



## Memorandum

Date: May 18, 2009

To: Chris Jordan, City Manager

From: Chris Kerr, Acting Planning Director

Subject: Additional Findings for CUP-09-01 and AP-09-02

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After coordinating with the City Attorney, staff recommends that the Council adopt the following six (6) Findings with the final decision for the two hotel applications CUP-09-01 and AP-09-02. These Findings should be included in the Final Decision regardless of whether Council approves or denies these applications. The Findings address the consolidated review process utilized by the Council for the applicant's hearings.

### **Finding No. 1**

The City Council had authority to call up DR-08-01/VAR-08-01/WAP-08-01 pursuant to authority within CDC 99.170 G.2. The CDC provides that two members of the Council have the right to order the review of a Planning Commission decision within fourteen days of the final decision. The final decision was issued on January 27, 2009 and the Council finds that the record contains two individual written requests for a review of the decisions submitted via e-mail by Councilor John Kovash and Mayor Patti Galle, present members of Council, and who were members at the time of the call up. The requests were received by the planning staff prior to the established deadline of February 10, 2009. Council finds that both requests were submitted in a timely manner thus CDC 99.170 G.2 was met and a review by Council was taken.

### **Finding No. 2**

The Council finds that the written requests submitted by the two members of Council conform to the requirements for a call up of a Planning Commission decision as they are in writing and reference the application sought to be reviewed. The written requests are in the record at pages 6 and 7 of the binder given to Council for the March 3, 2009 hearing. The Council finds that the code does not require that grounds be submitted because the hearing will be de novo. Council finds that CDC 99.250 D. provides that an application for review "may state grounds" for the review, but it is not required. Council finds that the notices contain sufficient details as required by CDC 99.250 to comply with the Code for proper application for a Council review, and the Code requirements are met.

### **Finding No. 3**

Following the timely call up of DR-08-01/VAR-08-01/WAP-08-01 pursuant to authority within CDC 99.170 G.2, city planning staff prepared a notice of the review. The Council finds that the notice, found in the record of AP-09-02, is adequate to conform to the requirements of CDC

99.260 that requires that review notices be given to all persons with standing. The contents of the notice conform to the requirements of CDC 99.270, including notice that the appeal will be de novo.

**Finding No. 4**

Prior to conducting the review hearing, it was determined by Council that in addition to the applications previously reviewed and approved by the Planning Commission, the application required a conditional use review to allow transient housing in the general commercial zone. The conditional use determination is needed before a review of DR-08-01/VAR-08-01/WAP-08-01 is completed. Due to the time constraints related to the 120 day time limits for review of DR-08-01/VAR-08-01/WAP-08-01, the Council determined that the conditional use application should be expedited. The applicant stated that it was not willing to allow for further delay beyond the time needed for it to prepare a conditional use application and for the city to prepare a revised hearing notice. Rather than send the conditional use application to the planning commission, the initial review body specified by the Code, the Council exercised its rights under CDC 99.070, consolidation of proceedings. The Council interpreted the Code to allow it to be the initial review body for the conditional use application allowing it to finalize the conditional use decision before taking final action on review of DR-08-01/VAR-08-01/WAP-08-01. Council finds that it is the only local review authority authorized by the Code to review a planning commission action under CDC 99.170. Council finds that it had original jurisdiction of the review of the planning commission decision, given the status of the applications at that time. The Council finds that when the need for a conditional use was determined, the language of CDC 99.070 allowed for consolidation of the proceedings with the Council the appropriate reviewer. Council finds, given the hierarchy established by CDC 99.070, that it was appropriate for it to conduct a consolidated review of the applications with a two step vote on the applications, with the conditional use vote occurring first.

**Finding No. 5**

Council finds there is no local right for an appeal of any decision made at the Council level as the appropriate appeal body is the Oregon Land Use Board of Appeals. A conditional use decision made by the planning commission is subject to appeal to the City Council. Council finds that CDC 99.070 provides for consolidation of proceedings and identifies the City Council as the highest review authority in the hierarchy thus the Code anticipates that the City Council will be the initial reviewer of an application that is consolidated with another City Council review. Based upon this, the Council finds that applications that usually are reviewed by the planning commission with right of appeal to the City Council have no local appeal right when they are consolidated at the City Council review level. Council finds that the conditional use application decision made by the Council is subject to appeal to the Oregon Land Use Board of Appeals.

**Finding No. 6**

CDC 99.038 requires that an applicant contact and discuss an application with the affected neighborhood. CDC 99.038 1. states that the purpose of neighborhood contact is to identify potential issues or conflicts regarding a proposed application so they may be addressed prior to filing. Council finds that in this case all potential issues or concerns that could arise from the CUP application were sufficiently reviewed by the neighborhood in September, 2008 when the neighborhood reviewed DR-08-01/VAR-08-01/WAP-08-01. The review criteria for the CUP are essentially the same as those applied by the planning staff and planning commission in the review of the hotel under DR-08-01/VAR-08-01/WAP-08-01. During the hearing on May 11,

2009, Elizabeth Kieres, a representative of the Willamette Neighborhood Association, testified that the neighborhood reviewed and approved the concept of a hotel at this location at its meeting of September, 2008. The issues that the neighborhood raised, according to the neighborhood association representative, were addressed at the planning commission. Council finds that the conditional use application CUP- 09-01, to allow a hotel in the General Commercial zone, was not required to conform to CDC 99.038 1. because the Willamette Neighborhood Association had reviewed the hotel proposal earlier.