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RE: City of Millersburg Letter to the Board of Commissioners regarding PLN-2022-00807

On Tuesday January 10, the County Planning Commission held a hearing for County Land Use case PLN-2022-00807, a proposal by the City of Millersburg to modify the Urban Growth Boundary (UGB). The City wanted to bring a few items to the Boards attention.

First error in the PC Motion

The City certainly understands the difficult and complicated job the Planning Commission has, especially in a County. We thank them for the time they put into the review of this case. However, with all due respect, the Planning Commission (PC) appears to have made a number of errors in their motion.

First, the motion included a recommendation of denial to the Board based primarily on the fact that the two properties to be swapped were not “like-for-like.” This term was used frequently during the hearing, however, as the meeting went on the concept of what ‘like-for-like’ actually meant was slowly expanding such that it became inconsistent with the specific meaning as it relates to the State statutes and rules. There are a few concerns specific to Commissioner McHenry’s motion and his refence that the properties were not like-for-like.

1. The PC must root their recommendation in the County criteria. While the State requirements for a UGB exchange do require some elements to be the same (like-for-like, see the UGB land exchange provisions of OAR 660-024-0070), these are not specifically a criteria requirement outlined in Linn County Code (LCC) section 921.822(A) and 921.874.
2. The interpretation that the properties must be like-for-like was incorrectly applied. OAR 660-024-0070 outlines the specific ways that the properties must be similar. These include **only** size and designations (land use and zoning). These do not include farm ‘quality.’ Having that said, the soils classification does play a role in the process, but these are not linked to the UGB swap requirements. Commissioner McHenry’s motion did not specify how the properties were not like-for-like; however, the only factors that are permitted to play into that statement would be size and designations. DLCD determined the size of the two properties were similar enough to satisfy the State OAR requirements (which uses the term substantially the same). All designations are the same. So, the two permitted comparison factors meet the OAR requirements. No other factors were permitted to

play a role in the comparison of the two properties.

It should be noted that part of the required alternatives analysis process includes the need for soil classification review and comparison. The soils classification was the same for all of the alternative locations studied in the Alternatives Analysis. Therefore, even with the consideration of the soil classifications, all properties were equal.

Some of the public speakers suggested the land was not of equal farm value because the property along the river had trees, was lower in elevation, had difficult access, was in a FEMA floodway, and because it was used by Willamete Industries as settling ponds. None of those are criteria. Nor are any of those requirements to be studied for the proposed UGB swap.

Additionally, none of those arguments are supported by evidence in the record. Staff never suggested that they were of equal farm value; the staff report only suggested that that the property along the river could be (and should be) designated with EFU zoning. In Linn County the Exclusive Farm Use (EFU) zone is used for, and permits, open space areas. Specifically, the County Code Section 928.300(A)(4) explains the EFU zone is partially intended "to provide for the protection of open space, fish and wildlife habitat, watersheds, scenic resources, and air, water and land resource quality." The EFU zone is the appropriate zoning designation for the property near the river regardless of that property's ability to be farmed. Again, there is nothing in the State ORS or OARs that require two swapped UGB properties (using OAR 660-024-0070) to be of equal farming value, only that the designations and size match. Stated differently, the whole concept of like-for-like is only required because the City is employing the swap provisions of OAR 660-024-0070, which have only two requirements- similar size and equal land use and zoning designations.

Lastly, the property along the river could very well be farmed. The FEMA Floodway designation does not mean it cannot be farmed. See the discussion of the Floodway below. Regarding the infiltration basins for Willamette Paper, the water directed to those ponds was already treated. In fact, some of the treated water was used on the farm fields south of Conser Road for crop irrigation.

Second error in the PC Motion

Planning Commissioner McHenry made the motion and listed two reasons for the denial. The like-for-like was the first, the second was that the project "did not comply with State Laws." Commissioner McHenry did not, however, explain which laws he felt were violated. When making a recommendation, the reasons for the motion must be clearly stated. Typically, these are the findings in the staff report. When the PC makes a motion contrary to the staff report, they need to explain which criteria has not been satisfied. In this case, not only was the motion not rooted in criteria, but the Commissioner failed to indicate how it did not meet the criteria, or what State laws he felt were not met. In doing so, he left the applicant no ability to correct the issue or even try to clarify for the Board if the motion was correct. The City and County Planning Staff provided ample evidence in the record that the project meets all City, County, and State requirements for a UGB land exchange.

FEMA Floodway

Some of the speakers on the 10th were farmers who indicated that they had farms in the area. Part of their argument was that the property proposed to be added to the County jurisdiction was in a FEMA Floodway and was therefore not usable as farmland. That notion is incorrect. Many of the farmers who spoke have property within a FEMA floodway, and they have been farming those properties for years. One such property owner from North Albany has a farm that is almost entirely within a FEMA Floodway, located on the opposite side of the river from the property proposed to be added to the County. Additionally, as mentioned previously, neither the FEMA designation nor the farming quality of the property is a criteria for the proposed UGB modification. The graphic shows the project area to be added to the County jurisdiction and farmland also within the Floodway. Just about all of the FEMA Floodway is on farmland, except the project site.

