure throughout the land use process undermines the applicant’s basic attempt to ferry their application through to approval. Despite acknowledging this failure as it relates to square footage, this application cannot be approved because the applicant continues to present inconsistent and incorrect figures, as demonstrated below.

With certainty, the applicant submitted misleading and inconsistent information throughout the public process for this application, by undercounting the size of the proposed structure, undercounting the number of attendees, and refusing to account for the proposed uses. Indeed, the lack of candor from the applicant, here, is unique in my 18-year career in Oregon land use. At the hearing, counsel for the applicant alleged that

² BCC 53.215(2) provides that a “[t]he decision to approve a conditional use permit shall be based on findings that ... [t]he proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area[.]”

³ ORS 215.441(2)(b) provides that “[a] county 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 tis section.”

⁴ In full, BCC 51.525 provides: “If 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.” (emphasis added).

the square footage for the mezzanine was irrelevant, which the applicant now appears to understand is very relevant to the application and the approval criteria. Legal counsel for the applicant should withdraw that statement from the record in order to maintain consistency. If not, then the application is so fundamentally flawed that neither the applicant nor the applicant's legal counsel can agree on what is relevant and what is irrelevant for purposes of this application. Unfortunately, that is not the only problem with the application because the application continues to undercount attendees and fails to account for the impacts from all conditional uses (e.g., gymnasium and day care center). Simply put, this application is a mess, and it is also reflected in the fact that every single notice provided to the public and neighboring property owners has been defective, as noted below.

The Udell Engineering & Land Surveying Memorandum (Udell 8/11 Memo) finally acknowledges the applicant's failure regarding square footage, yet continues to provide inconsistent information as to attendees and frequency of use. For example, the Udell 8/11 Memo alleges that there would be 500 seats for the church, 90 attendees for the Children's Ministry, and 313 attendees for the Youth Group. However, this continues to omit any figures related to the use of the Gymnasium (which is a conditional use that has yet to be accounted for) and the day care center (which is also a conditional use that has largely not been accounted for). To put it bluntly, the Udell figures are useless when the applicant fails to account for all of the proposed uses and their attendees.

The Sandow Engineering Memorandum (Sandow 8/11 Memo) also now accounts for its prior failures by presenting new figures based on the almost 29,000 square foot building. This should have been done from the start. Regardless of those conceded failures, the Sandow 8/11 Memo continues to omit account for the gymnasium use and the day care center use, two conditional uses that have largely been ignored. It is impossible to understand the applicant's rationale in their continued lack of candor with the public and the Board of Commissioners. Indeed, no figures have been presented for these conditional uses, and, therefore, the Board of Commissioners may deny this application on that failure alone.

Request to strike the unnamed memorandum dated 8/11/26

There is an unnamed memorandum dated 8/11/26 that bears no name, signature, or other indication that it has been prepared by the applicant or the applicant's agent. Consistent with the Board of Commissioners' direction at the 8/4/26 hearing that only the

applicant is permitted to participate in the first 7 days of the open record period⁵, the letter cannot be included in the record. Notably, there is no transmittal email or other indication that the memorandum came from the applicant, and, therefore, the letter must be struck from the record. Moreover, because this is the last opportunity to submit any information into the record, neither the applicant nor the County may supplement the record to demonstrate that it came from the applicant.

Response to unnamed memorandum dated 8/11/26

In response to the unnamed memorandum dated 8/11/26 (Unnamed 8/11/26 Memo), assuming it is from the applicant, though it bears no indication as such, the applicant attempts to downplay its continued lack of candor throughout this process. For example, the unnamed 8/11/26 memo alleges that “the 28,557-square-foot gross floor area does not represent an expansion, enlargement, or change to the worship and multi-purpose building previously submitted for review,” but the problem is that the applicant failed to disclose this information before the very last moment, despite the application stretching beyond a year prior. If it did not represent a “change,” it remains to be seen why the applicant was not previously candid with the Planning Commission, the public, or the Board of Commissioners. Indeed, this “change” is another reason to deny the application for violation of BCC 51.525.

At this point, if the applicant was candid, then the failures could possibly be excused, but the applicant continues its obfuscation. For example, the applicant alleges that the architectural “details do not establish separate land uses or fixed operational capacities for each individual room.” That is simply false. The gymnasium and the day care center are separate conditional uses that have not been fully addressed, either in their cumulative traffic impacts or the number of attendees and the frequency of attendees and/or events. The applicant’s repeated failures in this regard – as well as others – is simply beyond the pale. The applicant attempts to hide behind “primary” and “secondary” uses, but if those uses are conditional uses, under the code, then they need to be accounted for in the application materials. To the extent that the applicant alleges that the gymnasium or day care center is an accessory use, then such an argument is simply

⁵ Here, I reiterate my procedural objection noted at the 8/4/26, which prejudices my client’s substantial rights by not allowing my client to provide new information in the open record period. This provides greater opportunities to the applicant, while reducing the opportunities to others, including my client, which prevents my client from presenting his case and preventing a full and fair opportunity for a hearing on this application.

mistaken because there is no authority that a conditional use may have accessory uses that are actually conditional uses.⁶ As of now, the applicant has entirely failed to carry their burden of proof, after failing to provide accurate figures to the County and the public.

The unnamed 8/11/26 memo alleges that the Udell memo accurately characterizes the number of attendees, but that is simply not the case. Again, the applicant has failed to account for the number of attendees for separate gymnasium activities or the day care center attendees that would presumably operate at the same time as the religious services and throughout the week. Again, there is simply a lack of candor that the Board of Commissioners should not accept as normal. Indeed, the applicant's approach has been extraordinarily out of character for a land use application, and that does little to engender trust in the neighbors and the surrounding community.

Perhaps most disappointing is the applicant's continued effort to undermine the significance of its errors. For example, the applicant alleges that underestimating the square footage by roughly 1/3 "does not significantly alter the proposal." Again, this is simply false, and, at this point, it is unclear why the applicant continues to downplay its failures or why the applicant refuses to account for all proposed land uses, including conditional uses. Prior to accounting for the correct square footage, the applicant alleged that they were creating an oversized parking lot to account for major events, weddings, funerals, and so forth. Now, it is apparent that such allegations were hollow, which, if not for the due diligence of the public, would have resulted in a significantly undersized parking lot. Regardless, the applicant still fails to account for all the conditional uses and their effects on the transportation facilities. As such, the applicant cannot carry its burden

⁶ In the Rural Residential zone, a recreational facility (i.e., a gymnasium) and a day care center for the number of attendees sought here.

to satisfy BCC 53.215(2)⁷ or ORS 215.441(2)(b)⁸, regardless of the applicant's violation of BCC 51.525⁹.

The applicant alleges that the 500-seat figure refers “to the approximately 500 seats within the primary worship area and not to the maximum occupancy of the entire building[.]” but, if the applicant is designing a building for a “maximum occupancy” of more than 500, then the building must be held to that maximum occupancy. Why is the applicant proposing an oversized building if it does not intend to use that maximum occupancy? As the applicant finally concedes, the building, as proposed, can accommodate 1,419 occupants. This concession cannot be overstated, and the traffic related impacts of that many individuals must be accounted for in the application, as well as the number of attendees and frequency of events and uses. If that is the case, then the applicant must be held to that figure. To do otherwise would be to ignore the fundamental components of the building, namely occupancy. The notion that these figures are “preliminary” is nothing more than a façade. If an applicant proposes a structure for 1,419 occupants, then the applicant must be held to that standard for purposes of transportation effects. What recourse will the neighbors or the public have when as many individuals occupy the structure? These figures must be taken seriously at this point, not at some later point when there is no further recourse by the neighbors or public to participate. Moreover, the idea that these figures can be “refined” – upwards or downwards – is contrary to the land use process, including the idea that the applicant can change the figure at a later time when there is no opportunity by the neighbors to engage the public process. The notion that the applicant can change the proposed occupancy of the building after the public process has ended is simply unfounded and contrary to basic principles of the Oregon land use system. Instead of what the applicant “anticipates,” the applicant must be held to the standard of the size of the building it proposes to construct.

⁷ BCC 53.215(2) provides that a “[t]he decision to approve a conditional use permit shall be based on findings that ... [t]he proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area[.]”

⁸ ORS 215.441(2)(b) provides that “[a] county 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.”

⁹ 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.”

To do otherwise would make a mockery of the land use process, and it would elevate estimates over objective data.

The unnamed 8/11/26 memo also relies specifically on the ITE trip generation for a “church,” but, as noted above, omits any ITE trip generation for the other conditional uses sought, including a gymnasium and a day care center. Again, these conditional uses have been minimized, though they are not permitted outright in the underlying zone. The Board of Commissioners cannot accept the applicant’s invitation to ignore the Benton County Code and understate the impacts to the transportation system (i.e., “undue burden” under BCC 53.215(2) and the “level of service” standard for transportation under ORS 215.441(2)(b)). The applicant also identifies a variety of uses of the church that are not traditionally part of a church use, and those uses (“children’s ministry occurring in conjunction with Sunday worship services, Sunday evening youth activities, weekday office use, occasional evening classes and meetings, leadership meetings, men’s and women’s activities, classes and seminars, weddings, memorials, fellowship activities, and a potential weekday child care program”) and their transportation impacts must be addressed. To do otherwise would be to, again, understate the impacts on public facilities in violation of BCC 53.215(2) and ORS 215.441(2)(b). The applicant proposes to use its current use at a much smaller facility as an example or comparison, but fails to account for the significantly oversized structure that is proposed. Again, this is not a small, rural church that is proposed, but rather a multi-use facility with offices, flex rooms, day care center, gymnasium, and so forth. In essence, the applicant is attempting to gain approval for a church, when this is so much more.

As for “outdoor worship services and special events,” the applicant plainly undercounts such events and entirely fails to account for “major events,” events that the applicant has previously acknowledged will occur but failed to explain. How can the traffic impacts be accounted for based upon the number of seats when the applicant is proposing to hold services and events outside with unlimited seating and space? Opponents have also identified more than just two such events that occur at the current church. These events cause overflow parking and include hundreds and hundreds of more people than there are alleged seats in the church. The applicant attempts to hide behind the notion that it “may or may not” carry out such events. For purposes of land use, if such events and services could be held on the subject property, then they must be accounted for in the application. Again, the applicant has not been forthcoming with all the facts, which requires the public to perform their due diligence, and the applicant continues in this vein in the final stages of the application.

Notably, prior to acknowledging the actual square footage of the structure, the applicant alleged that it would be creating an oversized parking lot to account for the major events and likely parking overflow, which occurs at the church's current location. Now the applicant purports to satisfy the "minimum parking requirement," though the applicant has yet to account for all conditional uses entailed within the structure. These additional conditional uses must be accounted for, yet the applicant has failed to do so, much like other basic issues in this land use proceeding. For example, the applicant alleges that "[p]arking associated with the church use will be accommodated on the subject property, and ordinary church operations will not rely on NW Powers Avenue or neighboring properties for overflow parking." This omits the other proposed conditional uses, and it serves as another example of the applicant continually downplaying the impacts from proposed conditional uses. The applicant cannot carry its burden under BCC 53.215(2) and ORS 215.441(2)(b) by sticking their head in the sand as it relates to the gymnasium and the day care center.

The applicant's proposed Transportation Management Demand (TMD) is utterly ineffective because it is not mandatory and – indeed – it cannot be mandatory. The TMD is purely hortatory or aspirational, and there is no analysis that demonstrates it will be effective or ameliorate the issues that exist at the current facility. For example, the applicant proposes "volunteer parking coordination, carpool and rideshare encouragement, directional and event signage, designation of a parking coordinator, and monitoring of on-site parking conditions." Not only are these proposals not mandatory but they have not been demonstrated to be effective. To the extent the applicant wants this to be a condition of approval, it has not been proven to be effective, certain, or capable of addressing the underlying issue, including ameliorating the undue burden on transportation facilities (*e.g.*, parkin on Powers Avenue as the applicant's congregants already do at their existing site).

The unnamed 8/11/26 memo attempts to address staff's proposed conditions, but those conditions do not account for the new square footage, as well as the failure to account for other conditional uses. In other words, staff's proposed conditions of approval are stale in light of the applicant finally acknowledging its failure to present consistent and correct information to the County and the public. Moreover, the conditions of approval do not account for the gymnasium or day care center, both of which are conditional uses, not accessory uses.

The unnamed 8/11/26 memo proposes alternatives with regard to condition P-12 that are apparently at the discretion of County staff and the applicant. This violates LUBA's caselaw by deferring discretionary decision-making to a time when the public

no longer has the opportunity to participate, appeal, and so forth, including all the participatory rights that have been provided as part of this process. Conditions of approval are not optional; they are mandatory. By including proposed alternatives and options for the County engineer, the applicant is violating LUBA's caselaw for conditions of approval.¹⁰ See *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011); *Broderson v. Jackson County*, 28 Or LUBA 645 (1995); *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992).

Every notice from the County for this project was defective – procedural error

Not a single notice from the County accurately identified the proposal before the Board of Board of Commissioners. BCC 51.605(1)(b) requires public notice for a conditional use permit, and, here, three separate conditional uses are proposed (*i.e.*, church, gymnasium, and day care center). Accordingly, the public notice was required to “[e]xplain the nature of the application or land use action and the use or uses which could be authorized.” BCC 51.615(1)(a). Here, the square footage of the building and the proposed uses in the proposed worship structure never changed. It has always been roughly 28,557 square feet with a church, gymnasium, and a day care center for phase 1, yet no notice issued by the County has accurately identified the size of the building or the proposed uses. Below are the various excerpts from the notices sent by County, but no notice actually identifies the correct square footage or all of the conditional uses associated with the proposal. That failure plainly violates the Benton County Code's requirement identified above.

Revised Notice for Board of Commissioners' Hearing:

“The Board of Commissioners will consider the appeal of the Planning Commission's decision to deny the above-mentioned CUP application. The application proposes to construct an 18,902-SF church building to serve as a

¹⁰ A decision to approve an application must demonstrate that compliance with all discretionary approval criteria is “feasible.” *Meyer v. City of Portland*, 7 Or LUBA 184 (1983), *aff'd*, 67 Or App 274 (1984). Conditions of approval can be used by a local government to ensure compliance will be achieved. “[F]easibility means that ‘substantial evidence supports findings that solutions to certain problems ... are possible, likely and reasonably certain to succeed.’” *Meyer v. Portland*, 67 Or App 274, 280 n. 6, 678 P2d 741, *rev. den.* 297 Or 82 (1984).

worship space and multi-purpose facility for up to 500 attendees. A 2,160 SF storage shed is also proposed.”

Here, the notice provides an incorrect square footage and omits two conditional uses, including the gymnasium and day care center. This notice was plainly defective under BCC 51.615(1)(a).

Notice for Board of Commissioners’ Hearing:

“The Board of Commissioners will consider the appeal of the Planning Commission’s decision to deny the above-mentioned CUP application. The application proposes to construct an 18,902-SF church building to serve as a worship space and multi-purpose facility for up to 500 attendees. A 2,160 SF storage shed is also proposed.”

Here, the notice provides an incorrect square footage and omits two conditional uses, including the gymnasium and day care center. This notice was plainly defective under BCC 51.615(1)(a).

Notice of Planning Commission Decision:

“Conditional Use Permit- to establish a church on a 19.43-acre Parcel”

Here, the notice provides an incorrect square footage and omits two conditional uses, including the gymnasium and day care center. This notice was plainly defective under BCC 51.615(1)(a).

Notice of Planning Commission Public Hearing

“Proposed Action: LU-25-067: CUP – Church Planning Commission will consider a Conditional Use permit to establish a church on a 19.43-acre parcel zoned Rural Residential. The applicant is proposing to a two phase construction process of a site build out, as identified below.

Phase 1 is proposed as the construction of an 18,902-square-foot gymnasium building which will temporarily serve as the primary worship space for up to 500 attendees. In addition the applicant proposes construction of a 36’x60’ structure for storage.

Phase 2 is proposed for the construction of a 54,709-square-foot main sanctuary building. Once completed the worship services will relocate from the gymnasium

to the sanctuary. Once completed the gymnasium will be used for ancillary activities.”

Here, the notice provides an incorrect square footage for phase 1 and omits the day care center as a conditional use and fails to identify the gymnasium as a conditional use. This notice was plainly defective under BCC 51.615(1)(a).

Published Notice for Planning Commission Hearing:

LU-25-066 & LU-25-067 Notice of Planning Commission Hearing
The Benton County Planning Commission will hold a public hearing on Tuesday, March 17, 2026, from 6:00–9:00 p.m. to consider a Conditional Use Permit (File #LU-25-066 & LU-25-067) for Variance to Parking Standards and a Church on a 19.43-acre parcel zoned Rural Residential (RR) at 4500 Powers Ave NE, Albany, (T10S R4W Section 26B, Tax Lot 600). The applicant and property owner Northside Christian Church. The hearing will be held in

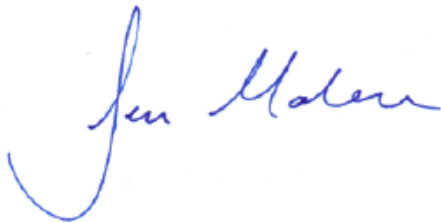
Here, the notice provides no square footage and omits two conditional uses, including the gymnasium and day care center. This notice was plainly defective under BCC 51.615(1)(a).

Each of these notices, which is to say every notice provided by the County, fails to provide sufficient notice to the public, as well as Cary Hoffer, as to the nature and scope of the proposal, as well as the basic uses that are proposed. These failures plainly violate the land use regulations identified above and prejudice the substantial rights of Mr. Hoffer, as well as anyone that read notices in good faith.

Conclusion

For the above reasons, including the lack of candor that has permeated this application, the Board has the authority to deny the application on numerous grounds, and I am available to prepare or assist in preparing findings in support of a denial.

Sincerely,



Sean T. Malone

Attorney for Cary Hoffer

Cc:

Client