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December 10, 2007

Brian Issa
Veneta
88184 Eighth Street
PO Box 458
Veneta, OR 97487

Re: Bolton Hill South Rezoning (ZC-2-07)

Dear Brian:

Please accept this letter as the applicant's post-hearing statement, which is intended to respond to issues and testimony presented as of the date of the December 3 public hearing on this matter. The applicant will respond by December 13 to any materials that are submitted by the close of business today, such that the Planning Commission can made a decision on December 17.

The Staff Report to the Planning Commission notes that there are no substantial issues with this application and it recommends approval. The applicant supports the staff report.

Response to Comments received at the December 3 hearing:

1. Letter from M. Linstromberg (December 3, 2007)

The letter correctly notes that there is not a discrete list of standards in the zoning code for making a zone change decision, but that the relevant language of the comprehensive plan does apply to the decision. The focus, therefore, is on the comprehensive plan. Acknowledged provisions of a comprehensive plan apply to zone changes. ORS 227.175(4). The focus, therefore, should be on the relevant provisions in the comprehensive plan.

(a) The letter points to Growth Management Policies in the plan, specifically the "Future Moratorium Policy," which directs the city to adopt a moratorium when it determines that "Veneta's Water System Facilities are at capacity." The city has not determined that the system facilities are at capacity. Furthermore, if the city were to make such a determination, the policy is a directive to the city to do something. It is not a policy that applies in the context of this application. If the city were to adopt a moratorium no development, then the moratorium might apply to this application, depending on exactly what the moratorium ordinance says. Furthermore, regardless of policies in the plan, moratoria are governed by state law. See ORS 197.505.

(b) In paragraph 2 the letter suggests that it would be more appropriate to keep the property in the Rural Residential zone. Arguments about what zone would be the better zone for

the property are not an issue the city can consider. The property already has Rural Residential zoning. The question is whether the applicant is entitled to Single Family Residential. Nothing in the plan or the zoning code invites the city to decide which zone is the better zone.

(c) The letter references Growth Management Policy 6.(1), which addresses water issues in connection with applications to change the plan designation. This policy does not apply. By its terms it only applies to plan change decisions. This is a zone change application.

(d) The letter closes with the suggestion that the city needs a moratorium on development and denying this application would be a good way to start. Rezoning proposals and moratoria on development are really different things. They do not mix. Completely different standards apply. Assuming she is correct about the need for a moratorium, the correct thing for the city to do would be to address state and local standards for adopting a moratorium. The required steps are very clearly stated.

2. Letter from Lauri Segel, Goal One Coalition (December 3, 2007):

(a) Goal One points to a code section, VLDO 2.11(10), that includes the LCDC as among those entitled to written notice of a "zoning map" change 45 days prior to the first evidentiary hearing. She also points to a statute, ORS 197.610, which requires 45 days notice to the LCDC of any proposal to amend a "land use regulation or adopt a new land use regulation." The zoning map is not a "land use regulation." A land use regulation is defined by statute as the "local government zoning ordinance * * * establishing standards for implementing a comprehensive plan." ORS 197.015(12).

A site-specific zone change is not an amendment of a land use regulation. It is the application of a land use regulation – the zoning code – to a specific piece of property. Land use regulations are adopted and amended by ordinance, as stated in the statute. A zone change is not. Therefore, the statute cited by Goal One, ORS 197.610, does not require that notice of this proposed change be given to the LCDC or the DLCD.

The language of the zoning code, in contrast, <u>does</u> require such notice because it specifically calls out "zoning map" changes as being noticed to the LCDC. This is a situation where the code requires more than the related statute requires. Technically, failure to provide the notice required by the code is a procedural error by the city, but it is a harmless procedural error. Failing to provide the notice, or providing it late, does not harm the substantial rights of any party. As a matter of law, the DLCD and the LCDC have no stake in this proceeding. Zone change applications are reviewed for compliance with the comprehensive plan, not the Statewide Planning Goals. See ORS 227.175(4). The LCDC reviews decisions that involve the application of the Statewide Planning Goals, such as amendments to comprehensive plans and the text of zoning codes. To keep things neat and tidy, the city should send notice to the LCDC, because the code says so. But failure to do so, or failure to do so 45 days prior to the December 3 hearing, is not a basis for challenging the decision of the city.

(b) Goal One takes the novel position that there is nothing in the city's plan or code that says the SFR zone is appropriate to implement the LDR plan designation. The simple answer is found in the text of the Low Density Residential plan designation, at page 76 of the plan, which describes the land with this plan designation as being appropriate for residential development at the density allowed by the requested SFR zone. That is a pretty good link between the plan designation and the proposed zoning.

(c) Goal One notes that Plan Policy A6 really applies to the plan changes, not zone changes. We agree, but this is not a problem. The plan applies to this zone change as a standard, and the zone change is consistent with the plan because the plan designation is LDR.

(d) Goal One references the Moratorium Policy in the plan cited in the Linstromberg letter. This is not a standard for this decision. See paragraph 1.(a) above.

(e) Goal One cites Residential Policy 2 from page 26 of the plan, which directs the city to provide a variety of residential neighborhoods. It alleges this rezoning is inconsistent with this policy. The rationale is that the existing zoning is consistent with this policy. Goal One is half right. Both the existing and proposed zoning are consistent with this policy. The policy supports the full range of housing types. This application will shift the type of housing development from one type supported by the policy to another type supported by the policy. There is no basis for Goal One's objection here.

(f) Goal One cites Residential Policy 3, which "encourages" "development of vacant lands within the sewer service area on the west side of Veneta as a first priority." Initially, plan policies qualified by the word "encourage" are never mandatory approval standards. Furthermore, this site is within the urban service area, as evidenced by its Low Density Residential plan designation. The applicant described several ways that sewer service can be provided. The staff agreed. Exactly how it is done can be determined at the time of development. This nonmandatory policy met.

(g) Goal One cites Residential Policy 11, which directs the city to increase residential densities where water and sewer facilities are available so that services can be provided efficiently. Goal One does not explain why the proposal is inconsistent with this policy. It is fully consistent. This site is in the urban service area. It can and should be developed as densely as the code allows. Furthermore, a directive to the city to increase densities in some areas is not

a basis for denying a zone change to a district that allows development consistent with the plan designation.

Thank you for your consideration.

Sincerely,

Bill Kloos

Cc: Client