M E M O R A N D U M

TO: Coburg City Council

FROM: Anne Davies, City Attorney

RE: Procedures for Consolidated Annexation/Zone Change Applications

DATE: March 1, 2021

BACKGROUND: Ravin Ventures, LLC and Hardly Hackitt, LLC own a 107-acre property located on the east side of I-5. Ramon Fisher, on behalf of those entities, filed an application to annex the property into the City, and also submitted an application for a zone change to change the zoning of the property to Light Industrial. Pursuant to Article X.F.4.b of the Coburg Development Code, the two applications were "consolidated for review and decision."

QUESTION PRESENTED: What is the decision-making process that is required and/or allowed under the Development Code for these two consolidated applications?

DISCUSSION: When two land use applications of different Types[1] are processed concurrently, it is often confusing to determine the appropriate procedures to be followed under the applicable code. Code provisions may not be entirely clear how to manage apparent discrepancies, and state law procedural requirements may also complicate the matter. In this case, it not even entirely clear in the code which procedures each of the two applications is supposed to follow.

Annexation

Article XX.A.1. provides that annexation applications are reviewed under Type II procedures. The Type II procedure includes a decision by the Planning Director, with an opportunity to appeal to the Planning Commission. Article XX.A.1 also provides, however, that "The City Council shall approve proposed annexations by Ordinance." This contradiction cannot be fully squared with the reference to Type II procedures. As the state law also requires annexations to

[1] The Coburg Development Code, like many land use codes in Oregon, separate the universe of land use applications into Types: e.g., Type I, Type II, Type III, and Type IV. Generally, the procedures become more involved as the Type numbers increase.

be approved by the governing body, ORS 222.170(3), the requirement for adoption by ordinance by City Council overrides the reference to the Type II process.[2]

Zone Change

The contradiction within the code for processing zone changes is even more confusing than the contradiction for processing annexations, set forth above. There are different places in the code that require that zone changes be processed by the Type II process, by the Type III process, and by the Type IV process.[3] While it is unclear what process the code requires for a zone change application, we do not need to determine the final answer here. That is because the code provides specific direction for processing two or more consolidated applications.

Processing of Consolidated Applications

In circumstances like this one, where two or more applications are consolidated and being processed together, and the applications are not all of the same Type, the code provides the following guidance:

> "If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order of preference: the Council, the Commission, or the City Planning Official or designee." Article X.F.4.b(1).

Unfortunately, this provision does not answer all of the questions now before the City Council. It is not entirely clear, for instance, what the code means when it states that the decision will be made by "the approval authority having original jurisdiction over one of the applications." The most likely intent of that provision is that the approval authority that makes the *initial* determination for any particular application is the approval authority with "original jurisdiction." In the case of the annexation, as explained above, the Type II reference conflicts with the requirement that the City Council adopt an ordinance approving the annexation. The Type II process does not provide for a decision by the City Council, even on appeal. So the approval authority with original jurisdiction for the annexation is the City Council.

The significance of the last phrase, referring to the "order of preference," is also not entirely clear. A reasonable interpretation, however, is that the decision on the consolidated applications will be made by the highest approval authority that is called on to make the initial determination for each of the individual applications. Because the City Council is the approval authority for the annexation, the City Council will be the approval authority for the consolidated applications.

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[2] The Coburg City Charter provides the City with authority "To annex areas to the City in accordance with State law." See Coburg City Charter, Chapter II, Section 4(2)(h).

[3] Table X.1 (Summary of Approvals by Type of Review Procedure) lists quasi-judicial land use district map changes as Type III. See page 105 of the Coburg Development Code, attached. Article XXI.A.1 references the Type II process with regard to zoning district amendments. See page 198, attached. Finally, Article X.A.2.d provides examples of applications that are to be processed using the Type IV (Legislative) process and includes zone changes. See page 104, attached. That provision, however, likely refers to legislative zone changes, and not quasi-judicial zone changes like this one, which proposes amending the zoning designation of a single, discrete parcel of land.

The consolidation provision quoted above also does not provide any guidance on the actual process; it only dictates which approval authority will make the decision.[4] So the question remains whether the Planning Commission must or should be called upon to make a recommendation to the City Council on the zone change application. In addressing this question, it is important to keep in mind the distinction between "what the code *requires*" and "what the code *allows*."

As explained above, it is not entirely clear what process Type would apply to this zone change application if it were being processed separately from the annexation. See note 2, above. The Type IV process *requires* consideration by the Planning Commission initially, with a recommendation to the City Council. However, that process, as explained in note 2, above, is generally reserved for legislative matters, which this zone change is not. The Type II process calls for the initial decision to be made by the Planning Director, with an opportunity to appeal to the Planning Commission. The Type II process does not involve the City Council at all. Because the consolidated applications will be decided by the Council in this matter, it does not make sense to further consider the Type II process in this inquiry.

The Type III process calls for an initial decision by the Planning Commission, with any appeal going to the City Council. This is the process that is provided for in Table X.1. The direction in the code at Article X.F.4.b(1), quoted above, however, trumps this process and *requires* that the City Council make the initial decision on this zone change.

Because the Type IV (legislative) process does not apply here, there is no provision in the code that *requires* the Planning Commission to consider the zone change and/or provide a recommendation prior to decision by the City Council. That said, there is also nothing in the code that *prohibits* the Planning Commission from considering the application and providing the City Council with a recommendation on the zone change application.

SHORT ANSWER: The City Council is not required to refer the matter to the Planning Commission to provide a recommendation on the zone change application, but the Council may choose to do so.

OPTIONS: (1) The City Council can move forward to make the decision on both applications.

(2) The City Council can ask the Planning Commission to make a recommending on the zone change application, and wait to consider both application until the Planning Commission has provided its recommendation.

CONSIDERATIONS: While the choice of which Option to follow is not bound by the code; i.e., the City Council has full discretion which Option to choose, the Council may wish to weigh the following policy considerations:

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[4] For instance, some city codes in Oregon provide that, where applications of different Types are consolidated, the process that applies is the process set forth in the application Type of the highest order. The Coburg Development Code does not exactly state that; it merely identifies the appropriate approval authority.

A. The additional time it will take to obtain a recommendation from the Planning Commission.

B. The expense to the City of conducting an otherwise unnecessary Planning Commission hearing.

C. The desire to have the Planning Commission, with its land use expertise, weigh in on the application.

D. A desire to more closely follow the procedures, including recommendation by the Planning Commission, that would apply to a zone change application if the applications were not consolidated.

E. Other considerations the Council deems appropriate.

d. A site plan indicating all structures, land uses and zoning designation within 150 feet of the site boundaries, or 300 feet if the height of the structure is greater than 80 feet.

e. A map showing existing wireless communication facility sites operated by the applicant within a 5 mile radius of the proposed site.

f. A collocation feasibility study that adequately indicates collocation efforts were made and states the reasons collocation can or cannot occur.

g. A copy of the lease agreement for the proposed site showing that the agreement does not preclude collocation.

h. Documentation detailing the general capacity of the tower in terms of the number and type of antennas it is designed to accommodate.

i. Any other documentation the applicant feels is relevant to comply with the applicable design standards.

3. Design Standards - All wireless communication facilities shall be located, designed, constructed, treated and maintained in accordance with the following standards:

a. <u>General Provisions</u>

(1) All facilities shall be installed and maintained in compliance with the requirements of the Building Code. At the time of building permit application, written statements from the Federal Aviation Administration (FAA), the Aeronautics Section of the Oregon Department of Transportation, and the Federal Communication Commission that the proposed wireless communication facility complies with regulations administered by that agency, or that the facility is exempt from regulation.

(2) All associated transmittal equipment must be housed in a building, above or below ground level, which must be designed and landscaped to achieve minimal visual impact with the surrounding environment.

(3) Wireless communication facilities shall be exempted from height limitations imposed in each zoning district.

(4) WCF shall be installed at the minimum height and mass necessary for its intended use. A submittal verifying the proposed height and mass shall be prepared by a licensed engineer.

(5) Signage for wireless communication facilities shall consist of a maximum of two non-illuminated signs, with a maximum of two square feet each stating the name of the facility operator and a contact phone number.

(6) Applicant is required to remove all equipment and structures from the site and return the site to its original condition, or condition as approved by the Staff Advisor, if the facility is abandoned for a period greater than

six months. Removal and restoration must occur within 90 days of the end of the six month period.

b. Preferred Designs

(1) Where possible, the use of existing WCF sites for new installations shall be encouraged. Collocation of new facilities on existing facilities shall be the preferred option.
(2) If (1) above is not feasible, WCF shall be attached to pre-existing structures, when feasible.
(3) If (1) or (2) above are not feasible, alternative structures shall be used with design features that conceal, camouflage or mitigate the visual impacts created by the proposed WCF.
(4) If (1), (2), or (3) listed above are not feasible, a monopole design shall be used with the attached antennas positioned in a vertical manner to lessens the visual impact compared to the antennas in a platform design. Platform designs shall be used only if it is shown that the use of an alternate attached antenna design is not feasible.
(5) Lattice towers are prohibited as freestanding wireless communication support structures.

c. Landscaping

The following standards apply to all WCF with any primary or accessory equipment located on the ground and visible from a residential use or the public right-of-way:

(1) Vegetation and materials shall be selected and sited to produce a drought resistant landscaped area.
(2) The perimeter of the WCF shall be enclosed with a security fence or wall. Such barriers shall be landscaped in a manner that provides a natural sight obscuring screen around the barrier to a minimum height of six feet.
(3) The outer perimeter of the WCF shall have a 10-foot landscaped buffer zone.
(4) The landscaped area shall be irrigated and maintained to provide for proper growth and health of the vegetation.
(5) One tree shall be required per 20 feet of the landscape buffer zone to provide a continuous canopy around the perimeter of the WCF. Each tree shall have a caliper of 2 inches, measured at breast height, at the time of planting.

d. Visual Impacts

(1) Antennas, if attached to a pre-existing or alternative structure shall be integrated into the existing building architecturally and, to the greatest extent possible, shall not exceed the height of the pre-existing or alternative structure.

development of land within the community, ensure the adequate provision of public facilities and services, protect the public health and safety of the community, and enable development to occur consistent with applicable provisions of the Comprehensive Plan.

b. The City shall not extend water, stormwater, or sanitary sewer service outside the urban growth boundary, unless a health hazard, as defined in ORS 222.840 - 222.915 is determined to exist. Annexation of the territory so served is required if the territory is within the urban growth boundary and is contiguous to the city limits. An alternative to annexation, if agreed to by the City and the owners of the affected property, may occur in the place of annexation.

c. Extraterritorial Service/Facility Contracts between a property owner and the City shall be initiated at the sole discretion of the City Council. The provisions of this contract shall be as directed by the City Council in response to the circumstances and conditions within the affected territory that are causative of the request for extraterritorial service.

2. **Applicability**. Regulations within this Article apply to applications requesting the extension and/or connection of water service or sewer service outside of the city limits and within the urban growth boundary, and stormwater service outside of the city limits and within or outside the urban growth boundary.

3. **Application Requirements**. In addition to the provisions specified in this Code, an extraterritorial extension of service application shall include the following:

a. A list of all tax lots proposed to be served, including street addresses and property owner names;

b. A legal description of the property to be served with water or sewer service;

c. A signed Consent to Annex form for the property proposed to be served;

d. A map drawn to scale showing the proposed extension of water, stormwater, or sanitary sewer lines to include the proposed number of service connections and their sizes and locations; and

e. A written narrative addressing the proposal's consistency with the approval criteria in ARTICLE X.X.B.4.