



City of McMinnville
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EXHIBIT 2 – SUPPLEMENTAL STAFF REPORT

DATE: December 16, 2021
TO: Planning Commission Members
FROM: Tom Schauer, Senior Planner
SUBJECT: Public Hearing (Docket CPA 2-20/ZC 3-20) – Kimco Map Amendment

STRATEGIC PRIORITY & GOAL:



GROWTH & DEVELOPMENT CHARACTER

Guide growth & development strategically, responsibly & responsibly to enhance our unique character.

OBJECTIVE/S: Strategically plan for short and long-term growth and development that will create enduring value for the community

Report in Brief:

The memo submitted by Dana Krawczuk which was attached to the original staff report for the December 16, 2021 hearing as **Attachment A** references a June 21, 2021 letter. That letter was submitted to staff, but was not entered into the record at a public hearing because the subsequent hearings following the initial May 20, 2021 public hearing have been continued.

Because the public testimony portion of the hearing is to be re-opened on December 16, and because the June 21, 2021 memo is referenced in the December 9, 2021 letter submitted by Dana Krawczuk attached to the Staff Report as **Attachment A**, this supplemental staff report is provided to enter the June 21, 2021 letter into the record. The June 21, 2021 letter is provided as an additional attachment to the staff report as **Attachment B**.

Attachments:

Attachment B: June 21, 2021 Letter from Dana Krawczuk

Attachments:

Attachment B – June 21, 2021 Letter from Dana Krawczuk

MEMORANDUM

June 21, 2021

TO: HEATHER RICHARDS, MCMINNVILLE PLANNING DIRECTOR
cc: Michael Strahs and Sam Knutson, Kimco McMinnville LLC
Alan Roodhouse

FROM: DANA L. KRAWCZUK

RE: Goal 9 Legal Analysis: EOA and Comprehensive Plan Policy 48.70 Establish Minimum Land Need Quantities

Introduction

Kimco McMinnville LLC's ("Kimco") pending Comprehensive Plan Map and Zone Change with PD Overlay application (CPW 2-20/ZC 3-20) (the "Application") proposes to rezone 37.7 acres (with approximately 4.25 acres needed for right of way) from M-2 (General Industrial) to C-3 PD (General Commercial with a Planned Development Overlay). The 2013 Goal 9 economic opportunities analysis ("2013 EOA") is applicable to the Application and identified a deficit of 35.8 acres of commercial land and surplus of 235.9 acres of industrial land.

Separately, the City has been engaging in long range planning processes related to the McMinnville Growth Management and Urbanization Plan and the Three Mile Lane Area Plan ("3MLAP"). Through those processes, the City has determined that the Comprehensive Plan and Zone Map designations for "40 acres of property along the south side of the Highway 18 frontage" shall be changed from industrial to commercial, as provided in Comprehensive Plan Policy 48.70 (Ordinance 5098). This policy supports the dual purposes of efficiently utilizing land within the City's urban growth boundary ("UGB") by redesignating excess land and also facilitating the 3MLAP preferred alternative.

A question has arisen about whether a consequence of redesignating Kimco's 37.3 acres commercial is that other properties south of Highway 18 would only be able to rezone approximately 2 to 6.5 acres¹ of their industrial zoned property as commercial because most of the 40 acres described in Policy 48.70 would have been absorbed by the Application. The short answer is no.

For the reasons detailed below, both the 2013 EOA and Policy 48.70 provide the minimum acreage needed to accommodate the City's commercial land demand. The only quantitative

¹ The range reflects how the 4.25 acre portion of Kimco's land required for right of way purposes is considered.

limitation on how much additional land can be redesignated and rezoned from industrial to commercial is the 235.9 acre surplus of industrial land identified in the 2013 EOA cannot be reduced so that there is a deficit of industrial land.²

In other words, the 35.8 acre and 40 acre land need described respectively in the EOA and Policy 48.70 is the floor of how much land can be redesignated and rezoned from industrial to commercial. The ceiling is 235.9 acres, which is the existing surplus of industrial land. Accordingly, the City has the legal authority to approve Kimco's 37.7 acre commercial rezone and to approve an additional significant commercial land redesignations south of Highway 18 in the future.

Summary of Analysis

The quantitative land need issue presented by the Application and the question of whether other properties south of Highway 18 can be rezoned commercial is exclusively a Goal 9 issue. The Goal 14 requirement to align land demand and supply in order to keep boundary expansions as limited as possible does not apply. This means that the detailed analysis, process and efforts to balance land supply and demand that the City just engaged in as a part of the UGB and urban reserve designations do not apply here.

Goal 9 requires in relevant part that the City "provide at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses." Goal 9, Section 3 (emphasis added). Also see OAR 660-009-0025(2). The City is authorized to designate land for industrial or commercial uses in excess of the need identified in the EOA. For example, the December 2020 UGB expansion retained a surplus of industrial land, consistent with Goal 9. A redesignation violates Goal 9 only if of the supply of industrial or commercial sites is reduced to the extent that a deficit is created.

The 2013 EOA concluded that the City has a deficit of 35.8 acres of commercial land and surplus of 235.9 acres of industrial land. The 235.9 acre industrial surplus is the "ceiling" and 35.8 acres is the "floor" for redesignating industrial land as commercial. Accordingly, Goal 9 is violated only if 236 or more industrial acres are redesignated as commercial. If Kimco's 37.7 acres are zoned commercial, Goal 9 authorizes the City to redesignate 198.2 additional industrial acres as commercial.

Policy 48.70 does not limit the number of acres that can be rezoned commercial south of Highway 18 to 40 acres. At a minimum, UGB-related efficiencies require that 40 acres be redesignated and rezoned from industrial to commercial. However, there are several policy and practical reasons why the City is authorized to exercise its discretion and redesignate and rezone more than 40 acres from industrial to commercial south of Highway 18, so long as the supply of industrial land is not depleted (the 235.9 acre "ceiling"). For example, the 3MLAP preferred alternative is a high-level concept plan of potential zoning designations. A finer grain analysis of development feasibility, connectivity and design principles could support commercial

² All rezones are required to meet all approval criteria, such mitigating significant impacts to the transportation system and adequacy of public services.

designations in excess of 40 acres and/or a deeper area than is depicted in the preferred alternative.

Detailed Analysis

A. Goal 9 Requires the City to Maintain *Minimum* Quantities of Commercial and Industrial Land

Goal 9 requires in relevant part that the City “provide at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses.” Goal 9, Section 3 (emphasis added). Also see OAR 660-009-0025(2). The Goal 9 rules require the City to adopt an EOA that applies to areas within the UGB that, among other things, “compare[s] the demand for land for industrial and other employment uses to the existing supply of such land.” OAR 660-009-0015. The outcome of this analysis is a quantitative conclusion of whether the City has an adequate supply of needed land, identify any deficit or surplus, and adopt policies committing to providing an adequate supply of industrial and commercial land. OAR 660-009-0020.

Once the Comprehensive Plan and EOA are acknowledged, post-acknowledgment plan amendments, such as the proposed Application, “... that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation,” must demonstrate consistency with Goal 9. OAR 660-009-0010(4). One option to do so is to “[d]emonstrate that the proposed amendment is consistent with [the city’s] most recent [EOA] and the parts of its acknowledged comprehensive plan which address the requirements of this division[.]” OAR 660-009-0010(4); *see also Shamrock Homes LLC v. City of Springfield*, 68 Or LUBA 1, 5 (2013).

To demonstrate that a proposed plan amendment (a) maintains “at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses” and (b) is “consistent with” the City’s most recent EOA, the City must find that the amendment will not cause the quantity of the City’s commercial or industrial land supply to drop below the minimum thresholds identified in the most recent acknowledged EOA. That is, the City must evaluate whether “the amendments physically reduce the acreage of land in the Goal 9 inventory” or “threaten to convert lands inventoried for Goal 9 uses to uses not protected by Goal 9.” *Shamrock Homes LLC*, 68 Or LUBA at 8.

Goal 9 is implicated when a land use decision “has the effect of depleting” the available lands inventory or “could reduce” the available supply of industrial or commercial land beyond the minimum threshold identified in the EOA. *Grahn v. City of Newberg*, 50 Or LUBA 219, 223 (2005) (emphasis added). “The key is whether the amendment affects one or more of the assumptions that underlie the Goal 9 inventory so that the Goal 9 inventory may be rendered inadequate.” *Shamrock Homes LLC*, 68 Or LUBA at 9. *See also Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254 (1996); *Volny v. City of Bend*, 37 Or LUBA 493, 510–11 (2000). Neither the Land Use Board of Appeals nor the Oregon Court of Appeals has ever concluded that a land use decision violates Goal 9 simply because it would cause a city’s commercial land supply to exceed the minimum threshold identified in the acknowledged EOA.

B. Goal 14 Does Not Apply to the Application

It is important to distinguish the required analysis under Goal 9 from the analysis required under Goal 14. Goal 14 applies when a city proposes to convert rural land to urban uses, primarily in the context of UGB expansions. It does not apply to this Application, which seeks to redesignate and rezone urban land already within the City's UGB. Like the Goal 9 analysis that applies to this Application, the Goal 14 analysis also relies on the City's acknowledged EOA. *See* OAR 660-024-0010(2); 660-024-0040(6). However, the EOA serves a different purpose within the context of Goal 14.

The purpose of Goal 14 is to balance the state's need for urban land with the state's competing policy to protect rural land. Thus, unlike under Goal 9 which applies exclusively to urban land, the presumption under Goal 14 is that rural land should not be included in the UGB and designated for commercial and industrial uses, unless the local government can first identify a "demonstrated need" for additional land. OAR 660-015-0000(14). Accordingly, in the context of Goal 14, the EOA serves as the starting point for a local government to justify its need to expand the UGB to accommodate additional industrial and commercial land. *See* OAR 660-024-0040(5)–(6) (describing Goal 14 process to establish industrial and commercial "land need"). Also unlike Goal 9, Goal 14 places a high burden on local governments to demonstrate that they cannot satisfy commercial land needs without first redesignating land within the UGB. *See* OAR 660-024-0050(4) ("Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB."). Policy 48.70 is an example of how McMinnville complies with this Goal 14 requirement.³

Goal 9's purpose differs from Goal 14's. The purpose of Goal 9 is to promote economic development within the UGB. OAR 660-015-0000(9). For that reason, as discussed above, cities cannot take actions that would reduce the quantity of land necessary to support that goal; "at least and adequate supply of sites" must be provided. However, Goal 9 does not restrict cities from encouraging commercial economic development beyond the minimum level identified in the EOA or providing land in excess of the minimum quantity identified in the EOA.

³ Policy 48.70 provides:

Redesignation to Commercial. As an identified efficiency measure necessary to reduce the needed size of the "Phase 2" UGB amendment to meet additional Commercial land needs, the City shall initiate a change to the Comprehensive Plan and Zone Map to redesignate and rezone 40 acres of property along the south side of the Highway 18 frontage from commercial to industrial, leaving the rear portions in an Industrial designation. This recognizes that the City will retain an Industrial surplus as a result of adding the Riverside North area to the UGB as part of the "Phase 2" UGB amendment.

C. The Application Complies with Goal 9 and Does Not Preclude Future Redesignations and Rezones from Industrial to Commercial

The 2013 EOA identified a deficit of 35.8 acres of commercial land and a surplus of 235.9 acres of industrial land. As a result, the EOA recommended that the City redesignate “at least” 36 acres from industrial to commercial use. The Application proposes to redesignate 37.7 acres of land from industrial to commercial. If the City approves the Application, the City will still retain a surplus of 198.2 acres of industrial land. In other words, the Application does not threaten the adequacy of the City’s future industrial or commercial land supply, and it will not preclude other land owners from seeking to redesignate their own property as commercial land in the future. It will simply enable the City to accommodate the existing commercial land deficit identified in the EOA and move closer to its efficiency goal in Policy 48.70.