



BONNIE MISKEL • SCOTT BACKMAN • ERIC COFFMAN • HOPE CALHOUN
DWAYNE DICKERSON • ELE ZACHARIADES • CHRISTINA BILENKI
DAVID MILLEDGE • SARA THOMPSON • JEFFREY SCHNEIDER

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Via Electronic Mail

City Clerk
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, Florida 33060

**Re: Appeal of Planning & Zoning Board Denial of Major Site Plan Application
Costco Pompano Beach (RELO)**
P&Z No. **25-12000023** / File No. **LN-879**
Project Location: **S. Powerline Road / Race Track Road**
Owner: **Pompano Park JV Northwest Corner LLC**
Applicant: **Costco Wholesale Corporation (“Applicant”)**

Dear City Clerk, City Attorney, Mayor, and Members of the City Commission:

Please accept this letter as the Applicant’s appeal to the **City Commission** from the Planning & Zoning Board’s denial of the Major Site Plan application for the proposed Costco Wholesale facility within the LIVE! Pompano Planned Commercial Development (“PCD”). This appeal is taken pursuant Section 155.2424 of the City’s Zoning Code (“Code”) outlining the City’s applicable appeal procedures, which is based on the record before the Planning & Zoning Board. The appeal is **not a de novo hearing**. The record on appeal includes, without limitation, all application materials submitted in support of the Major Site Plan, including all plans, narratives, reports, and supporting documents; the Applicant’s presentation at the Planning & Zoning Board hearing; the City staff report; the recorded video of the City’s Planning & Zoning Board meeting held on June 24, 2026; and all other materials that were part of the record before the Planning & Zoning Board.

The Planning & Zoning Board was required to decide whether the Major Site Plan satisfied the applicable site plan review standards enumerated in Section 155.2407.E. of the City’s Code based on **competent substantial evidence** in the record. The record clearly demonstrates that the applicant met its burden as to each applicable criterion. In addition, City staff outlined in their staff report and on the record how the Applicant met its burden with each of the site plan criteria. Absolutely no competent substantial evidence was presented establishing that the application failed to satisfy any applicable site plan criterion. Accordingly, the applicant respectfully requests that the City Commission grant this appeal, reverse the Planning & Zoning Board’s denial, and approve the Major Site Plan.

I. Background

The application seeks Major Site Plan approval for a proposed 163,084-square-foot Costco Wholesale direct-to-consumer retail facility on an approximately 18.65-acre parcel within the northwest corner of the LIVE! Pompano Planned Commercial Development, bounded by Race Track Road and Powerline Road (“Property”). The proposed development includes a Costco warehouse,

tire center, gasoline filling station with 32 fueling positions at 16 dispensers, and 811 surface parking spaces, together with an off-site drainage lake parcel that is being site planned with the development order ("Project").

The Property carries a Regional Activity Center (RAC) land use designation and is zoned Planned Commercial Development (PCD). The staff report confirms that those designations permit the proposed commercial development and that the application is consistent with the City's Comprehensive Plan and the applicable Future Land Use Element goals, objectives, and policies. The Development Review Committee and the applicant worked collaboratively to address applicable development standards and staff recommended approval of the Major Site Plan subject to conditions.

II. Applicable Standard of Review

The Planning & Zoning Board acted in a **quasi-judicial** capacity when applying existing site plan standards to a specific development application. The City Commission's review of that denial is confined to the record and is not a de novo hearing. The record on appeal includes, without limitation, all application materials submitted in support of the Major Site Plan, including all plans, narratives, reports, and supporting documents; the Applicant's presentation at the Planning & Zoning Board hearing; the City staff report; the recorded video of the City's Planning & Zoning Board meeting held on June 24, 2026; and all other materials that were part of the record before the Planning & Zoning Board.

Under Florida law, review of a quasi-judicial local land-use decision asks whether: (1) procedural due process was afforded; (2) the essential requirements of law were observed; and (3) the decision is supported by competent substantial evidence. See [Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469 \(Fla. 1993\)](#); [Broward County v. GBV International, Ltd., 787 So. 2d 838 \(Fla. 2001\)](#).

For development-review decisions such as site plans and plats, once the applicant presents competent substantial evidence that the application satisfies the applicable published criteria, the burden shifts to the local government to support denial with competent substantial evidence that the application does not meet those criteria. [GBV International](#) is directly instructive: a local government may deny a development application only where the record contains competent substantial evidence showing that the application failed to meet the published criteria.

Generalized opposition, subjective preference, or dissatisfaction with the identity or character of a proposed user is not competent substantial evidence of noncompliance with site plan standards. Fact-based citizen testimony may be considered where it is tied to the applicable criteria, but generalized statements of opposition must be disregarded. See [Miami-Dade County v. Walberg, 739 So. 2d 115 \(Fla. 3d DCA 1999\)](#).

Accordingly, the question on appeal is not whether individual Board members preferred the previously approved retail concept, or whether Costco was what some expected when the LIVE! Pompano PCD was originally approved. The question is whether competent substantial evidence in the record showed that the submitted Major Site Plan failed to satisfy an applicable site plan criterion. It did not.

III. The Record Demonstrates Compliance With Each Site Plan Review Criterion

The Major Site Plan Application for the Project and corresponding staff report identifies the applicable Major Site Plan review standards and analyzes the application under each standard. The record contains competent substantial evidence satisfying each criterion.

This is confirmed by the record of the hearing itself. When questioned by Board members, the City's Principal Planner stated on the record that the traffic and land-use questions raised by the Board "are things that I think have been evaluated," and that he had "no issue saying that those elements comply with our regulations." (Planning & Zoning Board Hearing Tr. at 62.) No Board member, staff member, or member of the public offered contrary technical or engineering evidence disputing that conclusion.

IV. The Development Order's Two Stated Grounds for Denial Do Not Support the Board's Decision

The written Development Order identifies two stated "concerns" as the basis for the Board's denial: (1) that the current Project is significantly different from the previously approved development program and that the Applicant allegedly failed to provide evidence of community engagement, desirability, compatibility, or traffic impacts; and (2) that the Project allegedly creates unmitigated traffic impacts, including increased trips, congestion, and stacking from gas station users and grocery purchasers. Neither concern provides a legally sufficient basis to deny the Major Site Plan.

A. The Prior Site Plan and Generalized Community-Engagement Concerns Are Not Applicable Site Plan Criteria, and the Record Otherwise Demonstrated Compatibility and Code Compliance

The first stated basis for denial asserts that the Project is "significantly different" from the previously approved site plan because it proposes a single-entity Costco facility with a fueling station rather than the prior grocery store and multi-tenant retail program. That comparison is not an applicable approval criterion under Section 155.2407.E. The pending application was required to be reviewed against the City's adopted Major Site Plan standards, not against whether the Board preferred the prior development concept or whether the Project replicated the prior development order.

The Development Order itself confirms that the Project is located within the LIVE! Pompano PCD, that the property has a RAC land use designation, that it is zoned PCD, and that the zoning permits commercial development consistent with the City's Commercial, Institutional, and Mixed-Use Design Standards. The Development Order also acknowledges that the Project's total lot coverage within the 222-acre PCD is 24%, and that the Architectural Appearance Committee approved the two Superior Vernacular Design requests with enhanced screening design alternatives. Those findings confirm that the Project was evaluated through the City's adopted development-review framework.

The suggestion that the Applicant was required to present separate evidence of "engagement with community stakeholders" is not a published Major Site Plan approval standard. Nor is a generalized inquiry into whether the Project is "desirable" to surrounding stakeholders an independent basis for

denial where the applicable Code criteria are satisfied. A quasi-judicial decision must be based on competent substantial evidence tied to the governing approval standards. Community preference, generalized disappointment with a changed development program, or a desire for a different tenant mix is legally insufficient unless connected to a specific, unmet Code criterion.

This reading of the Code is confirmed by the City's Principal Planner's own statement at the hearing. When a Board member asked whether "community input" was part of the review criteria, Mr. Wemyss clarified that community concerns are, at most, "a reason to table an item to come back with additional information" where an issue "has [not] previously been evaluated" — not an independent basis for denial. (Hearing Tr. at 62.) City staff further confirmed on the record that community-related considerations for this Property had already been evaluated "early in the formulation of th[e] PCD." (Hearing Tr. at 69.) The record thus affirmatively establishes that "community engagement" is not an adopted Major Site Plan review standard under Section 155.2407.E.

Accordingly, the first stated basis for denial rests on legally irrelevant considerations and generalized preferences rather than competent substantial evidence of noncompliance with Section 155.2407.E. The fact that the Project differs from a prior approval does not, standing alone, establish that the current Major Site Plan fails to meet the Code.

B. The Alleged Traffic and Queuing Concerns Were Directly Addressed by Competent Substantial Evidence, and No Contrary Competent Substantial Evidence Was Presented

The second stated basis for denial asserts that the Project would create "unmitigated traffic impacts," including increased weekday and weekend traffic, congestion from gas station users and grocery purchasers, and expected vehicle stacking onto arterial and internal roadways. The record contains competent substantial evidence directly addressing each of those issues.

The record also included traffic information presented to the Board explaining that traffic for the LIVE! Pompano PCD had already been addressed through the PCD's prior traffic approval and mitigation framework. The PCD traffic analysis evaluated the larger mixed-use development at initial-phase and full-build-out conditions, identified required roadway and signal improvements, and tied those improvements to objective trip-generation thresholds. Those required improvements were not limited to the Costco parcel; they were established for the larger PCD and were designed to mitigate traffic impacts for the approved development program as a whole. As presented to the Board, the mitigation already completed and required for the PCD goes beyond the traffic impacts of the approvals issued to date, including the proposed Costco development.

The previously approved PCD mitigation framework required Phase 1 improvements at the 25% full-build-out trip-generation threshold, equivalent to 965 net new P.M. peak-hour trips, and Full Build-Out improvements at the 75% full-build-out trip-generation threshold, equivalent to 2,895 net new P.M. peak-hour trips. The identified mitigation included, among other items, turn-lane additions, signalization, right-turn overlap phases, signal phasing modifications, and signal timing optimization at key area intersections, including SR 814/W Atlantic Boulevard and SR 845/Powerline Road, SW 3rd Street/Race Track Road and SR 845/Powerline Road, SW 3rd Street/Race Track Road and SW 23rd Avenue/West Project Driveway, and SR 845/Powerline Road and W McNab Road. This is important because the Board's stated concern treated traffic as if the Costco application were

proceeding in isolation. It was not. Costco is within an approved PCD that already included a comprehensive traffic-mitigation program for the broader development.

In addition to that PCD-wide mitigation record, and at Broward County's request, the Applicant submitted a Costco-specific technical memorandum prepared by Kittelson & Associates evaluating driveway operations, intersection operations, turn-lane storage, and fueling-facility queuing associated with the proposed Costco development. The memorandum used accepted traffic-engineering methodologies, including ITE Trip Generation Manual, 12th Edition, trip generation; HCM 7th Edition and Synchro 12 operational analysis; FDOT seasonal adjustment data; FDOT Design Manual turn-lane guidance; and observed queue data from comparable Costco fuel stations.

That Costco-specific technical analysis expressly accounted for the Costco warehouse use and ancillary fueling component. It projected approximately 687 gross trips during the weekday PM peak hour, including pass-by trips, and assigned those trips to the three proposed access points based on driveway locations, local traffic patterns, and roadway connectivity. The analysis then evaluated future build conditions at the North Driveway/Race Track Road and SW 23 Avenue/Race Track Road intersections. The results showed that the analyzed locations would operate acceptably, with overall Level of Service C or better and volume-to-capacity ratios below 1.00 during the weekday PM peak hour.

The record also addressed the Board's stacking concern. The turn-lane analysis evaluated the existing Race Track Road turn lanes against the projected 95th percentile queues under build conditions and concluded that the existing turn-lane lengths are sufficient to accommodate the projected queues. For the fueling facility specifically, the memorandum analyzed the proposed 32 fueling positions, service capacity, and on-site storage. It concluded that the facility would provide approximately 548 vehicles per hour of service capacity, storage for approximately 48 queued vehicles within the fueling area, and total on-site capacity for up to approximately 80 vehicles. Comparable Costco fuel-station data showed 95th percentile queues well below the available on-site storage, and the memorandum concluded that fuel queues are expected to remain fully contained within the fueling station area without affecting internal circulation or adjacent roadways.

Thus, the precise issues identified in the Development Order—increased trips, congestion, gas-station demand, grocery-purchaser traffic, and vehicle stacking—were addressed through competent substantial evidence in the record. The Development Order does not identify any contrary traffic study, engineering analysis, expert testimony, adopted level-of-service failure, turn-lane deficiency, or queueing analysis refuting the Applicant's evidence. Generalized statements of concern about traffic are not competent substantial evidence where unrebutted professional traffic evidence demonstrates that the applicable standards are satisfied.

Because the traffic and queueing issues were addressed by competent substantial evidence and were not refuted by contrary competent substantial evidence, the second stated basis for denial cannot support the Board's decision.

V. The Denial Was Based on Irrelevant and Legally Insufficient Considerations

The record demonstrates compliance with the applicable criteria. The Board's denial cannot be sustained based on considerations outside those criteria.

Comments or concerns that Costco was not what was initially promised or anticipated as part of the larger LIVE! Pompano PCD development program are legally insufficient grounds for denial. The relevant inquiry was not whether Board members preferred the prior development concept, expected a different tenant, or believed the broader PCD should have evolved differently. The relevant inquiry was whether this Major Site Plan satisfied the applicable published standards. A quasi-judicial denial must be based on competent substantial evidence tied to the applicable Code criteria. Subjective expectations, policy preferences, generalized disappointment, or statements untethered to an adopted approval standard do not satisfy that requirement.

Indeed, the hearing record contains a direct, contemporaneous acknowledgment of this standard from a Board member who voted to approve the application. That Board member explained that the Board's role is to "apply the facts" to the adopted criteria and "compare it to what the law says," and expressly concluded that "we hear[d] enough competent substantial evidence to show that [the Project] implies" compliance, and that the Applicant met "all the boxes, which they have, and staff has testified to that." (Hearing Tr. at 60.) Another Board member voting to approve likewise stated that "the traffic has been thoughtfully spent through" and commended the design and road improvements. (Hearing Tr. at 58.) By contrast, the comments offered by Board members voting to deny were untethered to any adopted criterion — for example, one member's description of the Project as "this giant monster Costco." (Hearing Tr. at 38.) The denial itself passed by the narrowest possible margin, 4-3, underscoring that the dissenting votes reflected subjective disagreement rather than any consensus finding of noncompliance supported by competent substantial evidence. (Hearing Tr. at 89-90.)

VI. The Board Had No Competent Substantial Evidence to Deny the Application

The applicant met its initial burden by presenting competent substantial evidence that the Major Site Plan satisfied each applicable review criterion. The City's professional staff confirmed compliance or recommended conditions to ensure final technical compliance.

Once that showing was made, denial required competent substantial evidence that the application failed to meet one or more applicable published criteria. The record contains no such evidence. The Board did not identify a specific unmet standard, did not point to competent technical evidence contradicting staff's findings, and did not establish a legally sufficient basis for denial. As discussed above, this is confirmed by the hearing record itself, in which both City staff (Hearing Tr. at 65) and Board members voting to approve the application (Hearing Tr. at 60) expressly acknowledged that the Applicant had satisfied its evidentiary burden under the applicable criteria.

Under Florida law, that is insufficient. A quasi-judicial board may not deny a compliant development application based on generalized opposition, subjective preference, or considerations not adopted as review criteria. Because the denial is unsupported by competent substantial evidence and rests on legally irrelevant considerations, it departs from the essential requirements of law.

VII. Requested Relief

For the foregoing reasons, the applicant respectfully requests that the City Commission:

1. Grant this appeal;

2. Reverse the Planning & Zoning Board's denial of the Costco Major Site Plan application;
3. Approve the Major Site Plan for Costco Pompano Beach (RELO), P&Z No. **25-12000023**, subject to the staff-recommended conditions of approval; and
4. Grant such further relief as is appropriate under the City's Code and appeal procedures.

Thank you for your attention to this appeal. Please include this letter and all attachments submitted herewith in the City Commission appeal record.

Respectfully submitted,

MISKEL BACKMAN LLP

By: 

Christina Bilenki, Esq. & Scott E. Backman, Esq.

5550 Glades Road, Suite 620

Boca Raton, Florida 33431

Telephone: 561-405-3300

Email: sbackman@miskelbackman.com; cbilenki@miskelbackman.com

Counsel for Applicant / Costco Wholesale Corporation

Attachments

1. Planning & Zoning Board Staff Report for Costco Pompano Beach (RELO), P&Z No. 25-12000023 / File No. LN-879.
2. Major Site Plan application materials and plans submitted into the Planning & Zoning Board record.
3. Traffic analysis and fuel-station queuing materials submitted into the Planning & Zoning Board record.
4. Applicant's Presentation to the Planning & Zoning Board.
5. Any transcript, minutes, video record, or written order reflecting the Planning & Zoning Board denial.