

**STAFF REPORT**  
**JACK HALE – APPEAL OF NOTICE OF ACTION BSP-07-01**

TO: Douglas County Hearing Examiner  
FROM: Douglas County Transportation Services Staff  
RE: APP-08-03  
DATE: January 5, 2009

**I. GENERAL INFORMATION**

Requested Action: Mr. Donald Dimmitt, on behalf of Jack Hale, has filed an administrative appeal of an October 8, 2008 Binding Site Plan Notice of Action issued by Douglas County Land Services.

Location: The subject property is located on the northwest corner of the intersection of Grant Road and Urban Industrial Way. The property is further described as being in the SW Quarter of Section 9, Township 22 N., Range 21 E.W.M.

Background: On October 8, 2008, Douglas County Land Services issued a Notice of Action granting preliminary approval of the binding site plan. On October 22, 2008, Mr. Donald Dimmitt filed a Notice of Appeal of the Notice of Action on behalf of Mr. Hale. The Notice of Appeal was filed per, Chapter 14.12.010, and specifically appeals Conditions # 26, 29 second bullet, fourth bullet and seventh bullet.

**II. ENVIRONMENTAL REVIEW**

Conducting open record appeal proceedings of an administrative decision is categorically exempt from a threshold determination per WAC 197-11-800(11)(b).

**III. PROJECT ANALYSIS**

In October 22, 2008 correspondence from the applicant's legal council the following conditions contained in the Notice of Action for the Airway Binding Site Plan (BSP#07-01), dated October 8, 2008 were questioned.

#26. Construction of on-site transportation improvements may be phased. Dedication of right-of-way to facilitate construction of future transportation improvements shall not be phased.

#29 2<sup>nd</sup> bullet. Prior to final approval of the Binding Site Plan, the construction of the intersection mitigation (round about) identified in the August 2007 Traffic Impact Analysis shall be completed.

#29 4<sup>th</sup> bullet. Additional right-of-way shall be dedicated to accommodate the required intersection improvements (round about) at Grant Road and Urban Industrial Avenue. The intersection improvements (round about) are currently under design by Ed Zontek, engineer for Battermann Ventures. The applicant shall coordinate with Douglas County throughout the design process for the final right-of-way configuration.

#29 7<sup>th</sup> bullet. Half street frontage improvements for Urban Industrial Way meeting the standards for Figure 3-7b, Urban Local Access of the road standards shall be constructed.

Development proposals are reviewed and recommendations provided to ensure that provisions to adequately address Transportation and Stormwater are in place or are addressed as part of the proposed development. Douglas County Code and Comprehensive Planning documents, along with professional engineering judgment are utilized in the review of development proposals.

Title 12 of the Douglas County Code (Douglas County Road Standards) provides minimum standards for transportation facilities. These minimum standards for development provide requirements for road and bridge design, construction and reconstruction. In establishing the minimum standards for development, the County Engineer has sought to encourage standardization road design elements. Considerations include safety, convenience, aesthetics, proper drainage, and maintenance.

In accordance with Douglas County Code and the Greater East Wenatchee Area Comprehensive Plan (Amendments Adopted January 8, 2008), the proposed development, BSP 08-03, shall comply with the following:

Greater East Wenatchee Area Comprehensive Plan, Amendments Adopted January 8, 2008, Transportation Goals and Policies include the following:

Goal: Provide a balanced transportation system that meets the needs of the community by accommodating the movement of people, goods, and services at an optimum level of safety and efficiency.

Goal: To provide an effective transportation network with adequate capacity to meet the adopted Level of Service (LOS) Standard and the travel demand for the area.

Goal: Ensure adequate and safe access to Property via a system of public and private roads.

Policy T-4: Permanent cul-de-sacs shall only be permitted in situations where it can be demonstrated that the design provides an acceptable level of network circulation and the prohibition of cul-de-sacs creates an unreasonable economic burden.

Douglas County Code (Comprehensive Road Standards) addresses the importance of planning for circulation in the development of new roads, including but not limited to the sections noted below:

12.52.030 General Design Principles for New Roads

A. Road Network Circulation

The importance of good road network circulation for the health, welfare and safety of the public cannot be overemphasized. Poor circulation adds

unnecessary miles to pedestrian and trail systems, school bus routes, mail delivery and other service deliveries, utility services and most importantly, emergency services such as police and fire. Through good road network circulation, the public will have better emergency access and police and fire safety will be enhanced.

1. Plans will be reviewed for the provision of the best possible road and pedestrian network circulation and for conformance with any adopted comprehensive plan.

The road alignment may necessitate re-alignment in order to foster the long-range transportation objectives of the County. This includes greater scrutiny to provide continuity of pedestrian and other trail systems related to the proposed road network. The inclusion of permanent cul-de-sacs is strongly discouraged as they inhibit road and pedestrian network circulation (see 12.52.040 L for specific requirements) and are not consistent with the County Comprehensive Plan.

2. To facilitate the best possible road and pedestrian network circulation, if it is determined by the County Engineer, after making an individualized determination, that the layout of roads are to provide for the continuation of existing roads in adjoining subdivisions, then the roads shall be constructed prior to final plat approval. When adjoining property is not subdivided, the County Engineer shall determine whether roads in the proposed plat are to provide access to such unplatted property. The location for access to unplatted property shall be placed such that the objectives in these Standards can be achieved. Reserve easement strips may be required to prevent unauthorized access until such time as the connecting roads are constructed.

3. If the roads are to remain private, the above still applies except a separate tract or easement will be shown on the final plat map and they will not be dedicated to the public. Specific information in the recorded covenants regarding the use of this easement will be required.

4. Unless otherwise approved, all lots within major subdivisions shall be accessed by means of an internal road network. This network may be public or private but not a mixture of both. Access easements or multi-dwelling driveways in lieu of public or private roads shall not be permitted.

#### 12.52.040 Design Requirements – New and Reconstructed Roads

The following minimum design standards shall apply to all new and reconstructed roadway. Exhibits showing the basic cross-section requirements for the various road classifications are shown in Figures 3-1 through 3-8 at the end of this Part.

##### L. Cul-de-sacs and dead end roads

Permanent cul-de-sacs and dead end roads are not normally permitted within new developments. Permanent cul-de-sacs will only be permitted where the applicant can (a) demonstrate that his/her design does provide an acceptable level of network circulation considering the terrain and adjacent existing roadway network, and (b) demonstrate that the prohibition of cul-de-sacs will place an unreasonable economic impact on the applicant.

It is clearly noted in the Greater East Wenatchee Area Comprehensive Plan that cul-de-sac shall only be permitted in situations where it can be demonstrated that an acceptable level of network circulation is provided or the prohibition of cul-de-sacs create an unreasonable economic burden. This policy is consistent with the Douglas County Road Standards, specifically Section 12.52. The importance of a good road network circulation for health, welfare and safety of the public can not be over emphasized. Through good road network circulation, the public will have better emergency access, police and fire safety will be enhanced. The importance of the dedication of right-of-way for construction of the interior road as shown on the application documents is further illustrated within the appeal application which states "From a practical standpoint, it may well be that a second or third phase of the Binding Site Plan would take all or most of the property and thus negate any need for the interior road." This illustrates that the potential for the transportation improvements to be constructed in a manner that provides for connectivity in accordance with the Comprehensive Plan and Douglas County Code, is **not** assured without the dedication of the right-of-way occurring during the initial phase of development. Without provisions to provide for the identified connectivity provided by the interior road, the result would be two, permanent dead ends, with cul-de-sacs built to a temporary standard. The inclusion of permanent cul-de-sacs inhibits road and pedestrian circulation, jeopardizes availability of emergency services as well as service deliveries and utility services, and as noted previously, is not consistent with Douglas County Code or the Comprehensive Plan.

The size of this development, and the area remaining after completion of Phase one is quite small. The preliminary documents submitted demonstrate the feasibility of construction of the looped internal road, consistent with the Douglas County Road Standards. Approval of the Binding Site Plan includes dedication of right-of-way along the proposed alignment in order to protect the feasibility of future construction of the alignment submitted by the applicant as part of the application documents. This will prevent obstructions such as a structures or utilities from being constructed within this future corridor.

Temporary cul-de-sacs, which due to modifications in the development plans become permanent cul-de-sacs, are problematic. Temporary cul-de-sacs are typically located within *temporary* easements, this leads to questions about responsibility for maintenance of facilities, located on private property. Temporary cul-de-sacs are often constructed to a lesser standard (structural section) that the permanent improvements, again this results in problems regarding maintenance and/or replacement of these improvements. This issue is addressed through the dedication of right-of-way to support the future construction of the alignment as proposed by the applicant. Dedication of right-of-way is necessary to ensure that transportation facilities are constructed in accordance with the Comprehensive Plan and Douglas County Code.

A Traffic Impact Analysis for Commercial Development in Douglas County, Hale Study, 26.25 Acres Industrial Park, dated October 23, 2007, prepared by Gibson Traffic Consultants, was received by Douglas County on October 29, 2007. The report references the Grant Road at Airport Way TIA Study, previously prepared by Gibson Traffic Consultants. The October 23, 2007 report notes "Providing a single-lane round about (RAB) and southbound bypass lane at this intersection would negate the peak-hour delays and the intersection would operate at acceptable LOS B conditions during

both AM and PM peak periods. The October 23, 2007 report does not provide information to support the assertion contained within the appeal that the round about is not required for safe access in or out of the proposed Hale Binding Site Plan.

A DRAFT traffic study (March 2005) was prepared at the time of the Battermann Binding Site Plan, BSP 04-003, which analyzed the intersection of Urban Industrial Avenue and Grant Road. This Traffic Impact Analysis addressed the impacts of industrial development at this intersection and the appropriate improvements necessary to mitigate these impacts. This study, *Grant Road @ Airport Way/Urban Industrial Avenue, Intersection Final Traffic Study – Gibson Traffic Consultants, Inc.* was finalized in August 2007. This traffic analysis addressed Trip Distributions and Assignments for four (4) eastern industrial park parcels, including the Hale parcel. The recommended Access Improvements consisted of construction of a “Rural Single-Lane” round about at the intersection of Grant Road and Urban Industrial Avenue and the Airport Way realignment. The realignment of Airport Way is identified on the Douglas County Transportation Improvement Plan and within the Pangborn Memorial Airport, Master Plan; this project will be at least partially federally funded. Construction of the Single Lane round about, as identified as a mitigation measure associated with industrial development was noted as a Condition of Approval associated with the Battermann Binding Site Plan. Battermann Ventures was provided the opportunity to construct the identified round about (3-legs Grant Road East, Grant Road West and Urban Industrial Avenue) as a private developer project, in order to avoid participation in construction of the improvements as part of the Airport Way re-alignment, which utilizing Federal Funds, is anticipated to have a significantly higher cost associated (30%) with administration of the federal contract requirements. Battermann Ventures provided a Performance Assurance Agreement (bonding) for construction of the round about in order to receive approval of Phase I of the Battermann Binding Site Plan. Battermann Ventures was notified at that time that future phases of development of the Battermann Binding Site plan would not be approved until such time as the intersection improvements have been completed. Since that time Battermann Ventures has been moving forward with design of the round about/intersection improvements. Plans are nearly complete, pending acquisition of right-of-way and acceptance of the construction plans by the County Engineer; construction of the round about is anticipated for the 2009 construction season.

The Hale application does not provide information to support the assertion contained within the appeal that the round about is not required for safe access in or out of the proposed Hale Binding Site Plan. The August 2007, Gibson Traffic Consultants, Intersection Final Traffic Study identified interim un-signalized intersection improvements for separate channelization lanes, signing and striping improvements. It would be unreasonable to require incorporation of the identified interim measures, when construction of the ultimate intersection improvements is anticipated to be completed within the 2009 construction season. Construction of the interim measures which would be immediately followed by construction modifications and ultimately construction of the ultimate intersection improvements. This would be confusing to the traveling public, difficult to coordinate and be an unwarranted financial impact on both developers and the citizens of Douglas County.

The round about is an identified transportation improvement required to support industrial development including the proposed Hale/Airway Binding Site Plan. The

traffic impact analysis notes that additional right-of-way is likely required on the north and south sides of Grant Road to provide adequate space for the round about intersection. Information regarding the status of the round about design, (Ed Zontek, PE is the design engineer for Battermann Ventures, working on the round about design) will be provided as the design is working towards completion.

Approval of the Battermann Binding Site Plan included the option for Battermann Ventures to pursue formation of a Road Reimbursement Agreement as outlined in Douglas County Code 12.44. At this time a Road Reimbursement Area addressing Urban Industrial Avenue improvements or the Grant Road/Urban Industrial Avenue round about has not been formed. The relationship between dedication of right-of-way and participation/benefit associated with improvements identified in the formation of a Road Reimbursement Area should be addressed at the time of the public hearing associated with formation of a Road Reimbursement Area, if this option is ultimately pursued by Battermann Ventures.

Transportation improvements are to be constructed in accordance with Douglas County Code and any deviations approved by the County Engineer. The County Engineer approved a Request for Deviation to Douglas County Road Standards on May 22, 2008.

#### **IV. SUGGESTED FINDINGS OF FACT**

1. The appellant is Jack Hale, 9106 East Charter Oak Dr., Scottsdale AZ.
2. The appellant filed an application for a binding site plan, which was given the identification number of BSP#07-01.
3. On October 8, 2008, the Douglas County Land Services issued a Notice of Action granting preliminary approval for BSP#07-01.
4. On October 22, 2008, Mr. Donald Dimmitt filed a Notice of Appeal of the Notice of Action for BSP#07-01 on behalf of Mr. Hale.
5. Chapter 2.13.070, DCC, authorizes the Douglas County Hearing Examiner to hear appeals alleging an error in a decision by the director of land services in taking an action on a short plat or binding site plan.
6. Chapter 14.12, DCC, establishes procedures for appealing administrative decisions.
7. Conducting open record appeal proceedings of an administrative decision is categorically exempt from a threshold determination per WAC 197-11-800(11)(b).
8. Greater East Wenatchee Area Comprehensive Plan, Amendments Adopted January 8, 2008, Transportation Goals and Policies include the following:
  - Goal: Provide a balanced transportation system that meets the needs of the community by accommodating the movement of people, goods, and services at an optimum level of safety and efficiency.
  - Goal: To provide an effective transportation network with adequate capacity to meet the adopted Level of Service (LOS) Standard and the travel demand for the area.
  - Goal: Ensure adequate and safe access to Property via a system of public and private roads.
  - Policy T-4: Permanent cul-de-sacs shall only be permitted in situations where it can be demonstrated that the design provides an acceptable level of network circulation and the prohibition of cul-de-sacs creates an unreasonable economic burden.

9. Douglas County Code Section 12.52.030 General Design Principles for New Roads states *“The inclusion of permanent cul-de-sacs is strongly discouraged as they inhibit road and pedestrian network circulation (see 12.52.040 L for specific requirements) and are not consistent with the County Comprehensive Plan.”*
10. Douglas County Code Section 12.52.040 Design Requirements – New and Reconstructed Roads, L. Cul-de-sacs and dead end roads, states *“Permanent cul-de-sacs and dead end roads are not normally permitted within new developments. Permanent cul-de-sacs will only be permitted where the applicant can (a) demonstrate that his/her design does provide an acceptable level of network circulation considering the terrain and adjacent existing roadway network, and (b) demonstrate that the prohibition of cul-de-sacs will place an unreasonable economic impact on the applicant.”*
11. The August 2007, Grant Road @ Airport Way/Urban Industrial Avenue, Intersection Final Traffic Study prepared by Gibson Traffic Consultants identifies access improvements necessary to accommodate industrial development within the Pangborn Industrial Service Area.
12. The October 23, 2007 Traffic Impact Analysis, Hale Study, 26.25 Acres Industrial Park, prepared by Gibson Traffic Consultants concurs with the recommendations contained within the August 2007 Grant Road @ Airport Way/Urban Industrial Avenue, Intersection Final Traffic Study prepared by Gibson Traffic Consultants.
13. It is recommended that Condition of Approval 29, Seventh bullet be modified as follows: *“Half Street frontage improvements for Urban Industrial Avenue shall be completed in accordance with Figure 3-8, Urban Collector and the deviation accepted by the County Engineer on May 22, 2008.”*

Respectfully Submitted,



Jennifer Lange, P.E.  
Assistant County Engineer