



Jean Fraser &lt;jf@portlandmaine.gov&gt;

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**Fwd: Taco Bell Portland ME - outstanding items**

1 message

Jean Fraser &lt;jf@portlandmaine.gov&gt;

Thu, Jul 5, 2018 at 11:14 AM

To: Jennifer Thompson &lt;jlt@portlandmaine.gov&gt;

Cc: "O'Brien, Stuart" &lt;sgo@portlandmaine.gov&gt;, "Barhydt, Barbara" &lt;bab@portlandmaine.gov&gt;, "Errico, Thomas" &lt;thomas.errico@tylin.com&gt;

Jen

This is a heads up; further discussion may be necessary when we hear back from Kyle.

When this Level II approval was issued it was only after some long negotiations regarding this condition of approval - Kyle and his Traffic Engineer asked questions and suggested text revisions.

The City's Traffic Engineer (Tom Errico) wanted to restrict movements into and out of the drive through in view of the conditions in Washington Ave (near an intersection)- if Guggenheim had not agreed to the condition we would have required those restrictions.

To explain Kyle's e-mail, he has requested the return of his defect guarantee and has linked his willingness to address the condition to its cost as compared to the defect guarantee (so the return of the defect guarantee would cover the cost of complying with the condition). They have not completed the landscaping in any case.

Will keep you posted.

Thanks  
Jean

----- Forwarded message -----

From: **Jean Fraser** <jf@portlandmaine.gov>

Date: Thu, Jul 5, 2018 at 10:55 AM

Subject: Re: Taco Bell Portland ME - outstanding items

To: "Gibson, Kyle" &lt;Kyle.Gibson@guggenheimpartners.com&gt;

Cc: James Dealaman &lt;jdealaman@portlandmaine.gov&gt;, "dfenstermacher@vhb.com" &lt;dfenstermacher@vhb.com&gt;

Kyle

I have been directed by the City's Planning Director to advise you that the *Crash Monitoring Study* was a condition of approval, and if this condition is not addressed then we will be placing this matter in the hands of our attorney as it is a Land Use violation.

Guggenheim obtained the Site Plan approval and was aware of the requirement for a *Crash Monitoring Study*. As previously noted, this condition was included in order to address safety concerns as your proposals introduced a drive-through and additional traffic to this location.

Please submit the *Crash Monitoring Study* in the near future (eg within one month) in accordance with the condition (quoted below) - it was due at latest in June 2018.

Thank you  
Jean

#### CONDITION(S):

- i. That applicant shall conduct a detailed *Crash Monitoring Study* at the drive access with Washington Avenue (to be conducted in accordance with a methodology agreed with the City's Traffic Engineering Reviewer and particularly focusing on crashes caused by Taco Bell vehicles entering or exiting the site) for the 12 months following the opening of the drive through to the public, such date to be informed to the City Planning Authority. A report summarizing the outcomes of the *Crash Monitoring Study*, including the identification of all-crashes and any other problems observed in the 12 month period, shall be submitted to the City Planning Authority immediately upon completion and no later than one month after the *Study* is conducted. The applicant will obtain the crash data from local sources including the Portland Police Department. If the *Study* indicates that the full turn access has contributed to a significant increase in crashes along Washington Avenue involving site vehicles (as determined by the City based on the cause of the crashes and on the City Traffic Engineer's recommendations), the applicant shall modify the access to be right-out and right-in only; and
- ii. That the applicant shall pursue the creation of a 2-way road connection to the "Rite Aid" driveway to the north in order to encourage Taco Bell customers to use the access from Allen Avenue and reduce potential conflicts in Washington Avenue. The applicant shall preserve space for this connection in the current site plan and agree to construct it in the future if the Rite Aid site is redeveloped or at a time period when the site is being reviewed by the City. If this connection is achieved and permanent (ie open to Taco Bell vehicles) within the first 12 months following the opening of the drive through to the public (ie during the monitoring period), the applicant shall not be responsible for submitting the final report associated with the *Crash Monitoring Study* nor the associated potential restrictions as outlined in Condition 1 above; and
- iii. The drive-through is approved as part of the Taco Bell use only. If the occupant changes and the drive-through remains in operation, the new occupant shall submit a traffic analyses relating to the new occupant's drive through traffic generation to the Planning Authority for review and approval. If the new occupant's drive through use results in "peak hour" traffic volumes that are greater than those associated with Taco Bell (as documented in the Taco Bell site plan application subject of this letter), the new occupant may be required to revise the access from Washington Avenue to incorporate restrictions (for safety) and may be required to obtain a Traffic Movement Permit; and

On Tue, Jun 5, 2018 at 3:25 PM, Gibson, Kyle <[Kyle.Gibson@guggenheimpartners.com](mailto:Kyle.Gibson@guggenheimpartners.com)> wrote:

Jean,

I will request a proposal for the crash monitoring study from the traffic consultant. If it is less than the balance the city of from the bond escrow, then may proceed. If it is more, it is doubtful we will complete the study. Due to the poor volume of business the Taco Bell has experienced during the first year, I can't imagine there have been any increase in accidents as a result of its opening. Having been back to the site numerous time over the last year, I have never personally seen more than two cars in the drive through at any one time. It's been an extreme disappointment to the franchisee.

As we discussed at length previously, Guggenheim can't force Rite Aid to grant any easement or connection point onto the Taco Bell site. We did have conversations with them and they could see no benefit to them and were not interested in agreeing to that connection. I will reach out to them again, maybe with the merger of Rite Aid and Walgreens something changed but I am not optimistic that there will ever be a connection point since neither Walgreen's nor Rite Aid were the owner of the property. They were only the leasee on a long-term ground lease with the property owner we spoke with.

Unless the City wants to try taking it under imminent domain, which I would expect a legal challenge from the property owner and a very difficult case for the City to prevail, especially based on what I expect the crash monitoring study would actually reveal. To further complicate the this process, Guggenheim no longer holds any legal interest in the real property of this site.

Kyle

**Kyle R. Gibson, CDP**

Vice President of Development and Construction

**Guggenheim Partners, LLC**

**Guggenheim Retail Real Estate Partners, Inc.**

**3000 Internet Blvd. Suite 570**

**Frisco, TX 75034**

214 872 4009 Office

972.979.4524 Mobile

**Kyle.Gibson@GuggenheimPartners.com**

**[www.guggenheimpartners.com/retailrealestate](http://www.guggenheimpartners.com/retailrealestate)**

**From:** Jean Fraser [mailto:[jf@portlandmaine.gov](mailto:jf@portlandmaine.gov)]

**Sent:** Tuesday, June 05, 2018 12:06 PM

**To:** Gibson, Kyle <[Kyle.Gibson@guggenheimpartners.com](mailto:Kyle.Gibson@guggenheimpartners.com)>

**Cc:** James Dealaman <[jdealaman@portlandmaine.gov](mailto:jdealaman@portlandmaine.gov)>

**Subject:** Taco Bell Portland ME - outstanding items

Kyle

I understand that you have been in touch with James Dealaman in our office and would like to have the Defect Guarantee returned.

The Director of Planning has asked me to advise you that this would not be processed until the first two conditions of site plan approval have been addressed satisfactorily (the Site Plan Approval letter is attached). These conditions are as follows:

- i. That applicant shall conduct a detailed *Crash Monitoring Study* at the drive access with Washington Avenue (to be conducted in accordance with a methodology agreed with the City's Traffic Engineering Reviewer and particularly focusing on crashes caused by Taco Bell vehicles entering or exiting the site) for the 12 months following the opening of the drive through to the public, such date to be informed to the City Planning Authority. A report summarizing the outcomes of the *Crash Monitoring Study*, including the identification of all-crashes and any other problems observed in the 12 month period, shall be submitted to the City Planning Authority immediately upon completion and no later than one month after the *Study* is conducted. The applicant will obtain the crash data from local sources including the Portland Police Department. If the *Study* indicates that the full turn access has contributed to a significant increase in crashes along Washington Avenue involving site vehicles (as determined by the City based on the cause of the crashes and on the City Traffic Engineer's recommendations), the applicant shall modify the access to be right-out and right-in only; and
  
- ii That the applicant shall pursue the creation of a 2-way road connection to the "Rite Aid" driveway to the north in order to encourage Taco Bell customers to use the access from Allen Avenue and reduce potential conflicts in Washington Avenue. The applicant shall preserve space for this connection in the current site plan and agree to construct it in the future if the Rite Aid site is redeveloped or at a time period when the site is being reviewed by the City. If this connection is achieved and permanent (ie open to Taco Bell vehicles) within the first 12 months following the opening of the drive through to the public (ie during the monitoring period), the applicant shall not be responsible for submitting the final report associated with the *Crash Monitoring Study* nor the associated potential restrictions as outlined in Condition 1 above;

As you may recall, during the site plan review the City's Traffic Engineer was very concerned about the safety issues related to the left turn in and left turn out from the drive-through, especially in view of the proximity to the intersection. We have noted that a large number of crashes have taken place in this location since the date of your CO, although it is not clear to what extent the Taco Bell use is a factor. I don't believe I have heard from anyone concerning the *Crash Monitoring Study*.

The second condition is now a realistic option as the abutting Rite Aid store is to be closed by Walgreens and there may be an opportunity to connect the Taco Bell site to their service drive and improve safety for the users of the Taco Bell site.



Please note that because the conditions relate to public safety, the Planning Authority considers it important to have these conditions addressed in a timely manner; we are obligated to follow up on these conditions of approval in order to ensure that the use of the property is safe and in compliance.

Therefore I would be grateful if you could advise us as to the progress and intentions in respect of the two conditions quoted above.

Thank you for your attention to these outstanding items.

Thank you

Jean

PS I would also note that some of the site work/landscaping appears to be incomplete and I am arranging for a final inspection.

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*Jean Fraser, Planner*

*City of Portland*

874 8728

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*City of Portland*  
874 8728

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874 8728

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