



Memorandum

TO: Chris Jordan, City Manager
FROM: Chris Kerr, Senior Planner
DATE: December 10, 2008
SUBJECT: LUBA Remand of Office Building at 5750 Hood Street
(AP-08-01)

PURPOSE:

The City Council is required to address this application which was remanded from the Land Use Board of Appeals ("LUBA"). This Memorandum includes a discussion of the issues, a summary of the options available to the Council on this matter, and a Staff recommendation. Additional materials related to the petition are attached as separate Exhibits for your review.

BACKGROUND:

This remanded project obtained City approval following a hearing of the City Council on March 17, 2008. The council heard an appeal of a Planning Commission approval for Design Review and a Water Resource Area permit. The City Council voted 2-2 on a motion to overturn the appeal (attached as Exhibit CC-5), which pursuant to the CDC, resulted in the Planning Commission approval being upheld.

The City's approval of the project was appealed to LUBA. In a Final Opinion and Order dated October 7, 2008 (attached as Exhibit CC-4), LUBA remanded the approval to the City on two specific grounds, which are the issues to be considered by the Council at the December 22, 2008 hearing as described above.

Subsequent to the remand, the applicant submitted additional evidence relevant to the issues considered to be at your December 22, 2008 hearing, including a revised site plan for the project that: (1) eliminates the proposed pedestrian walkway on the south side of the building; (2) reduces the disturbed area associated with the surface parking in the rear (west) portion of the site; and (3) modifies the storm water detention facilities for the project.

DISCUSSION:

The remanded decision was an approval of a 4,200 square foot office building on property located at 5750 Hood Street, north of Burns Street (DR 07-10 and NDW 07-08). The approval criteria of Chapter 55 (Design Review) and Chapter 32 (Water Resource Areas) of

the Community Development Code (CDC) applied to the original decision. However, this hearing is limited to discussion of the two issues upon which LUBA remanded the decision:

- 1) Determination of whether the project, with minor revisions proposed by the applicant, satisfies CDC 32.090(A), which allows up to 5,000 square feet of the site within a water resource area to be developed, and
- 2) Determination of whether the outdoor parking area and downhill retaining wall, with minor revisions proposed by the applicant, satisfy all applicable rear yard setback requirements, including CDC 21.070(A)(4)(c) and 34.060.

The Council will also consider any other issues related to the approval criteria only to the extent the applicant's specific minor changes to the proposal after the approval was remanded by LUBA call into question compliance with any other relevant approval criterion.

ISSUE # 1 – 5,000 SQUARE FEET OF DISTURBED AREA

1. Should walkways or sidewalks be considered part of the 5,000 square feet of allowed disturbed area pursuant to the “hardship” provisions of West Linn Community Development Code (CDC) 32.090(A) – Water Resource Areas?

STAFF RESPONSE: Staff agrees with LUBA that the 5,000 square feet of disturbed area includes walkways and sidewalks. While the language in CDC 32.090(A) states that development, while including “access roads and driveways,” does not specifically mention walkways and sidewalks, the inclusion of the “access roads and driveways” term does not mean the exclusion of other, unnamed types of development. The definition of “development” in CDC 2.030, which includes “paving, filling, grading or site clearing,” clearly contemplates that permanent walkways and sidewalks are considered “development,” and thus subject to the 5,000 square foot limitation of CDC 32.090(A).

2. Should storm water drainage facilities be considered part of the 5,000 square feet of allowed disturbed area pursuant to the “hardship” provisions of CDC 32.090(A) – Water Resource Areas – even if the facilities are located underground?

STAFF RESPONSE: Staff agrees with LUBA that the 5,000 square feet of disturbed area includes storm water drainage facilities. Such facilities, even if underground, qualify as “development” under the definition, and thus are subject to the 5,000 square foot limitation of CDC 32.090(A).

3. Does “development disturbance” as described in CDC 32.090(A) include areas that are temporarily disturbed, but re-vegetated to a natural state?

STAFF RESPONSE: All development projects include a final “disturbed” development area. However, most projects require disturbance of an additional, perimeter area needed for construction activities.

CDC Chapter 32, and in particular Section 32.090, are silent on whether the “development area” includes areas of temporary disturbance associated with construction activities in the permanent disturbance area. However, CDC 32.050(K), one of the approval criteria for

water resource area permits, states that “vegetative improvements to areas within the water resource area may be required ... if portions of the site within the water resource area are disturbed during the development process.” This criterion goes on to require a re-vegetation plan pursuant to CDC 32.080 that will result in the water resource area having a combination of native trees, shrubs, and groundcover on more than 80% of its area, and more than 50% tree canopy coverage in its area. The intent of this re-vegetation requirement is to return the areas of temporary disturbance to a natural state consistent with the rest of the water resource area.

Given this re-vegetation requirement, staff believes that it is the intent of the West Linn Community Development Code to exclude areas within the water resource setback area that are temporarily disturbed and re-vegetated to a native state from the definition of “development,” subject to the 5,000 square foot maximum disturbance requirement of CDC 32.090(A).

ANALYSIS OF APPLICANT’S REVISED PROJECT REGARDING ISSUE # 1:

The applicant’s revised project proposes to permanently disturb 4,998 square feet of the site. An independent analysis of the plans performed by the City’s Geographical Information Systems (GIS) staff shows a permanent disturbed area of 4,991 square feet. The applicant has eliminated the proposed pedestrian walkway on the south side of the building, and has reduced the disturbed area associated with the surface parking in the rear (west) portion of the site.

The applicant has not provided an estimate of the amount of additional temporary disturbance necessary to construct these permanent improvements. Based on staff’s recommended interpretation of CDC 32.090(A) discussed above, this additional area is irrelevant, because condition of approval # 1 in the City’s prior decision on this matter requires re-vegetation of temporarily disturbed areas pursuant to the requirements of CDC 32.050(K) and 32.080.

Staff believes that the applicant’s revised plan has addressed the issues remanded by LUBA relating to conformance with CDC 32.090(A), the 5,000 square foot maximum disturbed area. Given the applicant’s use of the maximum area, staff recommends modification of existing condition of approval # 1 to ensure that the final plans do not exceed 5,000 square feet of disturbed area and that the re-vegetation plans are implemented for the entire rest of the site up to the building edge.

In addition, staff recommends that the City find that improvements to the public right of way of Hood Street required by this development are not on the subject property, and thus are not subject to the 5,000 square foot maximum disturbed area allowed by CDC 32.090(A). While Section 32.090(A) includes within the 5,000 allowed square feet “access roads and driveways,” these are implicitly those roads and driveways on the site itself, not adjacent public streets that are owned by the public.

ISSUE # 2 – REAR YARD SETBACK ON WEST (LIBRARY) SIDE OF SITE

1. What is the base grade of the surface parking area for determining the height of the parking area, and thus whether it is considered a “structure” for purpose of determining the appropriate setback from the property line?

STAFF RESPONSE: CDC 2.060 defines “Building Height” as “the vertical distance above a reference datum measured to the highest point of a flat roof ... or to the highest gable of a pitched or hipped roof.” The reference datum is measured as follows:

1. *For relatively flat sites where there is less than a 10 foot difference in grade between the front and rear of the house, the height of the house shall be measured from grade five feet out from the exterior wall at the front of the house; or*
2. *For steeper lots where there is more than a ten-foot difference in grade between the front and rear of the house, the height of the house is measured from grade at a point five feet out from the exterior wall on the lowest side (front or rear) of the house. One then measures vertically to the peak or ridgeline of the roof to determine the height.*

(Note: although the CDC references “house,” the city uses these standards to measure height of any structure. No alternative language for measuring the height of structures that are not “houses” is located within the CDC).

CDC 2.060 defines a Building as “any structure used or intended for supporting or sheltering any use or occupancy.” CDC 2.060 defines Structure as “something constructed or built and having a fixed base on, or fixed connection to, the ground or another structure, and platforms, walks, and driveways more than 30 inches above grade and not over any basement or story below.”

The project site is within the Office Business Commercial zoning district. CDC Section 21.070(A)(4)(c) states that the rear yard setback in this district is 25 feet. The setback applies to “Structures” which, according to CDC 2.060, are only those improvements that are more than 30 inches above grade.

In reviewing the site plan the applicant has submitted, if the parking lot is considered part of the overall structure, then the high point around the structure is along the south side. The ground level at a spot five feet from the south side of the structure is at an elevation of 127.9 feet. The lowest point of the building is located at the northwest corner of the surface parking area adjacent to the library. The elevation at this point is 116.4 feet. Measuring five feet out from this point, the elevation is significantly lower than 116.4 feet, probably in the range of three additional feet. Thus, there is an approximate 14 foot grade differential between the highest and the lowest point of the structure. Therefore, under paragraph 2 of the definition of Building Height, the reference datum for measuring height of the structure is from a point five feet from the low point of the structure, or approximately 114 feet. Any part of the structure that is greater than 30 inches in height must therefore meet all applicable yard setbacks. This means that no portion of the structure within 25 feet of the rear property line (adjacent to the library) may be greater than 30 inches in height, as measured from the 114 foot reference datum.

Alternatively, if the surface parking lot is considered as a separate structure from the main building, then both its highest and lowest points are its surface elevation of 116.4 feet. In this situation, there is no grade differential and therefore under paragraph 1 of the definition of Building Height, height is measured from five feet in front of the lot. The front

of the project is on the east side (Hood Street), and five feet east of the parking lot the elevation also is 116.4 feet. This means that no portion of the parking lot within 25 feet of the rear property line (adjacent to the library) will be greater than 30 inches in height, as measured from the 116.4 foot reference datum.

2. Should the surface parking area be considered an “accessory structure” with a reduced setback requirement pursuant to Section 34.060 of the CDC?

Alternatively, the applicant argued at LUBA that the surface parking area was in fact an accessory structure. Pursuant to Section 34.060 of the CDC, accessory structures may have a setback of only three feet from a rear property line if certain conditions are met, specifically that the structure is more than 60 feet from the front property line, the structure is no taller than 15 feet, and the structure does not exceed an area of 500 square feet.

ANALYSIS OF APPLICANT’S REVISED PROJECT REGARDING ISSUE # 2:

The applicant’s original plan included a surface parking lot to the rear of the building. This lot had two retaining walls, the first on the uphill (south) side and adjacent to the library (west) side. This wall was interior to the proposed parking area, because the parking area is at a lower finished grade than the surrounding terrain. The second retaining wall was on the drainageway (north) side and library (west) side, and was triangular in shape, reaching a height of 10.5 feet at the northwest corner of the parking area and tapering in both directions back to grade. This wall was exterior to the proposed parking area, because the parking area was at a higher finished grade than the surrounding terrain, which slopes steeply at this point into the drainageway.

The applicant’s revised plan keeps the retaining wall on the uphill side of the parking area the same, but has modified the lower part by reducing the turnaround area for cars to the minimum necessary. The resulting retaining wall adjacent to the drainageway has been reduced to a maximum height of 2 ½ feet, or 30 inches. Also, the lower retaining wall is not connected to the building structure, being separated by a small area that is “at grade,” thus not requiring a retaining wall.

Staff recommends the following findings:

1. The parking area and lower retaining wall adjacent to the drainageway should be considered separate structures from the main building. The parking area by itself is the equivalent of a paved driveway to a residential structure, which, even though it may be physically connected to the concrete floor of a garage, is not considered by the City as part of the “structure” for determination of height and setback issues. A paved area and a commercial building are such fundamentally different types of “structures” that they cannot be considered to be one continuous structure.

2. By itself, neither the parking area nor the retaining wall adjacent to the drainageway has a “height” exceeding 30 inches. Using the city’s standards for measurement of height, the base grade of both these structures is measured five feet in front (east) of the parking lot, since the lowest point does not exceed the highest point by more than 10 feet. This base datum is 116.4 feet.

3. The parking area, being flat, is not a structure since it has a height of zero as compared to the base datum of 116.4 feet. Similarly, because the retaining wall extends downward from the parking area, it too has a height of zero and is not a structure.

4. Alternatively, staff has determined that the retaining wall adjacent to the drainageway would qualify as an “accessory” structure, allowed up to 3 feet from the rear property line. The structure has a height of less than 15 feet, is less than 500 square feet in size, and is more than 60 feet from the front property line. The paved parking area itself does not qualify for the reduced setback allowed for an “accessory” structure, because it is greater than 500 square feet in size.

Staff believes that the applicant’s revised plan has addressed the issues remanded by LUBA relating to conformance with CDC 21.070(A)(4)(c). Staff would recommend an additional condition of approval to ensure that the final plans do not show wall heights in excess of those shown on the tentative plans, and that the lower retaining wall be not physically connected to the building.

ANALYSIS OF APPLICANT’S REVISED PROJECT REGARDING COMPLIANCE WITH CDC CHAPTER 46 – PARKING

The applicant’s revised plan has shown compliance with both issues remanded by LUBA by reducing the size of the parking lot, thus reducing the disturbed area and also reducing the size of the retaining wall adjacent to the drainageway. The part of the parking lot eliminated in the plan consists of a portion of the area used for maneuvering of parked vehicles using the back two uncovered parking spaces adjacent to the library (west) side of the project site.

CDC Chapter 46 does not have a clear measurable criterion for determining whether the applicant’s proposed parking area is adequate. The relevant portion of the Chapter is CDC 46.150(A)(9), which states that, “access drives from the street to off-street parking shall be designed and constructed to facilitate the flow of traffic and provide maximum safety for pedestrian and vehicular traffic on the site.”

A diagram associated with CDC 46.150(F) shows alternative parking lot layouts with design standards. The standard width for a two-way access driveway with perpendicular parking stalls along both sides is 23 feet. The applicant’s proposed access driveway meets this standard under the building, but tapers to a lower width adjacent to the last two perpendicular spaces to minimize the height of the retaining wall adjacent to the drainageway. However, the figure in the CDC speaks to required driveway aisle width when perpendicular parking stalls exist on both sides, and these two parking spaces are located on only one side. Therefore, the figure does not appear to apply to this situation.

Staff has analyzed the dimensions of the parking spaces and the driveway area, and has determined that a typical vehicle will be able to maneuver out of the two rear spaces, back up, and then head forward toward Hood Street and out of the parking lot. Staff finds that the applicant’s revised plan be found in conformance with standards set forth in Chapter 46 – Parking. Staff recommends, based upon its analysis, that this finding is met by the revised plan.

OPTIONS:

The City Council shall have the option to (1) approve, (2) deny, (3) approve with modifications, or (4) remand this proposal back to the Planning Commission for additional consideration.

STAFF RECOMMENDATION:

Staff recommends that the applicant's revised plan be approved by the City Council, with the findings (attached) addressing the issues remanded by LUBA and as described in the discussion above, including the following modified conditions of approval (changes from the City's previous decision are shown in bold strike-out/underline format).

1. Prior to commencement of site work, the applicant shall prepare a re-vegetation plan, to be approved by the Planning Director for the natural drainage way area and any areas of the site to be disturbed during construction, but not permanently developed. The applicant shall implement the re-vegetation plan to the satisfaction of the Planning Director prior to occupancy. **The re-vegetation plan shall cover the entire site except for the actual building and parking area footprints, and the re-vegetated area shall not allow a "buffer" zone between the vegetation and the building.**
2. Prior to occupancy, the applicant shall ~~either dedicate the undisturbed or re-vegetated riparian areas to the City, or shall cause an open space and conservation easement to be placed upon these areas of the site.~~ **record a conservation easement over the entire site, except for the 4,991 SF of area proposed to be disturbed.**
3. Prior to commencement of site work, the applicant shall place six-foot high chain link fencing along the perimeter of the area to be developed and the area to be disturbed by construction activity, with the precise location to be reviewed and approved by the City Arborist and the City Engineer. After removal of the fence, the applicant shall place appropriate riparian zone markers at 50 foot intervals, at locations to be approved by the City Engineer, prior to occupancy.
4. If final on-site and Hood Street widening impervious area exceeds 5,000 square feet, surface water treatment and detention will both be required. If less than 5,000 square feet, only treatment is required. No concrete structures may be placed in the drainage way or transition zone.
5. The applicant shall incorporate appropriate on-site solid waste and recycling facilities into the building design to the satisfaction of the City Engineer.
6. HVAC units shall be located and designed to demonstrate compliance with West Linn's CDC and Municipal Code noise standards.
7. The applicant shall replace the existing two-inch galvanized water line from the intersection of Hood Street and Burns Street to the property's private water service connection. The size of the replacement ductile iron line shall be determined by what is necessary to satisfy the fire protection standards of the Tualatin Valley Fire and Rescue District.

8. Prior to occupancy the applicant shall assess street frontage illumination. If found deficient, applicant must install street lights **having the City's design approval** to bring illumination to City standards.
9. **In coordination with the revegetation plan required,** tThe applicant shall prepare a landscape plan, to be reviewed and approved by the Planning Director with input from the City Librarian, designed to screen parking areas and retaining walls on the site from the view of the library. After approval, the applicant shall implement the plan prior to final occupancy of the building, and shall provide a guarantee to ensure survival of the landscaping for at least three years after final occupancy.
10. The final building plan shall show all rooftop equipment fully screened from view from the library grounds.
- 11. The proposed retaining wall heights in the applicant's final building plans, and as constructed, may not increase in height above what is shown on the approved site plan. The wall heights may be less than those shown on the approved site plan. The downhill retaining wall may not be physically connected to the building.**

Exhibits Attached



EXHIBITS

**CITY COUNCIL PUBLIC HEARING
DATE: DECEMBER 22, 2008**

FILE NO.: AP-08-01

REQUEST: LUBA Remand of Office Building at 5750 Hood Street

CC-1	PROPOSED FINAL DECISION & FINDINGS	10-16
CC-2	LUBA FINAL OPINION & ORDER	17-25
CC-3	APPLICANT'S DESIGN REVIEW NARRATIVE	26
CC-4	NEW PLANS	27-34
CC-5	PUBLIC NOTICE & AFFIDAVIT	35-41
CC-6	CITY COUNCIL FINAL DECISION OF 3/17/08 MTG	42
CC-7	ORIGIONAL PLANS.....	43
CC-8	COMMENTS RECEIVED AS OF DEC. 10, 2008.....	44

**WEST LINN CITY COUNCIL
FINAL DECISION NOTICE
AP-08-01**

**IN THE MATTER ON REMAND FROM THE LAND USE BOARD OF APPEALS TO
ADDRESS SPECIFIC ISSUES RELATED TO THE CITY'S APPROVAL OF A DESIGN
REVIEW AND WATER RESOURCE AREA PERMIT FOR AN OFFICE BUILDING AT
5750 HOOD STREET**

At its regular meeting on Monday, December 22, 2008, the West Linn City Council held a limited public hearing to respond to a remand from the Oregon Land Use Board of Appeals (LUBA). The remanded decision was an approval of a 4,200 square foot office building on property located at 5750 Hood Street, north of Burns Street (DR 07-10 and NDW 07-08). The approval criteria of Chapters 55 (Design Review) and Chapter 32 (Water Resource Areas) of the Community Development Code (CDC) applied to the original decision. However, this hearing was limited to discussion of the two issues upon which LUBA remanded the decision:

- 1) Determination of whether the project, with minor revisions proposed by the applicant, satisfies CDC 32.090(A), which allows up to 5,000 square feet of the site within a water resource area to be developed, and
- 2) Determination of whether the outdoor parking area and downhill retaining wall, with minor revisions proposed by the applicant, satisfy all applicable rear yard setback requirements, including CDC 21.070(A)(4)(c) and 34.060.

The Council also considered any other issues related to the approval criteria only to the extent the applicant's specific minor changes to the proposal after the approval was remanded by LUBA called into question compliance with any other relevant approval criterion.

The hearing was conducted pursuant to the provisions of CDC Chapter 99.

The hearing was opened by Mayor King and commenced with a staff report presented by Chris Kerr, Senior Planner. The applicant made a presentation, then the appellant made a presentation, then public testimony was heard with respect to the two issues under consideration. Mayor King

A motion was made by Councilor _____ and seconded by Councilor _____ to affirm the approval of the project subject to the amended conditions of approval as recommended by staff, and to make the findings of fact set forth herein. The motion passed with _____ in favor (_____) and _____ opposed (_____).

Based on the entire record, including without limitation the evidence submitted before and at the public hearing on this matter, the City Council makes the following findings of fact. Each finding herein is intended to support the whole decision, and no finding in this document is limited by the heading or caption under which it appears or is cross-referenced, these being solely for the convenience of the reader.

Project History

- A. The project that is the subject of this notice received final City approval following a hearing of the City Council on March 17, 2008, on an appeal of the City Planning Commission's approval of the project. The City Council voted 2-2 to overturn the appeal, which pursuant to the CDC resulted in the Planning Commission approval being upheld.
- B. The City's approval of the project was appealed to LUBA. In a Final Opinion and Order dated October 7, 2008, LUBA remanded the approval to the City on two specific grounds, which are the issues considered by the Council at the December 22, 2008 hearing as described above.
- C. Subsequent to the remand, the applicant submitted additional evidence relevant to the issues considered at the December 22, 2008 hearing, including a revised site plan for the project that: (1) eliminates the proposed pedestrian walkway on the south side of the building; (2) reduces the disturbed area associated with the surface parking in the rear (west) portion of the site; and (3) modifies the storm water detention facilities for the project.

Issue No. 1 – Maximum Square Footage

- D. Walkways and sidewalks are included in the calculation of disturbed area required by CDC 32.090(A). Although development under CDC 32.090(A) includes “access roads and driveways” but does not specifically mention walkways and sidewalks, the inclusion of “access roads and driveways” does not mean that other, unnamed types of development are excluded from the scope of 32.090(A). The definition of “development” in CDC 2.030, which includes “paving, filling, grading or site clearing,” clearly contemplates that permanent walkways and sidewalks are considered development and thus subject to the 5,000 square foot limitation of CDC 32.090(A).
- E. Storm water drainage facilities, even if underground, come within the definition of “development” and therefore are included in the calculation of disturbed area required by CDC 32.090(A).
- F. Areas temporarily disturbed during construction, but re-vegetated to a natural state, are not included in the calculation of disturbed area required by CDC 32.090(A). CDC Chapter 32, and in particular Section 32.090, are silent on whether the development area includes areas of temporary disturbance associated with construction activities in the permanent disturbance area. However, CDC 32.050(K), one of the approval criteria for water resource area permits, states that “vegetative improvements to areas within the water resource area may be required ... if portions of the site within the water resource area are disturbed during the development process.” This criterion also requires a re-vegetation plan pursuant to CDC 32.080 that will result in the water resource area having a combination of native trees, shrubs, and groundcover on more than 80% of its area, and more than 50% tree canopy coverage in its area. The intent of this re-vegetation requirement is to return the areas of temporary disturbance to a natural state consistent with the rest of the water resource area. Given this re-vegetation requirement, areas within the water resource setback area that are temporarily disturbed and re-vegetated to a native state are not “development” and therefore not considered part of the disturbed area for purposes of CDC 32.090(A).

- G. Improvements to the public right of way as part of a project are not on the subject property, and thus are not considered part of the disturbed area for purposes of CDC 32.090(A). While CDC 32.090(A) includes within the 5,000 allowed square feet “access roads and driveways,” these are implicitly those roads and driveways on the site itself, not adjacent public streets that are owned by the public. With respect to this project, improvements to the public right of way on Hood Street are not considered part of the disturbed area for purposes of CDC 32.090(A).
- H. Evidence submitted by the applicant shows that the total disturbed area, including storm water drainage facilities, is 4,998 square feet. An independent analysis by the City’s GIS staff determined the total disturbed area, including storm water drainage facilities, to be 4,991 square feet. Under either calculation, the total disturbed area is less than 5,000 square feet, and no contrary evidence has been received. Therefore, the applicant has satisfactorily addressed this issue as remanded by LUBA and criterion CDC 32.090(A) is met.
- I. Because the City has conditioned the project on re-vegetation of temporarily disturbed areas pursuant to CDC 32.050(K) and 32.080, any areas temporarily disturbed during construction do not count towards calculation of disturbed area for purposes of CDC 32.090(A). However, because the applicant is close to the maximum amount of disturbed area, the conditions of approval shall be modified to ensure that the final project does not exceed 5,000 square feet of disturbed area and that re-vegetation plans are implemented for the entire remainder of the site up to the edge of the permanently disturbed area.

Issue No. 2 – Rear Yard Setback

- J. CDC 2.060 defines “building height” as “the vertical distance above a reference datum measured to the highest point of a flat roof ... or to the highest gable of a pitched or hipped roof.” The reference datum is measured as follows:
1. For relatively flat sites where there is less than a 10 foot difference in grade between the front and rear of the house, the height of the house shall be measured from grade five feet out from the exterior wall at the front of the house; or
 2. For steeper lots where there is more than a ten-foot difference in grade between the front and rear of the house, the height of the house is measured from grade at a point five feet out from the exterior wall on the lowest side (front or rear) of the house. One then measures vertically to the peak or ridgeline of the roof to determine the height.

Although these provisions refer to the “house,” the City uses these standards to measure the height of any structure. The CDC contains no alternative language for measuring the height of structures that are not “houses.”

- K. CDC 2.060 defines a “building” as “any structure used or intended for supporting or sheltering any use or occupancy.”

- L. CDC 2.060 defines a “structure” as “something constructed or built and having a fixed base on, or fixed connection to, the ground or another structure, and platforms, walks, and driveways more than 30 inches above grade and not over any basement or story below.” The language “30 inches above grade and not over any basement or story below” applies to all structures, not just structures that are “platforms, walks and driveways.”
- M. The project site is within the Office Business Commercial zoning district, which requires a 25-foot rear yard setback under CDC Section 21.070(A)(4)(c). The setback applies to “structures” which, according to CDC 2.060, are only those improvements that are more than 30 inches above grade. For this site, the rear lot line is the west property line adjacent to the public library.
- N. The revised site plan for the project includes a surface parking lot to the rear of the building. This lot has two retaining walls, the first on the uphill (south) side and adjacent to the library (west) side. This wall is interior to the proposed parking area, because the parking area is at a lower finished grade than the surrounding terrain. The second retaining wall is on the drainage way (north) side and library (west) side. It reaches its maximum height at the northwest corner of the parking area and tapers to the south and east back to grade. This wall is exterior to the proposed parking area, because the parking area is at a higher finished grade than the surrounding terrain, which slopes steeply to the north, down into the drainage way.
- O. As compared to the site plan reviewed by the Council on March 17, 2008, the applicant’s revised plan keeps the retaining wall on the uphill side of the parking area the same, but modifies the downhill retaining wall by changing the turnaround area for one car. The resulting downhill retaining wall is 2 ½ feet, or 30 inches, above existing grade at its highest point, which is the northwest corner of the parking lot. Also, the downhill retaining wall is not connected to the building itself, being separated by a small area that is “at grade,” thus not requiring a retaining wall.
- P. The parking area and downhill retaining wall adjacent to the drainage way are a separate structure from the main building. The parking area by itself is the equivalent of a paved driveway to a residential structure, which, even though it may be physically connected to the concrete floor of a garage, is not part of the “structure” for determination of height and setback issues. A paved area and a commercial building are such fundamentally different types of “structures” that they cannot be considered to be one continuous structure. The downhill retaining wall is not physically connected to the building and therefore is not part of the same structure as the building.
- Q. By itself, neither the parking area nor the retaining wall adjacent to the drainage way has a height exceeding 30 inches, and therefore neither are structures subject to CDC 21.070(A)(4)(c). Pursuant to clause (1) of the definition of building height in CDC 2.060, the base grade of both these improvements is measured five feet in front (east) of the parking lot, since the difference between the lowest point and the highest point of the parking lot and downhill retaining wall does not exceed 10 feet. This base datum is 117 feet.

- R. The parking area has a slight slope for drainage from its southeast corner down to its northwest corner. The highest point of the parking surface does not exceed the base datum of 117 feet by more than a few inches; hence the parking area is not a structure. Similarly, because the downhill retaining wall extends vertically downward from the parking area, it is located entirely below the base datum of 117 feet and therefore has no height. Any safety guard railing on the top of a retaining wall does not apply to calculation of its height for purposes of determining whether or not the wall is a structure; therefore, the wall is not a structure and is exempt from the rear yard setback of CDC 21.070(A)(4)(c). The Council imposes additional conditions of approval requiring that the final project not have retaining wall heights in excess of those shown on the tentative plans, and that the downhill retaining wall not be physically connected to the building. With these conditions of approval, the applicant has satisfactorily addressed this issue as remanded by LUBA and criterion CDC 21.070(A)(4)(c) is met.
- S. Alternatively, the downhill retaining wall adjacent to the drainage way is an “accessory” structure and is allowed pursuant to CDC 34.060 because the wall is more than three feet from the rear (west) property line, is located more than 60 feet from the front (east) property line, does not exceed fifteen feet in height, and is less than 500 square feet in size.

Other Findings

- T. The applicant’s revised site plan reduces the size of the outdoor parking lot, and therefore raises the question of whether the proposed parking area is still in compliance with the CDC. The CDC does not have a clear measurable criterion for determining whether the applicant’s proposed parking area is adequate; however, CDC 46.150(A)(9) provides that “access drives from the street to off-street parking shall be designed and constructed to facilitate the flow of traffic and provide maximum safety for pedestrian and vehicular traffic on the site.”
- U. A figure associated with CDC 46.150(F) shows alternative parking lot layouts with design standards. The standard width for a two-way access driveway with perpendicular parking stalls along both sides is 23 feet. The applicant’s proposed access driveway meets this standard under the building, but tapers to a lower width adjacent to the last perpendicular space to minimize the height of the retaining wall adjacent to the drainage way. However, the figure in the CDC speaks to required driveway aisle width when perpendicular parking stalls exist on both sides, and these two parking spaces are located on only one side. Therefore, the figure does not apply to this situation.
- V. The applicant’s revised site plan indicates that the two outdoor spaces will be designated for only “compact” vehicles. The two spaces are the farthest from the entrance and exit to Hood Street; therefore, vehicle maneuvering in the outdoor parking lot will not interfere with traffic flow in the parking lot, nor will it pose risks to pedestrians on Hood Street or elsewhere on the site. Further, the eastern parking space has space behind it that exceeds the standard width for an access driveway with perpendicular stalls on either side, and the western parking space has been made wider than required and has been provided with extra turning and back-up space to the west that compensates for having less than 23 feet directly behind it. Thus, the Council concludes that the reduced size of the outdoor parking lot in the applicant’s revised site plan does not change the City’s

prior conclusion that the project complies with the applicable approval criteria. Specifically, the requirements of CDC 46.150(A)(9) continue to be met.

- W. All other revisions to the project proposed by the applicant subsequent to the LUBA remand are minor in nature and do not affect the City's determination that all applicable approval criteria are met.

In conclusion, the Council finds that the project, as modified according to the applicant's revised site plan (a copy of which is attached to this Final Decision Notice), and subject to the conditions of approval below, is in compliance with CDC 32.090(A), meets all applicable rear yard setbacks, and otherwise is in compliance with all applicable approval criteria.

The Council adopts the following conditions of approval for the project:

1. Prior to commencement of site work, the applicant shall prepare a re-vegetation plan, to be approved by the Planning Director for the natural drainage way area and any areas of the site to be disturbed during construction, but not permanently developed. The applicant shall implement the re-vegetation plan to the satisfaction of the Planning Director prior to occupancy. The re-vegetation plan shall cover the entire site except for the actual building and parking area footprints, and the re-vegetated area shall not allow a "buffer" zone between the vegetation and the building.
2. Prior to occupancy, the applicant shall either dedicate the undisturbed or re-vegetated riparian areas to the City, or shall cause an open space and conservation easement to be placed upon these areas of the site. This dedication or easement (or combination thereof) shall be placed upon the entire site except for the actual building and parking area footprints.
3. Prior to commencement of site work, the applicant shall place six-foot high chain link fencing along the perimeter of the area to be developed and the area to be disturbed by construction activity, with the precise location to be reviewed and approved by the City Arborist and the City Engineer. After removal of the fence, the applicant shall place appropriate riparian zone markers at 50 foot intervals, at locations to be approved by the City Engineer, prior to occupancy.
4. If final on-site and Hood Street widening impervious area exceeds 5,000 square feet, surface water treatment and detention will both be required. If less than 5,000 square feet, only treatment is required. No concrete structures may be placed in the drainage way or transition zone.
5. The applicant shall incorporate appropriate on-site solid waste and recycling facilities into the building design to the satisfaction of the City Engineer.
6. HVAC units shall be located and designed to demonstrate compliance with West Linn's CDC and Municipal Code noise standards.
7. The applicant shall replace the existing two-inch galvanized water line from the intersection of Hood Street and Burns Street to the property's private water service connection. The size of the replacement ductile iron line shall be determined by what is necessary to satisfy the fire protection standards of the Tualatin Valley Fire and Rescue District.

- 8. Prior to occupancy the applicant shall assess street frontage illumination. If found deficient, applicant must install street lights having the City’s design approval to bring illumination to City standards.
- 9. In coordination with the re-vegetation plan required, the applicant shall prepare a landscape plan, to be reviewed and approved by the Planning Director with input from the City Librarian, designed to screen parking areas and retaining walls on the site from the view of the library. After approval, the applicant shall implement the plan prior to final occupancy, and shall provide a guarantee to ensure survival of the landscaping for at least three years after final occupancy.
- 10. The final building plan shall show all rooftop equipment fully screened from view from the library grounds.
- 11. The proposed retaining wall heights in the applicant’s final building plans, and as constructed, may not increase in height above what is shown on the approved site plan. The wall heights may be less than those shown on the approved site plan. The downhill retaining wall may not be physically connected to the building.

This decision will become effective 21 days from the date of mailing of this notice as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearing, or signed in on the attendance sheet at the hearing, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the Oregon Land Use Board of Appeals.

This decision was mailed on _____, 2008.

Therefore, this decision becomes final at 5:00 p.m., _____, 2009.

 NORMAN B. KING, MAYOR

 DATE

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 LAURA HORSEY and STANLEY HORSEY,
5 *Petitioners,*

6
7 vs.

8
9 CITY OF WEST LINN,
10 *Respondent,*

11
12 and

13
14 ALMA COSTON and WILLIAM COSTON,
15 *Intervenors-Respondents.*

16
17 LUBA No. 2008-051

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from City of West Linn.

23
24 Charles Swindells, Portland, filed the petition for review and argued on behalf of
25 petitioners.

26
27 No appearance by City of West Linn.

28
29 David J. Petersen, James K. Hein, Portland, filed the response brief. James K. Hein
30 argued on behalf of intervenors-respondents. With them on the brief was Tonkon Torp LLP.

31
32 RYAN, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,
33 participated in the decision.

34
35 REMANDED

10/07/2008

36
37 You are entitled to judicial review of this Order. Judicial review is governed by the
38 provisions of ORS 197.850.

1 Opinion by Ryan.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a decision by the city approving a design review and water
4 resource area permit for a 4,200 square foot office building.

5 **FACTS**

6 Intervenor applied for design review approval to construct an approximately 4,200
7 square foot office building with twelve parking spaces on a 12,700 square foot lot zoned
8 Office-Business Commercial. Ten of the proposed parking spaces are located below the first
9 floor of the building, and two parking spaces are located in the rear of the building. The
10 subject property is located at the north end of Hood Street, a dead-end street that terminates
11 north of the northeast boundary of the subject property. The property is located completely
12 within the protected water resource area of Maddax Creek and parts of the property contain
13 steep slopes.

14 The planning commission approved the permits, and petitioners appealed the
15 planning commission's decision to the city council. A city council vote to uphold the
16 planning commission's decision failed, and the planning commission's decision approving
17 the permits was considered affirmed and became the final city decision on the application.¹
18 This appeal followed.

19 **FIRST ASSIGNMENT OF ERROR**

20 In the first assignment of error, petitioners argue that the city erred in determining
21 that CDC 32.090(A) is satisfied. CDC 32.090(A) allows development on properties located
22 entirely within a water resource area, subject to certain conditions:

¹ West Linn's Community Development Code (CDC) 99.300(B) provides that if a majority of the city council does not vote to affirm, reverse or remand a planning commission decision, then the planning commission's decision is considered affirmed. In the present appeal, a motion to affirm the planning commission's decision failed, and the decision of the planning commission was considered affirmed. Record 8.

1 “Lots located completely inside the water resource area. Development may
2 occur on lots located completely within the water resource area that are
3 recorded with the County Assessor’s Office on or before the effective date of
4 this ordinance. *Development shall disturb the minimum necessary area to*
5 *allow the proposed use or activity, and in any situation no more than 5,000*
6 *square feet of the water resource area, including access roads and driveways,*
7 subject to the erosion and sediment control standards in CDC Chapter 31, and
8 subject to a finding that the proposed development does not increase danger to
9 life and property due to flooding and erosion.” (Emphasis added.)

10 Petitioners maintain that there is no evidence that the area that will be disturbed by the
11 development is limited to “no more than 5,000 square feet of the water resource area,
12 including access roads and driveways * * *.” Petitioners argue that the city failed to consider
13 the square footage of a sidewalk that runs along the south side of the building, and if that
14 square footage had been considered, the area disturbed by the development would have
15 exceeded the 5,000 square foot maximum set forth in CDC 32.090(A). Petitioners also
16 maintain that the city erred in failing to consider the additional area that will be developed in
17 order to allow stormwater facilities to be constructed.²

18 Intervenors initially respond that petitioners failed to raise any issue regarding the
19 sidewalks below and thus the issue “was not preserved for appeal.” Intervenors-
20 Respondents Brief at 6. We understand intervenors to argue that under ORS 197.763(1) and
21 ORS 197.835(3), petitioners are precluded from raising an issue for the first time on appeal
22 to LUBA. Petitioners answer that the issue was raised at Record 46-47. We agree with
23 petitioners that the statements at Record 46-47 were sufficient to raise the issue.

24 Intervenors next respond that the development plans do not show that the space
25 between the south side of the building and the southern boundary of the property is
26 developed. Intervenors also respond that even if that area is to be developed with a walkway
27 or sidewalk, CDC 32.090(A) requires that “access roads and driveways” be included in the

² Intervenors apparently proposed installation of a silt-box filtration catch system, but the location of the system is not identified on a site plan. Record 37.

1 calculation, but is silent regarding walkways or sidewalks, so that the city was correct in
2 excluding that area from the square footage calculation. In response to petitioners' argument
3 that the city erred in failing to include the area that will be disturbed in order to construct
4 stormwater facilities, intervenors respond that because the facilities are to be constructed
5 underground, they need not have been included in the calculation of the area disturbed by the
6 development.

7 First, we disagree with intervenors that the development plans do not show a
8 walkway south of the south side of the building. Intervenors-Respondents' Brief App. 16.
9 The plans show development of the walkway, and the walkway shown on intervenors' plans
10 appears to fit within the CDC definition of "development" found at CDC 02.030:

11 "Development. Any man-made change defined as the construction of
12 buildings or other structures, mining, dredging, paving, filling, grading or site
13 clearing, and grubbing in amounts greater than 10 cubic yards on any lot or
14 excavation. * * *."

15 If, as appears to be the case, the sidewalk constitutes development and that development will
16 "disturb the * * * [water resource] area," that disturbed area must be considered in
17 determining whether "development" will disturb no more than 5,000 square feet under CDC
18 32.090(A).

19 Regarding the proposed stormwater drainage system, the stormwater facilities also
20 appear to fit within the definition of "development," even if they are ultimately located
21 underground. It may be that the city could interpret "development disturb[ance]," within the
22 meaning of CDC 32.090(A) to include only permanent disturbances to the surface of the
23 water resource area, but the challenged decision does not adopt such an interpretation. It
24 may also be that the facilities are located entirely within other developed areas that are
25 already included in the square footage calculation. If so, the city must provide that
26 explanation on remand.

27 The first assignment of error is sustained.

1 **SECOND ASSIGNMENT OF ERROR**

2 CDC 21.070(A)(4)(c) requires “minimum yard dimensions or minimum building
3 setback area” of 25 feet from the rear lot line.³ As noted, the proposed development includes
4 a parking area with two parking spaces in the rear of the building, in an area that extends
5 from the western wall of the building to approximately five feet from the western boundary
6 of the property, with a 10-foot retaining wall in the northwest corner of the parking area. In
7 their second assignment of error, petitioners argue that the city erred in determining that
8 CDC 21.070(A)(4)(c) was satisfied, because, petitioners argue, the parking area and the
9 retaining wall in the northwest corner of the parking area are impermissibly located within
10 the 25-foot setback.⁴

11 Petitioners’ theory for why the parking area and retaining wall are impermissibly
12 located within the 25 foot setback relies on the definitions of “building” and “structure”
13 found in CDC 2.030. CDC 2.030 defines “building” as:

14 “Any structure used or intended for supporting or sheltering any use or
15 occupancy.”

16 “Structure” is defined as:

17 “Something constructed or built and having a fixed base on, or fixed
18 connection to, the ground or another structure, and platforms, walks, and
19 driveways more than 30 inches above grade and not over any basement or
20 story below.”

³ CDC 21.070(A)(4)(c) provides in relevant part:

“The minimum yard dimensions or minimum building setback area from the lot line shall be:

“* * * * *

“c. For a rear yard, 25 feet;”

⁴ Although petitioners do not discuss it, it appears that the development includes another retaining wall above the parking area to the south and west. Intervenor-Respondents’ Brief App. 16.

1 We understand petitioners to argue that the parking area and the northwest retaining wall are
2 “structures” under CDC 2.030 and as such, their location within the setback violates CDC
3 21.070(A)(4)(c).

4 Intervenor respond that the city correctly found that the parking area, retaining wall
5 and building are one “structure,” that the setback requirements apply to the structure as a
6 whole, and that because the main body of the building is not built within the setback no
7 violation of the setback requirement occurred. Intervenor rely on a theory posited below
8 that the setback requirements are calculated based on how the building’s height is calculated:

9 “First one must start with the premise that the elevated office building and
10 parking area (including retaining wall) together constitute one ‘structure’ as
11 explained above. * * * The setback requirements thus apply to the structure
12 as a whole. Next, the structure height is calculated from a base point at grade
13 in front of the whole building, which is essentially at the same elevation as the
14 parking area surface. * * * *Because height is measured from the surface of*
15 *the parking area for purposes of applying the setback, the retaining wall*
16 *supporting the northwest corner of the parking area essentially has zero*
17 *height. * * **

18 “When the correct base measuring point is used for the entire structure, *the*
19 *structure does not violate the setback because the parking area retaining wall*
20 *is not 30 inches above grade. * * ** Instead, the structure does not exceed 30
21 inches above the base point until the western wall of the office building,
22 which is well beyond 25 feet from the western property line * * *.”
23 Intervenor-Respondents’ Brief 8-9 (Emphases added) (citations omitted).

24 Based on this explanation, we understand intervenors to argue that the city found that
25 because the parking area and retaining wall are not more than 30 inches above grade when
26 measured from a base point grade in front of the building, no violation of the setback
27 requirement has occurred.

28 It is not clear from the adopted findings whether the city interprets CDC 2.030’s
29 definition of “structure” in the way intervenors explain. However, to the extent the city
30 interprets the phrase “more than 30 inches above grade” found in the definition of “structure”
31 to apply to structures generally, rather than to apply only to the part of the definition that
32 references “platforms, walks, and driveways,” we do not think that interpretation is

1 consistent with the text of the definition. If the city intended to find that the parking area
 2 and/or the retaining wall are “platform[s], walks and driveways” that are not more than 30
 3 inches above grade, it may explain its rationale for such a finding on remand.

4 Finally, intervenors argue in the alternative that the retaining wall is an “accessory
 5 structure” as defined in CDC 2.030, and is therefore permitted to be located three feet from
 6 the property line as set forth in CDC 34.060.⁵ However, there is nothing in the adopted
 7 findings that supports intervenors’ theory, and in fact the findings state that “the applicant
 8 does not propose any accessory structures.” Record 202. For those reasons, we decline to
 9 adopt intervenors’ theory. The city may consider that theory on remand if it wishes.

10 The second assignment of error is sustained.

11 **THIRD ASSIGNMENT OF ERROR**

12 In their third assignment of error, petitioners argue that the city erred in concluding
 13 that CDC 48.040(b) was satisfied. CDC 48.040(b) provides:

⁵ CDC 2.030 defines accessory structure as:

“A subordinate structure with a maximum area of 1,500 square feet, except for agricultural buildings, located on the lot, the use of which is clearly incidental to and associated with the principal use.”

CDC 34.060 provides:

“Accessory structures such as garages, carports, garden/tool sheds, etc. shall comply with all requirements for the principal use except as provided in Section 34.040 and where specifically modified by this Code as follows:

“A side yard or rear yard requirement may be reduced to three feet for an accessory structure except for a side or rear yard abutting a street, with the exception of alleys platted and dedicated prior to September 30, 1984, as defined in this Code, provided that:

- “A. The structure is erected more than 60 feet from the front lot line;
- “B. The structure does not exceed one story or 15 feet in height;
- “C. The structure does not exceed an area of 500 square feet; and,
- “D. The structure does not violate any existing utility easements.”

1 “All non-residential uses shall be served by one or more service drives as
2 determined necessary to provide convenient and safe access to the property
3 and designed according to Section 48.030(A). In no case shall the design of
4 the service drive or drives require or facilitate the backward movement or
5 other maneuvering of a vehicle with a street, other than an alley.”

6 The city determined that the proposal satisfied the access requirement. Record 203.
7 Petitioners argue that large vehicles, and possibly any vehicles if the parking area is full, will
8 be unable to turn around in the driveway in the underbuilding parking lot without backing
9 onto Hood Street in violation of this provision.

10 Intervenor respond that the city was correct in concluding that the criterion was
11 satisfied. Intervenor note that planning staff presented evidence that the twelve parking
12 spaces provide ample parking for office uses, and that those office uses do not generate
13 heavy delivery truck traffic. Intervenor also point out that the record indicates that most
14 vehicles would be able to turn around under the building either by using a vacant parking
15 space or using the access aisle adjacent to the handicapped parking space. We agree with
16 intervenor that the evidence in the record is sufficient to support the city’s determination
17 that CDC 48.040(b) is satisfied.

18 In this assignment of error, petitioners also assert that intervenor’s application
19 materials omitted a vehicle access, egress and circulation plan as required by CDC 48.020(c),
20 and that the applicant provided unclear information as to where and how refuse collection
21 and recycling would be accommodated on the site. Intervenor respond that a circulation
22 plan and a refuse and recycling plan were provided. Record 112-113, 212. We agree with
23 intervenor.

24 The third assignment of error is denied.

25 **FOURTH ASSIGNMENT OF ERROR**

26 In the fourth assignment of error, petitioners argue that the city erred in determining
27 that CDC 54.020(E)(3)(d) was satisfied. CDC 54.020(E)(3)(d) provides:

1 “A parking, loading, or service area which abuts a street shall be set back
2 from the right-of-way line by perimeter landscaping in the form of a
3 landscaped strip at least 10 feet in width. * * *”

4 We understand petitioners to argue that the provision is not satisfied because the covered
5 parking area on the east side of the building is not set back from the street right-of-way line
6 by a 10-foot landscaping strip.

7 The planning commission interpreted CDC 54.020(E)(3)(d) as not applying to a
8 covered parking area such as the one proposed:

9 “The Planning Commission determined that the CDC 54.020(E)(3)(d),
10 requiring a 10-foot wide landscaped strip between a public street and an
11 adjacent off-street parking area, did not apply to situations where the adjacent
12 off-street parking area was covered and underneath the building
13 structure. * * *” Record 9.

14 Petitioners argue that the text of CDC 54.020(E)(3)(d) does not support the planning
15 commission’s interpretation because the provision does not distinguish between covered and
16 surface parking areas, and that in any event intervenors’ proposed parking lot is in fact a
17 surface level parking lot, notwithstanding that it is covered.

18 Intervenors respond that the planning commission’s interpretation is entitled to
19 deference under ORS 197.829(1), which requires LUBA to affirm that interpretation unless it
20 is inconsistent with the text of CDC 54.020(E)(3)(d). We agree with intervenors that the
21 planning commission’s interpretation of the CDC is not inconsistent with its text.

22 The fourth assignment of error is denied.

23 The city’s decision is remanded.

DESIGN REVIEW NARRATIVE

Proposed Office Building for Bill and Alma Coston
5750 Hood Street, West Linn, OR
July 12, 2007

Revised and Updated August 23, 2007

Revised and updated November 17, 2008 to address errors remanded by LUBA to the City of West Linn:

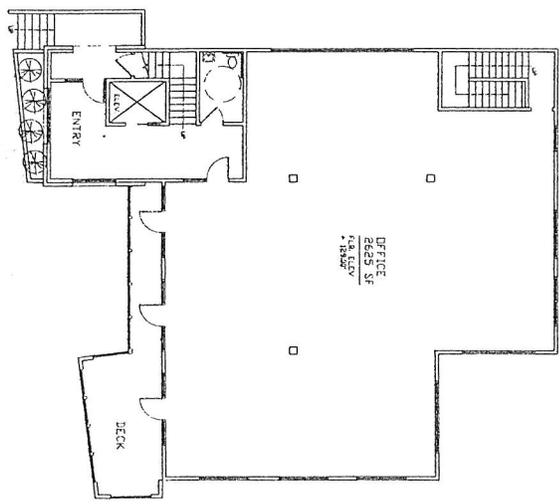
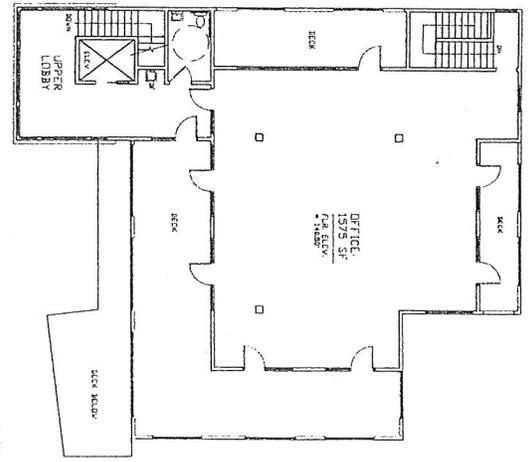
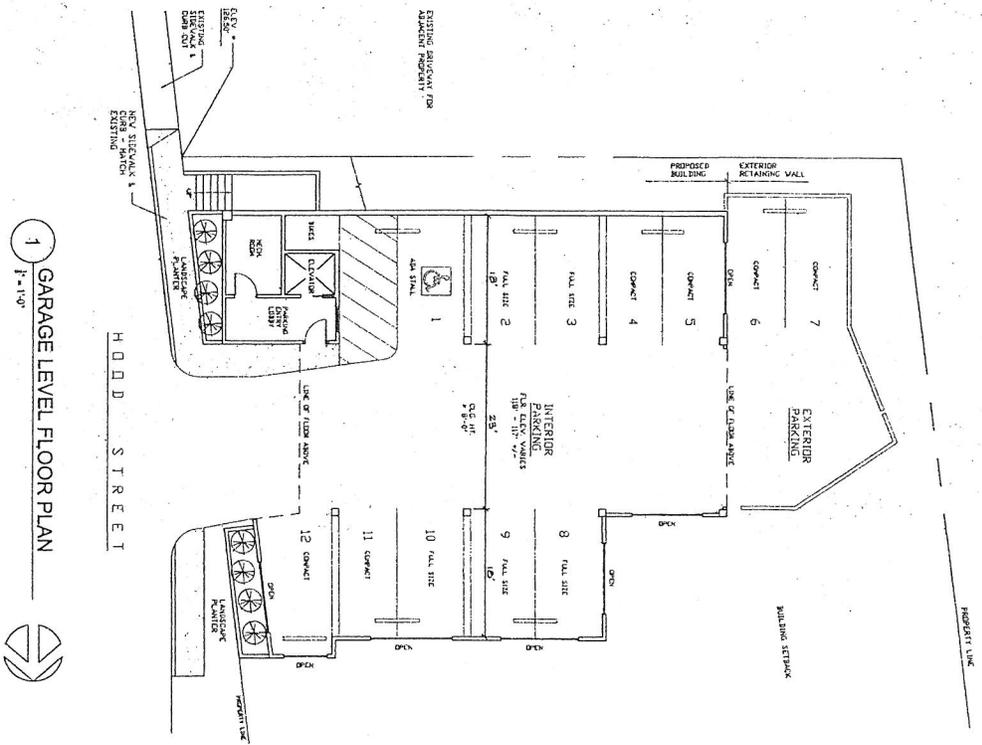
Exceeded the allowable 5000 Ft. use
"Impermissibly located" 10 ft. retaining wall in 25 ft. rear setback

This narrative in an abbreviated form, addressing only the issues noted above, is being submitted with new drawings to show corrections to Interpretations of West Linn City Codes for use of maximum of 5000 sq. ft. in Water Resource Area, and "impermissibly located" 10 ft. retaining wall in 25 ft. rear set back. We are to specifically address only the remanded errors.

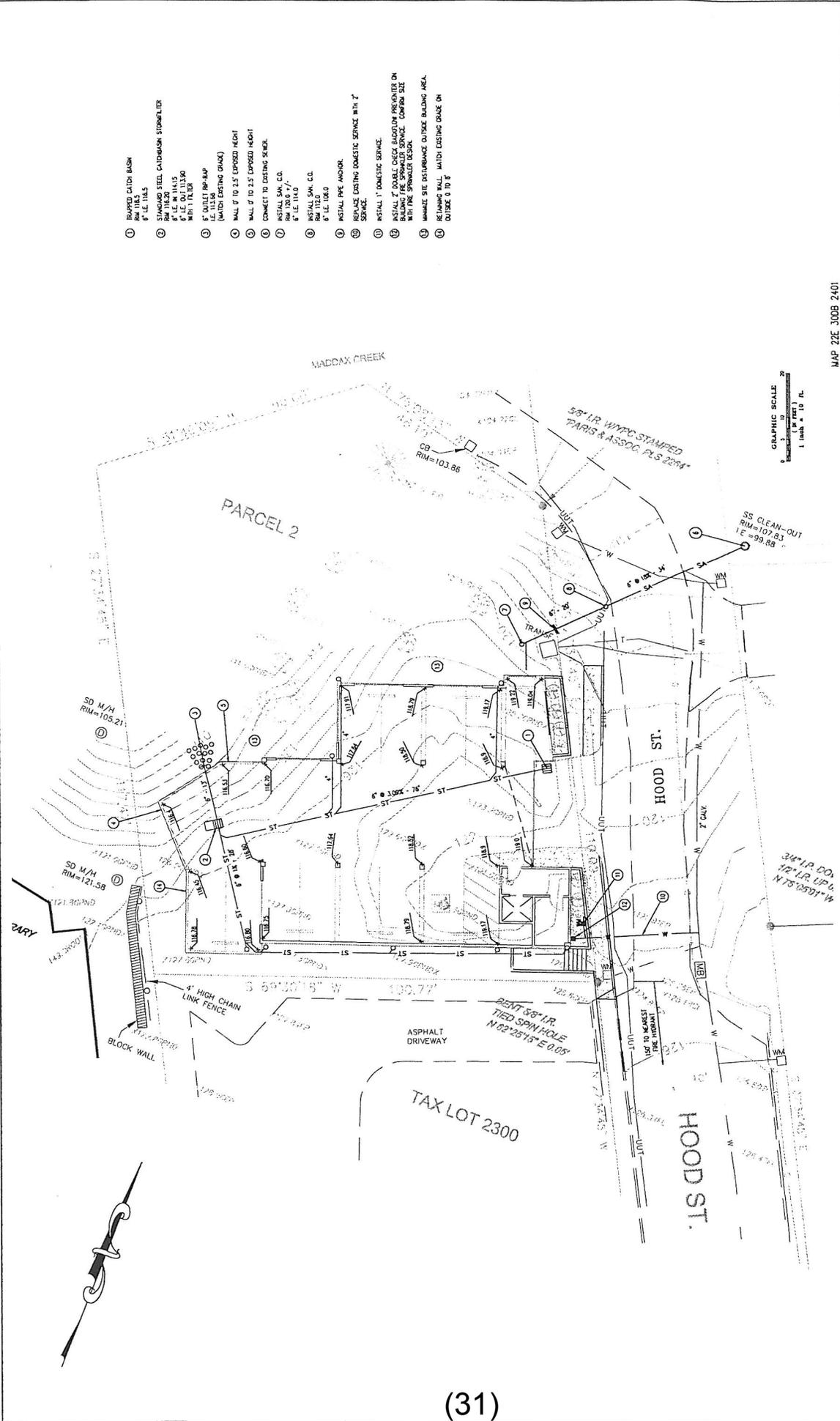
Our revised drawings show use of 4,968 sq. ft. for the developed area, and 30 sq. ft. for drainage outflow. Total 4,998 sq. ft. In the revised drawings, the walkway along the south side of the building which is not required by code, has been removed. The lower retaining wall supporting fill for rear parking and turn around shows a maximum height of 30" above existing grade, and is not attached to the building structure. This wall has been moved away from the library.

If a revision of full original narrative is necessary, we will provide a more complete narrative when advised.

AREA CALCULATION
 GARAGE LEVEL 435 SQ. FT.
 MAIN LEVEL 2825 SQ. FT.
 TOTAL AREA 3260 SQ. FT.

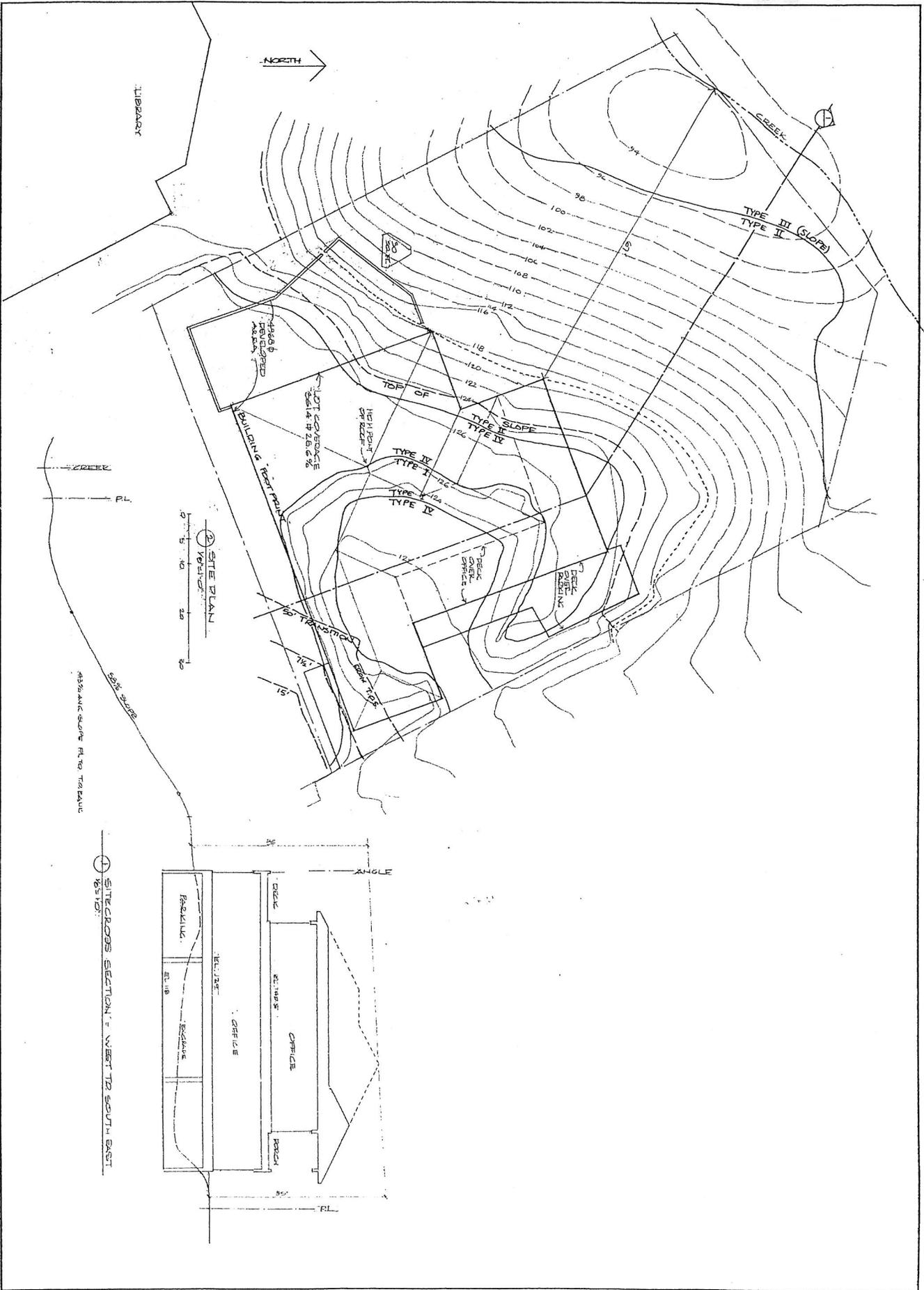


<p>YRACUEN ARCHITECT ARCHITECTURE DESIGN</p> <p>6625 SW BEAVERTON-HILLSDALE HWY. #136 PORTLAND, OREGON 97224 PHONE 503-292-4422 FAX 503-292-0780</p>	<p>OFFICE BUILDING FOR ALMA & BILL COSTON</p> <p>5750 HOOD STREET WEST LINN, OREGON</p>	<p>PRELIMINARY</p> <p>Street Number: A2</p> <p>Job No.</p>
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- 1 TRAPPED CATCH BASIN
- 2 6" C. TILES
- 3 24" WIDE STEEL CATCH-BASIN STRONGBOX
- 4 6" I.E. IN 14.15
- 5 6" I.E. IN 13.90
- 6 6" I.E. IN 13.75
- 7 6" I.E. IN 13.60
- 8 6" I.E. IN 13.45
- 9 6" I.E. IN 13.30
- 10 6" I.E. IN 13.15
- 11 6" I.E. IN 13.00
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- 13 6" I.E. IN 12.70
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- 100 6" I.E. IN -0.30

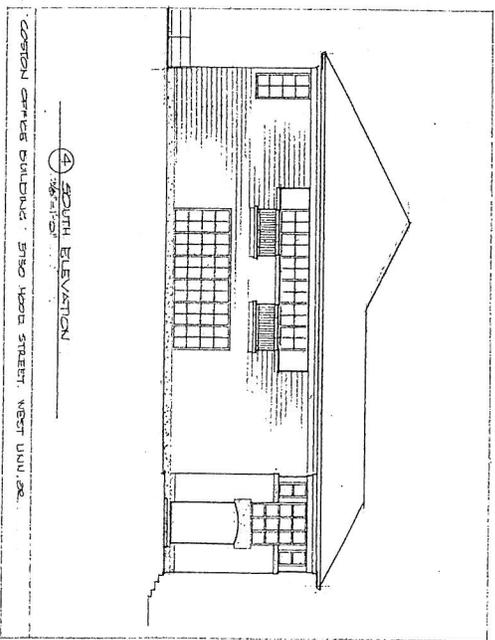
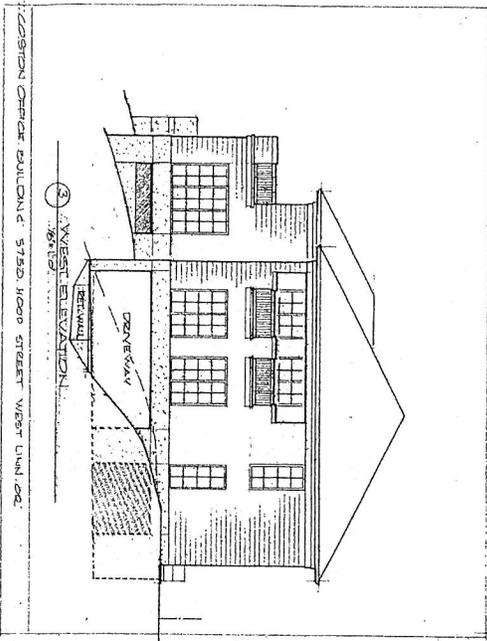
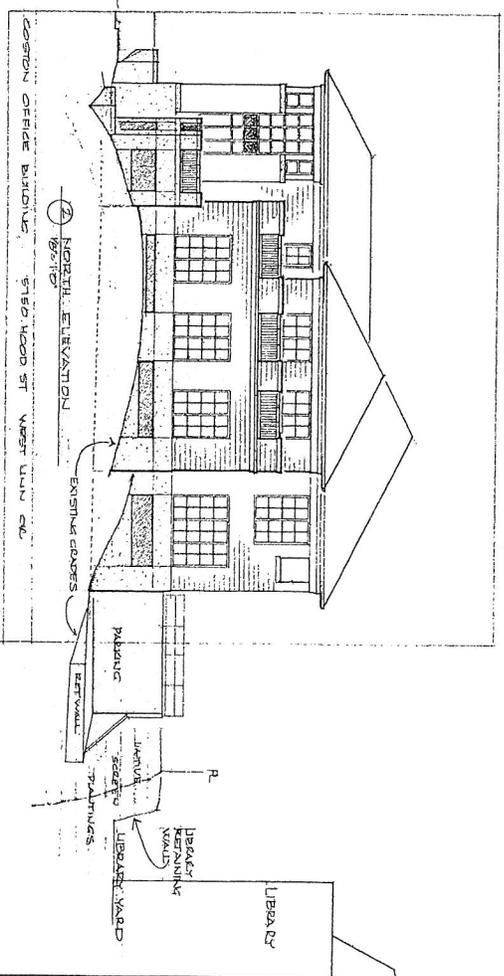
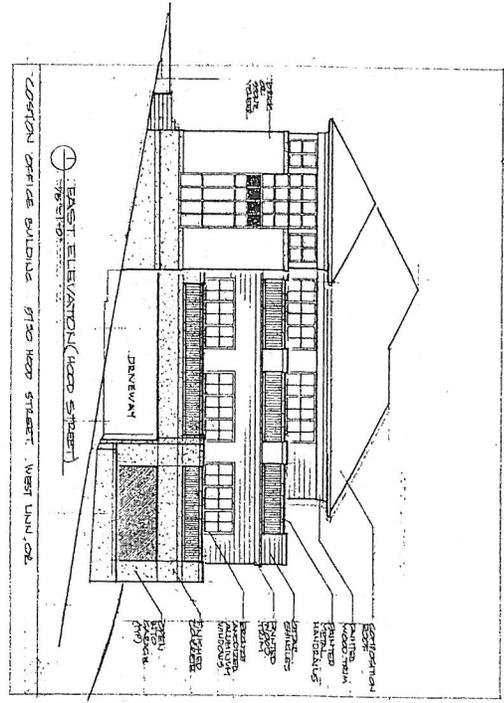
<p>MAP 22E 300B 2401</p> <p>PRELIMINARY STORM DRAIN & UTILITY PLAN</p> <p>YRAGUEN ARCHITECTS COSTON BUILDING WEST LINN, OREGON</p> <p>ZTEC CAD FILE P3647-1</p>		<p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p> <p>SCALE: 1" = 10'</p> <p>PROJECT NO: P3647-1</p> <p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p>
<p>ZTEC ENGINEERS Inc.</p> <p>Civil Structural Surveying</p> <p>3727 S.E. 81st Avenue, Portland, OR 97206</p> <p>Phone: (503) 235-8755 Fax: (503) 233-7889</p> <p>Email: ztec@ztecengineers.com</p>		<p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p> <p>SCALE: 1" = 10'</p> <p>PROJECT NO: P3647-1</p> <p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p>
<p>BY: JMM</p> <p>DATE: 11/29/08</p> <p>APPROVED: JMM</p> <p>DATE: 11/29/08</p>	<p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p> <p>SCALE: 1" = 10'</p> <p>PROJECT NO: P3647-1</p> <p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p>	<p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p> <p>SCALE: 1" = 10'</p> <p>PROJECT NO: P3647-1</p> <p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p>
<p>FOOTPRINT & STORM OUTFALL BUILDING FOOTPRINT</p>		<p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p> <p>SCALE: 1" = 10'</p> <p>PROJECT NO: P3647-1</p> <p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p>
<p>EXPIRES 12/31/2008</p>		<p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p> <p>SCALE: 1" = 10'</p> <p>PROJECT NO: P3647-1</p> <p>DATE: 11-29-08</p> <p>PROJECT: 22E 300B 2401</p>



Faden Prohard / Design Inc.
 231 S. State Street V.316
 Lake Oswego, Oregon 97034
 503 650 8181 503 656 1343 FAX
 faden@fadepchard.com

ALMA and BILL COSTON OFFICE BUILDING
 5750 HOOD STREET WEST Linn, OREGON
 SITE ANALYSIS and CROSS SECTION

NO.	DATE	BY	REVISIONS
1	11/17/95	JFP	



REVISIONS	BY
1/17/20	RP

AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

GENERAL

File No. AP-08-01 Applicant's Name Alma Caston
Development Name office Bldg - 5750 Hazel Street
Scheduled Meeting/Decision Date December 22, 2008

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check one below)

Type A X

- A. The applicant (date) 11-26-08 (signed) Cb
- B. Affected property owners (date) 11-26-08 / 12-2-08 (signed) Cb
- C. School District/Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) 12-2-08 (signed) Cb
- E. Affected neighborhood assns. (date) 11-26-08 (signed) Cb
- F. All parties to an appeal or review (date) 11-26-08 (signed) Cb

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:
Tidings (published date) 12/11/08 (signed) [Signature]
City's website (posted date) 11/26/08 (signed) [Signature]

Type B _____

- A. The applicant (date) _____ (signed) _____
- B. Affected property owners (date) _____ (signed) _____
- C. School District/Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) _____ (signed) _____
- E. Affected neighborhood assns. (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.
Date: _____ (signed) _____

Type C _____

- A. The applicant (date) _____ (signed) _____
- B. Affected property owners (date) _____ (signed) _____
- C. Affected neighborhood associations (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.
Date: _____ (signed) _____

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) _____ (signed) _____

STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.

(date) _____ (signed) _____

FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

(date) _____ (signed) _____

**CITY OF WEST LINN
CITY COUNCIL MEETING
PUBLIC HEARING
FILE NO. AP-08-01**

The West Linn City Council, at a hearing date of **Monday, December 22, 2008** starting at **6:30 p.m.** in the Council Chambers of City Hall (located at 22500 Salamo Road, West Linn, OR), will hold a public hearing to respond to a remand from the Oregon Land Use Board of Appeals (LUBA). The remanded decision was an approval of a 4,200 square foot office building on property located at 5750 Hood Street, north of Burns Street (DR 07-10 and NDW 07-08). The approval criteria of Chapters 55 (Design Review) and Chapter 32 (Water Resource Areas) of the Community Development Code apply to this decision. However, the revised hearing is limited to discussion of the two issues upon which LUBA remanded the decision:

- 1) Determination of whether the project, with minor revisions proposed by the applicant, satisfies CDC 32.090(A), which allows up to 5,000 square feet of the site within a water resource area to be developed, and
- 2) Determination of whether the outdoor parking area and retaining wall, with minor revisions proposed by the applicant, satisfy all applicable rear yard setback requirements, including CDC 21,070(A)(4)(c) and 34.060.

The Council will consider any other issues related to the approval criteria ONLY if the applicant's specific minor changes to the project call into question compliance with any other relevant approval criterion. The Council will NOT consider testimony on any issue that was resolved by the City in its previous decision on the project and was sustained by LUBA in its decision.

You have been notified of this proposal because County records indicate that you own property within 500 feet of the subject property located at tax lot 2401 of Clackamas County Assessor's 2S-2E-30DB and/or because you already have standing on the application.

All documents and applicable criteria in the above-noted file are available for inspection at no cost, or copies can be obtained for a minimal charge per page. At least 10 days prior to the hearing, a copy of the staff report will be available for inspection. For further information, please contact Bryan Brown, Planning Director, at City Hall, 22500 Salamo Road, #1000, West Linn, OR 97068 (please e-mail at bbrown@westlinnoregon.gov or phone 503-656-4211).

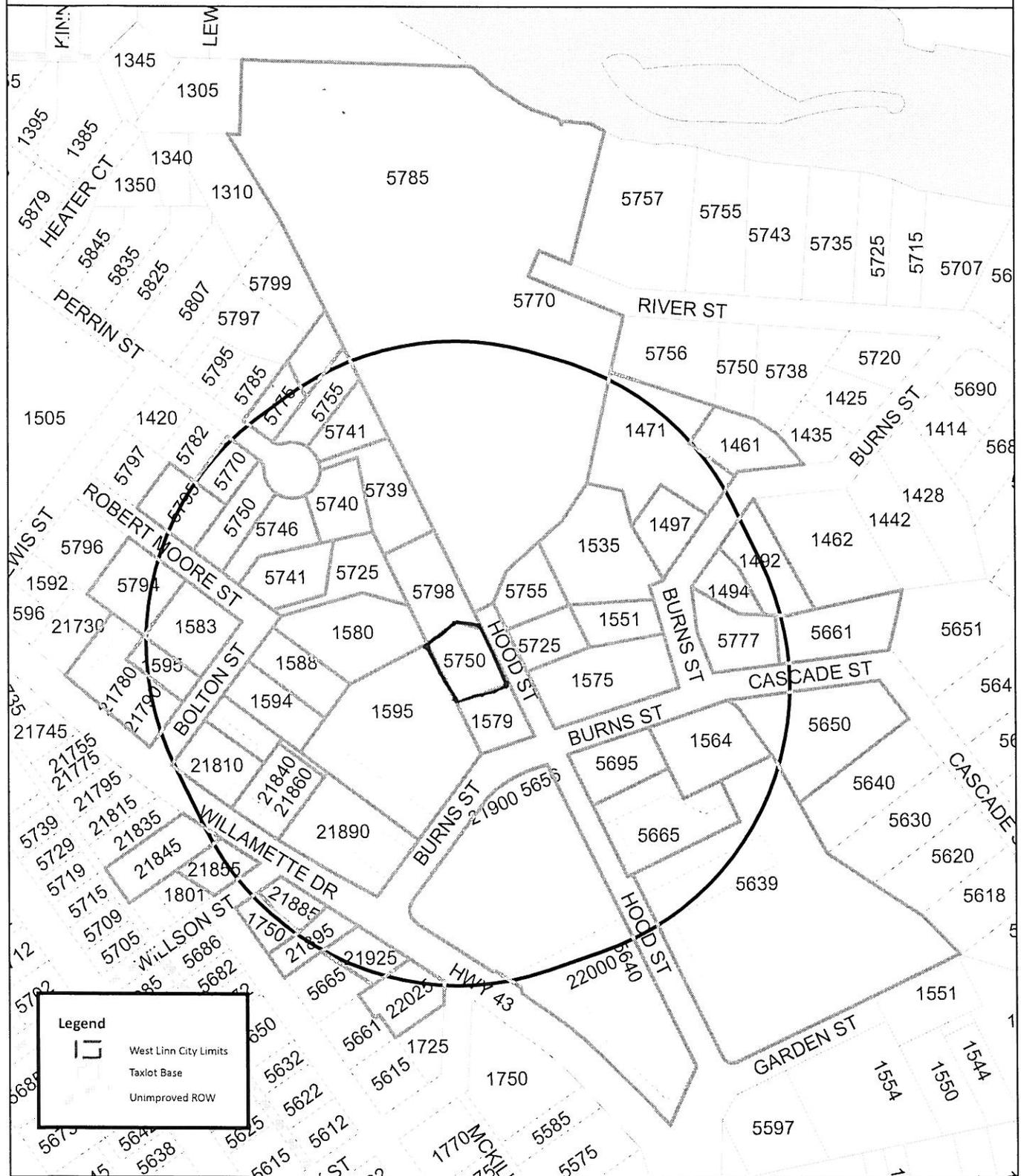
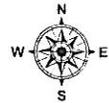
The hearing will be conducted in accordance with the rules of Section 99.170 of the Community Development Code. Persons who wish to present written testimony on this proposed action may do so in writing prior to, or at the public hearing. Oral testimony may be presented at the public hearing. At the public hearing, the City Council will receive a staff report presentation and invite both oral and written testimony. The City Council may continue the public hearing to another meeting to obtain additional information, or close the public hearing and take action on the application. Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals based on that issue.

TERESA ZAK

Planning Commission Administrative Asst.

p/dev/ccnotice-AP-08-01 remand

AP-08-01 5750 Hood Street



Legend

- West Linn City Limits
- Taxlot Base
- Unimproved ROW

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.
 Taxlot Base Source: Metro RLIS

NOT TO SCALE



SNAPNOTIFY.MXD / APP 9-17-08
 User Name: T Zak
 Map Creation Date: Nov 25, 2008

MAILED
11-26-08 / 16

CC-5

①

BEZNER MICHAEL B & RACHEL
5775 PERRIN ST
WEST LINN, OR 97068

BORNTRAGER BRYON &
TAWNYA E
1497 BURNS ST
WEST LINN, OR 97068

COLEMAN RANDALL C
2337 TAYLOR DR
WEST LINN, OR 97068

COSTON WILLIAM R TRUSTEE
PO BOX 387
WEST LINN, OR 97068

DAWSON LARRY A
5695 HOOD ST
WEST LINN, OR 97068

DOUBLEDAY R D & SANDRA LEW
1551 BURNS ST
WEST LINN, OR 97068

DOUGHERTY DAN M
21885 WILLAMETTE DR
WEST LINN, OR 97068

DUSSEAU GARY L & REED S
1492 BURNS ST
WEST LINN, OR 97068

ELLINGTON MARK W & JULIE A
5725 ROBERT MOORE ST
WEST LINN, OR 97068

ESAGUI VERONICA
21860 WILLAMETTE DR
WEST LINN, OR 97068

FISCHER STEPHEN A JR
21855 WILLAMETTE DR
WEST LINN, OR 97068

GATES MICHAEL RAYMOND &
GERI
1471 BURNS ST
WEST LINN, OR 97068

GILMER TIMOTHY
MYLES&PATRICIA
5794 ROBERT MOORE ST
WEST LINN, OR 97068

GRYGIEL KATARZYNA
5795 ROBERT MOORE ST
WEST LINN, OR 97068

HAMEL CHRISTOPHER JON &
LINDA
5661 CASCADE ST
WEST LINN, OR 97068

HAYWOOD SUZANNE TRUSTEE
5750 PERRIN ST
WEST LINN, OR 97068

HORSEY STANLEY C & LAURA R
5725 HOOD ST
WEST LINN, OR 97068

HUTCHISON JOHN C
PO BOX 648
WEST LINN, OR 97068

JOHNSON RONALD H & ANNETTE
10667 SE 144TH LOOP
HAPPY VALLEY, OR 97086

KOVRT BRENT R
5739 PERRIN ST
WEST LINN, OR 97068

LOHMAN EDWARD F & DEBBIE
STEINER
1579 BURNS ST
WEST LINN, OR 97068

LOMMEN ERIN THONETTE & JAY
3840 CALAROGA DR
WEST LINN, OR 97068

MCCARTHY ROBERT E & JANET D
1535 BURNS ST
WEST LINN, OR 97068

MCCARTHY ROBERT E & JANET D
1535 BURNS ST
WEST LINN, OR 97068

MILTON RONALD D & KIMBERLY
1461 BURNS ST
WEST LINN, OR 97068

MULLINS WILLIAM H &
MARLENE A
8696 SE 141ST CT
HAPPY VALLEY, OR 97086

NAKANO STEVEN M & AMY E
1594 BOLTON ST
WEST LINN, OR 97068

NAVE KATHLEEN S & THOMAS E
1588 BOLTON ST
WEST LINN, OR 97068

NOYE STEVEN H
3003 SABO LN
WEST LINN, OR 97068

OLSON ROLF
3453 AUGUSTA NATIONAL DR
SALEM, OR 97302

PERRINE TERESA
1583 BOLTON ST
WEST LINN, OR 97068

PKF-1 LLC
1291 LAKE GARDEN CT
LAKE OSWEGO, OR 97034

QUIGLEY WILLARD MERLE
22025 WILLAMETTE DR
WEST LINN, OR 97068

RAMS MARGO L & TOD J
21895 WILLAMETTE DR
WEST LINN, OR 97068

RAZE JAMES
20827 NE CADEN
FAIRVIEW, OR 97024

REINHOLD CARL K & MEG B
1494 BURNS ST
WEST LINN, OR 97068

SHAABAN WALEED Y & K
5741 ROBERT MOORE ST
WEST LINN, OR 97068

SHERMAN JILL G TRUSTEE
21845 WILLAMETTE DR
WEST LINN, OR 97068

SODERQUIST MAE MARIE
4552 CEDAROAK DR
WEST LINN, OR 97068

SPILLUM DOUGLAS JAY TRUSTEE
5650 CASCADE ST
WEST LINN, OR 97068

SPRING STUART S & ELIZABETH
21925 WILLAMETTE DR
WEST LINN, OR 97068

STUCKY D MICHAEL & NESJA G
1580 BOLTON ST
WEST LINN, OR 97068

SWAN DIANNE S CO-TRUSTEE
5777 CASCADE ST
WEST LINN, OR 97068

WEST LINN SHOPPING CTR LLC
19767 SW 72ND AVE STE 100
TUALATIN, OR 97062

WHITE PATRICK
5147 SE 12TH WAY
GRESHAM, OR 97080

WILLHITE JEFFREY W
2309 TOMPKINS ST
WEST LINN, OR 97068

BOLTON + ALL

MAILED
12-02-08/16

CC-5 (1)

Steven Miesen
6275 Holmes Street
West Linn, OR 97068

Scott Galloway
1875 Deanna Drive
West Linn, OR 97068

Aaik Van Der Poel
2408 Woodhaven Court
West Linn, OR 97068

Tiffani Howard
335 SW Hamilton Street
West Linn, OR 97068

Christine Siegel
West Linn Public Library
1595 Burns Street
West Linn, OR 97068

Paden Prichard
333 S. State Street
Lake Oswego, OR 97034

Alice Richmond
3939 Parker Road
West Linn, OR 97068

Dale Blanchard
19683 Sun Circle
West Linn, OR 97068

Terri and Cary Cummings
2190 Valley Court
West Linn, OR 97068

Peggy Kirkdendall
1825 Webb Street
West Linn, OR 97068

Roger Shepherd
5845 West A Street
West Linn, OR 97068

Mark Hanson
21780 Willamette Drive
West Linn, OR 97068

Jeffery Lewis
Foundation Home Lending
1584 Holly Street
West Linn, OR 97068

Matt Grady
Gramor Development
19767 SW 72nd Avenue # 100
Tualatin, OR 97062

Karie Oakes
1125 Marylhurst Drive
West Linn, OR 97068

Robert Thomas
2563 Pimlico Drive
West Linn, OR 97068

Sally McLarty
19575 River Road # 64
West Linn, OR 97068

Nick Hamel
1544 Garden Street
West Linn, OR 97068

Anita Austen
21140 Zeus Drive
West Linn OR 97068

Nancy Ross
6254 Failing Street
West Linn, OR 97068

Bob and Louise Holladay
5585 McKillican Lane
West Linn, OR 97068

George Milliken
5475 Grove Street
West Linn, OR 97068

Roger Sheperd
5845 West A Street
West Linn, OR 97068

David Petersen
Tonkin Torp LLP
888 Fifth Avenue # 1600
Portland, OR 97204

Berta E. Sutherland
1530 Rosemont Road
West Linn, OR 97068

Mary Hill
19050 Nixon Avenue
West Linn, OR 97068

Alice Seeger
18530 Vista Court
West Linn, OR 97068

ODOT Region 1
Attn: Sonya Kazen
123 NW Flanders
Portland, OR 97209

State of Oregon
Land Use Board of Appeals
550 Capitol St. NE Ste: 235
Salem, OR 97301

**WEST LINN CITY COUNCIL
FINAL DECISION NOTICE**

AP-08-01

**IN THE MATTER OF THE REVIEW OF THE PLANNING COMMISSION DECISION
TO APPROVE A DESIGN REVIEW AND WATER RESOURCE AREA PERMIT FOR
AN OFFICE BUILDING AT 5750 HOOD STREET**

At a special meeting of March 17, 2008, the West Linn City Council held a public hearing to review Planning Commission approval of a Class II Design Review and Water Resource Area Permit. The project consists of a 4,200 square foot office building and 12 parking spaces, 10 of them beneath the building, on a 13,000 square foot lot at 5750 Hood Street. The design review criteria are found within Chapter 55 of the CDC and the water resource area criteria are found within Chapter 32 of the CDC. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

The hearing was opened by Mayor King and was commenced with a staff report presented by Gordon Howard, Staff Attorney. Public testimony for and against the application was heard. Mayor King closed the hearing.

A motion was made to uphold the Planning Commission decision and approve the application with additional and amended conditions of approval. The vote in favor of the motion was two in favor: Councilors Burgess and Carson and two opposed: Mayor King and Council President Eberle. Councilor Gates was absent and excused because of a conflict of interest. The motion failed, and thus pursuant to CDC 99.300(B) the decision of the West Linn Planning Commission becomes the final city decision on this matter. A copy of that decision is attached.

This decision will become effective 21 days from the date of mailing of this notice as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearing, or signed in on the attendance sheet at the hearing, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the Oregon Land Use Board of Appeals.

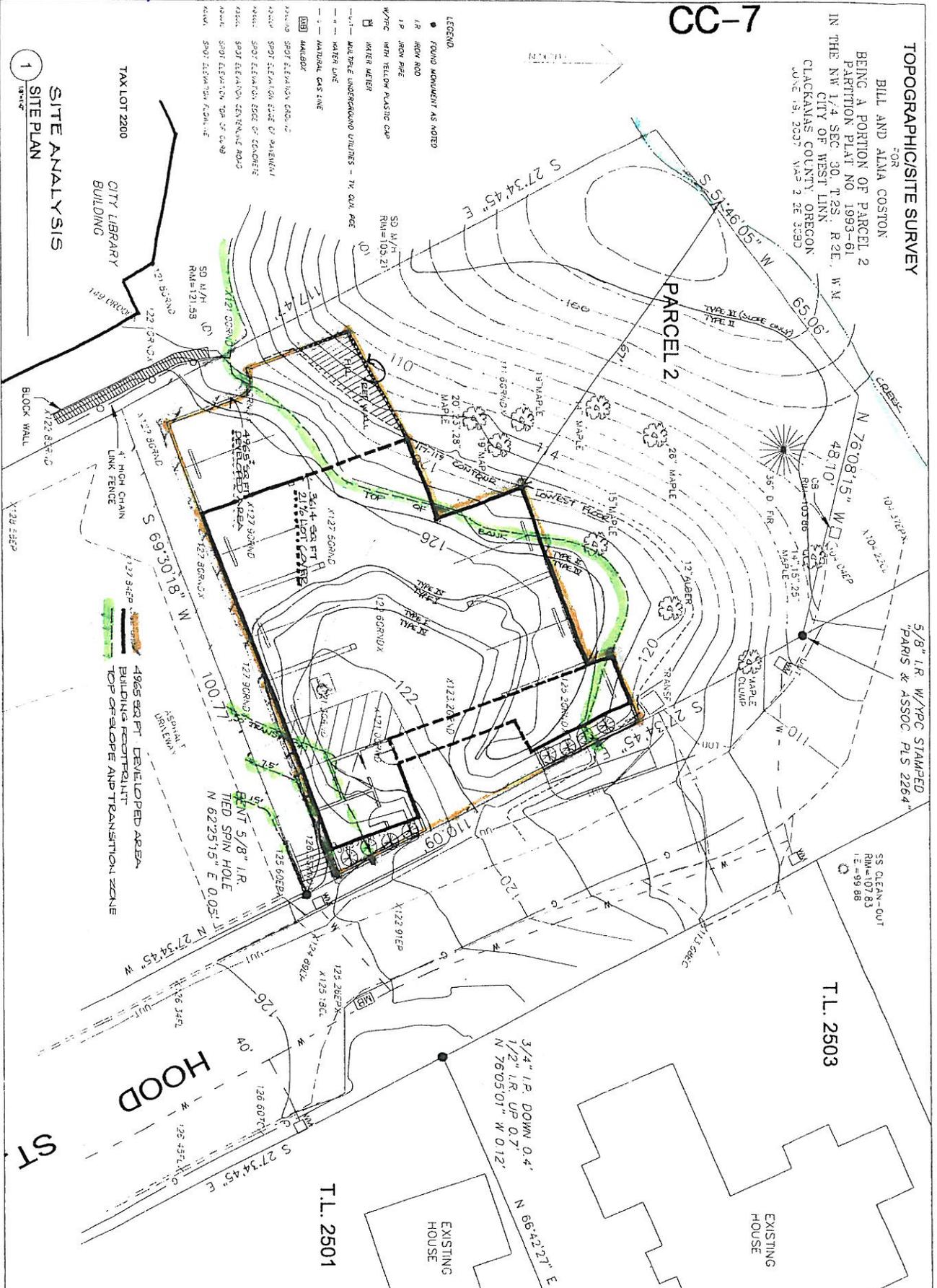
This decision was mailed on March 19, 2008.

Therefore, this decision becomes final at 5 p.m., April 9 ¹³, 2008.

TOPOGRAPHIC/SITE SURVEY

FOR
BILL AND ALMA COSTON
 BEING A PORTION OF PARCEL 2
 PARTITION PLAT NO. 1993-61
 IN THE NW 1/4 SEC 30, T.2S, R.2E, W.1M
 CITY OF WEST LINN,
 CLATSOP COUNTY, OREGON
 JUNE 15, 2007 WAS 2 ZE 3593

CC-7



Sheet No.	A3
Street Name	
PRELIMINARY	
Sheet Title	SITE PLAN
Date	5/1/08
Drawn	
Date	7/10/07
Plot	7/10/07
File	
Revised	
OFFICE BUILDING FOR ALMA & BILL COSTON 5750 HOOD STREET WEST LINN OREGON	
YRAGUEN ARCHITECT ARCHITECTURE DESIGN	
8005 SW BEAVERTON-HILLSDALE HWY. #106 PORTLAND, OREGON 97225 PHONE 503-292-4422 FAX 503-292-0780	

Brown, Bryan

From: Laura Horsey [laura@easystreet.net]
Sent: Wednesday, December 03, 2008 12:47 PM
To: Brown, Bryan
Cc: Howard, Gordon
Subject: Coston / Hood St. application
Follow Up Flag: Follow up
Flag Status: Red

Hello Bryan:

Gordon and I have had some discussion about the apparent deliberate misrepresentation the Coston's made in their original calculation of the the 5,000 sq.ft. development area. His comment that the drawing presented at the City Council meeting might be considered a fraud against the city made sense in that for many months I have been bewildered as to why staff would recommend approval for something so obviously outside the limit of code. I didn't think anyone with professional integrity as I believe you both to be could do this -- without being misled. Gordon indicated that is what happened with regard to the 5,000 sq ft area. For us it has been an expensive and exhausting process to correct this error by going to LUBA. It is all the more galling to now have the city allow the Coston's the option of continuing their application. Terminating this application and requiring that the Coston's begin again would better reflect the strength of the LUBA remand and would send a needed message to the Coston's and the community that there are consequences to providing misleading information in city applications. Refusing an optional continuation of the application is quite a mild consequence, but a step in the right direction.

In addition, it occurs to me that a new application would be free of the considerable procedural baggage that has accumulated on this one: the odd three person quorum at the planning commission, the disputed city council appeal fees, the split vote at the city council which led to the the planning commission decision being let stand (to the apparent surprise of the mayor), and lastly the LUBA appeal. Considering a new application wouldn't overwhelm decision-makers (PC or CC) with the sheer volume of the record.

I hope to have a short (20 min?) meeting with you and Gordon before he departs tomorrow and will call to see what might be arranged.

Regards, Laura

Laura Horsey
laura@easystreet.net