



## MEMORANDUM

TO: City Council

FROM: Lauren Russell, Associate Planner

DATE: March 16, 2021

SUBJECT: APP2021-0001 Appeal of Holman's Director's Interpretation (DI2020-0002)

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At the April 6, 2021, meeting, the City Council will hear an appeal of the Director's decision to approve Holman's Director's Interpretation (DI2020-0002). The entire land use record must be provided to the Council for consideration, which is provided with this Memorandum and Agenda Bill.

### **Background Information:**

Holman's Funeral Service Inc., represented by Peter Finley Fry, applied for a Director's Interpretation (DI 2020-0002) on May 28, 2020. The property located at 3230 SW 87th Avenue was acquired by Holman's in 2020 in anticipation of relocating this longstanding family business, established in 1854, from its historic location at 2610 SE Hawthorne Boulevard in Portland, where it has operated since 1923. At the time of the original application submittal, the applicant had not yet completed a pre-application conference with staff, which is a requirement for all Type Two applications, such as the Director's Interpretation. The pre-application conference was scheduled for July 8, 2020, and staff provided the applicant with an incomplete letter on June 26, 2020, based only on the information that was included in the May 28, 2020, submittal. Staff letters to the applicant are included in the land use record (Exhibit 2 to the Agenda Bill) for reference.

The applicant's submittal for the pre-application conference included more information about the proposed funeral home use and development. Upon review of the materials submitted, staff identified several challenges to establishing the same business operations as in the original location. In addition to a number of issues related to the physical configuration of the lot, site, and existing building, staff informed the applicant that the proposed funeral home use is not addressed in the Development Code and that a mortuary use and crematorium use are only allowed as part of a cemetery. Staff advised the applicant that a Director's Interpretation could be sought to make a determination regarding the proposed funeral home use, but that a Text Amendment to the Development Code would be needed to allow a crematorium use outside cemeteries.

The applicant informed staff that the crematorium component of the business could be postponed to a later phase of development, or completely omitted from operations at this location if needed. On September 28, 2020, the applicant submitted additional materials related to the Director's Interpretation application and also submitted a Design Review Two (DR2020-0112)

application for physically locating the proposed funeral home use at the subject site. Staff provided the applicant with a second incomplete letter on October 29, 2020. In response to the second letter, the applicant requested that each application be processed separately rather than concurrently, so that the Design Review Two application could remain incomplete and on hold pending the outcome of the Director's Interpretation application. On March 11, 2021, the applicant withdrew the Design Review Two application.

The applicant submitted additional materials related to the Director's Interpretation application on November 14, 2020, and requested that the application be deemed complete. Staff provided the applicant with a completeness letter on November 20, 2020, and the applicant submitted a final revised version of their written statement on December 11, 2020. This final revised version no longer referenced on-site cremation. The Director used this version when considering the funeral home proposal.

Following consideration of the materials submitted by the applicant, the City issued its Director's Interpretation decision on February 2, 2021. The appeal period ended on February 16, 2021. A timely appeal of the Director's Interpretation was filed by Susan Corbett on February 16, 2021. Staff reviewed and accepted the appeal as valid under the provisions of Section 50.65 of the Beaverton Development Code.

Staff anticipates that additional materials will be filed by the appellant, the applicant, or members of the public. Staff will provide additional memoranda to the Council as necessary to respond to additional materials.

**Section 50.65.3 Appeal of a Type 2 Decision:**

*Within seven (7) calendar days after an appeal has been filed, the Director shall determine whether an appeal contains at least the following information:*

***A. The case file number designated by the City.***

FINDING:

The appellant identified the Director's Interpretation (DI2020-0002) application on the appeal form received by the City on February 16, 2021.

**Therefore, staff finds that appeal contains the required information.**

***B. The name and signature of each appellant.***

FINDING:

The appellant signed the appeal form.

**Therefore, staff finds that appeal contains the required information.**

**C. Reference to the written evidence provided to the decision making authority by the appellant that is contrary to the decision.**

**FINDING:**

The appellant provided written evidence in an email (Exhibit 2.1 of the Notice of Decision), which the City received on December 23, 2020, prior to the 5:00 PM deadline for public comment.

**Therefore, staff finds that appeal contains the required information.**

**D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.**

**FINDING:**

Only one party, Susan Corbett, filed the appeal.

**Therefore, staff finds that this criterion is not applicable.**

**E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law, or both, and the evidence relied on to allege the error.**

**FINDING:**

The appellant outlined the alleged errors in their appeal letter (Exhibit APP 1.1) received by the City on February 16, 2021. Responses to these allegations of error are provided below. Staff finds that the appellant provided specific approval criteria being appealed, the reasons why they assert that the findings are in error, and the evidence they relied on to allege the errors.

**Therefore, staff finds that appeal contains the required information.**

**F. The appeal fee, as established by resolution of the City Council.**

**FINDING:**

The appellant submitted the required fee of \$258.75 for an appeal. The appeal fee was set by the City Council as part of the Planning Division fee schedule.

**Therefore, staff finds that appeal contains the required information.**

**Summary of Appellant's Assertions:**

The appellant made one assertion in their appeal submittal (Exhibit APP 1.1). In the findings below, staff only responds to the appellant's assertion of errors and does not provide a full re-

analysis of the original Director's Interpretation (DI2020-0002). Staff incorporates the findings of DI2020-0002 in their entirety and provides references to where analysis of these topics is found within the Notice of Decision.

***Assertion 1: The Director erred in concluding that the interpretation is consistent with the City's Comprehensive Plan and other provisions within the Development Code. (BDC Section 40.25.15.1.C.3)***

The appellant asserts that the interpretation is not consistent with Comprehensive Plan Goal 3.7.4 Neighborhood Center: provide opportunities for small-scale commercial development that serves adjacent neighborhoods. Policy 3.7.4.a limits the scale and type of non-residential uses to ensure compatibility with surrounding neighborhoods. Policy 3.7.4.c states that development standards and/or conditional use review should be used to address potential issues related to compatibility of neighborhood commercial uses with adjacent housing, including noise, access, and parking. On pages DI-2 and DI-3 of the Notice of Decision, the Director found that the proposed funeral home business will provide professional services to the general public. All business activities will occur inside the building. Because no religious services or gatherings occur on-site, there will be no funeral processions from the proposed funeral home to cemeteries or other places of internment, which will limit potential noise and traffic impacts on adjacent housing. No on-site crematorium is proposed as part of the funeral home which will limit potential noise, odor, and vibration impacts on surrounding properties.

The appellant claims that not all business activities will occur inside the building because the business includes the transportation of bodies, which will generate noise because transportation occurs outdoors. The applicant's proposal states that deliveries and loading activities would occur within a garage. Even if these activities would not occur in a garage, staff finds that it is common for "Service Business / Professional Services" uses to have deliveries and loading activities external to the building while all other activities occur inside the building. Therefore, the interpretation that the proposed funeral home use is a "Service Business / Professional Services" use is consistent with Comprehensive Plan Goal 3.7.4 Neighborhood Center.

The appellant also asserts that the interpretation is not consistent with Development Code Section 10.20. On page DI-4, the Director found that Section 10.20.6 states that where it is unclear whether or in what manner sections of this Code apply to a given situation, or if the terms or sections are ambiguous or vague, terms defined in Chapter 90 (Definitions) shall have specifically stated meanings unless the context clearly requires otherwise and terms not defined in Chapter 90 (Definitions) shall have the meaning set forth in Webster's 1993 Third New International Dictionary. Chapter 90 of the Development Code defines "cemetery" as a place in which the deceased are entombed. A cemetery may include crematoria and mortuaries within its boundary. This use includes, but is not limited to, cemeteries, mausoleums, columbaria, or other similar uses. The proposed funeral home use is not a cemetery because it will not be a place in which the deceased are entombed; rather, the disposition of a body and final internment will occur off-site. The other terms included in the Development Code's cemetery definition are not defined in Chapter 90. Webster's 1993 Third New International Dictionary defines "crematorium" as a furnace for cremating the bodies of the dead or a building containing such a furnace. The proposed funeral home use is not a crematorium because it will not include a structure, called a retort, in which the bodies of the dead are cremated.

The appellant claims that the proposed funeral home use should be considered a crematorium because cremations could occur on-site for two reasons. First, the applicant's original submittal materials included an on-site cremation unit as part of the proposal; however, the applicant modified the proposal to no longer provide on-site cremation and this was the version of the proposal reviewed by staff when the application was deemed complete. It is common for proposals to change while land use applications are still being reviewed for completeness. In the pre-application conference summary notes, which is referred to as the July 9, 2020, staff report in the appellant's submittal and can be found in Exhibit 3.1 to the Notice of Decision, staff informed the applicant that it was unlikely that the Director could make findings that a crematorium use is a permitted accessory use to a "Service Business / Professional Services" use and therefore on-site cremation is a prohibited use. In response, the applicant revised the proposal to no longer have on-site cremation.

The second reason that the appellant claims that cremations could occur on-site is because there is a process known commercially as Aqua Cremation that does not require a retort. Staff finds that this Alkaline Hydrolysis process, while called Aqua Cremation, does not meet the definition of "crematorium" as defined in Webster's 1993 Third New International Dictionary, which is how terms not defined in Development Code Chapter 90 shall be assigned meaning. Even so, the applicant did not state that Alkaline Hydrolysis was one of the on-site business activities that would occur as part of the proposed funeral home use. Therefore, the interpretation that the proposed funeral home use is a "Service Business / Professional Services" use is consistent with Development Code Section 10.20.

**For these reasons, staff finds that the Director did not err in fact or law in concluding that the interpretation is consistent with the City's Comprehensive Plan and other provisions within the Development Code.**

**RECOMMENDATION:**

Staff recommends that the City Council **affirm the Director's decision to approve Holman's Director's Interpretation (DI2020-0002)**, with the conditions of approval stated in Notice of Decision, dated February 2, 2021, **thereby denying the appeal (APP2021-0001)**.

**EXHIBITS:**

Exhibit APP 1 – Appellant Materials:

APP 1.1 Appeal Submittal from Susan Corbett, received February 16, 2021

Exhibit APP 2 – Applicant Materials:

No additional applicant materials received to date.

Exhibit APP 3 – Public Comment:

APP 3.1 Email from Rebecca Bertone, received February 16, 2021

APP 3.2 Email from John McCarthy, received February 16, 2021

APP 3.3 Email from Stacy Schlesinger, received February 16, 2021

APP 3.4 Email from Jazz and Alka Sandhu, received February 16, 2021

APP 3.5 Email from Jason Hedges, received February 16, 2021

Exhibit APP 4 – Agency Comment:

No additional agency comment received to date.

Land Use Record (Exhibit 2 to the Agenda Bill)