

June 4, 2018

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VIA E-MAIL

Ms. Denyse McGriff, Chair
Oregon City Planning Commission
698 Warner Parrot Road
Oregon City, OR 97045

RE: City of Oregon City File Nos. PZ 15-01 and ZC 15-03; Application by Historic Properties, LLC

Dear Chair McGriff and Members of the Planning Commission:

This office represents Historic Properties, LLC. This letter responds to the argument and evidence submitted by Mr. James Nicita to the Planning Commission on May 14, 2018.

Because the remand of the City of Oregon City's (the "City's") approval of Historic Properties, LLC (the "Applicant") Application is not the initial evidentiary hearing, no party is entitled to an extension to a continuance of the public hearing or an open record period pursuant to ORS 197.763(6)(a). While the Planning Commission retains the discretion to leave the written record open or continue the public hearing, the Applicant urges the Planning Commission to receive argument and evidence at its continued public hearing on June 11, 2018 and then close the public hearing and record and deliberate to a tentative decision.

The Planning Commission can find for the reasons already in the record and in this letter that the Applicant has satisfied the single issue before the Planning Commission on remand: do the more intensive uses under the proposed Post-Acknowledgement Plan Amendment (the "PAPA") conflict with the resource protected under the City's acknowledge Statewide Planning Goal 5, "Natural Resources, Scenic and Historic Areas, and Open Spaces", program?

Substantial evidence in the whole record demonstrates that the Planning Commission can find that either the City's existing program adequately protects the Goal 5 resource, or the Economic, Social, Environmental and Energy ("ESEE") analysis demonstrates that the land uses allowed by the PAPA will not have a greater impact on the Goal 5 resource than do land uses allowed under the current zoning.

1. The City is not relying "almost exclusively" on the City's 2015 Stormwater Drainage Design Standards adopted pursuant to Oregon City Municipal Code (the "OCMC") Chapter 13.12.

Mr. Nicita ignores substantial evidence submitted by the Applicant in the letter from the Applicant's attorney dated April 14, 2018 and the ESEE analysis prepared by Ms. Stacey Reed,

PWS, Senior Wetlands Scientist with AKS Engineering & Forestry, dated May 30, 2018. The May 25, 2018 memorandum from Ms. Aleta Froman-Goodrich, P.E., also supports this conclusion. Taken together, the substantial evidence contained in those documents demonstrate that the land uses allowed by the PAPA will not have a greater impact on the Goal 5 resource than the land uses allowed under the current zone.

Mr. Nicita argues that the 2015 Stormwater and Grading Design Standards may not be relied upon because they do not reference Goal 5. However, nothing requires either City of Oregon City Resolution No. 15-14 or OCMC Chapter 13.12, “Stormwater Management”, to reference Goal 5. The Planning Commission can find that Chapter 13.12’s purpose statement, found in OCMC Chapter 13.12.010, includes several relevant purposes that protect Goal 5 resources:

- To minimize increased stormwater runoff rates from any development so as to minimize the impact upon any downstream natural channel that may exist between the subject area and the Willamette or Clackamas Rivers (OCMC 13.12.010.A);
- To prevent water runoff generated by development from exceeding the capacity of downstream stormwater facilities (OCMC 13.12.010.B);
- To reduce stormwater runoff rates and volumes, soil erosion and pollution, wherever possible in developing lands (OCMC 13.12.010.C);
- To prevent the uncontrolled or irresponsible discharge of stormwater from new development onto adjoining public or private property (OCMC 13.12.010.D);
- To maintain the integrity of stream channels for their biological functions, as well as for drainage and other purposes (OCMC 13.12.010.E.);
- To manage stormwater volumes (OCMC 13.12.010.F);
- To require stormwater facilities that meet certain standards (OCMC 13.12.010.G);
- To add new stormwater facilities that comply with applicable National Pollutant Discharge Elimination System (NPDES) requirements (OCMC 13.12.010.I); and
- To minimize increases in stormwater pollution (OCMC 13.12.010.K).

Taken together, all of these purposes of OCMC Chapter 13.12 clearly work to maintain, protect and assure no greater adverse impacts to Newell Creek, the relevant Goal 5 resource. There is no dispute that OCMC Chapter 13.12 will apply to the stormwater facilities required to be constructed when new land uses are developed under the PAPA. Additionally, OCMC Chapters 17.47, “Erosion and Sediment Control” and 17.49, “Natural Resource Overlay District”, protect the Goal 5 resource from conflicts with the uses allowed under the PAPA.

Mr. Nicita argues further that the City may not rely on the NPDES permit because the Oregon Department of Environmental Quality ("DEQ"), according to Mr. Nicita, has never made findings that the permit complies with Goal 5. Mr. Nicita cites no relevant law requiring such findings. The fact is, THAT the NPDES permit manages pollution to streams such as Newell Creek and serves the purpose of protecting the Goal 5 resource regardless of whether Goal 5 is mentioned or not.

Finally, Mr. Nicita argues that that NPDES decision is a land use decision and findings are required. However, the period for which findings were required, if this were the case, has long since passed and the issue, while academic, has no practical impact on the decision before the Planning Commission.

2. The Planning Commission can rely on the May 30, 2018 ESEE analysis prepared by Ms. Reed.

Ms. Reed's analysis has been previously submitted to the Planning Commission and available to the public. Ms. Reed analyzed the impacts of the more intense PAPA land uses pursuant to the ESEE analysis required by administrative rule. Ms. Reed concludes, as the ESEE analysis concludes, that the proposed PAPA "will not result in a greater conflict to the Goal 5 resource mapped on the site over the current FSR zoning" (Memorandum at page 2).

3. Conclusion.

LUBA's remand to the City is very narrow and quite specific. The Planning Commission has before it substantial evidence, with which City Staff agrees, that the Goal 5 resource will not be adversely affected by the land uses allowed by the PAPA, both because existing programs will protect the Goal 5 resource and pursuant to the Applicant's ESEE analysis. For these reasons, the Planning Commission can reject Mr. Nicita's arguments and approve the Application.

In the event the Planning Commission does close the public hearing and tentatively approve the Application at the conclusion of its June 11, 2018 continued public hearing, the Applicant respectfully requests that it be directed to prepare findings as the prevailing party and return those findings after review by City Staff to the Planning Commission for a final decision.

Very truly yours,



Michael C. Robinson

MCR/jmh

Cc Mr. Dan Fowler (*via email*)
Mr. Mark Foley (*via email*)
Mr. Tom Sisul (*via email*)
Ms. Stacey Reed (*via email*)
Ms. Laura Terway (*via email*)

Ms. Denyse McGriff, Chair

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Mr. Garrett Stephenson *(via email)*

Ms. Carrie Richter *(via email)*

Mr. Pete Walter *(via email)*

Ms. Aleta Froman-Goodrich *(via email)*

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