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April 5, 2019

To: Lisa Milliman

Re: Zone Change/Comprehensive Plan Change/Conditional Use 19-002 - Comments for First Open Record Period

Thank you for the assistance you provided at the public hearing on March 27, 2019. This letter includes my personal comments for the initial open record period that closes on April 10, 2019, and is not sent on behalf of the City of Aurora.

Assumed Trip Generation for the Former Church

Prior to and at the hearing, there was discussion of the deduction of 631 trips for the former church on the site shown on Table 5 of the applicant's traffic report (Exhibit X). At the hearing, the applicant's attorney commented that the use had not ceased entirely, whereas the church's own web site and social media postings submitted into the record by the City of Aurora demonstrate the use did cease in 2017, and that their 2018 retreat was held at a different location. Therefore all nonconforming use rights are lost, including the right to deduct vehicle trips based on the former use from the trip generation calculation for the proposed zone change. MCZC 171.114.050.

At the hearing the county staff commented that the county continues to agree with the trip generation estimate in the applicant's traffic report (Exhibit X). The applicant's traffic engineer submitted a memo dated March 27, 2019 in response to comments made on this and other traffic issues. The memo states:

It is correct that the church is no longer occupied, however it was occupied at the time that the traffic counts were collected. The 100KSF estimated size was originally based on a reasonable Floor Area Ratio (FAR) for a 16+ acre property with a church use. A church use is permitted subject to standards under EFU, not a conditional use. This

supports the notion that a substantially larger church is a reasonable worst case scenario under EFU zoning.

That response merits a careful review. The first phrase contradicts the statement of the applicant's attorney at the hearing which indicated the religious use continues. Next, the traffic counts were collected on June 7, 2017. The presence of some limited church activity and traffic more than one year prior to submittal of the application does not satisfy the standard for preservation of nonconforming use rights under MCZC 171.114.050. The applicant's traffic report, in footnote 1 of Table 5, states the estimated 100,000 square foot size was "for the existing church", and there is no discussion of 100,000 square feet being a reasonable floor area for a church on a 16 acre property in that report.

Furthermore, a 100,000 square foot church is not allowed on this site by the land use regulations for several reasons. The site has Amity silt loam soils, which is a Class 2 soil, as described on page 12 in the application narrative and the applicant's septic report. Class 2 soils are defined as "high-value farmland". ORS 215.710(a) and (b); OAR 660-033-0020(8)(a). The site is located less than three miles from the Aurora urban growth boundary, as described in the applicant's narrative.

MCZC 17.136.040 describes uses subject to standards in the EFU zone. Subsection C.1.a states that new religious organizations "may not be established on high-value farmland." In other words, a new church of any size is prohibited due to the Class 2 soils. Even in the absence of that prohibition, Subsection C.1.b.i states that "new religious organizations ... within three miles of an urban growth boundary shall meet the following standards: i. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved, unless an exception is approved pursuant to OAR Chapter 660, Division 004." See also OAR 660-033-0130(2)(a).

This means the church would be limited to a capacity of 100 people, absent one or more goal exceptions. Clearly a church for 100 people does not require 100,000 square feet of buildings. A 100,000 square foot church that requires a goal exception is not permitted subject to standards, and there is no information in the record to support the assumption that goal exceptions for that use could be approved. For reference, attached is an aerial photo of the Mission Hills church in Littleton, CO which is approximately 100,000 square feet, and accommodates 1200 people in its sanctuary,

twelve times the maximum capacity allowed by the EFU zoning. For comparison, it is next to an aerial photo of the subject property at the same scale.

In the event that the hearings officer finds that the nonconforming status of the former church has not expired, both the county zoning code and the state administrative rule for agricultural lands still prohibit expansion of the existing church buildings to anything remotely close to 100,000 square feet because the site is within three miles of the Aurora urban growth boundary. MCZC 17.136.040.C.2.b; OAR 660-033-0130(2)(a). There is no information in the record to support the notion that a church campus with maximum design capacity of 100 people requires 100,000 square feet of buildings, nor that 100 churchgoers would generate 631 average daily trips.

The assumptions by the applicant's traffic engineer that 631 vehicle trips can be deducted based on either 100,000 square feet of existing church, or based on the construction of new or expanded buildings comprising 100,000 square feet as a reasonable worst case scenario under the existing EFU zoning, lack an adequate factual base and are not consistent with state and local land use regulations.

The traffic engineer's response memo of March 27, 2019 also states:

While the project team is confident this approach is appropriate, we ran a sensitivity analysis of intersection operations to determine the impact of the full trip generation without the deduction of the existing church land use. Without this reduction, the general findings of the TPR/TIA remain the same. No additional intersection improvements are warranted. Some improvements may be triggered in the short term as opposed to the long-term, but the recommended improvements remain the same and adequately mitigate the impacts of the zone change.

When the deduction for the former religious use is removed, the estimated daily trip generation rises from 961 to 1592, an increase of 65%. The sensitivity analysis accounting for that very large increase has not been provided for the record, and has apparently not been reviewed by Marion County, ODOT, Clackamas County or the City of Aurora. The applicant should provide a revised traffic report without a deduction for the former religious use, and until that report is provided and evaluated, there is not an adequate factual base to support findings that MCZC 171.060(J) and the Transportation Planning Rule are satisfied.

Partial Mitigation

At the hearing, both the applicant's team and county staff discussed partial mitigation in the form of proportional payments as a method of compliance for traffic impacts. The City of Aurora noted its agreement in principle, but that the erroneous trip generation means the correct numerators for the affected intersections are not in the record. Because the actual trip generation is 65% higher than reported, the scope of the applicant's traffic report must be expanded to include the additional intersections identified by the City of Aurora (Ehlen Rd and Highway 99E) and Clackamas County (Airport Rd and Miley Rd). And the proportionate share analysis must also be expanded to include those intersections. The staff report's recommended Condition B must be revised to require this mitigation as well.

It is important to emphasize the county must require actual traffic improvements on the ground. A decision that does not require construction of improvements to one or more affected facilities will not satisfy OAR 660-012-0060(2), regardless of whether the applicant pays a fee in lieu. The county must identify and explain the mitigation that will be constructed.

Thus far, the county has not satisfied the requirements of OAR 660-012-0060(11)(c) for partial mitigation, because the required notice was not provided to local governments, nor apparently to DLCD, and neither the notice nor the staff report include the necessary findings. The county must describe: the proposed mitigating actions; analysis and projections of the extent to which the amendment will fall short of consistency with the function, capacity and performance standards of transportation facilities; findings on economic impacts; and findings that the benefits of the proposed amendments outweigh the negative effects on transportation facilities.

The notice for the March 27 hearing does not include these items, although the purpose of this letter is not to request new notice and another hearing. The substance of the traffic analysis and actual mitigation are the important things. The hearings officer's recommendation should include the information and findings on partial mitigation consistent with this rule, based on a revised traffic report, and should be coordinated with affected local and state public agencies.

Summary

Thus far the application and the county's response rely on a trip generation estimate that conflicts with the information in the record, and that is not consistent with state and local land use regulations regarding the cessation of a nonconforming use, and the regulations for new and expanded religious uses on high-value farmland near an urban growth boundary. The proposed partial mitigation solution is not sufficiently developed for evaluation, and the proposed Condition B does not account for impacts identified in the applicant's traffic study.

The county should work closely with the applicant's team and affected government agencies to bring the application into compliance with the Transportation Planning Rule and MCZC 171.060(J).

Thanks for considering these comments.

Best regards,



Joseph Schaefer

Encl

Cc: Mark Shipman, Saalfeld Griggs
Scott Jorgensen, City of Aurora
Dan Fricke, ODOT
Joe Marek, Clackamas County
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