
LEGAL MEMORANDUM

Legal Department, City of Salem, Rm. 205 City Hall, Phone: (503) 588-6003

To: City Council

Through: Steve Powers, City Manager

From: Dan Atchison, City Attorney

Date: November 26, 2018

Subject: Summary of actions required on remand of the City's UGB expansion decision

The purpose of this memo is to summarize the Land Use Board of Appeals' (LUBA) decision that remanded the City's 2015 decision to expand the Salem Area Urban Growth Boundary (UGB) and make other changes to the City's land use regulations. In summary, while the City prevailed on most of the substantive assignments of error, particularly on the transportation and "need" issues, the City will need to correct errors identified by LUBA in cooperation with Polk County and our other regional partners. LUBA found the City's decision erred in three respects;

1. Used incorrect population forecast,
2. Zoning district for the property was incorrect/may not sufficiently limit permitted uses, under the Goal 15 (Willamette Greenway) exception.
3. Lack of findings for compliance with Comprehensive Plan, Willamette Greenway Goals.

1. Incorrect population forecast.

LUBA's final order stated that the City used the wrong population forecast in its analysis of the proposal. LUBA's decision strongly implied that if Portland State's (PRC) forecast is available when the City takes action on remand, that the City use the PRC forecast. In the alternative, the City could use the acknowledged 2009 forecast. The forecast used by the City overestimated the UGB's future population by 13,000 as compared to the PRC forecast.

Steps to address:

- Work with MWCOG to revise transportation analysis applying the correct population numbers. Once the analysis is complete, the City will need to

revise findings and conclusions relative to the applicable criteria. Depending on the resulting traffic volumes, there may be a need to engage a consultant to conduct additional traffic analysis.

- City staff/consultant will need to review the analysis, and draft revised findings and conclusions.

2. Zoning.

LUBA's final order found that the zoning for the property subject to the UGB expansion and the property subject to the Goal 15 (Willamette Greenway) exception were not correct. For the UGB expansion property, the retention of the EFU zoning was in error, because the EFU zoning does not allow an "urban" transportation facility contemplated in the decision. In regard to the Goal 15 exception, LUBA stated that the City, on remand, must more clearly explain how the zoning for the property limits the uses . . . to those justified in the exception (urban transportation uses).

To comply with LUBA's direction, the properties must be rezoned to uses that; 1) allow an urban transportation use, and; 2) limits the zone to only that use. There are portions of the subject property within and without the City limits. Therefore there will need to be two-rezoning decisions; one conducted by the City and the other conducted by Polk County.

The City property rezoning is fairly straight forward procedurally. The City would legislatively initiate the proceeding (either Planning Commission or Council can initiate).

The Polk County property rezoning is a bit more complicated. Polk County has agreed that it is the appropriate decision maker for the application. In this scenario, the City would apply to Polk County, and its Board would make the ultimate decision.

Alternatively, the City could annex the Polk County property and process the zone changes together. In both rezonings, the decisions would be conditioned on the City's overall UGB decision being approved, because the findings in the rezoning decisions would rely on the results of the City's UGB decision.

Steps to address:

- Prepare facts and findings for the "City" zone change,
- Initiate the zone change proceeding, hold a hearing, and issue a final decision.

3. Willamette Greenway Goal Policies.

The City did not have findings of compliance with certain Willamette Greenway policies contained in the comprehensive plan. While there is substantial evidence in the decision regarding the Greenway that evidence was not tied directly to the Greenway policies.

Steps to address:

- Review the record to verify there is substantial evidence to show the proposal complies with the Willamette Greenway policies contained in the comp. plan. If so, draft findings of compliance. If not, prepare substantial evidence and draft findings of compliance.

4. Overall action on remand.

Once all the work has been done on the remand issues, the City, and the City's partner jurisdictions will need to conduct new hearings. The scope of the hearing(s) on the UGB expansion can be limited to the remand issues.

Conclusion.

Depending on the size and scope of the work required to address the revised population estimate, and how the zoning issues will be resolved, it will likely be six to nine months before the project would be ready for consideration on remand.