



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

July 2, 2007



TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Pendleton Plan Amendment
DLCD File Number 002-07

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: July 13, 2007

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Mark Radabaugh, DLCD Regional Representative
Michael W. Muller, City of Pendleton

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DLCD NOTICE OF ADOPTION

DEPT OF

This form must be mailed to DLCD within 5 working days after the final decision per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

JUN 25 2007

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: CITY OF PENDLETON Local File No.: ZC07-01 (If no number, use none)

Date of Adoption: 6/19/2007 (Must be filled in) Date Mailed: 6/22/2007 (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 3/22/2007

- Comprehensive Plan Text Amendment, Comprehensive Plan Map Amendment, Land Use Regulation Amendment, Zoning Map Amendment, New Land Use Regulation, Other: (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

ZONE CHANGE FROM C-2 (TOURIST COMMERCIAL) TO C-3 (SERVICE COMMERCIAL) FOR A 0.37 AC (16,117 S.F.) PARCEL LOCATED ON THE WEST SIDE OF RELOCATED HWY 395, ACROSS FROM THE INTERSECTION OF SW HALEY AVENUE

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

SAME

Plan Map Changed from: TOURIST COMMERCIAL to SERVICE COMMERCIAL

Zone Map Changed from: C-2 to C-3

Location: NW Location Acres Involved: 0.37 ACRES

Specify Density: Previous: NA New: NA

Applicable Statewide Planning Goals: 2&9

Was an Exception Adopted? Yes: No: X

DLCD File No.: 002-07 (15981)

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**. Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: ODOT, CITY CEMETARY

Local Contact: MICHAEL W. MULLER Area Code + Phone Number: 541-966-0261

Address: 500 SW DORION City: PENDLETON, OREGON

Zip Code+4: 97801 Email Address: mike.muller@ci.pendleton.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:
**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Mara.Ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. 3756

AN ORDINANCE AMENDING ORDINANCES NO. 3442 AND 3250 (THE 1990 COMPREHENSIVE PLAN, AND THE OFFICIAL ZONING MAP) BY REZONING A CERTAIN DESCRIBED AREA C-2, TOURIST COMMERCIAL, TO C-3, SERVICE COMMERCIAL, AND ADOPTING FINDINGS OF FACT.

WHEREAS, the Pendleton Planning Commission received a request from Alfred L. & Edythe Kube to rezone a 0.37 acre (16,117 sq ft) parcel of property located on the east side of Southgate Avenue-Hwy 395 from C-2 (Tourist Commercial) to C-3(Service Commercial) zone described below:

A tract of land located in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 9, Township 2 North, Range 32 East of the Willamette Meridian described as follows:

Commencing at the Southeast Corner of Section 9 thence N 0°54'00" W along the east boundary of said section a distance of 94.65 feet more or less to the point of beginning of this description, thence N78°35'17"W along the south line of the subject property a distance of 195 feet more or less to a point on the centerline of Relocated Highway 395, thence N20°57'15"E along said centerline a distance of 125 feet more or less, thence S69°02'45"E a distance of 96.23 feet more or less, thence N20°57'15"E a distance of 110 feet more or less to a point on the east boundary of said Section 9, thence S0°54'00"E along the east boundary of said Section 9 to the point of beginning of this description.

All lands subject to this rezoning are shown on Exhibit "A"; and,

WHEREAS, the Pendleton Planning Commission conducted a public hearing on this request on May 17, 2007, and recommended the adoption of findings of fact and conclusions of law attached hereto as Exhibit "B"; and,

WHEREAS, the City Council held a public hearing on this request and accepts the recommendation of the Planning Commission to adopt the findings of fact and approve the request; and,

WHEREAS, the Oregon Department of Land Conservation and Development has been given a 45 day notice before the first evidentiary hearing in which to review and comment on the request.

NOW THEREFORE, CITY OF PENDLETON ORDAINS AS FOLLOWS:

SECTION 1. The official zoning map (established by Ordinance #3250) is amended to change the zoning of the property described herein from C-2, Tourist Commercial, to C-3, Service Commercial.


SECTION 2. The official Land Use Map (Map I) of the Comprehensive Plan (established by Ordinance #3442) is amended to change the land use designation of the property described herein from Tourist Commercial to Service Commercial.

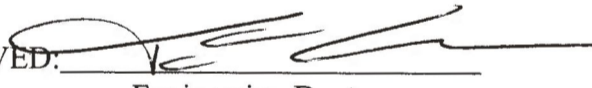
SECTION 3. The City Council adopts the Findings of Fact and Conclusions of Law as recommended by the Planning Commission (Exhibit "B") and grants said comprehensive plan map change and rezone.

PASSED by the City Council and approved by the Mayor on June __, 2006

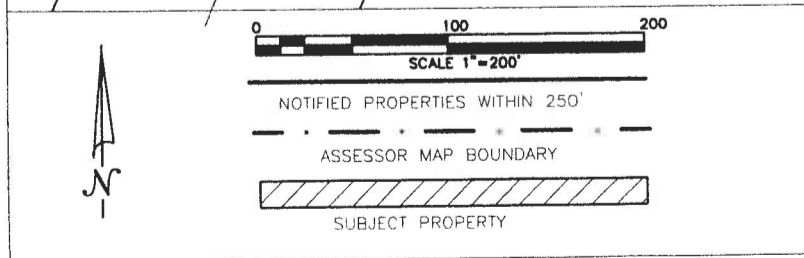
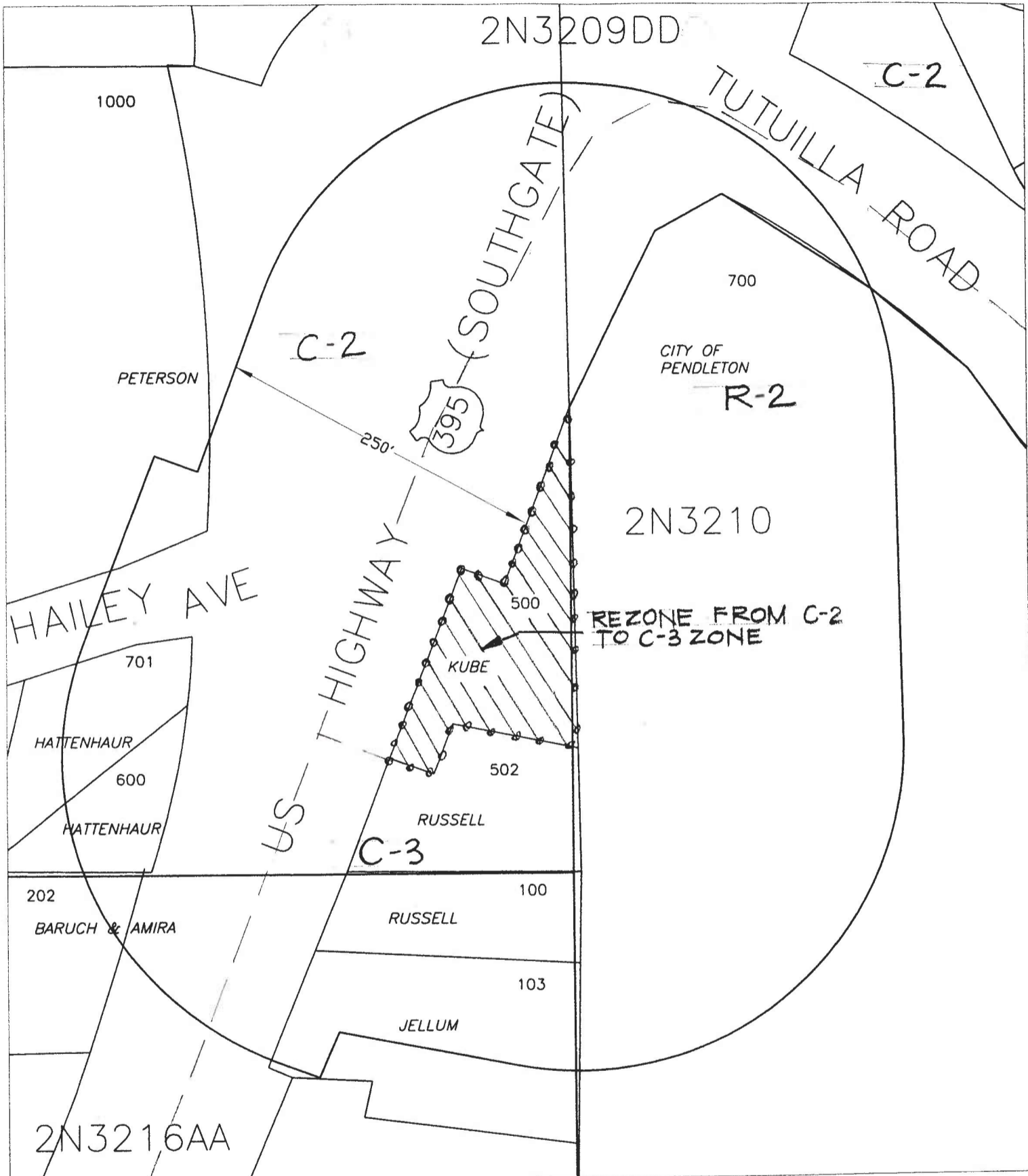
APPROVED: _____
Mayor

ATTEST: _____
City Recorder

APPROVED AS TO FORM: 
City Attorney

LEGAL DESCRIPTION APPROVED: 
Engineering Dept.

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CITY OF PENDLETON-PLANNING DEPARTMENT

EXHIBIT "A"

ZONE CHANGE REQUEST FROM C-2 TO C-3

ALFRED L. & EDYTHE KUBE

FILE No. ZC07-01

SCALE AS SHOWN 4/23/07 MWM

K:\PROJECTS\Platts\Planning\drawings\public hearings & agreements\SW\ZC07-01(Kube).dwg

**PLANNING COMMISSION
FINDINGS AND DECISION**

May 17, 2007

Consideration of a recommendation to the City Council regarding a Comprehensive Plan Map change and rezoning of a 0.37 acre (16,117 sq ft) parcel of property located on the east side of Relocated Hwy 395 (Southgate) (identified as Tax Lot 500, Map 2N 32 09DD, Umatilla County) from C-2 (Tourist Commercial Zone) to C-3 (Service Commercial Zone); Alfred Kube, owner. (File No. ZC07-01).

REVIEWED BY: Michael W. Muller, City Planner

RELEVANT CRITERIA:

1. Zoning Ordinance No. 3250, Section 147, 148 and 149 states the following:

SECTION 147. AUTHORIZATION TO INITIATE AMENDMENTS. An amendment to the text of this Ordinance or to a zoning map may be initiated by the City Council, the Planning Commission or by application of the property owner for an amendment by filing an application with the City Manager using forms prescribed pursuant to Section 157 of this Ordinance.

SECTION 148. COMPLIANCE WITH COMPREHENSIVE PLAN. An amendment to the text of this Ordinance or to a zoning map shall comply with the provisions of the City of Pendleton Comprehensive Plan text and Comprehensive Land Use Map. Any deviation from this section shall be preceded by an amendment to the Comprehensive Plan Text or to the Comprehensive Land Use Map.

SECTION 149. PUBLIC HEARING ON AMENDMENTS. The Planning Commission shall conduct a public hearing on the proposed amendment according to the procedures of Section 161 of this Ordinance at its earliest practicable meeting after it is proposed and shall, within forty (40) days after the hearing, recommend to the City Council approval, disapproval or modification of the proposed amendment. After receiving the recommendation of the Planning Commission, the City Council shall hold a public hearing on the proposed amendment and render a final decision within one hundred twenty (120) days after application submittal unless the City and applicant agree upon longer review. Public hearings on amendments encompassing lands of a mobile home park shall be conducted after notification of park tenants at least twenty (20) but no more than forty (40) days prior to the hearing.

FINDINGS OF FACT:

1. The subject parcel of property described as Tax Lot 500, Map 2N 32 09DD, Umatilla County, Oregon, totaling 0.37 acres is contiguous to property to the north (Tax Lot 702, Map 2N 32 10) Denny's, zoned C-2, Tourist Commercial. The easterly property (Tax Lot 900, Map 2N 32 15) zoned R-2 is developed as the Olney Cemetery. The southerly property (Tax Lot 502, Map 2N 32 09DD) zoned C-3 is developed as a car wash (It's Time to Wash). Since the parcel is contiguous to existing service commercial property, it is appropriate and makes sense to rezone the parcel to conform with the existing service commercial neighborhood land use characteristics to the south.
2. The property owner has indicated that he has the opportunity to further develop the parcel. Parcels that abut the Relocated Highway 395 display various forms of commercial property. The majority of the commercial activities along 395, south and east of Exit 209 focus on primarily service commercial uses. The extension of this zone to include the subject parcel would not create a spot zone nor would it significantly alter the current usage of the overall area.
3. Comments received from ODOT regarding the subject property state, "No parking or advertising on ODOT right of way. No new access. Existing shared permitted access would still be permitted for this use with no need to apply for a new approach permit." The property currently has access adequate to serve the uses permitted within the C-3 zone. The access is via a shared driveway, which is encouraged as a source of access along Highway 395. If a use is proposed that would require additional access, the applicant would be required to obtain permission from ODOT before construction of such access. Within City ordinances regulating right-of-ways, construction within the right-of-way is not permitted. The construction or placement of advertisement within city right-of-way would not be permitted.
4. The subject 0.37 acre parcel is currently zoned C-2 (Tourist Commercial) and allows a caretaker's dwelling, eating/drinking establishments, hotels/motels, service station, or a tourist information center. The proposed rezone to C-3 (Service Commercial) will allow auto repair garages, business/personal services, commercial amusement, multi-family dwelling units, eating/food stores, finance offices, general retail, health services, and transit facilities. Since the balance of the adjacent lots to the south contain such uses and the development of the subject parcel will meld with both the C-2 and C-3 zoned uses; it makes sense to rezone the property C-3 to allow for an extended freedom of use.

5. If the Planning Commission recommends this request for approval, the City Council will be presented with an ordinance amendment that would be considered in public hearing for enactment that would re-designate and rezone the subject property on the Comprehensive Plan Map and the Zoning Map from C-2 (Tourist Commercial) zone to C-3 (Service Commercial) zone.
6. The Department of Land Conservation and Development (DLCD) have been provided notice of this proposal. This notice is provided pursuant to ORS 197.610 and OAR Chapter 660, Division 18, and must be sent at least 45 days prior to the initial evidentiary hearing date to allow the DLCD staff the opportunity to file an objection and/or attend the hearing if they have a concern. The final hearing date before the City Council will be scheduled for the July 3, 2007 meeting.
7. On December 16, 1980, the City Council adopted a standard condition to be placed upon all land use requests to protect the city taxpayer from any costs of potential appeals to the decisions. This condition shall be applied in this case as well.

CONCLUSIONS: The proposed re-designation and rezone is valid for the following reasons, as well as those that are presented above:

1. The proposal recognizes the need for applying the appropriate zoning that is more compatible with and matches the land use of the properties in the vicinity.
2. The C-3 zoning is contiguous to the subject property and would represent a logical extension thereof.

RECOMMENDATION: The Planning Commission forwards a favorable recommendation to the City Council to enact an ordinance that would accomplish to re-designate and rezone the subject parcel from R-2 (Medium Density Residential) zone to C-1 (Central Commercial) zone, subject to the following condition:

1. The applicant(s) have the burden of proof regarding all requests affecting this subject property, and the applicant(s) recognize that it is the sole obligation of the applicant(s) to substantiate this request.

If any administrative review, suit or action is instituted in connection with any appeal of this decision, the applicant(s) shall be required to: (1) reimburse the city of all costs incurred in defending this action, including, but not limited to, attorneys fees, staff costs, and materials and other related cost; (2) notify the city that the applicant(s) do not desire to undertake such costs and will drop the request; or (3) defend the city's actions on behalf of the city.

The applicant(s) shall notify the City Manager within five days from the city's receipt of any notice of appeal by delivering a written statement to the City Manager advising the City Manager whether the applicant(s) will reimburse the City for all costs as described above; desires to drop the request; or intends to defend the City's actions on behalf of the City.

In the absence of written communication from the applicant(s) within the allotted five days, the City may, at its option, presume the applicant(s) desire to drop the request and the City shall have no obligation to defend the appeal.

In appeals involving questions of City wide significance, the City may participate in the proceedings described herein at its own expense. Nothing in this condition affects the applicant's right to retain independent counsel in making its own legal appearance on appeal.

If any proceeding, including recession, is instituted by the applicant(s), in which the City is a party, in connection with any controversy arising out of this request, the applicant(s) will indemnify and hold the City harmless from any costs of the action, including a reasonable amount to be fixed by the court as attorney fees in such suit or action, both at trial and on appeal.