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VIA E-MAIL - building@ci.manzanita.or.us

City of Manzanita Planning Commission
167 S. 5th Street
Manzanita, OR 97130

Re: Manzanita Lofts Planned Unit Development

Dear Commissioners:

This law firm represents the applicant, Vito Cerelli and Manzanita Lofts LLC. We have reviewed the staff report in this matter dated June 10, 2022, the available written public comments and related materials. The applicant agrees with the staff report and accepts all of the proposed conditions of approval recommended by staff.

We are writing to supplement the staff report specific to one issue raised by several members of the public: whether any Manzanita Comprehensive Plan policies apply to this quasi-judicial land use matter as approval criteria. Staff correctly states on pages 5-6 of the staff report that application of comprehensive plan policies to this application as approval criteria is prohibited by ORS 197.195(1) because the application requests a "limited land use decision." However, staff does not expound on the definition of a limited land use decision, so we take that opportunity here.

Under ORS 197.015(12)(a)(B), a "limited land use decision" includes, among other things:

a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns ... [t]he approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

In this case, the site of the proposed project is within the urban growth boundary, as it is within City limits. The applicant proposes a hotel, which is "a use permitted outright" in the zone. Consequently, the City's obligation is to apply "discretionary standards designed to regulate the physical characteristics" of the proposed use. The decision to be made falls squarely within the definition of a "limited land use

decision," and therefore staff was correct to apply ORS 197.195(1) to conclude that no comprehensive plan policies can constitute approval criteria here.

Furthermore, even if this application was a "land use decision" and not a "limited land use decision," Comprehensive plan policies still would not constitute approval criteria in this case. The decision maker is not required to evaluate plan policies that are not approval criteria. *Ellison v. Clackamas County*, 28 Or LUBA 521, 525 (1995). While comprehensive plan policies can sometimes be approval criteria for land use decisions (ORS 197.015(10)(a)(A)(ii)), the decision maker must evaluate the plain language of the policy alleged to apply and determine whether it was intended to serve as an approval criterion. *See., e.g., Stewart v. City of Brookings*, 31 Or LUBA 325, 328 (1997). Broadly-worded policies that set policy direction to develop legislation, or that set aspirational goals, are not approval criteria. *Angel v. City of Portland*, 21 Or LUBA 1, 13-14 (1991); *Bennett v. Dallas*, 96 Or App 645, 647-49 (1989).

An example of the latter is the Manzanita Comprehensive Plan goal cited by several commenters that the City should "maintain and create residential living areas which are safe and convenient, which make a positive contribution to the quality of life, and which are harmonious with the coastal environment." First, this is identified in the Plan as a "goal" and not a "policy," and second, consistent with that label this is merely a broad brush statement of aspirational goals to guide future legislation and planning; they are not approval criteria to be applied at the individual quasi-judicial land use level. Other statements from the Comprehensive Plan cited by public commenters set similar aspirational goals, not concrete land use approval criteria. Accordingly, no evaluation of Comprehensive Plan policies is appropriate or necessary.

Please enter this letter into the record in this matter. Thank you.

Best regards,



David J. Petersen

DJP/rkb

cc (via e-mail): Vito Cerelli

