

Crystal Orr

From: Jill Rolfe
Sent: Friday, September 20, 2019 8:58 AM
To: Crystal Orr
Subject: FW: REM 19-001 Application of CCZO 5.0.500

Crystal,

This goes in the record for remand.

Jill Rolfe

Jill Rolfe, Planning Director
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From: Jill Rolfe
Sent: Friday, August 09, 2019 9:16 AM
To: 'andrew@stamplaw.com'
Subject: RE: REM 19-001 Application of CCZO 5.0.500

Hearings Officer Stamp,

Thank you for requesting clarification. Staff believes there is sufficient evidence in the record to reply to Ms. Moro's argument. As staff understands Ms. Moro argument to be that the applicant has filed several applications currently pending resolution before the hearings officer since the Board approve the application that is under review through the remand process. She asserts that the county must determine if those subsequently filed applications are inconsistent with the project proposed in the remand application and has failed to do so. She states her understanding is that the project proposed in the application subject to remand proposed a different locations and different uses related to the gas processing components, including the power generation, and so this analysis must be conducted by the county and findings must be made as to the whether the application should be deemed revoked or deemed revoked to the extent of the inconsistency.

Pursuant to ORS 215.435(2)(a), the County has jurisdiction to take action on remand. The Board of Commissioners voted on May 7, 2019 to appoint a hearings officer to hold a "de novo" evidentiary hearing on remand, as authorized by Coos County Zoning and Land Development Ordinance (LDO). The Board limited the scope of the hearing to the issue identified by LUBA in its final opinion. The staff report identified each assignment of error in detail. Staff did explain during the beginning of the hearing the matter was limited to the scope of the hearing. Ms. Moro fails to explain how this provision may apply in a remand situation given the matter is limited to the issues identified by LUBA. Section 5.5.800.4.c "Hearings on remanded decisions Shall be, in the sole discretion of the Board, either: *** c. Limited to the issues identified by LUBA in its decision. New evidence and testimony shall be presented solely on the issues remanded by LUBA in its decision." Again, Ms. Moro fails to explain how the County can apply this provision if the testimony and evidence are solely limited to the issues identified by LUBA or why this is not considered a resolved issue. It seemed clear to staff this was outside of the scope of the issue that were before the county on remand. If Ms. Moro would like this provision to apply she had to explain how it was related to one of the assignments of error or request that the County open the scope of the hearing beyond the issues identified by LUBA. Staff believes this is further supported by the applicant's March 14, 2019 submittal in the first two paragraphs but especially in the following explanation:

Exhibit: 68
Date: 9/20/19

“Resolved issues” are outside the scope of the remand pursuant to Beck v. City of Tillamook, 313 OR 148, 153, 831 P2d 678 (1992). “Resolved issues” include “(1) [I]ssues presented in the first appeal and rejected by LUBA; and (2) issues which could have been, but were not, raised in the first appeal.” Louisiana Pacific v. Umatilla County, 28 OR LUBA 32, 35 (1994).

The Board was provided a copy of the request for remand and choose to limit the scope of the hearing to the unresolved issues raised by LUBA decision in this matter.

Staff could provide an explanation of how this provision is applied but that would be outside of the record and the scope of this hearing.

Thank you and please let me know if you require further information from staff.

Jill Rolfe

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From: andrew@stamplaw.com [mailto:andrew@stamplaw.com]
Sent: Thursday, August 08, 2019 8:31 PM
To: Jill Rolfe
Subject: REM 19-001 Application of CCZO 5.0.500

Dear Ms. Rolfe:

I am requesting additional written staff comment on one issue in the REM 19-001 case. In an undated letter received by the County on June 10, 2019, Ms. Tonia Moro argues that CCZLDO 5.0.500 requires the County to deem this application revoked in part. CCZLDO 5.0.500 provides:

***SECTION 5.0.500 INCONSISTENT APPLICATIONS:
Submission of any application for a land use or land division under this Ordinance which is inconsistent with any previously submitted pending application shall constitute an automatic revocation of the previous pending application to the extent of the inconsistency.
Such revocation shall not be cause for refund of any previously submitted application fees.***

Ms. Moro argues that this application is inconsistent with more recent application submittal known as the “Omnibus II application” as well as “several applications currently pending resolution before the hearings officer since the Board approved the relevant application.” I do not have enough information in the record to address this argument, but I’m guessing that you might be able to shed light on this issue for me.

Andrew H. Stamp
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