

Portland Vancouver Junction Railroad LLC

CVTV Hearing:

https://www.cvtv.org/vid_link/31146?startStreamAt=0&stopStreamAt=3736

Video Notes with (Time Stamps)

* *Objection comments are in **blue** below video notes*

(21:56)

Staff: Didn't meet all zone change approval criteria in CCC 40.560.020.F (specifically 2&3)

- Does not meet criteria 2 of 40.560.020F because the IR zoning district lacks specific location criteria in its purpose statement. This should be corrected to match the criteria in IL, IH, and BP definitions to better define the IR zone regarding the compatibility with surrounding zones. PVJR agrees and this is mentioned at **(34:30)** but they still want to move forward using the current definition.
- Agree, does not meet criteria 3b of 40.560.020.F. Applicant does not prove the zone change better implements comprehensive plan policy. They point to plan policy that they believe they can better implement but is already sufficiently covered with IL zoning. This is further discussed at **(31:12)** in the video.

(22:21)

Staff: IL already allows for rail distribution as an outright permitted use

- The only valid reason to zone IR would be to increase the uses available. All 16 of which are IH uses not permitted in an IL zone.
- Applicant is giving up 55 uses compatible with the surrounding IL zones to gain 16 IH permitted uses that are incompatible with surrounding IL and residential zones.

(22:50)

Staff: Public is concerned because PVJR didn't express their intended use for the property.

- They have an intended use but are not openly revealing it. It's discussed later at **(44:25)** but they blame an NDA for not going into detail.
- Their potential intended use would fall under the IH/IR permitted uses but not the IL.

(24:40)

Staff: Requests examiner upholds recommendation for denial of the application.

- Agree, application should be denied
 - The applicant does not need an IR zoning to make use of the railroad since they are already permitted to use it under the IL zoning. They are using the IR zone to get a specific IH/IR permitted use approved for this property.
- Agree, applicant does not sufficiently meet the criteria in CCC 40.560.020.F 3b
 - There is no specific proof that they can better implement plan policy by switching from an IL to an IR zone.

(27:50)

PVJR: Addressing criteria 2 and 3 of CCC 40.560.020.F

- Disagree, applicant cannot meet the criteria in 2 because the IR zoning district lacks specific location criteria in its definition.
 - This should be corrected to match the location criteria in IL, IH, and BP definitions to better define the IR zone. Applicant mentions this at **(34:30)**.
- Disagree, applicant does not meet criteria 3b since the rezone does not better implement comprehensive plan policy.
 - All plan policies referenced can be satisfied using the IL zone designation and does not need the IR zone change.

(28:00)

PVJR: Railroad Industrial zone adopted 2007 and part of the intent was to provide uses between light and heavy industrial uses. Client was heavily involved in the public process.

- Owner of PVJR was heavily involved in the creation of the IR zone.
- The IR zone does not add uses that are between light and heavy uses. It trades 55 uses permitted under IL for 16 uses permitted under IH.
- PVJR agrees the wording of the IR zone definition lacks language regarding compatibility which does exist in the definitions of IL, IH, and BP zones. **(34:30)**
- PVJR suggests that a language change should be made if compatibility is required on IR zoning. PVJR argues that it should not currently be a limitation. **(34:30)**

(28:40)

PVJR: Owner purchased property in 2010 or 2011 from county for the distinct purpose of operate the railroad and railroad use through the site.

- The use of the railroad is already permitted under the former IL zone
- What is not permitted under IL is the heavy industrial uses the IR zone permits
- Applicant clearly wants a zone change to allow IL prohibited uses to be permitted

(29:05)

PVJR: Claims site is ideal for railroad industrial use. Surrounded by light industrial properties, rail line frontage is 1000ft and has a spur trap on the site. It is also ready for customer use.

- IL zone does not prohibit the use of the railroad for industrial purposes. It does prohibit heavy industrial use in that zone.
- Applicant mentions that it's surrounded by light industrial here but later says that compatibility is not something that needs to be considered.
- Applicant fails to mention that it's adjacent to a veterinary clinic which is explicitly prohibited under IR zoning. IL, IH, and BP all allow for a veterinary clinic.

(29:50)

PVJR: Mentions the defining criteria for an IR zone to be implemented.

“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.”

- This is the criteria for IR zone approval. There is no language stating anything about compatibility with surrounding areas. This allows a potential rezone of any area along the railroad as an IR zone.
- This is dangerous because the IR zone adds many IH uses that are not permitted in the IL and residential zones due to odor, noise, and pollution concerns.
- It looks like a good way to rezone anything on the railroad line as heavy industrial without any consideration for the surrounding zone regulations.

(31:12)

PVJR: Claims adding this zone change meets the locational criteria, Purpose statement, and plan policies (specifically policies 5.4.5 and 9.6.2).

- It does not meet the locational criteria because the IR zone definition doesn't have a location criterion in the definition. This is incongruent with the other zones (IH, IL, BP) which do account for compatibility and take location into account.
- The purpose statement only refers to uses that are most suited for and can make use of the railroad without any language regarding any other criteria. This is too broad of a definition and needs refining.

Plan Policy 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."

- This can be done using the former IL zone and doesn't require a change. They only want the change for very specific uses not permitted in the IL zone.

Plan Policy 9.6.2 "Develop compatible land uses that promote the long-term economic viability of the county railroad."

- The land use under IL is far more compatible to the surrounding zones since it doesn't allow for any IH permitted uses.
- Moving from IL to IR removes 55 uses most of which (37) do not have overlap with IH uses. It only adds 16 uses that all have overlap with IH. The IH uses added bring with them pollution and noise concerns.

(32:42)

PVJR: Claims any discussion of Heavy Industrial use is irrelevant because they are not seeking a plan amendment they are staying within an industrial designation and switching from an IL zone to an IR zone.

- The IH and IR zones are virtually identical. The only difference is there are 19 uses in the IR zone that are not permitted (18 of which are allowed under light industrial).
- All 16 uses that the IR zone permits that IL prohibits are classified as IH uses.
- They later mention mining as a possible use which would be considered IH.

(33:25)

PVJR: References that staff claimed they were likely not compatible with nearby zones. Applicant claims they have no way to demonstrate compatibility with nearby zones and believes it is an ambiguous or vague determination.

- Looking at the use cases that the IR zone allows it would make sense that staff would assume they are going to employ an IH industry on the land since those are the only uses added by IR rezoning.
- IH uses are not compatible with the surrounding area that is zoned IL. Also, IR zoning isn't compatible with the adjacent veterinary clinic.

(34:08)

PVJR: Compatibility is not the measure for the criteria that needs to be met. They reference the initial criteria of locational criteria, purpose statement, and plan policy of the zoning district.

- While it does technically meet the location criteria and purpose statement. It already meets the plan policy objectives discussed earlier (31:12) without a rezoning.
- Compatibility would fall under the locational criteria condition. Since the IR zone's only condition is that it be near the railroad it meets that criterion.

(34:30)

PVJR: Suggests that if the language regarding compatibility is necessary, the county council should have added it to the criteria or added it to the IR zone definition specifically like they did with the IL and IH zones.

- Applicant mentioned earlier owner of PVJR was heavily involved in the zone creation process. This was mentioned earlier in the conversation at **(28:00)**.
- Interesting that Eric Temple (PVJR owner) worked closely with the county to create the IR zone and now would like to make use of the loophole created by using it to rezone an IL zone for IH uses.
- Omitting a location criterion that defines compatibility allows anything along the railroad line to be rezoned as IR without considering the impact on the nearby zones.

(34:50)

PVJR: Residential zone is on the other side of the tracks and there is light industrial buffering. Argues light industrial is not compatible with residential zoning.

- The IR zone is not compatible with the veterinary clinic that is adjacent to the property which is zoned correctly in IL. This alone should be enough to deny the applicants proposal to rezone IR.
- The definition for light industrial has criteria that makes it more compatible with residential than the heavy industrial zone. Specifically, the minimal odor, noise, and pollution requirements. IR zoning is basically just IH permitted uses as long as the property exists along the railroad.

(36:45)

PVJR: F.3b is what they are addressing here. Building Industry Association of Washington and Columbia River Economic Development Council supports the proposal with letters.

- The letters do not matter if they are not able to meet the zoning criteria in the first place. They should have no impact on this zoning change request.

(39:20)

PVJR: Suggests the IR zone expands and broadens the scope of permitted use on the site.

- Disagree, it does the opposite. Rezoning from IL to IR will trade 55 light industrial uses for 16 heavy industrial uses. This effectively narrows and limits the scope.

(42:28)

PVJR: Suggests they don't need an intended use to get a zone change and shouldn't be required to provide one. They claim they can prove that by expanding the scope of permitted uses it allows them to satisfy the policies in 9.6.2.

- Disagree, it does the opposite. Rezoning from IL to IR will trade 55 light industrial uses for 16 heavy industrial uses. This effectively narrows and limits the scope.

(44:25)

PVJR: References an NDA with a potential customer for the property that has a potential use for the site. They would like to employ a particular use in the future that is allowed in the IR zone.

- This just further demonstrates that they intend to use the IR zoning to get IH uses approved. The only uses that they could possibly be talking about are the 16 uses permitted under IR/IH that are prohibited in IL.

(44:45)

PVJR: References the Pioneer Industrial LLC case and makes a distinction about their site vs that location. Even though they could employ railroad uses under the IL zone they want IR because it enhances, broadens, and opens a wider scope of potential uses.

- Disagree, it does the opposite. Rezoning from IL to IR will trade 55 light industrial uses for 16 heavy industrial uses. This effectively narrows and limits the scope. They want the IR zone because it provides a loophole to get IH approved uses. One of which they want to employ on this property.

(46:48)

PVJR: Building Association Letter claims this use will support aggregate industries and will take trucks off the street.

Examiner: asks how this will take trucks off the street.

PVJR: Explanation is that the IR zone does support mining, but he sees it as a storage and distribution location for mined aggregate which would be delivered via railroad.

- This may remove trucks from delivering aggregate if they decide to use the location for that purpose. They never give a specific use case, so this is theoretical.

(48:46)

Examiner: Asks if moving from IL to IR expands the scope of uses, does it also lose some potential uses that it had under the IL zoning? The examiner confesses to not knowing and is trying to better understand. He assumes that it leaves some behind and gains some new.

PVJR: Claims they do not believe so and lets staff explain more. States they will clarify it in the open record period. They believe it adds a dozen or so new uses.

- Rezoning from IL to IR will trade 55 light industrial uses for 16 heavy industrial uses.

(49:55)

DTC: Dr. Tammy Cleveland from Columbia Veterinary Center testifies.

DTC: Submitted a letter against the IR zoning proposed. They have been located at their location adjacent to the property since 1969 serving the immediate residential areas and nearby homes. They are in the middle of a large building project on that location behind their current building which will expand their facility.

DTC: Have concerns about the door that is left open by zoning it as IR. Noise, chemicals, and air quality are all a concern not only for the patients but the clients and staff that do business there. Noise is a major complaint because of the effect it has on animals. References their sensitivity to ground vibrations and noises we tend to hear and ignore.

DTC: Main concern is that the uses allowed in IR but not allowed in IL align more with heavy industrial than light industrial and is concerned about the effects on their location. Particularly the chemicals, pollution, and noise that is associated with those uses. They started their building project under the assumption that the property next to them was IL and are worried the IR zoning could have a negative impact on their business.

- Agree, with all the concerns listed by Dr. Cleveland. The IR zone prohibits veterinary zoning. It is only allowed in IL, IH, and BP zones. This makes the IR zoning incompatible with the adjacent property.

(53:32)

CG: Cody Gray works with Dr. Cleveland. Addresses concern with the moving of aggregate and the effects it can have on their business. They are expanding their business from 28 to 40 employees, and they expect to double their revenue. Explains that the only zoning differences in the IR zone are heavy industrial uses. Reiterates everything in IL is compatible with the clinic (Veterinary Clinics are zoned for IL). Believes moving to IR puts their business at risk.

- The IR zone prohibits veterinary zoning. It is only allowed in IL, IH, and BP zones. This makes the IR zoning incompatible with the adjacent property.
- IR zone adds 16 heavy industrial uses that are incompatible with their business.

(56:38)

Staff: Answers the question regarding the loss of uses going from IL to IR. They reference educational facilities, technical trade schools, healthcare services, spectator sports, laundry services, public administration. Examiner requests list during open record so he has a concise list of the uses that would be lost. She summarizes that there will be many industrial uses that will no longer be permitted on that site.

- Rezoning from IL to IR will trade 55 light industrial uses for 16 heavy industrial uses.

(57:50)

PVJR: States that after reviewing the information there are several uses that would be lost by moving from IL to IR, but believes the uses lost would not take advantage of the rail line.

- Rezoning from IL to IR will trade 55 light industrial uses for 16 heavy industrial uses.
- The 55 uses all have permission to use the railroad under IL zoning.

Summary

Portland Vancouver Junction Railroad 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 that usage and compatibility was not what was needed to get the zoning change approved, and 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.”

They kept insisting that the property was most suited for and could take advantage of the county rail line but didn't say explicitly what the “usage” would be. They mentioned aggregate a few times and suggested distribution along the railroad.

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 of 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. Even after stating that moving to IR narrows and limits their uses on the property by trading 55 IL uses for 16 IH uses. PVJR was able to leverage the lack of location criteria in the IR definition to convince the examiner that IR zoning was necessary to expand their ability to use the land.

They also failed to recognize the zone change impact on the adjacent veterinary clinic. The IR zone is not compatible with that property. Veterinary clinics are prohibited in IR zones but are permitted in all other zones (IL, IH, and BP). This means the IL zone was a better implementation of plan policy.

The application was approved after the examiner considered all the evidence that the applicant submitted. I'm unable to find any good reason that the zone change be approved based on the information in the public records.