

August 8, 2017

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VIA EMAIL

Ms. Laura Terway, Director
Community Development Director
City of Oregon City Community Development
221 Molalla Ave, Suite 200
Oregon City, OR 97045

Re: Request by Icon Construction for Oregon City Commission Call-Up of Type II Application

Dear Ms. Terway:

This office represents Icon Construction (“Icon”), which has a Type II subdivision application pending before the Oregon City (“City”) Community Development Director that includes locating a public roadway partly within the existing fifty foot (50’) wide easement and, at the request of the Oregon City Parks and Recreation Department, a ten foot (10’) wide public concrete path inside and outside of the easement for the benefit of park users, both within Wesley Lynn Park. The purpose of this letter is to request that the City Commission call-up Icon’s Type II application before the Community Development Director reaches a decision on it so that the Oregon City City Commission can make a decision on Icon’s Type II application and interpret Chapter X of the Oregon City Charter.

Members of the public have submitted comments during the comment period on the Type II application that have demonstrated to Icon and the City that the public is concerned about the effect of the application on the adjacent City park. The concern that the public has expressed implicates Chapter X of the City Charter. Icon and the City have determined that an interpretation of Chapter X of the City Charter by the City Commission is appropriate in conjunction with the Type II application.

Icon and the City agree that the City Commission has the legal authority to call up a matter pending before the Community Development Director before the Director has rendered a decision. Although such a call-up might be procedural error where the City’s code does not authorize and prescribe such a process, the Oregon Land Use Board of Appeals (“LUBA”) has held that procedural error is not a basis to reverse or remand a local government’s land use decision unless the procedural error prejudices the ability of an opponent of the decision to prepare and submit their case against it, and to receive a full and fair hearing regarding their

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opposition. *See e.g., Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 697 (2005); *Muller v. Polk County*, 1988 WL 898629 (Or LUBA).

The Oregon City Municipal Code does not authorize or prescribe the procedures for a call-up of a pending matter by the City Commission. However, the City Commission will review Icon's application in a *de novo* public hearing. The *de novo* hearing will provide more, not less, opportunity for parties interested in Icon's application to be heard and to make their case. The City Commission has the legal authority to call up Icon's Type II application in accordance with this request. Therefore, no party's substantial rights will be prejudiced by the call-up.

If the City Commission calls up Icon's Type II application, Icon agrees to extend the 120-day time period in ORS 227.178(1) by thirty (30) days. The 120-day period is currently set to expire on November 2, 2017.

Very truly yours,



Michael C. Robinson

MCR:rsr

cc: Ms. Carrie Richter (via email)
Mr. Mark Handris (via email)
Mr. Rick Givens (via email)