

Memo

To: The Honorable Mayor and Oregon City Commissioners

From: Carrie Richter, Deputy City Attorney

Re: Record Issues Memo - Appeal of HRB's Conditional Approval of the Construction of a new operations facility for the Oregon City Public Works Department in the McLoughlin Conservation District - AP 17-01 and 17-02

Oregon City Municipal Code Section 17.50.190(F) limits the City Commission's decisions on appeals in two ways. First, the Commission's review is to be on the record. The City Commission may not consider new evidence submitted after the record was closed before the Historic Review Board (HRB). Second, the City Commission's review is limited to the issues raised in the notice of appeal.

Before moving into the substance of the appeal, the City Commission should make a decision about whether any of the materials provided to the City Commission, beyond those submitted to the Historic Review Board, should be excluded from the record as beyond the scope of OCMC 17.50.190(F). This memo identifies the materials received into the record since the matter was concluded before the HRB and provides a recommendation about how the Commission may decide to resolve these issues:

Items that should be included in the record for this proceeding:

- 1) Notice to the tribal representatives which became part of the record by virtue of OAR 661-010-0025, a LUBA rule that says that all notices are part of the record (included in agenda packet);
- 2) The MNA Resolutions supporting the request for a fee waiver (provided as part of the fee waiver matter);
- 3) Copies of the applicable approval criteria including:
 - a. OCMC 17.40 (uploaded for the Commission's reference on the computers on the dias as an attachment to the agenda packet);
 - b. Ordinance 1953 including the Historic Preservation chapter of the 1980 Comprehensive Plan as referenced as a criteria in OCMC 17.40.030(C)(2) (uploaded for the Commission's reference on the computers on the dias as an attachment to the agenda packet);
 - c. The Guidelines for New Construction within Oregon City Historic Districts (included in the initial agenda packet); and
- 4) Non-redacted portions of the Charles Coombs March 7, 2018 written argument (recommended redaction attached to this memorandum.)

Items that contain new evidence or argument not raised in the notices of appeal that should be rejected and not considered as part of this record include:

- 1) Redacted portions of page 26 of the June 27, 2017 HRB decision as redacted in the February 17, 2018 staff report on page 24, (in the agenda packet); and
- 2) Portions of the Charles Coombs March 7 written argument including:
 - a. Reference to a 2002 historic inventory at footnote 2. This document was not adopted by the Historic Review Board of the City Commission and therefore, it does not set forth any of the approval criteria applicable to this review.

- b. The Appellants did not raise a challenge related to the comparative scale of the new construction – an argument raised for the first time on pages 4 – 6. This is a new issue that was not raised in the appeal and it should not be considered.
- c. At pages 11-13, Mr. Coombs raises some new facts relating to how the Public Works Department is currently operating on the site. These are new facts that are not in the record and make reference to a “Public Survey” that does not appear in the record

Staff recommends resolution of this issue in a single motion that could be worded as follows:

“I move that this Commission reject those portions of the HRB decision dated June 27, 2017 as set forth in the February 17, 2018 staff report and also portions of the Charles Coombs testimony dated March 7 as it has been redacted by the Deputy City Attorney, from the record. These materials will not be considered by the City Commission in making its decision.”