

July 8, 2026

VIA EMAIL

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Re: Procedural approach and decisionmaker designation for Application DR-25-04/LLA-25-02

Dear Carrie:

Our firm represents the City of West Linn (“City”) as special counsel for land use-related matters, and it is in this capacity that I am writing to you. This letter is in response to your letter dated June 29, 2026, regarding concerns you have with the City’s procedural approach to Application DR-25-04/LLA-25-02 (the “Application”). This letter clarifies the City’s intended approach to reviewing this Application by stating the City’s procedural approach to the commercial and residential aspects of this Application, and the decisionmaker required by the West Linn Development Code (“CDC”).

1. Procedural Approach.

As you are well aware, home rule authority and preemption legal principles stemming from Article XI, Section 15 of the Oregon Constitution create a complex relationship between state land use regulations and local CDC. Where state law preempts the CDC, the City must comply with state law. Where CDC is not expressly or implicitly preempted, however, the City must continue to enforce its CDC until its City Council chooses to amend it.

As you note in your letter, HB 4037 (2026), Section 17 amends ORS 197A.400(5) to prescribe procedures that control local review of housing development applications. However, these statutory amendments are silent on the appropriate procedure for reviewing mixed use applications involving residential and commercial development, such as this Application. Without express statutory language dictating the required review procedure for the commercial aspects of this mixed use development, the City must continue to apply its CDC requirements to the extent that they do not conflict with the new statutory language.

CDC 55.030.C.1 states that the planning commission shall review Class II design review applications in accordance with the applicable criteria set forth in CDC 99.110 and CDC chapter 55. Further, CDC 99.170.A provides that the planning commission shall conduct a hearing on all matters over which it has original jurisdiction. Therefore, the planning commission must proceed with a hearing on this application, to the extent not preempted by state law.

As a result, without authority to act to the contrary, the City must proceed with a hearing for the commercial aspects of the Application, but no hearing for the residential aspects of the Application (which it is preempted from doing so by HB 4037 (2026), Section 17). The City cannot avoid a hearing for the entire Application without violating the procedural requirements of the CDC.

You claim in your letter that this path forward is not clear and objective, and therefore not in compliance with ORS 197A.400(1). However, the letter fails to articulate why a hearing before the planning commission is not a clear and objective procedure. CDC provides clear procedures for planning commission hearings, noticing requirements, and review standards that do not offer room for subjectivity. The bifurcated element of conducting a hearing on commercial aspects of this Application followed by deliberations on both the commercial and residential aspects add procedural complexity, but not subjectivity or lack of clarity.

Your comparison of this Application to *Icon Development v. City of Oregon City* is unpersuasive. LUBA No. 2022-100, May 19, 2023. In this case, the city conditioned annexation on a subsequent master plan review, which involved subjective, discretionary approval criteria but a clear and objective review procedure. The applicant submitted a master plan review application for housing development, but objected to certain criteria that it identified as not being clear and objective. The city argued that the applicant's ability to develop under county zoning regulations offered the applicant a clear and objective path, while this condition provided an alternative path with subjective criteria. LUBA rejected this argument, concluding that the city must have offered the applicant a path involving clear and objective criteria in order to meet this statutory requirement. LUBA ultimately remanded the decision to the city to reach a decision on the application without the unclear and subjective criteria.

This case is distinguished from the Application at hand. Unlike *Icon Development*, the City is not mandating standards, either their own or a third party's, upon the residential aspects of this Application that are unclear or subjective. Like *Icon Development*, however, the City does provide a clear and objective procedure by which to review the Application. Therefore, this Application is clearly distinct from *Icon Development* and cannot be relied upon to predict the applicant's chances in a LUBA appeal.

Ultimately, the City will proceed with a hearing for the commercial aspects of this Application only, as required by the CDC.

2. Appropriate Decisionmaker.

The legal principles of home rule and preemption also hold true for determining the appropriate decisionmaker for this Application. The residential components of the Application may be subject to the recently operative requirements of HB 4037 (2026), Section 17, amending ORS 197A.400 to establish an expedited procedure for reviewing housing development applications. These procedural requirements state that the City may not hold a public hearing when making the initial decision, but do not specify the required local decisionmaker. ORS 197A.400(5). However, CDC 55.030.C.1 and 99.060.B.2.h expressly state that the planning commission is the local decisionmaker for Class II design review applications. Therefore, although the City may be expressly preempted from holding a hearing to decide this aspect of the Application, its planning commission must still act as the decisionmaker. The City will accomplish this by conducting deliberations only on this aspect of the Application.

This local decisionmaker requirement is not impacted by CDC 99.170.A., as you suggest. Rather, this CDC requirement that the planning commission conduct a public hearing on all matters over which it has original jurisdiction is expressly preempted by ORS 197A.400(5), while the initial local decisionmaking body is not. Therefore, the City will not conduct a hearing for its initial decision but must proceed with the planning commission as the initial decisionmaker.

Your argument that failing to hold a hearing before the planning commission would prejudice the applicant's substantial rights is also unfounded. First, the City has offered the applicant the option to proceed with a hearing before the planning commission on both aspects of the Application, which it appears to have rejected. Second, the applicant will receive sufficient opportunity to submit written testimony to the planning commission prior to deliberations, just as it would have if staff were making the decision without a hearing. Given these opportunities for written testimony, it is difficult to envision how deliberations in this manner would deprive the applicant of its ability to meet its burden of proof.

Further, as you note in your letter, should the City review the commercial component of this Application as a design review, this review must be processed as a limited land use decision. ORS 197.195 establishes the required procedure for limited land use applications, including design review applications. Similar to ORS 197A.400(5), ORS 197.195(3) is silent on the required local decisionmaker and whether the City may require an initial hearing. Therefore, the City must comply with its Code with respect to these two procedural elements and hold a hearing before its planning commission for this aspect of the design review. This reading of the statute is

supported by Department of Land Conservation and Development (“DLCD”) guidance¹ issued following SB 1537 (2024).

Ultimately, the City will proceed with the planning commission as the initial City decisionmaker for both aspects of this Application. Since these amendments to ORS 197A.400 only recently came into effect as of July 1, 2026, the City has yet to conduct deliberations in connection with this statute. However, the City is confident that proceeding with the planning commission as the initial decisionmaker is the only legally viable option before it that also does not discourage needed housing through unreasonable cost or delay.

Sincerely,



Ashleigh K. Dougill

AKD/kkb

c: Kaylie Klein, City Attorney for West Linn

¹ See https://www.oregon.gov/lcd/Housing/Documents/DLCD_SB1537_Guidance_FAQ.pdf, Question 52.