

To: Planning Commission
From: Cindy Walbridge, Planning Director
Subject: Staff Response to Comprehensive Plan purported deficiencies by those who submitted testimony on the Morrison Park/Tax Lot #700 Rezone Application 16-37
Date: February 14, 2017

HOOD RIVER MUNICIPAL CODE – TITLE 17 ZONING – ZONE CHANGES AND PLAN AMENDMENTS

HRMC 17.08.030 (A) includes these requirements:

A. An application for a quasi-judicial zone change . . . shall include . . .

7. Existing site conditions, including . . . natural areas, open space, scenic and historic areas . . . and present use of the site;

Response: This has been added to the report – Attachment “A”. Testimony provided by Susan Crowley on 2/21/17 includes a historic look at the park which will be incorporated into the record. As such, criterion has been met.

8. An explanation of how the zone change complies with the Comprehensive Plan and criteria in this chapter;

Response: Explanation of how the zone change complies with the Comprehensive Plan is addressed below. How the zone change complies with the criteria for a zone change is addressed in the first original staff report distributed on 10/14/16 and attached to this addendum. As such, this criterion has been met.

9. A statement of the potential effect(s) of the zone or plan change on the site; and

Response: Effects of this proposed zone change on the site will be changing a vacant, treed, 5 acre open space/public facility zoned parcel with temporary lease agreement allowing use as frisbee golf course to high density residential (R-3). The permitted uses allowed in ‘R-3’ are delineated in HRMC 17.03.030 and any development on this site will be required to meet HRMC. Until a development proposal for the site is obtained, the potential effects of this zone change vary among the permitted uses of R-3 property through conditional uses of R-3. It is the intent of the City to work with a developer to build Multi-family dwellings, subject to site plan review and public park space; both of which are permitted uses of R-3 property. In either case, the developer will be obliged to HRMC’s site development requirements, setback requirements, maximum building height, parking regulations, signs and landscaping. There is potential this zone change will allow the City to address an identified public need for multi-family affordable housing. Such development may include the construction of buildings, paved areas and retention of some open space for park setting. This development may remove trees from the site for building, access and parking areas. As such, this criterion has been met.

10. If an exception to a goal is required, applicant shall submit documentations

establishing compliance with ORS Revised Statute ORS 197.732 . . . "

Response: From Gordon Howard, Principal Urban Planner, Department of Land Conservation and Development “there is no need for an exception to Goal 8. Goal 8 is broad and general and has no specific standards for which an exception would be required.” As such, this criterion is not applicable.

HRMC 17.08.040:

"A. Quasi-Judicial zone or plan changes may be approved if the change will not be unreasonably harmful or incompatible with existing uses and one or more of the following exist . . ."

Response: The City interprets this provision to refer to existing uses in the surrounding area, not on site, which is more consistent with the plain language of this policy because, by definition, every zone change will change the zone of the subject site. Therefore, it would make no sense to require that the new zone uses be compatible with the old zone uses since the point of a zone change application is to change the zone. This is a request to change the zone, and the responsibility of the decision maker is to assess potential conflict with the existing surrounding uses (i.e. changing the zone from OS/PF to Industrial for a rendering plant adjacent to residential zoned land) with the proposed new zone designation. When a provision in a code or plan presents any ambiguity, as in this case, ORS 197.829(1) requires LUBA and the Court of Appeals to defer to the governing body’s interpretation:

197.829 Board to affirm certain local government interpretations. (1) The Land Use Board of Appeals shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

- (a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- (b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- (c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
- (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.

“Based on the foregoing analysis, we conclude that, when a local government plausibly interprets its own land use regulations by considering and then choosing between or harmonizing conflicting provisions, that interpretation must be affirmed, as held in Clark and provided in ORS 197.829(1)(a), unless the interpretation is inconsistent with all of the "express language" that is relevant to the interpretation, or inconsistent with the purposes or policies underpinning the regulations. We therefore reject petitioners’ contrary contention.”

Siporen v. City of Medford, 349 Or 247, 252 & 259, 243 P3d 776 (2010)

From this holding it is clear that the City Council, as the body that adopted these land use regulations and comprehensive plan provisions, has wide latitude in interpreting the ambiguous provisions of its land use regulations and comprehensive plan. As such, this criterion is met.

CITY OF HOOD RIVER COMPREHENSIVE PLAN

Goal 8 – Recreational Needs

GOAL: to satisfy the recreational needs of the citizens of the community and visitors to the area.

"POLICIES:

Existing park sites will be protected from incompatible uses and future expansion alternatives at some sites will be developed.

Response: Existing park sites will be protected and Morrison Park has been protected, as all parks within the 1983 Comprehensive Plan Recreational Resource Inventory have.

In conferring with DLCD, they said if an acknowledged comprehensive plan regarding Goal 8 parks and recreation needs dates from 1983, then that should be the baseline for your findings. You can provide some updated numbers as necessary in your findings reflecting facts “on the ground,” regarding amount of park acreage. The City has not updated its park inventory since 1983 nor has it adopted a Hood River Valley Parks & Recreation Master Plan primarily because they are developed for their entire planning area (Hood River County) and not specific to the City/Urban Growth Area. However the City works closely with the Parks District in adding trails and parks and open space without removing any until this request. The City has rezoned and/or developed (with the Parks District) the following properties for open space or recreational uses since 1990, which exceeds 55 acres not accounting for the trails. 55 acres have been added for open space and recreational use in the city limits while nothing has been taken out until this request.

Waterfront Park – formerly Light Industrial
The Hook – formerly Light Industrial
The Spit – formerly Light Industrial
Eastside of Hood River near Hood River – formerly Residential
The Westside Trail – worked with Parks District to get all easements Trail
South Of Indian Creek Trail
Indian Creek Extension from Devon Court
City half of Wells Island – redesignated from conference center for Port to Open Space.

The City has also collected well over one million dollars in System Development Charges (SDC’s) for park development by the Parks District since 1994.

In conferring with Department of Land Conservation and Development (DLCD), the only mandatory part of Goal 8 regarding cities is the following language:

The requirements for meeting such needs, now and in the future, shall be planned for by governmental agencies having responsibility for recreation areas, facilities and opportunities: (1) in coordination with private enterprise; (2) in appropriate proportions; and (3) in such quantity, quality and locations as is consistent with the availability of the resources to meet such requirements. State and federal agency recreation plans shall be coordinated with local and regional recreational needs and plans.

There are no implementing administrative rules pertaining to city parks. The governing body can make findings, based on background evidence, on the recreation issue, and as long as they are plausible can change the zone based on a greater need. What does this have to do with this policy? It means that existing park sites will be protected, enhanced, and a governing body may de-designate open space based on a greater need. In this case the greater need is meeting the identified public need of affordable housing through goals of Strategy #3: Action 3.1: Identify publicly-owned properties that could be used for affordable housing and partner with the Mid-Columbia Housing Authority to develop affordable housing. As such, criterion has been met.

Goal 10 - Housing

Goal 10, which is now the newly-integrated Housing Needs Analysis (HNA), incorporated into the Comprehensive Plan in 2015, described the buildable lands inventory from which it developed its recommendations, and states specifically at page 5 (emphasis added):

***Public land.** Lands in public . . . ownership are considered unavailable for residential development. This includes lands in . . . City ownership. . ."

Response: Page 5 of the adopted Housing Needs Analysis refers only to the fact that public lands were not included in the inventory of residential lands. That is all. The references to Goal 10- Housing and the need for a specific type of housing in the City of Hood River are applicable and legal for this proposal.

Goal 4 – Forest Lands

Goal 4 states in relevant part:

"Within the City of Hood River . . . [t]here are a few forested spots inside the City which are located in . . . open space areas. . . These limited sites will continue to be protected by the zoning applied to those lands."

Response: Goal 4 is not applicable in the City.

Goal 5 Open Spaces Scenic and Historic Areas and Natural Resources

Goals: 5. Lands zoned as Open Space will be preserved as open space.

Response: The protections afforded to OS zoned land by HRCF Goal 5 apply only to land that is zoned OS and which the City Council has deemed appropriate to retain as OS-zoned land. This policy protects land that has and will retain the OS designation so as to preserve the open space values and resources that the council recognized on the parcel. This policy does not impose any requirement nor does it impose any additional procedural steps for the de-designation of an OS zoned parcel to a non-OS designation. Nothing in this or any other Goal 5 policy prevents the City from de-designating OS-zoned land to some non-OS designation. Only if a particular parcel were an inventoried Goal 5 resource and that designation had been imposed after an ESEE analysis as required by the Goal 5 Administrative Rule would there be an additional step required before the parcel could be de-designated. In that case, the city would have to amend its Goal 5 inventory before the protective zone or designation could be removed from the property and before the site could be removed from the Goal 5 inventory.

That is not the case with regard to the Morrison Park site because it is not an inventoried Goal 5 resource and was never subject to an ESEE analysis. As such, the only procedural requirements and the only applicable criteria attendant to the de-designation of this parcel from OS to a non-OS designation are the standard zone change criteria. Goal 5 only applies to this parcel if it were to retain the OS designation, and then it would serve to protect the site's open space and other Goal 5 resource values. Because the property is not an inventoried Goal 5 resource, nothing in Goal 5 prevents the Council from de-designating the parcel to a non-OS zone. As such, criterion has been met.

Goal 9 Economy

GOAL: *To diversity and improve the economy to the Hood River planning area while preserving and promoting the City's quality of life and small-town atmosphere.*

POLICIES:

1. Preserve and promote the city's "quality of life" including small town atmosphere, . . . open space and recreational opportunities, . . . [and] beautiful natural setting . . .

Response: Employers throughout Hood River continue to struggle attracting and retaining employees due to the rising cost of housing. Access to housing is an issue for the entire Mid-Columbia region and without affordable options, individual must commute or find work elsewhere and businesses may elect to not move into or expand into our community. The City's quality of life is being compromised as evidenced by the public need to address affordable housing. Rezoning this 5 acre parcel will enhance our efforts to diversify and improve the economy to the Hood River planning area while preserving and promoting the City's quality of life and small-town atmosphere. It bears repeating from findings under Goal 8 – Recreation, that the City of Hood River has rezoned over 55 acres of land since 1990 for open space and recreation. As such, criterion has been met.

Goal 14 - Urbanization

"IMPLEMENTATION STRATEGIES:

6. The effects of exceeding the carrying capacity of . . . land . . . and public facilities are detrimental to the public health . . . and general welfare. Development which will exceed related resource . . . carrying capacities will, therefore not be permitted."

Response: One cannot state this site has exceeded the carrying capacity of the City of Hood River without any evidence. This would require a professional report by a suitable biologist or ecologist demonstrating the carrying capacity of a particular resource is compromised by this application.



TAX
LOT
#700

Existing Conditions

- 5 acre open space / public facilities (OS/PF) parcel on north side of Wasco St & East of 20th St.
- Current Use: Disc Golf Course (see IGA)
- Parks District has removed blackberries over the years and several trees because of disease.
- There is no on-site parking
- There is a small waterway flowing north from skate park onto this parcel, then to a small pond to the East.

**INTERGOVERNMENTAL AGREEMENT BETWEEN
HOOD RIVER VALLEY PARKS & RECREATION DISTRICT
AND CITY OF HOOD RIVER
FOR THE PURPOSE OF
PROVIDING AND MAINTAINING A DISC GOLF COURSE**

THIS AGREEMENT, made this 14th of MARCH, 2005, by and between the Hood River Valley Parks & Recreation District (hereinafter the "District") and the City of Hood River (hereinafter the "City").

RECITALS

1. ORS Chapter 190 authorizes governmental entities such as cities and special districts to enter into written agreements for the performance of any or all functions and activities that either party, its officers or agents, has the authority to perform on its own. The agreement may provide that the entities cooperate in the construction, improvement, operation and maintenance of facilities.
2. Pursuant to ORS Chapter 266, Oregon parks and recreation districts are empowered to construct, reconstruct, alter, enlarge, operate and maintain parks, recreation grounds and buildings as, in the judgment of the district board, are necessary and proper.
3. The City owns real property commonly known as Morrison Park ("Park") that is zoned Open Space/Public Facility and that is currently not being put to any beneficial use.
4. The District desires to improve the Park for public park purposes and, more specifically, for the purpose of installing and maintaining a Disc Golf Course.
5. The City has agreed to allow the District to use the Park for a Disc Golf Course until such time as the City determines that the Park property should be used for other purposes on the terms and conditions set forth below.

AGREEMENT:

In consideration of the mutual covenants of the District and City, each to the other giving, the District and City do hereby agree as follows:

Section 1. Disc Golf Construction, Maintenance and Repair. The City grants the District the exclusive right and privilege to install and operate a Disc Golf Course in the Park, and all associated rights to use the Park for that purpose. The District is responsible for all costs associated with the construction, maintenance, upkeep and repair of the Disc Golf Course.

a. The District shall maintain the appearance and general condition of the Disc Golf Course to the satisfaction of the City.

b. The District shall repair or replace broken, vandalized, dangerous or otherwise unusable equipment as soon as possible.

c. The Disc Golf Course is subject to review and approval under Hood River Municipal Code Section 17.03.080 as a permitted use subject to site plan review. Approval of this Agreement does not constitute approval of the intended use.

d. The District anticipates that it will not need the entire Park for the Disc Golf Course and, therefore, it will not be required to improve those portions of the Park not used for the Disc Golf Course. However, the District will be required to maintain those portions of the Park located south of I-84 and not used for Disc Golf Course in a clean and safe condition, including by not allowing trash to accumulate.

Section 2. Advertising. The District may procure and install, affix, maintain and replace appropriate signs displaying advertising matter on the elevated baskets, concrete tee pads, tee/rule signs, or lost disc receptacles.

a. All advertising is subject to the City's approval, both under the HRMC and as to whether the City considers the subject matter of the advertisements appropriate for public property.

b. In the use of advertising, the District may not violate any person's right to privacy or infringe upon any person's trademarks, trade names, copyrights or other proprietary rights. The City's approval of the advertising is not a waiver of those duties and the District shall indemnify and hold the City harmless with respect to all claims arising out of a breach of those duties.

c. All advertising placed by the District on the Disc Golf equipment is owned by the District and remains the property of the District, and is subject to removal by the District at any time.

Section 3. Operation.

a. **Hours and Fees.** The District shall operate the Disc Golf Course as a public park for use by the public at no charge and during the District's regular park hours. The District may close the Disc Golf Course to the public for maintenance (by the City or District), for an emergency, or when the Disc Golf Course is reserved by a private group for exclusive use.

b. **Parking and Traffic.** The parties anticipate that the Disc Golf Course will bring additional vehicular traffic to the area. Consequently, the District shall contact all residents within 250 feet of the Disc Golf Course prior to its opening to discuss any questions or concerns the residents may have. In addition, the District shall make staff available to answer questions and comments that the Disc Golf Course's neighbors may have concerning the operation and maintenance of the Course both before and after it opens. The parties agree that the City may, under this Agreement, impose reasonable parking and traffic restrictions and requirements to address any parking and/or traffic issues that may arise during the term of this Agreement.

Section 4. Compliance with Laws. District shall be responsible for compliance with all federal, state and local laws, orders and regulations in connection with its operation of the Disc Golf Course.

Section 5. Insurance. The District shall maintain liability insurance for the Park commensurate with the activities conducted there and covering, at a minimum, the parties' liability under state law. The City does not waive any immunity or limitation of liability available to it pursuant to state or federal law, and reserves the right to assert any such immunity and/or limitation.

Section 6. Indemnification. The District and City agree that they will each indemnify and hold the other harmless from any and all loss, claim or liability arising from, or related to, the acts or omissions of the parties, their employees and/or agents in connection with the construction, operation and maintenance of the Park.

Section 7. Term.

a. The term of this Agreement shall be ten (10) years; provided, however, that the City may terminate this Agreement prior to its expiration with ninety prior written notice when the City determines that it is necessary and convenient to sell the Park. The written notice shall specify the termination date of this Agreement, which date must be no less than ninety (90) days after the date of the notice. This Agreement may otherwise be terminated upon the mutual agreement of the governing bodies of both the District and the City, or, without such agreement, in the event of a material breach of the terms and conditions of this Agreement by one of the parties. A material breach is considered to have occurred if, after receipt of written notice from the non-breaching party, the breaching party fails to cure the breach, or take reasonable steps to cure the breach, within thirty (30) days after the date of the written notice.

b. This Agreement shall automatically renew for additional ten (10) year periods unless either party delivers written notice to the other party of its intent not to renew no less than ninety (90) days prior to the expiration of the current term.

c. Upon termination of this Agreement, the District shall remove all Disc Golf Course equipment and leave the Park in good condition, wear and tear due to normal use excepted.

Section 8. Attorney Fees. In the event of any action to enforce the terms of this agreement, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements, its reasonable attorney fees at arbitration, trial and on appeal.

Section 9. Miscellaneous.

a. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and permitted assigns.

b. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by any party without the prior written consent of the other parties.

c. Nothing in this Agreement, express or implied, is intended or shall be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.

d. This instrument may be amended only by an instrument in writing executed by all the parties, which writing must refer to this instrument.

e. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties shall be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

f. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

g. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

IN WITNESS WHEREOF, the City and the District have executed this agreement pursuant to due authority, as evidenced by the signatures of the duly appointed representatives of each entity below.

**HOOD RIVER VALLEY PARKS &
RECREATION DISTRICT**

By: _____

Its: _____

Blaine H. Johnson
Board Chair

CITY OF HOOD RIVER

By: _____

Its: _____

[Signature]
CITY MANAGER