Duff on Hospitality Law

Land Use Decision Stymies New Hotel in Hood River

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In the recent decision, *Friends of Hood River v. City of Hood River*, the Oregon Land Use Board of Appeals (LUBA) remanded the City of Hood River's decision to grant a conditional use and preliminary site approval for, among other things, a 45,000 square foot, four story, 88 room hotel on the waterfront near the mouth of the Hood River. LUBA's decision was based on the City's failure to find compliance with its comprehensive plan.

LUBA determined that a finding of compliance with the City's comprehensive plan was required under state law regardless of whether the local code only requires consistency with the plan. Here, LUBA found that the City's decision did not analyze whether flooding policies, strategies, and standards found in the plan constitute mandatory standards that the application must meet. If so, the City will have to identify whether the standards are satisfied.

LUBA explained that, in practice, the language of comprehensive plans and land use regulations rarely rule the plan out as a potential source of approval criteria for permit decisions. Although LUBA recognized that comprehensive plan policies will constitute approval criteria if they are expressed in mandatory terms, it qualified this hard line approach with citation to its precedent. A project proponent cannot rely solely on the code language when it applies for land use approval, but must also consider those applicable elements of the comprehensive plan.

In addition, LUBA found the City had erred procedurally when it refused to allow Friends of Hood River, an Oregon group preserving public access and recreation in Nichols Basin, to respond to new evidence submitted by the applicant after the initial public hearing. LUBA determined that information the Friends may submit could shed light on whether the comprehensive plan policies regarding flooding are mandatory standards. When it comes to public process, applicants should expect appeals by members of the public who feel they did not have the full opportunity to comment on an application.

The practical lesson here is that land use applications require extensive due diligence early in the process to identify and address all potential state and local approval criteria, and that public participation is sacrosanct in Oregon land use decision making. Welcome to hotel development in the great Northwest. Please contact Greg Duff if you have questions or need assistance to obtain entitlements for your next hotel development.

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