



**Jennifer M. Bragar**  
Attorney  
Admitted in Oregon, Washington,  
and California  
jbragar@tomasilegal.com

121 SW Morrison St, Suite 1850  
Portland, Oregon 97204  
Tel 503-894-9900  
Fax 971-544-7236  
www.tomasilegal.com

September 21, 2020

**BY EMAIL**

Mayor Aziz and Council Members  
c/o Kelly Hart  
925 Main Street  
Lebanon, OR 97355

Re: Applicant's Response to Appeal  
File No. AR 20-05

Dear Mayor Aziz and Council members:

This office represents the applicant, Farmworker Housing Development Corporation ("Applicant" or "FHDC"), in the above-referenced file. FHDC proposes development of 24-units of affordable housing located at the western terminus of Weldwood Drive ("subject property"). FHDC has named the development Colonia Paz I. On August 19, 2020 the Planning Commission approved the proposed affordable housing development. On September 1, 2020 a group of neighbors ("Appellants") filed an appeal of the Planning Commission decision to approve the application claiming the commission failed to apply or incorrectly applied certain criteria. Please accept the below arguments that support approval of this application and include this letter in the record.

I. The Project is not a Planned Development under Lebanon Development Code ("LDC") Chapter 16.23.

The Appellants argue that the Planned Development standards under LDC Ch. 16.23 should apply to the application. However, this is an incorrect assertion not supported by the LDC because the circumstances under LDC 16.23.010.E do not arise in this application. LDC 16.23.010.E provides:

"A Planned Development may be approved in any of the City's Land Use Zones.

1. An applicant *may elect* to develop a project as a Planned Development in compliance with the requirements of this Chapter.

2. Planned Development applies to all development in the City identified for such review in this Code (see the following in LDC Chapters 16.05 – 16.10: Table 16.05-1, Table 16.06-1, Table 16.07-1, Table 16.08-1, Table 16.09-1, and Table 16.10-1).

3. In addition, the *City may require* that the following types of development be processed as Planned Developments using the provisions of this Chapter:

- a. Mixed development, integrated either horizontally or vertically (e.g., a mix of land uses such as residential and commercial on one site).
- b. Any development proposal that includes a site that had been subject to a Zoning Map Amendment in the two years prior to the submittal date of the development proposal application.
- c. Any development proposal that requires an exception to or amendment of an Adopted Facility Master Plan, including the Transportation System Plan.
- d. Any development proposal potentially causing adverse impacts to land in public ownership or developed for a public use that could result in the loss of public use, the loss of some public opportunity, or the conversion of a previous public facility.
- e. Any development proposal of 1 acre or more in size that is in a 100 year flood plain or is on a steep slope (i.e., 15% or greater)." (Emphasis added).

None of these circumstances apply to the application. First, under LCD 16.23.010.E.1 "[A]n applicant may elect to develop a project as a Planned Development in compliance with the requirements of this Chapter." As mentioned in the Applicant's July 22, 2020 Open Record Letter ("Open Record Letter") to the Planning Commission, the Applicant has not elected to develop the project as a Planned Development. Therefore, subsection 1 does not apply.

Second, under LDC 16.23.010.E.2, LDC 16.06.040.B dictates when a development application in the Mixed Use (Z-MU) zone requires a Planned Development Review. "if a proposed development in a mixed use zone is deemed a Major Land Use Action ... it shall be processed as a Planned Development." The characteristics of a Major Land Use Action in the Mixed Use zone are found within Table 16.06-1. The table shows that if a residential use is 25 acres or larger then a Planned Development review is required. The subject property is only 1.39 acres and does not meet this 25 acre threshold.

The table provides another test that would require the application to undergo Planned Development review: if the project is characterized by two or more of the following characteristics: (1) if the acreage or size of project is five acres (in a single site) or larger or a subdivision of 25 or more lots, (2) multi-year phasing, (3) Class III Impacts, and (4) projected demand on public infrastructure and city provided utilities exceed actual or designed capacities in adopted master facilities plans.

Here, the subject property is only 1.39 acres and does not meet the 5 or more acres threshold. The only site subject to the application is the 1.39 acre parcel. As conditioned, the Applicant is required to complete a partition to create the single lot. The proposed development

is not a subdivision of 25 or more lots, but a 24-unit apartment development on one parcel. A partition creates a total of three lots and does not qualify as a subdivision. Therefore, the application does not possess the first characteristic. Further, the Applicant did not propose multi-year phasing. Therefore, the application does not possess the second characteristic.

The application does not involve a residential use with Class III impacts. Class III Impacts are enumerated under Table 16.06-2 and are as follows: State Regulated Special Residential – Group Living: Homes or Group Facility, Manufactured Home Park and Other Residential uses such as Dormitories and Houseboats. The proposed apartment development on the subject property is a Class II Impact use as indicated in Table 16.06-2, and has been appropriately reviewed through this Administrative Review process. As identified on page 3 of the June 10, 2020 Staff Report, the project will not exceed the capacity for public infrastructure or utilities. Finally, this project does not involve multi-year phasing because it is a singular project that has no bearing on any successive projects. Any future development on surrounding parcels will be permitted, developed, and built under its own review criteria depending on the property owner's proposal at a later date. As stated above, the Applicant did not propose any phasing of development on neighboring parcels. Therefore, the proposed development does not possess two or more of the characteristics that would require Planned Development review under Table 16-06-1.

Finally, under LDC 16.23.010.E.3 the City may require that certain types of development be processed as Planned Developments. The application does not propose any of the listed development types. The application does not mix commercial and residential uses. The subject property has not been subject to a Zoning Map Amendment in the last two years prior to the submittal of the application. The project does not require an exception to or amendment of an adopted Facilities Plan. The project does not adversely effect land in public ownership or developed for public use. The subject property does not have an acre or more within a 100 year flood plain or on a steep slope. Even if any of the above conditions applied, the City retains the discretion to require a Planned Development review, and the City did not require the review here. In accordance with the forgoing, LDC Ch. 16.23 is not applicable to the proposed development and the Planning Commission correctly determined that the Planned Development standards under LDC Ch. 16.23 do not apply to this application.

II. The Planning Commission applied the correct development standards to the application.

The Appellants argue that the Planning Commission incorrectly applied the Residential Mixed Density zone ("Z-RM") development standards to the proposed housing instead of the Residential High Density zone ("Z-RH") development standards. However, as identified in the June 10, 2020 Staff Report at pages 1-2, under LDC 16.06.100, residential developments in a Mixed-Use zone are subject to the development standards of the Z-RM zone. *See also* Table 16.06-7. The subject property is under a Mix-Use zoning designation and the application is for a

residential use.<sup>1</sup> Further the Appellants are mistaken that the zone development standards would impact the assessment of System Development Charges ("SDC"). Again, Planning Director Hart explained during the June 24, 2020 Planning Commission meeting that SDCs are not calculated based on zoning designation, rather SDCs are based on the type of construction and the average trips per day. Attachment 1, p. 1. As a result, the Planning Commission correctly reviewed the application under the Z-RM development standards.

III. The Lebanon School District had been notified of the application.

The Appellants argue that the City failed to "coordinate and [C]ollaborate with the Lebanon School District" thereby potentially violating the City's Comprehensive Plan and LDC 16.23.010.G.6. This is incorrect. As to the basis for Appellants' claim that the Comprehensive Plan applies directly to this application, they cite to LDC 16.23.010.G.6. As illustrated in Section I of this letter, LDC Ch. 16.23 does not apply to the application. The Comprehensive Plan does not directly apply to this application because the development code implements the plan. No development code provision requires direct coordination with the school district. Moreover, as explained by Director Hart at the June 24, 2020 meeting the Lebanon School District has in fact been notified through the required notification process by the City. Attachment 1, p. 2. The School District was provided with an opportunity to comment on the proposed development. The School District did not provide any comments that the application would interfere with school planning or capacity.

The Appellants' vague claims in this appeal of sight, foot traffic, and noise abatement were all addressed in the Applicant's submittals to the Planning Commission. See Applicant's Open Record Letter at page 5 addressing foot traffic and pedestrian use around the subject property; Open Record Letter at page 5 and in Attachment 5 thereof address sight and traffic impacts; and Applicant's Rebuttal Letter of July 29, 2020, and page 1 of Applicant's August 5, 2020, Final Written Argument addressing noise. Appellants had the opportunity to respond to the Open Record submittals during the rebuttal period, but did not submit anything further to question the Applicant's submittals. Therefore, the Planning Commission correctly chose to rely on Applicant's submittals and expert testimony to determine that the application met the criteria despite Appellants' concerns about sight, foot traffic, and noise abatement for the existing neighborhood. Finally, as mentioned above when future developments take place, the School District will again be notified and provided with the opportunity to comment on the proposed developments.

IV. All of FHDC's submittals were available for public review throughout the process.

The Appellants argue that the City made no effort to provide supporting documents such as the Applicant's Wetland Delineation Study, the Geotechnical Study, and the Archaeological

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<sup>1</sup> Further, even if the Z-RH development standards applied, they are identical in terms of setbacks, parking, open space, and height limitations to the Z-RM development standards as explained by Director Hart during the June 24, 2020 Planning Commission meeting. Attachment 1, p. 1. *See also*, September 11, 2020 Staff Report to City Council, p. 5.

review - effectively withholding them from the public. This is not accurate. The public notice was issued on May 28, 2020 prior to any hearing on the application and contained instructions on how to review the application materials and indicated that the material would be posted online. Attachment 2. Specifically, the agenda reports and plans were posted to the City's website on June 9, 2020. Further, this information was reiterated during the June 25, 2020 Planning Commission meeting by Director Hart. Attachment 1, p. 1. Thereafter, the Planning Commission adopted a motion on July 15, 2020 to reopen the record for a seven day open record period, followed by a seven day rebuttal period, culminating in a seven day final written argument period. Nothing about this motion changed the original instructions in the Notice contained in Attachment 2 about how to review the materials. Further, all of the materials submitted after July 15, 2020 were posted to the City's website and available to all participants. The fact that the Appellants did not exercise their right to obtain these documents is not the fault of the City or the Applicant. The Appellants did not object to the City's review procedures during the Planning Commission's consideration of the application. Therefore, this issue is waived. The Appellants were not denied their ability to view the supporting documentation for the application.

V. The approved six foot perimeter fence meets the applicable standards.

The Appellants request an eight foot masonry fence. However, the Applicant's proposed a six-foot tall site obscuring fence of chain link with vinyl slats along the south and east property lines that meets the High Screen Landscaping Standard under LDC 16.15.030.C as illustrated in the Applicant's Supplemental Narrative, Attachment 5, pp. 19-21 to its Open Record Letter. Further the Applicant has the right to decide on its fence and landscape treatment as long as it meets the code, and the proposed fence does meet the criterion.

CONCLUSION

Based on the foregoing information, all of the Applicant's previous submittals, and the established need for affordable housing in Lebanon, the Applicant respectfully requests that the City Council uphold the August 18, 2020 Planning Commission Decision to approve this application. Thank you for your consideration of these materials.

Sincerely,



Jennifer M. Bragar

Enclosures

cc: client  
Tre Kennedy (by e-mail)

have any impact on the development review as the smaller property size is more restrictive and the project would meet the development standards whether the property were partitioned or not.

Next, the letter indicates the surrounding uses was incorrectly identified, indicating that to the south, the property is not vacant, but contains a single-family home. This is accurate, the report does misstate that the site is vacant, when in fact there is a single-family residence on the site.

The letter further states that they believe the development is considered high density and should therefore be processed using high density development standards rather than mixed-density, and that the high-density designation would impact development standards, and SDC charges.

For clarification, as identified in the staff report, under the Mixed-Use zoning designation, if the project is residential in nature, the code indicates that the mixed-density residential standards be applied. Further, the mixed-density and high-density residential development standards are identical in terms of setbacks, parking, open space, and height limitations; therefore, even with the application of the high density standards, the development proposal would still comply. Finally, the zoning designation modification would not impact the SDCs as they are not calculated based on zoning designation, but type of construction and trips per day.

The letter indicates that the project and city has not complied with the NPDES permit requirements for the construction phase, or the 1200C permit to address stormwater, wetlands and soils. For clarification, this application is in the initial review stages, and not the construction phase. If the planning commission were to approve the development proposal, the applicant would be responsible for obtaining a 1200C permit to address stormwater mitigation, wetlands and soils.

The letter continues indicating that the City did not provide calculations with the plans to demonstrate there is sufficient utility capacity for water, sewer, and stormwater. In response, the City through the review phase determined the project was compliant with the zoning classification and compliant with all aspects of the development code. As such, since there is no modifications or variances, the development buildout is anticipated in the City's facility plans, and there is no further calculations required for the city's utilities.

Next, the letter identifies that the project is near historical sites, specifically the wagon trail road, and an archaeological study should be completed and incorporated in the analysis for the project. In response, an archaeological review is not required to be completed as part of the land use consideration but is required prior to construction. However, the applicant has already conducted the archaeological review.

Next item, the letter indicates the project materials were not accessible till June 17th at which time the city provided the staff report and developer information. Again, for clarification, the public notice for the application was issued on May 28th, 20 days prior to the hearing with instructions of how to review the application materials. The agenda reports and plans were then posted to the City's website on June 9th, 8 days prior to the hearing.

The letter indicates that the project is incompatible with standing agreements, and

references the City and County Urban Growth Management Agreement, indicating that per the agreement, the City is responsible to coordinate with the County on the project, and since the City did not coordinate with the County, that the project should be delayed until such time as the coordination occurs. This is a misinterpretation of the Urban Growth Agreement. The Agreement is for the development of County land within the Urban Growth Boundary. So, if there were a development application within the County, but in the UGB, per this agreement, the County would be responsible to coordinate with the City on the development. However, this agreement does not require the city to coordinate with the county when developing in city limits. All that being said, as part of the public notice distribution, the City does notify the county of the scheduled public hearing and the proposal.

Finally, the letter refers to impact to schools, and the City must provide notice to the Lebanon School District when a major development is proposed that may impact the school district. Again, the City did notify the School District through the required notification process of the pending hearing, and they were provided the opportunity to comment, therefore this provision has been met.

Don Frier Letter:

Next is a letter from Don Frier. His letter indicated support of the project and indicated there was a significant need for affordable housing in the city.

Woodburn Letter:

The final comment letter received was from the city of Woodburn. This letter provided background on the 30 years' experience the City of Woodburn has with a development managed by the Applicant.

The letter identifies the resources and support provided by FHDC to the residents, creating a sense of community.

In addition, the City indicated their residents identified similar concerns as those indicated by the Lebanon residents, but to date, none of those concerns materialized.

Director Hart concluded the summaries of the public comments and stated after the close of the public comment period, we did receive a phone call from a resident requesting the Commission provided a one-week extension of the public review and comment period for further review.

City Attorney Kennedy discussed the legal statutory requirements per the ORS, Governor's modified order in regards to public hearings during the pandemic, and the City's municipal code, and recommended the Planning Commission to leave the record open for a period of seven days for the public to provide further testimony, then provide seven days for the applicant to respond and rebut the comments, but left the decision to the Planning Commission on how to proceed.

Vice-Chair Robertson indicated understanding and invited the Applicant to rebut the testimony provided by the members of the public.

The Applicant indicated in response to the request for a barrier, it is already in the plan to



# NOTICE OF VIRTUAL PUBLIC HEARING LEBANON PLANNING COMMISSION

**NOTICE IS HEREBY GIVEN** that a public hearing will be held before the Lebanon Planning Commission on **Wednesday, June 17, 2020 at 6:00 p.m. and Wednesday, June 24, 2020** through a virtual (online) meeting to afford interested persons and the general public an opportunity to be heard and give testimony concerning the following matter:

<b>Planning Case No.:</b>	AR-20-05 and VAR-20-02
<b>Applicant:</b>	Farmworker Housing Development Corporation
<b>Location:</b>	Weldwood Drive
<b>Map &amp; Tax Lot No.:</b>	12S02W23B 01701
<b>Request:</b>	Administrative Review and Class II Variance
<b>Decision Criteria:</b>	Lebanon Development Code Chapters: 16.06, 16.20 & 16.29

**Request:** The applicant is requesting Administrative Review approval to construct a 24-unit multifamily development. The applicant is also requesting a Variance to the minimum parking standards for off-street parking.

**Virtual Meeting:** Due to the COVID-19 pandemic, the City will be hosting a virtual Planning Commission meeting and following the procedural guidance provided by the Oregon Department of Land Conservation and Development (DLCD) in compliance with Oregon Public Meeting Laws.



The public hearing will occur in two phases: on June 17, 2020 at 6:00pm, the Planning Commission will open the public hearing, receive Staff’s report, and allow for the applicant to present. The Planning Commission will then postpone the public hearing to a date certain of Wednesday, June 24, 2020 at 6:00pm. This will provide time to receive written and verbal comment from the public. The written and verbal comment will be received by City Staff until 5:00pm on Monday, June 22, 2020. The comments will then be read into the record and played for the Planning Commission at the June 24, 2020 meeting. The applicant will then be able to respond to the public comments. Once all comments are recorded as part of the meeting, and the applicant responds, the Planning Commission will close the public hearing, and deliberate on the application.

The public is invited to watch the meeting online through the City of Lebanon’s YouTube page at <https://www.youtube.com/watch?v=VpePNgOMMgw> on June 17, 2020, and <https://www.youtube.com/watch?v=e4dg9jJ3NLo> on June 24, 2020. The City of Lebanon thanks you for your support in slowing the spread of COVID-19 by attending this public meeting digitally. **In compliance with the Governor’s Executive Order No. 20-16, this meeting will only be held virtually, there will be no physical location for persons to attend to participate in the meeting.**

The Agenda and application materials will be available for review on the City's website at <https://www.ci.lebanon.or.us/meetings> seven days prior to the hearing.

**Providing Comments:** The City will be accepting public comment on this item in a number of ways to afford interested persons and the general public an opportunity to give testimony on the subject matter. Written and verbal testimony will be accepted upon issuance of this notice, **until 5:00pm on Monday, June 22, 2020**. Written testimony may be emailed to [khart@ci.lebanon.or.us](mailto:khart@ci.lebanon.or.us), or may be mailed to the City at 925 S. Main Street, Lebanon, OR 97355, or delivered to the City and dropped in the white mail box in front of City Hall. Please note for mailed testimony, the letter must be received by the City no later than 5:00pm on Monday, June 22, 2020. For verbal testimony, a recording may be provided to the City, or you may call (541) 258-4252 and leave a voice message. **There will be no testimony accepted in person.**

*CITIZENS ARE INVITED TO PARTICIPATE* in the public hearing and give written or oral testimony as described above that address applicable decision criteria during that part of the hearing process designated for testimony in favor of, or opposition to, the proposal. If additional documents or evidence are provided in support of the application subsequent to notice being sent, a party may, prior to the close of the hearing, request that the record remain open for at least seven days so such material may be reviewed.

**Appeals:** Failure to raise an issue in the hearings, in person or by letter, or failure to provide sufficient specificity to afford the decision makers an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue. Decisions of the Planning Commission may be appealed to the Lebanon City Council within 15 days following the date the Commission's final written decision is mailed. Only the applicant, a party providing testimony, and/or a person who requests a copy of the decision has rights to appeal a land use decision. The appeal must be submitted on the appeals form as prescribed by City Council with appropriate fee paid and must set forth the criteria issues that were raised which the applicant or party deems itself aggrieved. Please contact our office should you have any questions about our appeals process.

**Obtain Information:** A copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available online in the Planning Commission Agenda Packet at <https://www.ci.lebanon.or.us/meetings>. The materials are also available for inspection in person at no cost and will be provided at the cost of 25 cents per single-sided page. If you have questions, would like additional information, or would like to schedule a time to view the application materials in person, please contact City of Lebanon Community Development Department, 925 Main Street; phone 541-258-4252; email [khart@ci.lebanon.or.us](mailto:khart@ci.lebanon.or.us).

**The meeting is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to 541-258-4906.**