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MEMORANDUM

TO: Board of County Commissioners
Gary Schmidt, County Administrator

FROM: Nate Boderman, Assistant County Counsel 
Jennifer Hughes, Planning Director, DTD

DATE: December 3, 2020

RE: Discretionary review of an authorization of similar use land use application by Willamette United Football Club, LLC related to property located at 1521 and 1541 Southwest Borland Rd.

Willamette United Football Club, LLC is proposing to develop a soccer training complex on property located at 1521 and 1541 Southwest Borland Road. The proposal includes three outdoor artificial turf sports fields, an indoor turf field, and an operational building containing a concessions area, restrooms, equipment storage, and staff offices. Other park facilities would include parking, an outdoor sports court, picnic area, barbeque area, playground, walking and jogging trails, an ecological observation station, runoff water retention ponds, and a septic field. Because a number of these uses are not specifically listed as permitted or conditional uses in the RRFF-5 zone in which the applicant's site is located, the applicant applied to the County for an interpretation of the ZDO to determine whether these uses were similar to other use already provided in the zone and could therefore be authorized.

On November 24, 2020, the County's Hearings Officer approved the applicant's proposal. The Hearings Officer reached the following conclusions:

- Playgrounds, basketball/volleyball courts, and concessions supporting recreational uses are all expressly allowed as conditional uses in the RRFF-5 District.
- Artificial turf fields, indoor training spaces, jogging/walking paths, and covered picnic areas, are *not* expressly listed in the RRFF-5 District as allowable (recreational) conditional uses, but are similar to one or more listed conditional uses.

- Operational buildings, indoor equipment storage, and parking are also not expressly listed in the RRFF-5 District as allowable conditional uses either, but are “support uses” allowable as conditional uses when supporting an approved recreational use approved as a conditional use.

It is important to note that interpretations of the County’s ZDO, such as this, evaluate the proposed use in the context of the zoning district in which the use would be located. In other words, the actual site is irrelevant for purposes of a similar use determination such as this, and presumably, the same decision would be reached on any property zoned RRFF-5.¹ Furthermore, since this application only interprets the code, it does not authorize any specific development. In this case, the County would need to approve a separate conditional use application in order for the applicant to fully implement its proposed use.²

The authorization of similar use application at issue here is procedurally unique in our code in the sense that it is one of the only land use applications which has appeal rights to the Board of County Commissioners and which the Board has discretion as to whether to accept the appeal. If a party wishes to appeal the Hearings Officer’s decision, ZDO 1307.13(E)(2) allows the Board to decide whether it would like to review the decision, or to decline review and have the Hearings Officer’s order be the final decision of the County, which would open up a path to appeal the matter to the Oregon Land Use Board of Appeals (LUBA).³ As of the date of this memo, the County has received one appeal, although two other parties have indicated that they intend to file appeals by the Monday, December 7 deadline.

Pursuant to ZDO 1307.13(E)(2), the Board must decide whether it will accept the appeal and hold a public hearing on this matter, or whether it declines to accept the appeal. There are no criteria in the ZDO to guide the Board as to what types of appeals it should accept. Additionally, there is no specific deadline by which the Board must make its decision under ZDO 1307.13(E). The County should, however, seek to finalize this process as quickly as possible given the general deadlines provided in state law to process applications such as these.

Attachment: Hearings Officer Final Order (Z0487-17-I)

¹ LUBA previously found that this application is site-specific for purposes of providing notice of the land use action to property owners around the applicant’s site.

² The County previously approved a conditional use for this site, but it was appealed to LUBA and the Court of Appeals which remanded the decision back to the County for further proceedings consistent with its opinion.

³ Because the County provides a secondary appeal to the Board, parties must utilize this appeal process before appealing the Hearings Officer’s order to LUBA directly.