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March 7, 2018

Oregon City Commission
625 Center St.
Oregon City OR 97045

RE: AP 17-02, appeal of Planning File No. HR 17-04 (Historic Review for a new Public Works Operations facility in the McLoughlin Conservation District)
City Commission meeting date: March 7, 2018

Dear City Commissioners:

Please be advised that I represent the McLoughlin Neighborhood Association in the above-referenced appeal. This letter, accompanied by a CD containing various evidentiary exhibits, is offered as a supplement to the MNA's prior submissions in this matter.

A fundamental procedural problem with this hearing is that the Staff Report and City Attorney Memorandum both assert that "no new evidence will be allowed" as part of this hearing. Staff Report at 2; City Attorney Memorandum at 1. That position is inconsistent with OCMC 2.28.070 (Appeals), which gives applicants, neighborhood groups, and residents the right to appeal *any* final decision of the HRB, and to add new evidence to the record on appeal. According to OCMC 2.28.070(D), on any appeal of a final HRB decision, "[t]he city commission shall consider the record *and such additional evidence as may be offered*[.]" (Emphasis added). Therefore, contrary to city staff's insistence that "no new evidence will be allowed," it is clear that the City Commission is required to allow new evidence.

Further, under ORS 197.763(7), because the City Commission must open the record to allow new evidence, it must also allow "any person" to participate in this appeal, even if they did not participate in the initial HRB proceedings. That statute states:

> When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

ORS 197.763(7). In summary, together OCMC 2.28.070 and ORS 197.763(7) compel the allowance of new evidence and new argument, by any person, in this appeal proceeding.

Similar to the public notice deficiencies in the HRB proceedings, below, the City has not properly noticed this hearing. The result is that no notices were posted near the proposed development site, and members of the public that use Waterboard Park have received no notice of this appeal proceeding. Under OCMC 17.50.190(F) (Appeals), which applies to this appeal, "[a]ppeal hearings shall comply with the procedural requirements of Section 17.50.120." One of the requirements under OCMC 17.50.120 is that notice of the hearing "shall be issued at least twenty days prior to the hearing in accordance with Section 17.50.090B." *Id.* at (B). Because OCMC 17.50.090(B) requires that the applicant physically post notice of the hearing around the site under OCMC 17.50.100, that posting should have been completed. However, no physical on-site posting was ever completed for this hearing. Even this afternoon, MNA members near and/or using Waterboard Park observed that posting of notice has still not been accomplished. To remedy this problem, this appeal hearing should be re-noticed and properly posted on/near the proposed development site.

In addition to the lack of any physical on-site posting of notice of this hearing, another problem with the public notice given for this hearing is the Notice of Public Hearing itself. The Notice is deficient is several ways. First, like the notice of hearing in the HRB proceeding, below, the Notice does not list all of the applicable approval criteria. The Notice only lists sections 17.39, 17.40, and 17.50 as applicable criteria. However, as explained more fully in the MNA's comments below and its Notice of Appeal, there are many other criteria that apply. Those additional criteria should have been listed in the Notice of Public Hearing. Second, the Notice incorrectly states that "Only the applicant and those persons who participated in writing or orally during the proceeding before the Historic Review Board will be allowed to participate either orally or in writing in this appeal." As explained above, because ORS 197.763(7) allows "any person" to participate in this appeal proceeding, the contrary statement in the Notice is inaccurate. Combined with the lack of physical notice on/near the site, the lack of accurate and adequate content in the Notice of Public Hearing has discouraged public participation in this hearing.

~~A substantive issue on appeal is the authority of the HRB to approve the Phase 1 Detailed Development Plan. That is, the MNA has argued that the HRB's approval was issued too early. Part of the problem with the timing of the HRB's issuance of its approval is that the City has no authority to seek final approval of a detailed site plan (like the plan under appeal) for real property that it does not own. In this case, Phase 1 development includes the armory property, which is owned by the State of Oregon, not Oregon City. The State of Oregon is not an applicant in this proceeding, and the evidence in the record is that the State, not the City, has control over the armory property. Although the City is attempting to gain control over the armory property, it does not yet have that control. While OCMC 17.65.020(A) allows *general* development plans to include land that is not "controlled" by the applicant, there is no such allowance for *detailed* development plans. Therefore, detailed development plans, like the plan presently on appeal, cannot be approved until the land is "controlled" by the applicant. Therefore the City Commission cannot approve the current detailed development plan unless and until the armory property is acquired by Oregon City.~~

Another timing issue is that the MNA's Application for Designation of Historic Landmarks was submitted and deemed complete in March 2017, before this application was submitted and deemed complete. The MNA's March 2017 application, if eventually approved, would result in local historic landmark designation for the Camp Adair buildings in the proposed development site area and an amendment to Oregon City's Goal 5 historic resources inventory. Those designations and inventory amendments would be relevant to the HRB's consideration of historic resources on the proposed development site because consideration of impacts to designated historic landmarks is part of the approval criteria for this land use application. However, the City has denied the MNA a hearing on its application, and that denial is currently on appeal to LUBA. Accordingly, this land use proceeding should not be finalized until the MNA's historic landmarks application for the Camp Adair buildings has been fully processed. That application was filed before the City's application for approval of the detailed development plan, and has priority.

The record does not contain substantial evidence supporting an adequate consultation with the Native American tribes. That consultation is required by OCMC 17.40.060(C)(2), and provides for notice to the "applicable tribal cultural resource representative" for each of the Confederated Tribes of the Grand Ronde, Confederated Tribes of the Siletz, Confederated Tribes of the Umatilla, Confederated Tribes of the Warm Springs, and the Confederated Tribes of the Yakama Nation. The record only contains an email that was purportedly sent to certain email addresses, but the identities of the recipients are not disclosed, and there is no evidence that the recipients qualify as the "applicable tribal cultural resource representatives" under OCMC 17.40.060(C)(2).

The City Attorney Memorandum argues that only certain Comprehensive Plan provisions, namely those specifically called out in the OCMC, apply to this land use proceeding. However, under *Baker v. City of Milwaukie*, 217 Or 500 (1975), the Oregon City Comprehensive Plan is the controlling land use planning instrument for the City of Oregon City, and any Comprehensive Plan provision germane to any given land use application applies to that application, without limitation by the OCMC.

Finally, the City's apparent willingness to sacrifice longtime public parkland for non-park development purposes is part of a disturbing statewide trend. ~~That is, several other municipalities have recently been considering allowing parks to be developed for uses such as hotels and residential housing. *See, e.g.*, Troy Field in Bend (http://www.bendbulletin.com/localstate/bend/3952846-151/hearings-officer-deny-change-for-troy-field) and Morrison Park in Hood River (http://www.hoodrivernews.com/news/2018/jan/24/luba-upholds-morrison-park-rezone/). Parklands, once developed for non-park use, will likely never be recovered as parkland.~~ In an era when urban public parks and open spaces are needed more than ever to serve the needs of a quickly growing and increasing dense population, municipalities should not sacrifice those scarce resources for the expediency of saving money in the short term.

Sincerely,

Jesse A. Buss
Attorney for MNA