



# CITY OF ST. HELENS PLANNING DEPARTMENT

# MEMORANDUM

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**TO:** City Council  
**FROM:** Jacob A. Graichen, AICP, City Planner  
**RE:** LUBA status for St. Helens Police Station—File: Appeal AP.2.23  
**DATE:** February 27, 2024

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This is a status update for the Council to help with decision making.

As you know, the Appeal of the Conditional Use Permit denial by the Planning Commission for the proposed police station at the intersection of Old Portland Road and Kaster Road (Kaster Road site) that was reversed (approved) by the City Council was appealed to the Oregon Land Use Board of Appeals (LUBA).

Gregory S. Hathaway of Hathaway Larson, LLP, representing Steve Toschi and Robyn Toschi produced a Notice of Intent to Appeal dated **December 11, 2024**. This set the possible case of *Steve and Robyn Toschi v City of St. Helens*.

The City Council discussed this with legal counsel and staff at the **December 20, 2023** executive session. At that time the record (i.e., body of work behind the decision) and the first step for the city after the Notice of Intent to Appeal would have been due around January 2, 2024.

On **December 28, 2024** the City's legal counsel filed a Notice of Withdraw to LUBA. This notice allows, but does not mandate, the city to reconsider the decision, actually withdraw the application, or if nothing else, suspend the process to buy time.

LUBA acknowledged the Notice of Withdraw via correspondence dated **January 3, 2024**. **See attached.** Importantly, it notes 90 days for decision on reconsideration to be filed. Or if the city does nothing, LUBA will restart the appeal.

**The 90-day mark (from the December 28 Notice of Withdraw) is March 27, 2024.**

At the **January 10, 2024** Special Session where discussion topics included the current police budget and the police station project, the Council expressed desire to move on from the Kaster Road site for the police station. Since then, staff efforts have focused on other sites.

After that meeting, staff did not direct legal counsel to officially withdraw the application since it was early in the 90-day suspension. Now that the 90-day mark is a month away, attaining clarity on this is important.

Basically, you have three general choices:

1. Continue to pursue the Kaster Road site with LUBA.
2. Abandon the Kaster Road site effort and focus on other sites.
3. Continue with the Kaster Road site and explore other sites.

The issues with LUBA are time and uncertainty. Due to factors such as a record objection, which is common enough to be an “industry standard” and LUBA has no time requirement to resolve, the matter could drag out 6 months, for example, before oral arguments are heard by LUBA. And if we get a LUBA decision by the end of the year, will that decision be appealed to the Oregon Court of Appeals, or will it be remanded back to the city? There are different things that can happen, none of which is easy to predict, other than delay for probably most of 2024.



# Oregon

Tina Kotek, Governor

**Land Use Board of Appeals**

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January 3, 2024

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RE: Toschi et al v. City of St. Helens  
LUBA No. 2023-085

This is to advise you that the Board has received City of St. Helens's notice of withdrawal of the decision challenged in the above referenced appeal for reconsideration pursuant to ORS 197.830(13)(b).

Under OAR 661-010-0021(2), the filing of a notice of withdrawal has the effect of suspending the LUBA appeal proceeding until a decision on reconsideration is filed with LUBA by the respondent. Under OAR 661-010-0021(1), a decision on reconsideration is required to be filed with LUBA, and served on the parties, within 90 days after the date the notice of withdrawal was filed.

Best regards,

Hannah Barkemeyer Baker  
Executive Support Specialist

