



Oregon

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February 27, 2015

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Angela Lazarean, Mid-Willamette Valley Regional Representative

SUBJECT: **Agenda Item 9, March 12, 2015, LCDC Meeting**

NEWBERG URBAN GROWTH BOUNDARY REMAND SUSPENSION

I. AGENDA ITEM SUMMARY

A. Background

This item is an update on progress toward mediation of the issues surrounding the Newberg urban growth boundary (UGB). The Land Conservation and Development Commission (LCDC and/or commission) conducted a hearing on February 13, 2014, to consider a referral from the director of the Department of Land Conservation and Development (DLCD and/or department) of an amendment to the Newberg UGB submitted by the City of Newberg (city) and Yamhill County. The UGB amendment includes 260 acres known as the South Industrial Area. The South Industrial Area is located on the south side of Newberg near Highway 219, Wyooski Road and Wilsonville Road.

The Newberg City Council adopted the amendment at its May 20, 2013 meeting, and the Yamhill County Commissioners adopted the proposal at their July 18, 2013 meeting. The commission received oral argument from the city and several objectors, deliberated, and on March 14, 2014, unanimously passed a motion to remand the task. The commission asked the city to enter into mediation with the parties to see if a compromise solution could be reached. They also suspended the effective date of the remand decision until March 2015 to allow the parties the opportunity to negotiate an agreeable solution.

The department is authorized to provide mediation services to resolve disputes related to an appeal (OAR 660-025-0085(2)(a)). DLCD contacted Oregon Consensus to request its services to conduct an assessment of the potential for mediation among stakeholders. Oregon Consensus interviewed key stakeholders in order to assess the feasibility of proceeding with mediation, and provide direction on the next steps.

On July 2, 2014, the Mediation Assessment (Attachment A) concluded that mediation was feasible and had broad support. Stakeholders interviewed were willing to participate in mediation to help resolve the pending decision on the Newberg UGB amendment. With Oregon Consensus'

assistance, the parties selected a mediator, Sam Imperati, with the Institute for Conflict Management, during August 2015. A mediation agreement was signed by each of the parties and executed in early January 2015. As of February 20, 2015, one mediation session has been conducted and the next session is in the process of being scheduled.

B. Staff Contact Information

If you have questions about this report please contact Angela Lazarean, Mid-Willamette Valley Regional Representative, at (503) 934-0056 or angela.lazarean@state.or.us.

II. ANALYSIS

Each step of the mediation process has taken longer than department staff anticipated when it recommended the commission suspend the remand decision until March 2015. Since the suspension expires in March 2015, additional time is needed to allow mediation to conclude. Department staff estimates that mediation will be complete by the end of June. If that is an accurate estimate, the department should know by the commission's July 2015 meeting whether the mediation results in a settlement agreement. If the commission extends the remand suspension until then and no agreement is reached, no further action by the commission is needed and the remand would go into effect. If the outcome of the mediation results in the city and county agreeing to consideration of changes to the submittal, the commission would need to provide additional time to allow local adoption processes to conclude.

III. DEPARTMENT RECOMMENDATION AND PROPOSED MOTION

The department recommends that the commission extend the suspension on this case until its July 2015 meeting. No motion to extend the suspension of the remand, or a failed motion to extend, would result in the remand going into effect at that time.

Proposed motion: I move the commission suspend the remand of the Newberg UGB submittal until the commission's July 2015 meeting.

An alternative motion would include a different date.

IV. ATTACHMENT

- A. Newberg Urban Growth Boundary Mediation Assessment Report

Assessment Report

Newberg Urban Growth Boundary Mediation



Oregon Consensus
Assessment Report
July 2, 2014

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July 2, 2014

Oregon Consensus is a program of Portland State University and a service of the Oregon Solutions Network.



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1. SUMMARY

There has been ongoing disagreement relating to the expansion of the City of Newberg's Urban Growth Boundary, in particular, the question of expanding the boundary to include additional land for industrial development. The Land Conservation and Development Commission took action in May to stay its March 2014 decision remanding the Newberg UGB amendment until March 2015. Based on requests from the city, the Friends of Yamhill County, and 1,000 Friends of Oregon, LCDC decided to delay the decision in order to allow the parties to consider mediation.

The Department of Land Conservation and Development is authorized to provide mediation services to resolve disputes related to an appeal [OAR 660-025-0085(2)(a)]. DLCD contacted Oregon Consensus to request their services to conduct an assessment of the potential for mediation among stakeholders. Oregon Consensus interviewed key stakeholders in order to assess the feasibility of proceeding with mediation, and provide direction on the next steps.

1.1 OVERVIEW OF ASSESSMENT RESULTS

There is a uniform opinion among the stakeholders interviewed that they would be willing to participate in mediation to address the pending Newberg UGB amendment. While opinions varied with respect to what would be required for mediation to be successful, it was considered to be worth their time and effort in order to avoid further expenses and delays, and to make an effort to re-establish ongoing working relationships with those involved with land use decisions in and around the City of Newberg.

All stakeholders interviewed concurred that it would be beneficial to have a small number of participants in the mediation. For example, those five with standing as "objectors" agreed that they could have one person represent their interests in the mediation process, presuming the two land use advocacy groups were also included. Stakeholders also agreed that they would be satisfied to have Oregon Consensus propose three to five senior level mediators with Oregon land use expertise for the parties to select from. The City of Newberg and DLCD expressed a willingness to share the cost of mediation. For the post assessment work, OC anticipates a mediation contract in a not to exceed amount of \$10,000 for approximately three 1/2 day sessions with preparation work between meetings, including additional OC time in mediator selection in collaboration with the parties.

1.2. NEXT STEPS

OC will confer with DLCD to confirm the mediation participants and draft a budget to fund mediation services in consultation with sponsors. OC will evaluate qualified senior practitioners (mediators) and prepare a short list of candidates; and, OC will assist the parties in the selection of a mediator and implement a contract for services. The selected mediator will conduct further assessment and preparation for the initiation of mediation.

2 ASSESSMENT QUESTIONS AND ANSWERS

As a tool for gathering stakeholder information to assess the feasibility of mediation and for designing the mediation process, 11 interested parties were interviewed and asked the same series of questions. A background interview was also conducted with Rob Hallyburton, DLCD; and, an informational conversation was held with Jacque Betz, the new Newberg City Manager.

1. What are the most important issues that need to be addressed or resolved through mediation?

- The most important issues to resolve in mediation are the size of the UGB expansion and the need for “Reconciliation” among the parties involved.
- There were some expressing a goal of saving highest quality farm land, minimizing the loss of Class 1 & 2 EFU I, the need to consider how much other land is currently available to meet industrial development needs that is already available within the Newberg CRA and UGB; and, to bring in marginal lands into UGB first
- Others expressed a pressing need for more industrial land, in part, supported by the county’s population projections, including Newberg
- Several wished to address the city’s “site suitability characteristics”, a factor in prior decisions relating to the controversial parcel known as the Gaibler site

2. What is the value of entering into a mediation process to identify solutions to the Newberg Urban Growth Boundary? Is mediation feasible; and, what is critical to success?

- While to varying degrees and perspectives, all believed that mediation was “worth attempting”, ranging from, “might be feasible”, to “do-able”, to “absolutely supportive of mediation”
- There was a call for “Good Faith” participation; and, that both sides have to understand that neither will get all that they want, parties will need to compromise
- Success depends on both sides wanting solution and both being willing to “give a little”, and parties being willing to consider all options, achievable with “diplomacy”
- There is a common desire to reduce the conflict between the city and members of the public, and to negotiate a solution and avoid years in court, parties are “very motivated to get this resolved”
- Goal of establishing future collaboration on establishing Urban Reserve Areas (URA’s)
- “High chance of success”, though no “winner take all”

3. What outcomes would you like to see?

- “Good faith” effort to resolve the boundary issue, “move the ball forward”, “tangible movement” toward a solution, and the identification of achievable outcomes
- Establish trust and an ongoing working relationship among the parties
- Minimize the loss of farm land by reducing the size of the UGB expansion, including consideration of the addition of small parcels; and the identification of any land within current boundary that could be repurposed for industrial land
- Reach a resolution on “site suitability characteristics”
- Increase clarity on the Goal 3/Agriculture Lands requirements to avoid “moving target”, and help make it easier to determine when a request, “meets the threshold of LCDC Goals” (long term)
- Would like to clearer standards and thresholds for Goals 14 and 9, process issue (long term)
- Desire not to jeopardize a world class business from locating in Newberg
- Identification of what land can be included to meet industrial needs; and, a resolution, “the sooner the better” for guiding infrastructure development

4. Who should be included in a mediation process?

- City of Newberg (Planner Jessica Pelz and/or City Attorney Truman Stone or Cathy Stuhr, Planning Commission Chair, or a city councilor.)
- 1,000 Friends of Oregon (Mia Nelson or possibly Mary Kyle McCurdy)
- Friends of Yamhill County (Sid Friedman)
- Grace Schaad (on behalf of 5 independent objectors, other 4 concurred)
- Yamhill County (County Planning does not think they need to be at the table, but will participate if requested)
- Not sure about including any property owners who wish inclusion in UGB

5. Do you have any ideas for funding for the ongoing mediation process? Can your organization, or any others, contribute to help pay the cost of mediation?

- Believes that Newberg should pay for all or part of the mediation process given the number of UGB amendments they have initiated
- In addition to Newberg, DLCDC should pay for a portion of the mediation costs
- Newberg staff prepared to bring RCA to Council for portion of funding (reserve funds)

6. What are your thoughts on the mediator selection process? For example, would you prefer to have Oregon Consensus off several mediators to select from?

- The practitioner/mediator must be experienced and have land use subject expertise (all agreed to this criteria)
- Oregon Consensus provide short list of mediators (3 to 5) for parties to select from (all agreed to this process)

7. Is there anything else you'd like to tell us?

- "Amicability" - People need to try to work together and establish a long term working relationship
- Avoid LUBA appeals
- "Enthusiastic" about this issue being resolved

3. CONCLUSION

Mediation is a feasible option to pursue in an effort to reach a resolution of the Newberg Urban Growth Boundary conflict and to restore future working relationships between parties with an interest in land use decisions in Newberg. Stakeholders interviewed are willing to participate in mediation, or be represented in mediation, to help resolve the pending decision on the Newberg UGB amendment.

The mediation can proceed with a small number of participants given that the independent objectors agreed to have Grace Schaad, in addition to 1,000 Friends of Oregon and Friends of Yamhill County, represent all five of them. Stakeholders would like to have Oregon Consensus propose three to five senior level mediators with Oregon land use expertise for the parties to select from.

APPENDIX A: INTERVIEW PARTICIPANTS

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