



## Memorandum

Date: March 19, 2009  
To: Chris Jordan, City Manager  
From: Chris Kerr, Acting Planning Director  
Subject: Holiday Inn Express Appeal application – AP-09-02

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On March 6, 2009, Staff determined that the proposed hotel use for this site, which is located in the General Commercial zoning district, requires a Conditional Use Permit (“CUP”) per Community Development Code (CDC) 19.060(20). A CUP application has never been submitted, and regrettably, was never previously requested by City Staff. It is disappointing that Staff did not identify this oversight at an earlier date; nevertheless, it is not possible for the hotel use to be approved without a complete CUP application that meets all of the applicable provisions of the CDC.

In light of these facts, Staff must recommend denial of the application as currently submitted.

Staff notified the applicant of this omission on March 6th, 2009 and has been actively involved in discussions with them to resolve this issue. It is our goal to reach a resolution on this matter prior to the March 30<sup>th</sup> meeting. Staff will be certain that, if submitted, the CUP application is processed in full accordance with the City’s CDC, particularly as it relates to the conditional use criteria and all notification requirements.

On March 9, 2009, the applicant requested that the City Council appeal hearing for this item be postponed for approximately 30 days. Per their request, the Council postponed the item until the evening of March 30, 2009 at 6:30 PM.

**Kerr, Chris**

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**From:** ~~GARY [mailto:hitesm@comcast.net]~~  
**Sent:** Friday, March 13, 2009 9:52 AM  
**To:** Kerr, Chris  
**Cc:** Galle, Patti  
**Subject:** Do Over

I thought it was announced as Interim. Not only do I think you do an adequate job, but deserve better support than what you appear to get.

I'm just palin miffed that any discussions will not be productive unless you are responsible for all these terrible policies and actions of the Council.

Plain and simple? The application is Incomplete. Stop this nonsense.

I'm going to keep the typing error in. A happy mistake that.

-----Original Message-----

**From:** Kerr, Chris [mailto:ckerr@westlinnoregon.gov]  
**Sent:** Friday, March 13, 2009 9:32 AM  
**To:** GARY  
**Cc:** Galle, Patti; City Council; Planning Commission; Soppe, Tom; Zak, Teresa; Hidden Springs Neighborhood Assoc.; Jordan, Chris  
**Subject:** RE: Holiday Inn Express REQUEST FORAPPLICATION AS INCOMPLETE

Thanks for the input Gary - I'll make sure it is included into the official record.

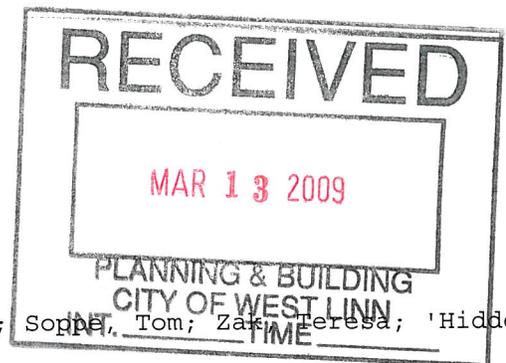
There are a lot of issues and suggestions below; I'd be happy to discuss them with you in detail. Please give me a call or email me to set up a time.

Thanks-

Chris Kerr

Acting Planning Director (I'll consider your suggested promotion to 'interim CM' below as a vote of confidence;)

723-2538



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**From:** GARY [mailto:hitesm@comcast.net]  
**Sent:** Thursday, March 12, 2009 4:40 PM  
**To:** Kerr, Chris  
**Cc:** Galle, Patti; City Council; Planning Commission; Soppe, Tom; Zak, Teresa; 'Hidden Springs Neighborhood Assoc.'  
**Subject:** Holiday Inn Express REQUEST FORAPPLICATION AS INCOMPLETE

Dear Interim City Manager Chris Kerr,

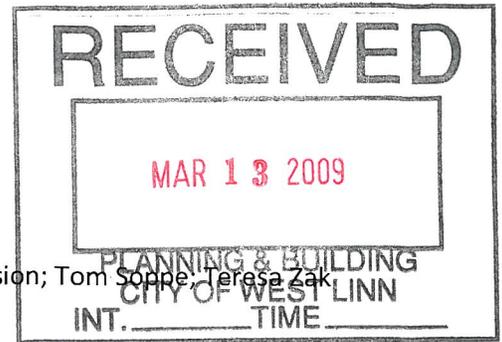
Thursday, March 12, 2009

To: Interim Planning Director Chris Kerr

Cc: Madam Mayor Patti Galli; West Linn City Councilors; Planning Commission; Tom Soppe; Teresa Zak

From: Gary Hitesman-Hidden Springs Resident

Re: File No. AP-020-02



Previous to the public hearing on March 9, 2009 by the City Council on the Holiday Inn Express, I submitted for the Public Record the following;

“...under CDC 19.030, PERMITTED USES, Hotels, motels, Transient Housing or any such other associated building type is not located within the Section. However, Transient lodging is located under #20 within 19.060, Conditional Use. CDC19.060 stipulates “The following are conditional uses which may be allowed in this zone subject to the provisions of Chapter 60, Conditional Uses: “.

Subsequently, I have ascertained that the application never filed for a Conditional Use Permit under Chapter 19 and, in over a year of review, was never addressed. On March 9<sup>th</sup>, the application was rescheduled for March 30<sup>th</sup> without explanation to the public. On March 11, 2009, I received the attached Public Notice per Section 99.170 of the CDC.(see attachment with highlights.)

With all due respect, none of this looks to me to be either reasonable or make any sense to me why this is moving forward as stated in the Public Notice. It also makes no sense to me why you, as the newly appointed Interim Planning Director, would approve this particular action.

Let me share with you my perspective.

Although the application was approved by the Planning Commission, the application appears Incomplete. The application is Incomplete because it does not satisfy Chapter 19 or Chapter 60. Perhaps the City is in a pickle because City Staff and the Commission inadvertently approved something that does not follow the CDC? Whatever the cause and effect of the situation, the application was Incomplete. This SHOULD have been raised at the March 9 public hearing with a decision rendered to DECLINE the application.

The latest PUBLIC NOTICE only makes the gravitas of the situation worse. In the Public Notice, the criteria for which approval will be based are limited to Chapters 32, 55, and 75. Although very important in the terms of establishing the validity of the criteria and its' application, all is moot under Chapters 19 and 60. This is a huge oversight, given the propensity of former Councilor Jones and Councilor Burgess to routinely dismiss issues raised that are not sanctioned by legal counsel. The City has made yet **another** fundamental error in how it wants to move forward. Am I wrong? Why does the Notice state that the only criteria to be evaluated has nothing to do with the fact that the application is Incomplete?

I strongly encourage the City to collectively put its' expertise to use and start spending our limited resources in a more effective manner. The City cannot go into this hearing as the Public Notice may be ignoring or in violation of something else. And when you do go ahead, I do not want to waste

any community effort on arguing Chapter 19, 60, 55, 75, or 32 when all I expect to hear back is that none of the testimony was related because briefs counseled otherwise.

I request the following, assuming it meets both the intent and requirements of the CDC.

#1) Render the application incomplete and deny the application. 'This' is a do over anyway.

#2 ) OR offer the applicant the time to fulfill Chapter 60 requirements and pay the accompanying associated fee, if any. The Planning Commission could 'wave' the one year re-filing requirement after the Planning Commission publicly acknowledges the application was initially incomplete. The Planning Commission could re-hear the application and as requested by the Council, more clearly address issues related to Chapter 32, 55, and 75.

#3) I do not believe that the public hearing can move forward without criteria for Chapter 19 and 60 and the requisite time for public review and comment. This is in violation of aspects within Chapter 99. No?

#4) I spoke for 30 minutes with Tom Soppe who rendered the opinion that the applicant would either likely withdrawal or the Council would likely DECLINE the application. As it is currently structured, I believe the public hearing provides unintended consequences, unforeseen problems, and includes making a bad situation even worse. Please do what you can to rectify this situation with a solution befitting the great City that we all live and/or work in and applies a tourniquet to all this wasted expense.

In closing, I feel that the Council did the correct thing in calling this decision up for consideration. A tremendous oversight, such as missing a Conditional Use designation, could have been disastrous had certain councilors not had the foresight to suspect something was not right. Although my gratitude may come in the form of a back handed compliment, I believe we are indebted and well served by those councilors. Thank you.

Please remember, *"Bigger is Badder"*

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-09-02 Applicant's Name VKNW, Inc.  
Development Name Holiday Inn Express, 2400 WFD  
Scheduled Meeting/Decision Date 3/30/09

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

- A. The applicant (date) 3-10-09 (signed) CB
- B. Affected property owners (date) 3-10-09 (signed) \_\_\_\_\_
- C. School District/Board (date) \_\_\_\_\_ (signed) \_\_\_\_\_
- D. Other affected gov't. agencies (date) \_\_\_\_\_ (signed) \_\_\_\_\_
- E. Affected neighborhood assns. (date) 3-10-09 (signed) CB
- F. All parties to an appeal or review (date) 3-10-09 (signed) CB

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:

Tidings (published date) 3 (signed) \_\_\_\_\_  
City's website (posted date) \_\_\_\_\_ (signed) \_\_\_\_\_

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) 3-10-09 (signed) [Signature]

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  
PUBLIC HEARING NOTICE  
FILE NO. AP-09-02**

The West Linn City Council is scheduled to hold a public hearing, on Monday March 30, 2009, starting at 6:30 p.m. in the Council Chambers of City Hall (located at 22500 Salamo Road, West Linn, OR,). This public hearing was continued from the public hearing scheduled for March 9, 2009. This public hearing will be on the proposal to build a 70 unit hotel on a site containing Bernert Creek and wetlands, with a Class II Variance for amount of square footage developed within the water resource transition area, at 2400-50 Willamette Falls Drive. This proposal was application DR-08-01/VAR-08-01/WAP-08-01 by VKNW, Inc., which was approved by the Planning Commission at their January 21, 2009 hearing. The City Council has called up this approval for further review, and such call ups function as appeals. Design Review criteria are found in Chapter 55 of the Community Development Code (CDC). Class II Variance criteria can be found in Chapter 75 of the CDC. Water Resource Area protection criteria can be found in Chapter 32 of the CDC. Approval or disapproval of the request by the City Council will be based upon these criteria and these criteria only. At the hearing, it is important that comments relate specifically to the applicable criteria listed.

Site located at tax lots 3400 and 3500 of Clackamas County Assessor's Map 2-1E-35DD and tax lots 2000 and 5300 of Clackamas County Assessor's Map 2-1E-35D.

The complete application in the above noted file is available for inspection at no cost and also on the City web site, or copies can be obtained for a minimal charge per page. At least ten days prior to the hearing, a copy of the staff report will be available for inspection. For further information, please contact Tom Soppe, Associate Planner, at City Hall, 22500 Salamo Road, West Linn, OR 97068, [tsoppe@westlinnoregon.gov](mailto:tsoppe@westlinnoregon.gov), or 503-742-8660.

The hearing will be conducted in accordance with the rules of Section 99.170 of the Community Development Code, adopted December 14, 1987, Ordinance 1129. Anyone wishing 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 from the City Planner; 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. If a person submits evidence in support of the application, any party is entitled to request a continuance of the hearing. If there is no continuance granted at the hearing, any participant in the hearing may request that the record remain open for at least seven days after the hearing. 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 (LUBA) based on that issue.

TERESA ZAK  
Planning Administrative Assistant

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TERESA ZAK  
Planning Administrative Assistant

**MAILED**  
3-10-09 / 106

VIC PATEL  
VKNW, INC.  
12700 SE MCLOUGHLIN BLVD  
MILWAUKIE, OR 97222

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BELLEVUE, WA 98004

BRAD KAUL  
STEVEN P. ELKINS  
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MIKE COYLE  
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PORTLAND, OR 97214

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WEST LINN, OR 97068

DALE GULLIFORD, JR.  
SCHOTT & ASSOCIATES, INC.  
P.O. BOX 589  
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1852 4<sup>TH</sup> AVENUE  
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LAURA HORSEY  
5725 HOOD STREET  
WEST LINN, OR 97068

MIDGE PIERCE  
1785 BRITTON STREET  
WEST LINN, OR 97068

TERI CUMMINGS  
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WEST LINN, OR 97068

KARIE OAKES  
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2188 CLUBHOUSE DR.  
WEST LINN, OR 97068

ALICE RICHMOND  
3939 PARKER ROAD  
WEST LINN, OR 97068

MR. & MRS. MICHAEL BOYD  
2475 WILLAMETTE FALLS DR.  
WEST LINN, OR 97068

~~DON HATCH  
6200 SUMMERLINN WAY  
WEST LINN, OR 97068~~

VICKI HANDY  
No Address Given on Sheet

GREG MORSE  
18335 NIXON AVE  
WEST LINN, OR 97068

DON HATCH  
6260 SUMMERLINN WAY  
WEST LINN, OR 97068

MARGARET MATTHIES  
1531 11<sup>TH</sup> STREET  
WEST LINN, OR 97068

CATHY AMAN  
1964 HALL STREET  
WEST LINN, OR 97068

ERIC & RITA CEDERQUIST  
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WEST LINN, OR 97068

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WEST LINN, OR 97068

VICKI HANDY  
*No Address Given*

*18 total*

**MAILED**  
*1-27-09 /cb*

*corrected*

## Kerr, Chris

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**From:** Kerr, Chris  
**Sent:** Monday, March 09, 2009 4:36 PM  
**To:** 'vipul patel'  
**Cc:** Jordan, Chris; Bill Monahan  
**Subject:** RE: Vick patel

Vic- I will forward this to the City Council asap.

Your 120 day clock for review will be extended to April 12.

I'll call you tomorrow with an update.

Thanks - Call me with any questions.

Chris Kerr  
723-2538

-----Original Message-----

**From:** vipul patel [mailto:~~vipul@hotmai.com~~]  
**Sent:** Monday, March 09, 2009 4:27 PM  
**To:** Kerr, Chris  
**Subject:** Re: Vick patel

We would like to extend are 120 period by adding a additional 30 day witch would post delay the city council meeting on march 9th.

In these 30 days we are getting legal advice from are attorneys on how to pursue are application with the city.

-----Original Message-----

**From:** Chrise Kerr  
**To:** ~~vipul@hotmai.com~~  
**Sent:** 9 Mar 2009 3:46 PM  
**Subject:** RE: Vick patel

Message truncated due to size.

Sent via BlackBerry by AT&T

**Kerr, Chris**

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**From:** vipul patel [vip16@hotmail.com]  
**Sent:** Monday, March 09, 2009 4:27 PM  
**To:** Kerr, Chris  
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