

March 6, 2018

Michael C. Robinson

Admitted in Oregon

T: 503-796-3756

C: 503-407-2578

mrobinson@schwabe.com

VIA EMAIL

Mayor Dan Holladay
City of Oregon City City Commission
Oregon City City Hall
625 Center Street
Oregon City, OR 97045

RE: *James J. Nicita v. City of Oregon City*, LUBA No. 2016-045, Notice of Appellant
Judgment; Remand of Application to City of Oregon City

Dear Mayor:

This office represents the Applicant in the above matter, Historic Properties, LLC (the "Applicant"). The Oregon Land Use Board of Appeals ("LUBA") issued a "Notice of Appellant Judgment and Order On Costs" (the "Notice") on February 13, 2018. The Notice is LUBA's final opinion on the matter and states that "the appellate court decision in this case requires no change in our final opinion and order dated January 25, 2017" (**Exhibit 1**). LUBA's Notice returns jurisdiction of the Application to the City of Oregon City ("the City").

This letter requests that at the Oregon City City Commission's (the "City Commission") regularly scheduled meeting on April 4, 2018, that the City Commission remand the Application to the Oregon City Planning Commission ("the Planning Commission") for a limited *de novo* hearing to address the single basis for remand. The Oregon City Municipal Code ("the OCMC") does not require the City Commission to hold a public hearing on the remand of the Application to the Planning Commission. Further, with the exception of the single issue described below that was the basis for a remand, all other issues raised in this appeal have been finally resolved in favor of the Applicant and the City and may not be raised again. This is known as the "Law of the Case" doctrine.

LUBA's remand concerned Goal 5. LUBA held that the City must conduct an initial inquiry to determine if the new uses allowed by the Application could conflict with the Goal 5 resources and if the new uses would result in increased volume and velocity of stormwater and the possibility of increased levels of contaminants.

Accordingly, the Applicant asks that the City Commission return the Application to the Planning Commission with instructions that the Planning Commission hearing be limited to argument and evidence that are related to the Goal 5 remand issue.

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This letter is not the Applicant's letter under ORS 227.191, "Final Action Required Within 120 Days Following Remand of Final Land Use Decision." The Applicant has 180 days from the effective date of the final order to request that the City take final action on remand within one hundred twenty days of the letter. ORS 227.191(2)(a) The final date of the appellate order is February 13, 2018. The 180 day period ends on September 12, 2018. The Applicant will send the required letter under ORS 227.181 before the end of the 180 day period.

Thank you for your consideration of this request.

Sincerely,



Michael C. Robinson

MCR:gv

cc: Mr. Dan Fowler (*via email*) (*with encl.*)
Mr. Mark Foley (*via email*) (*with encl.*)
Ms. Laura Terway (*via email*) (*with encl.*)
Mr. Bruce Goldson (*via email*) (*with encl.*)
Ms. Carrie Richter (*via email*) (*with encl.*)

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1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 JAMES J. NICITA,
4 *Petitioner,*

02/13/18 Am 10:09 LUBA

5 and

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7
8 ELIZABETH GRASER-LINDSEY,
9 CHRISTINE KOSINSKI,
10 and PAUL EDGAR,
11 *Intervenors-Petitioners,*

12 vs.

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14 CITY OF OREGON CITY,
15 *Respondent,*

16 and

17
18 HISTORIC PROPERTIES, LLC,
19 *Intervenor-Respondent.*

20 LUBA No. 2016-045

21 NOTICE OF APPELLATE JUDGMENT
22 AND ORDER ON COSTS

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25 **APPELLATE JUDGMENT**

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27 The Court of Appeals issued an opinion in *Nicita v. City of Oregon City*,
28 CA A164237, on July 6, 2017. The appellate judgment was filed on February
29 6, 2018. The appellate court decision in this case requires no change in our
30 final opinion and order dated January 25, 2017.
31

1 **COSTS**

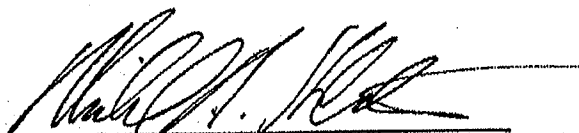
2 Petitioner, the prevailing party in this appeal, filed a cost bill requesting
3 award of the cost of his filing fee, in the amount of \$200. Petitioner also
4 requests return of his \$200 deposit for costs.

5 Respondent and intervenor-respondent do not object to petitioner's cost
6 bill.

7 Petitioner is awarded the cost of his filing fee, in the amount of \$200, to
8 be paid by respondent and intervenor-respondent. The Board shall return
9 petitioner's \$200 deposit for costs.

10 Dated this 13th day of February 2018.

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Michael A. Holstun
Board Member

Certificate of Mailing

I hereby certify that I served the foregoing Notice of Appellate Judgment and Order on Costs for LUBA No. 2016-045 on February 13, 2018, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

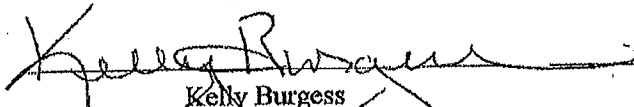
Elizabeth Graser-Lindsey
21341 S. Ferguson Road
Beavercreek, OR 97004

James J. Nicita
Attorney at Law
302 Bluff Street
Oregon City, OR 97045

Michael C. Robinson
Schwabe Williamson & Wyatt PC
1211 SW 5th Avenue Suite 1900
Portland, OR 97204

William K. Kabeiseman
Bateman Seidel
888 SW Fifth Avenue, Suite 1250
Portland, OR 97204

Dated this 13th day of February, 2018.



Kelly Burgess
Paralegal

Kristi Seyfried
Executive Support Specialist