

**NOTICE OF A PUBLIC HEARING ON THE REMAND OF
A LAND USE BOARD OF APPEALS DECISION
(PLANNED UNIT DEVELOPMENT)**

The City of Manzanita Planning Commission has continued this remand hearing from its original hearing of May 30, 2023, to **June 16, 2023 at 10:00 a.m.** via Zoom. Go to www.ci.manzanita.or.us for log in information. This special set meeting will include a remand hearing to consider the Oregon Land Use Board of Appeals' ("LUBA") remand of the City's denial of the following application:

Request: Planned Unit Development for a 34-Unit Hotel.
Applicant: Vito Cerelli.
Location: 698 Dorcas Lane.
Assessor's Map: 3N-10-29AD, Tax Lots 2600 and 2100.
Zoning: Special Residential/Recreational Zone (SR-R).
Criteria: This application will be evaluated against the Planned Unit Development criteria listed in Ordinance 95-4 Section 4.136; and, the Special Residential/Recreational Zone standards in Ordinance 95-4 Section 3.030.

On February 27, 2023, LUBA issued a Final Opinion and Order remanding the City's denial of the above-referenced application to the City. On March 30, 2023, applicant requested that the City address the application on remand. A copy of the request is enclosed with this Notice. On April 12, 2023, the City Council remanded this matter to the Planning Commission. On May 30, 2023 the Planning Commission held a hearing and made preliminary findings with respect to the remand issues relating to MZO 4.136(c)(2), (3), and (5). The Planning Commission elected to continue this hearing to June 16, 2023. The Planning Commission also elected to leave the record open for seven days, until June 6, 2023, as follows:

- Assuming that MZO 3.030(4)(a) applies, applicant has agreed to comply with this density standard. Applicant has testified that the open space will encompass 40% or more of the total lot or parcel area, will include a private park and a trail, some portion of which will be open to the public. The Planning Commission has left the record open to allow the applicant to submit additional information demonstrating that "at least 40% of the total lot or parcel area is reserved or dedicated as permanent open space as a public or private park area . . ." as well as how the proposed trail may provide an alternative route for pedestrian and bicycle traffic on nearby streets. Any party may submit new evidence relating to these items.
- The Planning Commission requested clarification from Mr. Todd Mobley, the City's contracted traffic engineer after the public comment portion of the hearing had closed. While clarifications from staff are not typically considered testimony, the Planning Commission will also accept new argument, but not new evidence, from any party during the open record period in response to any testimony that the party

believes may have occurred during the Planning Commission's deliberations. Parties are encouraged to identify the portion of the deliberations that they believe constitute testimony and provide responses via written submission.

The June 16 continuation of the remand hearing will be limited to argument relating to the evidence and argument submitted during the open record period.

Staff will issue an updated Staff Report reflecting the preliminary findings and correcting items as noted at the May 30 remand hearing.



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March 30, 2023

VIA U.S. MAIL AND E-MAIL - laman@ci.manzanita.or.us

Manzanita City Council
Attn: Leila Aman, City Manager
PO Box 129
167 S. 5th Street
Manzanita, OR 97130

Re: *Cerelli v. City of Manzanita* – initiation of remand
698 Dorcas Lane application for 34-unit hotel

Dear Councilors:

In its order of February 27, 2023 (the "Order") in the above-referenced matter, the Land Use Board of Appeals (LUBA) sustained three assignments of error raised by the applicant:

- First, LUBA ruled that a hotel is a permitted use in the SRR zone. Accordingly, the provisions of MZO 3.030(4) and 4.136(3)(c) are standards "designed to regulate the physical characteristics of the outright permitted use," and the decision before the Council on remand is a limited land use decision to determine if those standards are met. Order, p. 20. Comprehensive plan provisions may not be relied upon to determine compliance with applicable criteria. Order, pp. 23, 26.
- Second, LUBA ruled that the City failed to make a reviewable determination as to whether MZO 3.030(4)(a) applied to the proposal and, if so, whether it was met. Order, pp. 24-25.
- Third, LUBA ruled that the City's findings in response to MZO 4.136(3)(c)(5) were not supported by substantial evidence in the record. Order, p. 28.

This letter constitutes the applicant's request pursuant to ORS 227.181(2) to initiate remand proceedings to address the errors identified by LUBA.

We are not aware of any provisions of the MZO governing the procedure for this remand. The applicant recommends, however, that on remand the record should be reopened for the limited purpose of receiving evidence in response to the third error. The first error is purely a legal issue requiring the City's compliance on remand, and

the second error poses a combination of legal and factual issues that can be resolved by evaluating the existing record. Specifically, the applicant contends that MZO 3.030(4)(a) does not apply because hotel rooms are not dwelling units, but even if they are, the density standard in MZO 3.030(4)(a) is met. The existing record shows that the site is 3.83 acres, which at 6.5 dwelling units per acre permits a maximum density of 24 units. However, the applicant is willing to reserve or dedicate 40% of the site for open space or public or private park area or a golf course, thereby increasing maximum density to 13 units per acre, or 49 units. This is more than enough to accommodate the proposed 34 hotel rooms in the project.

Regardless of what procedures the City adopts, the applicant requests that the City provide adequate advance notice of its intended procedures with sufficient time for the applicant and other interested parties to fully prepare an appropriate response.

Thank you for your prompt attention to this matter. If you have any questions, please contact Mick Harris or me.

Best regards,



David J. Petersen

DJP/rkb

cc (via e-mail): Vito Cerelli
Souvanny Miller
Mick Harris

