

Pioneer Industrial LLC

CVTV Hearing:

https://www.cvtv.org/vid_link/30866?startStreamAt=0&stopStreamAt=4468

Video Notes with (Time Stamps)

* *Potential objections and other comments are in **blue** below video notes*

(13:00)

Staff: Begins with their overview of the applicant's request.

Staff: Shows where the property is located, the proximity of the property to nearby residential, and the frontage available along the railroad.

Staff: Presents the criteria that needs to be met for the approval under CCC 40.560.020.F

Staff: Found that applicant only met criteria 1 and not 2 through 4.

Staff: Asserts that the IR zone does not better implement locational criteria or policy set in the comprehensive plan than the current IL zone designation.

Staff: Argues the light industrial zone is more applicable to the property due to the proximity to the residential zone and current existing homes.

Staff: Suggests that rezoning to IR with the surrounding area staying IL constitutes spot zoning and should not be allowed.

Staff: Mentions that the late sign posting by the application caused late issuance of recommendation and suggests the record be kept open for an additional 18 days to accommodate additional public comment and response.

Staff: Recommends denial of the application because it does not meet all the requirements of CCC 40.560.020.F

Staff: Requests the examiner uphold the recommendation for denial.

- Agree, applicant does not meet the requirements for a zone change and an IR zone change would be incompatible with the surrounding residential and IL zoning.

(17:45)

Examiner: Clarifies the wetlands that is on the property since it was not on the recommendation paperwork but was in the GIS packet of information that he reviewed.

- It was confirmed that there is a small wetland in the northeastern corner.

(19:12)

AG: Andrew Gunther states that there is a wetland on the northeastern corner. They submitted a wetland determination.

- Not a point of concern. Just clarifying so there are no discrepancies in the report.

(20:39)

Examiner: Staff report it mentions approval criteria number 2. Policy listed by applicant in the application are 3.8.1 and 3.8.2 are regarding rail dependent uses in rural land. Examiner asking if this even applies to this application.

- The comprehensive plan policies 3.8.1 and 3.8.2 cover rural areas and do not apply to this zone change since the surrounding area is considered urban.

(21:38)

Staff: Since the property is not in an area designated as rural the policies do not apply. The Freight Rail Dependent Uses (FRDU) is also a separate overlay.

- Agree with both statements

(23:00)

Examiner: Asking staff if the applicant can use the rail line to search for development on the property without the IR zone change.

Staff: confirms they do have the ability to use the railroad under the current IL zone.

- 40.230.085-1 E482 Railroad use is outright permitted in IL, IH, and IR zones.

(23:20)

Examiner: Asks for clarification about the zone change. Wanted to know if the zone change adds to the usage.

Staff: Confirms that it does.

- This is incorrect. It removes 55 IL uses and replaces them with 16 IH uses. If anything, it would be subtracting and narrow the scope of uses. The IR and IH zone are identical with the exception of 19 IR prohibited uses 18 of which are permitted in light industrial.

(23:34)

Examiner: Address the claim of spot zoning. Asks about criteria for spot zoning and the significance. Mentions this being a single parcel lot.

Staff: Explains their rationale regarding that claim. Since the IR would be surrounded by IL usage, they believe it doesn't provide a gradual change of use. Typically, there needs to be a compatible or similar usage nearby. Basically, you wouldn't change one smaller parcel in the middle of a larger zone. Logically you would rezone the area not just the small parcel.

Examiner: Asks if spot zoning relates to any of the applicable zoning criteria.

Staff: Responds that it is common practice for the county to not use spot zoning. Not aware of any official policy prohibiting the zoning of a smaller parcel in a larger zoning area.

Staff: Requests to hold record open so they can add to that information for clarification.

(25:38)

Examiner: Addresses the lack of compatibility with nearby residential brought up by the staff in their finding. Would like to know which part of the rezone criteria is applicable to the nearby residential zone. He sees the county concern but not the actual policy prohibiting it.

Staff: Generally, there are comprehensive plan policies that support compatibility. Believes it would relate to criteria 3 of CCC 40.560.020.F but wants to hold record open so they can clarify that point a bit more.

- Table 1.6 on page 32 of the comprehensive plan clearly shows intention to keep heavy industrial uses and light industrial uses separate. The adoption of the IR zone is not consistent with this logic.
- Comprehensive Plan - Policy 9.1.2
Revise commercial and industrial development standards to allow for mixed use developments and ensure compatibility with nearby residential and public land uses.

(27:50)

LB: LeAnne Bremer representing Pioneer Industrial LLC, Andrew Gunther from PLS Engineering, and Mike Leboki the owner of Pioneer Industrial LLC are on the call.

LB: Agrees the record should be left open for comment for longer because of the delay in posting the sign. Wants clarification about public comment coming in after the hearing.

Examiner: Clarifies why they keep open record and the amount of time they would keep it open in a couple different scenarios.

LB: They received the staff report late and were concerned about the ability to add additional evidence if necessary.

- The examiner confirmed they will have plenty of time to enter new evidence and provide a rebuttal to any comments that come in before the record is closed.

(32:12)

LB: Restates the criteria for the rezone under CCC 40.560.020.F and discusses the purpose statement for the IR district under the Comp Plan. Believes that this proposal furthers that comprehensive plan policy.

- The property can already make use of the railroad using the IL zone and does not need the IR zone change. All the IR change does is add heavy industrial uses which are not compatible with the nearby residential.

(33:19)

LB: Identified additional plan policy and agrees they do apply to the rural area. Confirms they are not in the rural area. Suggests that a couple do apply to the urban area in question.

LB: References policy 3.8.3 of the comprehensive plan policy

“3.8.3: Freight rail dependent uses means buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of goods where the use is dependent on and makes use of an adjacent short line railroad. Such facilities are both urban and rural development. Clark County may include development of freight rail dependent uses on land adjacent to a short line railroad in the transportation element of this plan. The County may also modify development regulations to include development of freight rail dependent uses that do not require urban governmental services in rural lands.”

LB: Mentions that further in the policy it talks about the usage being urban and rural.

- The property can already use the railroad for IL purposes. They want to get IH uses approved using the IR zone as a loophole.

(34:24)

LB: They were unable to find any specific Freight Rail Usage Depended overlays under the codes overlay section 40.250.

LB: They did find an overlay called Railroad Overlay District 40.250.070 which has very specific usage. Industrial Railroad Urban Reserve was the designation referenced and they believe they will further this policy.

(37:17)

LB: States the purpose statement for the IR District 40.230.085.B.1.C

“Railroad Industrial District (IR). The railroad industrial district is intended to provide for those industrial uses that are most suited for and can take advantage of locations along the county’s rail line.”

- The IR zone creates a loophole allowing heavy industrial uses in light industrial zones. The IL, IH, and IR zones all have permitted use of the railroad.

(37:38)

LB: References table 40.230.085-1 and talks about comparing IL to IR uses. Believes that about 90% of the uses are the same. States there are a handful of manufacturing uses allowed in IR that are not allowed in IL.

- Incorrect, there are 55 IL uses lost by switching to the IR zone. 16 IH uses will be gained by making the switch. Their intended use is in the IH zone.

(38:13)

LB: States that the purpose for seeking the zone change is to maximize the opportunities available to the property which is adjacent to a railroad. Intent is to allow more uses of the railroad than are currently allowed under IL zoning.

- Moving from IL to IR removes 55 IL uses and replaces them with 16 IH uses.
- This would do the opposite of what they are intending to do with the rezoning. It narrows the scope of use and limits their potential uses compared to the IL zone.

(38:40)

LB: Confirms they have use of the railroad under IL zoning, but the zone change is being requested to allow the potential for more uses. They argue that if this property is not a good candidate to take advantage of the IR zone, they do not know what would be.

- Moving to IR from IL limits the usage and aligns the property more with IH. Their intended use is in the IH zone. They are using the rezoning to get that use approved without going through the IH rezoning process.

(39:20)

LB: Addresses the proximity to residential zoning and housing. Argues that it is not directly adjacent to the residential zone. There is a parking lot for an IL zoned trucking company between the residential zone and the property requesting IR zoning.

- The houses are approximately 400 feet away. The noise and pollution will not be blocked by a parking lot.

(40:15)

LB: Argues that even if zone compatibility were a criterion for approval, it is compatible with the surrounding area because most of the uses allowed in the IL zone are also allowed in the IR zone.

- The IR zone adds 16 uses that are prohibited in the IL zone.
- The zoning is not similar enough to be considered compatible with IL and residential zoning. There are IH uses not compatible with the surrounding area.

(40:35)

LB: Wanted to point out there are uses in the IL that could be considered to impact the surrounding area. Some examples given are heavy construction, animal slaughter and processing, plastics and rubber products manufacturing, cement and concrete product manufacturing, machine shop, and fabricated metal manufacturing. The point being that even allowing the addition uses that the IR zone allows will not create a greater impact than what is already permitted in the IL zone.

- Animal slaughter and processing is a conditional use in IL, and the other uses are permitted because they follow the current IL use criteria. They have minimal odor, pollution, and noise.
- The 16 uses added by moving the zone to IR are all considered IH and would have greater odor, pollution, and noise. It's the reason for IH and IL zone separation.

(41:38)

LB: Mentions that any impact still needs to mitigate regardless of which zone they are in.

- If all IH impacts could be appropriately mitigated near a residential area there wouldn't be a need for separate IL and IH zones.
- Regardless, the impact of IH uses will be a greater impact than the IL uses due to the nature of the uses allowed in their respective zones.

(41:48)

LB: Addresses staff's question regarding the limited size of the property frontage (250') to the railroad line. Questions whether that is relevant to the rezone criteria but is prepared to provide a railroad site plan and address the size issue question.

(42:43)

LB: Mentions the applicant owns more than just the 2.7 acres in the proposed rezone. They believe on its own that acreage can support the railroad use but also explained the applicant owns a total of around 13 acres adjacent to the property. The other properties cannot take advantage of the nearby railroad directly but could support the activities at this location if it were necessary all while staying zoned IL.

(43:37)

LB: Addresses approval criteria 3b of code 40.560.020.F

“Better implements applicable comprehensive plan policies than the current map designation”

LB: States few properties in the county can be zoned IR and suggests this is one of them. Reiterates that the IR zone permits additional uses that the IL zone prohibits. Applicant wishes to respond to the current demand in the construction industry and support economic growth and sustainability.

- Applicant has a specific use (cement batch plant) that is permitted in the IH zone but not the IL zone. They are using the IR zone as a loophole to get this use approved.

(44:25)

LB: Cites a rail study in their narrative and claims this is exactly the type of industry the county is looking for along the rail line. That is the reason the IR zone exists. Goes on to ask what the purpose of the IR zone would be if it cannot be used.

- I agree. There is no purpose for the IR zone. The IH and IL zones both already have use of the railroad. All IR does is open the door for IL zones to be rezoned to approve IH uses not permitted in the IL zones.

(44:52)

LB: Cites section 5.4.5 of the comp plan.

“5.4.5 Improve mobility and access for the movement of goods and services on the short line railroad to enhance and promote economic opportunity throughout the county.”

LB: They believe that this zone change furthers that by providing additional uses.

- The change does not provide additional uses. The zone change will trade 55 IL uses for 16 IH uses. Their intended use falls under the 16 IH uses added.

(44:16)

LB: Addresses approval criteria 4 of code 40.560.020.F

“There are adequate public facilities and services to serve the requested zone change.”

LB: Staff agrees that there are public services but says there are no extensive rail or shipping facilities nearby. Argues that IR uses must start somewhere and there is no policy that states you must have structure in place before approval of the zoning change.

(46:05)

LB: Adding miscellaneous points for the record.

LB: Exhibit 15 Railroad Industrial Urban Reserve Aerial.

Shows another area of the county where they plan to develop industrial railroad near residential zoning. The examiner does not show the exhibit in the hearing video but the discuss the zoning of that project.

- It sounds like they are discussing a future zoning map which shows the county's plan to develop IR zones near residential zones.
- This may support the case for IR near residential zones if they can get the zoning areas figured out. They agree to discuss further during open record.

(50:57)

LB: Address the claim that this is spot zoning. Claims this isn't spot zoning. It's just one industrial zone moving to another industrial zone. States they are both consistent with the comp plan designation of industrial. Reads off a definition of spot zoning from a WA case.

"Spot zoning has been consistently defined to be zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with a classification of surrounding land and not in accordance with the comprehensive plan."

LB: Suggests that because the IR rezone would be surrounded by IL zoning it's still in an area classified as industrial and wouldn't be considered spot zoning.

- The IR and IH zone are identical except for 19 uses (18 of which are light industrial uses). IL, IH, and IR all fall under industrial. The county clearly has plans to keep the IH and IL zones separate. Don't understand why IR exists.

(52:16)

LB: Eric Temple submitted his comments into the record. He is the President of Portland Vancouver Junction Railroad LLC which operates the railroad.

LB: They were encouraged by county staff during pre-application to reach out and speak with the PVJR if they wanted to proceed with the application to make sure they were on board with the proposal.

LB: They submitted a statement from Eric Temple with the pre-application stating that he supported the proposal and can service the site. When they received the recommendation of denial on the staff report they reached back out to Eric Temple, and he wrote a more comprehensive letter of support.

- Eric Temple worked with the county to create the FRDU and IR zone policy. He also owns a property just south along the railroad that was recently rezoned IR under the same conditions as this request. He stands to profit from this zone change.

(54:05)

AG: Andrew Gunther from PLS Engineering gets on the call to address the spot zoning question and other related comments from the county.

AG: Mentions he has seen in other jurisdictions buffering of heavy intensive uses using light intensive uses. Argues that if an IR zone is considered heavy intensive use, then the IL zones surrounding it provide the perfect buffer for that.

- There is a parking lot between this property and the residential 400 feet away. This is not a very good buffer for the noise and pollution that IH uses will generate.

(55:26)

AG: Addresses zoning in Exhibit 14 & 15 the other location previously mentioned at (46:05).

AG: Confirms there are some adjacent residential zones in the proposed IR zoning overlay shown on Exhibit 14 & 15.

AG: The area just to the east of the overlay is an R120 zone which is an existing urban zone. Immediately to the south is an R5 rural residential but has an urban holding designation for R110 residential in the future.

(57:00)

AG: Describes two sets of tracks that are nearby their location and suggests they can use the second set of tracks as a bypass if the main track were occupied by railcars loading or unloading at their site. He is using this to prove that there is adequate rail infrastructure to support the IR zone change request. This was one of the concerns of staff earlier **(41:48)**.

Examiner: Asks for clarification on two sets of track and how it is situated to the property.

(1:00:00)

Examiner: Discloses that he accidentally opened the wrong document thinking it was the staff report that was sent over FTP. He just wanted to disclose that he did partially review information on the "Alternate Decision" document but that he stopped after realizing that he was looking at the wrong document. Staff sent over the correct documents and he deleted everything that was incorrectly downloaded.

LB: Thanked the examiner for disclosing that information.

(1:01:40)

Staff: Points out that the usages that are allowed in the IR zone and prohibited in the IL zone are only permitted in the IH zone. If they were unable to use the IR zone change they would be required to go through a comprehensive plan change.

Staff: Looking at the usage and the table believes that the IH uses that would be gained by zoning as IR are not compatible with the nearby urban residential usage.

- This further confirms they are trying to use the IR zoning to get a specific IH use approved that is not permitted in the IL zone.

(1:03:30)

Staff: Wishes to emphasize the size of frontage is only 250' and may not support a railroad spur on its own. Does not think the county will be in support of using the main line.

Examiner: Clarifying the technical terms used. Spur is a dead-end section of railroad track that extend onto the property. Given the limited frontage there may not be enough space to construct the spur, and the county may not allow the use of the main line for loading and unloading of railcars.

Examiner: Would county need to approve the use of the railroad or would the operator of the railroad be able to give permission? They will cover this in open record.

(1:05:00)

Staff: Given the proximity of the residential zone and the IH uses that would be allowed, and the fact that the property can currently use the railroad under IL zoning, the county has determined that the current IL zone better implements the comprehensive plan. Which is why they have not recommended approval of the zone change to IR.

Examiner: States he would ask which policies specifically are in question here, but they are waiting for open record to gather that information.

- I agree, the zoning does not make sense. Moving the IR would negatively impact the nearby residential zones.

(1:06:10)

Staff: Asks that they wait the full 18 day before getting the comment from the applicant. They want to make sure the public has sufficient time to respond.

Examiner: Suggests waiting 9 days, letting the applicant respond early, allowing the public to respond to that new information as well, and then giving the applicant a final chance to make their case.

LB: Supports the suggestion.

Staff: Shares concerns about making sure that if the public is paying attention, they have a chance to comment on the staff additional new information.

Examiner: Agrees and suggests holding it open for 9 days for staff and applicant to enter any new arguments, then another 9 days for staff and applicant to comment on the new information, then after those 18 days the public could comment on all the new information. Once all that is done then the applicant can submit a final argument if they choose.

Staff: Agrees this is enough time to get all the information ready for public comment.

LB: Agrees

AG: Agrees

Summary

Pioneer Industrial LLC claimed to need IR rezoning to make full use of the nearby short line railroad. The property was already zoned as IL which allows for rail distribution as an outright permitted use.

They wanted the IR zone approved to allow for further usage that wasn't allowed in the IL zoned area. They were vague and didn't say exactly what usage they wanted to implement on that property. They claimed all they needed to prove was the qualification in the definition of the IR zone listed in 40.230.085.B.1c shown below.

“Railroad Industrial District (IR). The railroad industrial district is intended to provide for those industrial uses that are most suited for and can take advantage of locations along the county’s rail line.”

Potential reasons for a denial are listed below.

Failed to meet criteria 3b of 40.560.020.F because they were unable to prove how the zone change better implements comprehensive plan policy. All the evidence they provided can already be conducted under the IL zone. There is no substantial reason to rezone to IR other than changing from light industrial usage to heavy industrial usage.

The IL zone already had full use of the short line railroad that was adjacent to the property. Pioneer Industrial LLC leveraged the lack of specific location criteria in the IR definition to convince the examiner that IR zoning was necessary to expand their ability to use the land. Even though all 16 “new” uses they were gaining are Heavy Industrial and all 55 lost uses are compatible with the surrounding Light Industrial zoned properties

The application was initially denied due to not meeting the approval criteria. They failed to prove the rezoning better implemented plan policy. It was appealed to the superior court and dismissed. During this time Portland Vancouver Junction Railroad LLC received approval to rezone to IR using roughly the same arguments. They were working with Eric Temple from PVJR and even received a letter from him praising the rezoning as a good thing for the county and the railroad.

They went back to the examiner with a covenant that restricted the use to specific heavy industrial uses and received approval. The record in the GIS is still showing up as IL and does not reflect the change. The PVJR is showing up as IR. I'm unable to find any good reason that the zone change be approved based on the information in the public records.