

STAFF REPORT

CITY COUNCIL PUBLIC HEARING

DATE: MAY 11, 2009

FILE NO.: CUP-09-01

**REQUEST: CONDITIONAL USE PERMIT FOR A 70-UNIT
HOTEL AT 2400-2450 WILLAMETTE FALLS
DRIVE**

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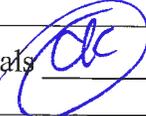
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**FOR ADDITIONAL ANALYSIS AND INFORMATION
PLEASE SEE STAFF REPORT FOR AP-09-02**

**City of West Linn
PLANNING & BUILDING DEPT.
STAFF REPORT**

TO: West Linn City Council (for May 11, 2009 meeting)
FROM: West Linn Planning Staff (Chris Kerr, Acting Planning Director) 
DATE: Report completed April 27, 2009
FILE NO: CUP-09-01
SUBJECT: 70-unit hotel at 2400-2450 Willamette Falls Drive, requiring Conditional Use Permit.

This staff report covers the Conditional Use Permit application for the proposed Holiday Inn Express. The Planning Commission approved the associated related applications DR-08-01/VAR-08-01/WAP-08-01; the Planning Commission decision was called up for review by the City Council as application AP-09-02. The Council will hold a consolidated hearing on both CUP-09-01 and AP-09-02.

Planning Director's Initials 

SPECIFIC DATA

**OWNER/
APPLICANT:** Vic Patel, VKNW, Inc., 12700 SE McLoughlin Blvd., Milwaukie, OR 97222

CONSULTANTS: Steven P. Elkins/Brad Kaul, Steven P. Elkins Architects, Inc. P.S., 11000 NE 33rd Place, Ste. 101, Bellevue, WA 98004

LOCATION: 2400-2450 Willamette Falls Drive

SITE SIZE: 1.58 acres

**LEGAL
DESCRIPTION:** Clackamas County Assessor's Map 2-1E-35DD, tax lots 3400 and 3500, and Clackamas County Assessor's Map 2-1E-35D, tax lots 2000 and 5300

ZONING: General Commercial

COMP PLAN

DESIGNATION: Commercial

APPROVAL

CRITERIA: CDC Chapter 60, Conditional Uses

120-DAY

PERIOD: The 120-day period was extended by the applicant until May 22, 2009.

PUBLIC NOTICE: Public notice was mailed to the Willamette Neighborhood Association and to affected property owners on April 17, 2009. The property was posted with a sign on April 22, 2009. Notice was published in the West Linn Tidings on April 30, 2009. Therefore, notice requirements have been satisfied. The application has also been posted on the City's website.

EXECUTIVE SUMMARY:

The applicant proposes a 70-unit, 4-story, 43,388 square foot hotel at a currently undeveloped site (except for a driveway) at 2400-2450 Willamette Falls Drive. The site is approximately 1.58 acres in size. The site is on the north side of the street, stretching from the intersection of 6th Street and Willamette Falls Drive to just west of the intersection of 7th Street and Willamette Falls Drive. Both 6th and 7th head only south, not north, from Willamette Falls Drive, so the site is not on a corner lot. The site is zoned General Commercial (GC), and is surrounded by other GC sites on the north side of Willamette Falls Drive, stretching west to 10th Street and east to 5th Street. The site backs to I-205, across which are R-10 zoned residential areas further up a steep hill. Across Willamette Falls Drive lie R-10 zoned residential areas. This section of Willamette Falls Drive consists of both the main arterial of Willamette Falls Drive and a frontage road that provides access to houses on the south side of the street. The right of way (ROW) is approximately 120 feet wide. The main arterial of Willamette Falls Drive is approximately 40 feet wide in front of the site.

The site is quite flat, but there is a steep slope up to I-205 behind the site in the Oregon Department of Transportation (ODOT) right-of-way (ROW). Bernert Creek traverses the western and southern areas of the site, and wetlands along the creek corridor also comprise a significant area of the southern and western sections of the site. Bernert Creek is a significant riparian corridor, so the setback is 100 feet from the stream edge, 50 feet from the wetlands, or 50 feet from the top of bank, whichever is greater at any given point. Therefore the entire site except a relatively thin section along the north central and northeast areas of the site lies within the water resource areas and their transition area. In January 2008 the applicant applied for a Class II Design Review, Water Resources Area permit, and a Class II Variance to exceed the amount of square footage allowed for development in the water resource transition area per the hardship provisions of CDC 32.090. DR-08-01/VAR-08-01/WAP-08-01 was approved by the Planning Commission on January 21, 2009, and was subsequently called up by the City Council as file AP-09-02. After the call-up, staff determined that the transient lodging use requires a Conditional Use Permit in the General Commercial (GC) zone. Although the Conditional Use Permit application was not heard by the Planning Commission, the City Council determined at their March 30 meeting that they

have the authority to consolidate review under the provisions of CDC 99.070 Consolidation of Proceedings. The City Council will be the initial hearing body for the CUP application.

The May 11 City Council hearing will be a consolidated de novo public hearing on both CUP-09-01 and AP-09-02, but the Council will be voting on each application separately. Because the CDC requires a CUP for the proposed use, the Council will be voting on CUP-09-01 first, and will then vote on the call-up application AP-09-02 under review. Therefore, regardless of staff's recommendation on the CUP application, if the City Council does not grant approval of the requested CUP on May 11th, staff will recommend after this vote that the AP-09-02 review lead to a denial since the hotel application cannot be approved without a required CUP.

PUBLIC COMMENTS

Please see attachment PC-4, which contains associated correspondence received since March 27 regarding this application and the associated AP-09-02.

RECOMMENDATION

Based upon staff findings and findings contained in the applicant's submittal in the City record, staff finds and recommends that there are sufficient grounds to approve this Conditional Use Permit application. Staff finds that the same conditions of approval recommended for AP-09-02 are applicable to this Conditional Use Permit application as well. The following are all of the conditions that are recommended for the hotel submittal. The only new condition that is proposed to be added to the Planning Commission's final decision is Condition of Approval 12; this condition is proposed to clarify the eventual implementation of the mitigation plan required by Chapter 32.

1. The applicant shall plant only native plants in the stormwater treatment facility proposed on site and in the raingarden between the sidewalk and street (see Condition 2).
2. The applicant shall install an 8-foot wide sidewalk along Willamette Falls Drive, with a minimum 6-foot wide raingarden swale strip between the sidewalk and the street. The sidewalk shall be connected to the existing sidewalk to the east. Appropriate street trees and street lighting shall be planted in the raingarden swale strip. Applicant shall provide half-street improvements to the satisfaction of the Engineering Department. The infield implementation of the actual half-street construction shall be determined by the City Engineer.
3. A 6 foot wide sidewalk shall be installed connecting the building to Willamette Falls Drive.
4. The existing drainageway culvert under the existing driveway shall be replaced to the satisfaction of the Sewer and Storm Division of the Public Works Department.
5. The water line shall be installed to allow for eventual looping west to 8th Court. This and other aspects of connecting the site to the water system shall be done to the satisfaction of the Water Division of the Public Works Department.

6. The gravel parking spaces at the southwest corner of the site shall no longer be used for parking, as these areas will be occupied partly by vegetative buffer restoration area and partially by right of way improvements. Up to 9 spaces at the west end of the proposed parking lot may be shared with the law office currently using the gravel parking area to be abandoned. Any parking sharing agreed to in the future by the applicant must conform to the provisions of the CDC, including Chapter 46.
7. All pervious pavement in the parking lot shall be constructed of hard-surfaced materials, not gravel.
8. All areas of the site not proposed for development that are within the drainageway, wetlands, and their 100-foot transition areas shall be placed in a conservation easement protecting them from further development.
9. Alternate methods of construction mitigating the limited fire access shall be approved by the Building Official and the TVFR Fire Marshal at the time of building permit issuance. The building permit shall not be issued unless all alternative methods deemed necessary by the Building Official and the Fire Marshal are proposed by the applicant in the building permit submittal.
10. The section of the driveway between Willamette Falls Driveway and the fork in the driveway shall be 24 feet wide. The driveway approach shall be designed and constructed per the current City of West Linn Public Works standards.
11. The applicant shall provide the Engineering Department a drainage plan showing that runoff from the sidewalk on Willamette Falls Drive will sufficiently drain to the raingarden in the planter strip.
12. **The mitigation plan implemented at the building permit stage shall be based on the square footage of disturbed water resource area and disturbed water resource transition area in the final approved site plan.**

SUPPLEMENTAL FINDINGS

CUP-09-01

CONDITIONAL USE AND GENERAL COMMERCIAL FINDINGS

Staff recommends adoption of the findings for approval contained within the applicant's submittal, with the following exceptions and additions:

CONDITIONAL USE

60.070 APPROVAL STANDARDS AND CONDITIONS

- A. *The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, except for a manufactured home subdivision in which case the approval standards and conditions shall be those specified in Section 36.030, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:*
1. *The site size and dimensions provide:*
 - a. *Adequate area for the needs of the proposed use; and,*
 - b. *Adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses. (ORD. 1291)*

FINDING NO. 1:

The site has adequate area for the hotel building and its required parking, while still allowing a visual buffer of vegetated space between the building/parking and the street, and between the parking lot and the building to the west. These spaces are where the water resource areas are located. The significant tree on the east end of the site is being preserved and will serve as a buffer between this site and the office building site to the east. I-205 and Willamette Falls Drive traffic will provide white noise that will drown out noise created by the hotel use. The criteria are met.

2. *The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.*

FINDING NO. 2:

The site is on a major commercial arterial street and is highly visible to I-205 in an area of I-205 with an interchange, making it very appropriate for a hotel use. Topography is generally flat except for the banks of the water resource area, where development will not occur. The shape and size are appropriate for the use. There will not be development within the actual creek and wetlands except for the required sidewalk along the street, and the applicant will mitigate in Fields Bridge Park for this area and for all areas of the transition area to be developed. Bernert Creek has previously been altered and rerouted on the site, and is currently overgrown with invasive species which will be replaced with native species as part of the revegetation required by Chapter 32. The

culvert will be replaced with a bottomless culvert, improving the environment of this section of the creek. The criterion is met.

3. *The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.*

FINDING NO. 3:

At this time there is no hotel or motel in the entire city of West Linn. A new hotel is consistent with the overall needs of the community. The hotel can serve existing residents, extended families, and visitors to the city. The proposal also provides improvements to the creek and surrounding area (see Finding No. 2 regarding revegetation and the bottomless culvert) and will provide sidewalks along Willamette Falls Drive where there are none currently.

4. *Adequate public facilities will be available to provide service to the property at the time of occupancy. (ORD. 1544)*

FINDING NO. 4:

Adequate public facilities will be available to provide service to the property at the time of occupancy. Per Condition of Approval 4, the storm water culvert will be replaced with a bottomless culvert to the satisfaction of the public works department. Transportation facilities are in place including a transit stop within 300 feet, and sidewalks will be provided. Adequate sanitary sewer capacity is in place. Storm water treatment will be provided along the public street/sidewalk area and within the site and will drain to Bernert Creek as required. The proposed conditions of approval ensure water and storm water provisions will be sufficient. The criterion is met.

5. *The applicable requirements of the zone are met, except as modified by this chapter.*

FINDING NO. 5:

See findings 11 through 22 below. The criterion is met.

6. *The supplementary requirements set forth in Chapters 52 to 55, if applicable, are met.*

FINDING NO. 6:

Chapter 55 is addressed in findings 23-49. Chapter 54 is addressed in Finding No. 28. No signs are proposed at this time, and sign permits will need to be applied for under the provisions of Chapter 52 when these are proposed. The review of the sign permit will ensure compliance with Chapter 52. Chapter 53 Sidewalk Uses does not apply. The criterion is met.

7. *The use will comply with the applicable policies of the Comprehensive Plan.*

FINDING NO. 7:

Goal 2 Land Use Planning, Commercial/Mixed Use Development Policy 4:

Design and locate existing or proposed commercial uses in a manner that:

- a. Protects remaining natural spaces, significant stands of trees, wildlife corridors, streams/riparian zones, and historic resources.
- b. Encourages the use of alternative transportation.

The one significant tree on site, near the northeast corner of the site, will be preserved. Except for the required public sidewalk along the street, there will be no new development in the stream or wetland, only in its transition area. There are no historic resources on site. The site is at a transit stop in a commercial zone adjacent to office buildings.

Goal 2 , Commercial/Mixed Use Development Policy 6:

Commercial development shall be planned at a scale that relates to its location in the district and the trade area to be served.

The scale of the hotel relates to its location as a buffer between residential areas and the interstate and relates to the highway and visitor traffic to be served.

Goal 5, Scenic Environment Policy 1:

Promote site design standards for development that enhance the urban landscape and prevent or minimize obscuring views enjoyed by the community.

The design of the hotel will enhance the urban landscape. The hotel is located adjacent to, but below, I-205. No significant views will be obscured.

Goal 5, Natural Environment policies 4-7, 10-11, 15, and 18 respectively:

Require that areas containing tree clusters, significant trees, and native vegetation along natural drainage courses and waterways in areas of new development be maintained to the maximum extent possible to preserve habitats, prevent erosion, and maintain water quality.

Preserve important wildlife habitat by requiring clustered development or less dense zoning in areas with wetlands and riparian areas, natural drainageways, and significant trees and tree clusters.

Restore, enhance, and expand the existing habitats found along rivers and streams, including planting native trees to reduce water temperatures.

Enhance and expand vegetation, particularly native species, on hillsides and in natural areas to prevent erosion and improve wildlife habitat.

Manage open space, habitat, and ecological/scientific areas as identified in the West Linn Goal 5 inventory and protection plan in order to preserve their unique qualities.

Control activities and uses within the areas identified above to maintain ecological values, while providing for compatible recreational and educational activities.

Preserve natural resource areas through public acquisition and other methods such as conservation easements.

Encourage private landowners to maintain and restore natural vegetation and other features, as long as such activities do not violate city nuisance laws.

The site plan was redesigned to preserve the only significant tree on site. The hotel and parking areas will not be developed in the water resource areas, only their transition areas. The transition areas that are not developed will be restored to native species, and mitigation will be done in Fields Bridge Park to mitigate for the developed areas within the transition area. A conservation easement will be placed over the entire transition area that is not developed. The proposal aims to protect the onsite and offsite water resource area. This will be done by controlling and treating runoff through new storm water controls. Currently the site has large gravel areas and unvegetated areas that contribute to higher stream temperatures and uncontrolled sedimentation being released into the stream. The new development will provide lower stream temperatures by providing additional shade to the stream, filtering water through rain gardens, and keeping uncontrolled surface runoff from entering the stream without treatment. The water resource area should function as a natural filter. Unfortunately, due to previous road development and reconfigurations, the site has been left in an unhealthy state and is covered with gravel, asphalt, and invasive species that do not allow the water resource area to properly function. The improvements in the proposal will increase the function of the water resource area through revegetation, which will allow the water resource area to better filter water and decrease sedimentation and erosion.

Goal 9, Economic Development, Policy 9:

Maintain public facilities (specifically right-of-way improvements) in established commercial and industrial districts to promote economic activity.

Right-of-way improvements that are part of this proposal in an existing commercial area include street improvements, a sidewalk, and storm water treatment. Condition of Approval 5 requires the applicant to provide facilities that allow for eventual water line looping to benefit the 8th Court commercial area to the west.

Goal 9, Economic Development, Policy 11:

Encourage the economic vitality of the four existing commercial areas.

A hotel is expected to serve as a catalyst to the economic vitality of the commercial area of the Willamette neighborhood. It will provide customers for restaurants, gas stations, food stores, coffee houses, and other retail outlets and services in this existing commercial area.

Goal 11, Section 3, Storm Drainage policies 3-5 and 7-8:

Protect downstream areas from increased storm water runoff by managing runoff from upstream development and impacts on adjacent natural drainageways and their associated vegetation.

Seek alternatives to the use of impervious surfaces within areas of dense standing trees and shrubs next to natural drainage courses and in other natural areas.

Design road crossings to minimize or eliminate impacts on natural drainage courses.

Require that riparian vegetation along the streams and drainageways be maintained and preserved or re-established where necessary. In order to maintain or operate public facilities, selective cutting, trimming, and thinning will be allowed along waterways.

Encourage use of permeable surfaces in developments.

The applicant will replace the culvert to Public Works' satisfaction per Condition of Approval 4. The parking lot will have a pervious surface. Vegetation in all areas of the transition areas that will remain undeveloped will be restored with native vegetation and will be protected with a conservation easement. The mitigation required will restore areas in Fields Bridge Park. In order to best protect the drainageway and wetlands, the applicant proposes using only the existing access to the site and adding no new driveway crossings.

Goal 13, Energy Conservation, Policies 1 and 4:

Reduce the need to travel outside the city to obtain goods and services when possible.

Encourage mass transit use.

Currently visitors to the city and friends and family of city residents have to travel outside the city to Oregon City, Lake Oswego, Clackamas, Tualatin, and elsewhere to patronize a hotel or motel. This situation increases vehicle miles traveled, wastes resources and time, and creates an unnecessary inconvenience for these visitors. This proposal will eliminate the need for visitors to the city to travel outside the city to patronize a hotel. The site is located on a mass transit line.

As illustrated above, staff finds that the approval of this hotel proposal will further numerous goals and policies of the Comprehensive Plan.

B. An approved conditional use or enlargement or alteration of an existing conditional use shall be subject to the development review provisions set forth in Chapter 55.

FINDING NO. 8:

This is not applicable to this application.

C. The Planning Commission may impose conditions on its approval of a conditional use which it finds are necessary to assure the use is compatible with other uses in the vicinity. These conditions may include, but are not limited to, the following:

1. *Limiting the hours, days, place, and manner of operation.*
2. *Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor, and dust.*
3. *Requiring additional setback areas, lot area, or lot depth, or width.*
4. *Limiting the building height, size or lot coverage, or location on the site.*
5. *Designating the size, number, location and design of vehicle access points.*
6. *Requiring street right-of-way to be dedicated and the street to be improved including all steps necessary to address future street improvements identified in the adopted Transportation System Plan. (ORD. 1544)*
7. *Requiring participation in making the intersection improvement or improvements identified in the Transportation System Plan when a traffic analysis (compiled as an element of a condition use application for the property) indicates the application should contribute toward. (ORD. 1544)*
8. *Requiring landscaping, screening, drainage, and surfacing of parking and loading areas.*
9. *Limiting the number, size, location, height, and lighting of signs.*
10. *Limiting or setting standards for the location and intensity of outdoor lighting.*
11. *Requiring berming, screening, or landscaping and the establishment of standards for their installation and maintenance.*
12. *Requiring and designating the size, height, location, and materials for fences.*
13. *Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.*

FINDING NO. 9:

Staff does not believe any additional conditions of approval, beyond those proposed and listed in the recommendation section above, are necessary to “*assure the use is compatible with other uses in the vicinity.*” (emphasis by staff)

- D. *Aggregate extraction uses shall also be subject to the provisions of ORS 541.605.*

FINDING NO. 10:

This is not applicable to this application.

GENERAL COMMERCIAL

19.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

- A. *Except as may be otherwise provided by the provisions of this Code, the following are the requirements for uses within this zone:*
1. *The minimum front lot line length or the minimum lot width at the front lot line shall be 35 feet.*
 2. *The average minimum lot width shall be 50 feet.*
 3. *The average minimum lot depth shall not be less than 90 feet.*

FINDING NO. 11:

The four taxlots are being developed as one site. The site is more than 50 feet wide and more than 90 feet deep. The criteria are met.

4. *Where the use abuts a residential district, the setback distance of the residential zone shall apply. For example, when the rear of a residential property abuts the side of a commercial property, the residential 20-foot setback shall apply to the commercial property. When the side of a residential property abuts the rear of a commercial property, the residential 5 to 7-1/2 foot setback shall apply to the commercial property. In addition, a buffer of up to 50 feet may be required.*

FINDING NO. 12:

The use is across the street from a residential district (R-10) with a 20-foot minimum front setback, and the front of the proposed building is more than 20 feet from the right of way. No other residential districts abut the site. The criterion is met.

5. *The maximum lot coverage shall be 50 percent.*

FINDING NO. 13:

Lot coverage is 45.9%. The criterion is met.

6. *The maximum building height shall be two and one-half stories or 35 feet for any structure located within 50 feet of a low or medium density residential zone, and three and one-half stories or 45 feet for any structure located 50 feet or more from a low or medium density residential zone.*

FINDING NO. 14:

The building is more than 50 feet from a low or medium density residential zone (the closest being the R-10 across the street). The building height is 45 feet at its highest point excluding the stair tower. At the stair tower the building is 56.5 feet tall. This is acceptable however because CDC 40.010 says, "Projections such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flag poles, and other similar objects not used for human occupancy, are not subject to the building height limitations of this Code." The criterion is met.

7. *For lot lines that abut an arterial, there shall be no minimum yard dimensions or minimum building setback area, and the maximum building setback shall be 20 feet. The front setback area between the street and the building line shall consist of landscaping or a combination of non-vehicular hardscape areas (covered with impervious surfaces) and landscaped areas, with at least 25 percent of the front setback area consisting of landscaped areas. If there are not street trees within the public right-of-way, the front setback area shall include such trees per the requirements of the City Arborist. (ORD. 1425)*

FINDING NO. 15:

The proposed setback for the hotel is approximately 67 feet, because of Bernert Creek and the wetlands in the front of the property along the street. The building is more than 20 feet from the abutting arterial street, Willamette Falls Drive. As stated in 19.070(A): "Except as may be otherwise provided by the provisions of this Code, the following are the requirements for uses within this zone." (emphasis by staff)

The hotel is proposed with the additional setback from the street in order to disturb the minimum amount of sensitive areas possible on the site. Chapter 32 requires the hotel to be built outside the drainageway and wetlands. Even with the hardship provisions and variance requested in the application reviewed in AP-09-02, the goal is to keep the hotel as far as practically possible from the drainageway and wetlands. If the front of the hotel was 20 feet from the street, parts of the hotel would be inside the current course of the creek and wetlands, and much of the rest of it would be on the creek bank. 32.050(B) says "Proposed developments shall be so designed as to maintain the existing natural drainageways...", and 32.050(C) says "Development shall be conducted in a manner that will minimize adverse impact on water resource areas." Because of the creek/wetlands across the entire front of this site, there is no way any development on this site could comply with 19.070(A)(7).

Also, 55.200(B)(7)(c) says "Commercial, office, and multi-family projects shall be built as close to the adjacent main right-of-way as practical... Reduced frontages by buildings on public right-of-ways... may be allowed due to extreme topographic (e.g., slope creek, wetlands, etc.) conditions or compelling functional limitations, not just inconveniences or design challenges." The slope of the Bernert Creek bank and the creek and wetlands themselves are extreme topographic conditions that allow for the lack of building frontage directly on (or within 20 feet of) the street.

Section 19.070(A)(7) clearly defers to other applicable sections of the CDC. In this case, the more restrictive requirements of CDC Chapter 32 are applicable to the development. The proposal meets all of the criteria of this section.

- B. *The requirements of Section 19.070(A) 1 through 5 (above) may be modified for developments under the planned unit development provisions of Chapter 24.*

FINDING NO. 16:

A PUD is not requested.

19.080 DIMENSIONAL REQUIREMENTS, CONDITIONAL USES

Except as may otherwise be established by this Code, the appropriate lot size for a conditional use shall be determined by the approval authority at the time of consideration of the application based upon the criteria set forth in Section 60.070(1) and (2).

FINDING NO. 17:

The criterion is met; see findings 1 and 2 above.

19.090 OTHER APPLICABLE DEVELOPMENT STANDARDS

- A. *The following standards apply to all development including permitted uses:*
1. *Chapter 34, Accessory Structures.*
 2. *Chapter 36, Temporary Uses.*
 3. *Chapter 38, Additional Yard Area Required, Exceptions to Yard Requirements, Storage in Yards and Projections into Yards.*

FINDING NO. 18:

No accessory structures or temporary uses are requested. Chapter 38 does not apply to this application.

4. *Chapter 40, Building Height Limitations and Exceptions.*
5. *Chapter 42, Clear Vision Areas.*
6. *Chapter 44, Fences; Screening of Outdoor Storage.*

FINDING NO. 19:

No fencing is proposed. The proposal complies with clear vision area requirements. See Finding No. 14 regarding Chapter 40.

7. *Chapter 46, Off-street Parking and Loading.*

FINDING NO. 20:

There are 63 spaces provided in the proposed parking lot. There are 70 units in the proposed hotel. 46.090(C)(7) requires one space per unit for hotels and motels. However Chapter 46 also has a provision (referring to CDC 55.100[H][5]) that required parking can be reduced by 10% if the site is adjacent to a transit stop, as this site is. The applicant has requested this 10% reduction in the minimum parking requirement. Therefore, only 63 spaces are required instead of the base requirement of 70, due to the presence of transit. All parking spaces are provided within 200 feet

of the building. Driveways are over 15 feet wide, meeting the requirement of 46.120. Three disabled parking spaces are required for a development with 51-75 total required parking spaces, and three spaces have been provided. As a hotel with more than 10,000 square feet and less than 100,000 square feet, one loading berth is required per 46.130. One berth of sufficient size has been provided. The final site plan includes parking spaces that meet space sizing requirements in Chapter 46. The applicant proposes pervious pavement; the code requires parking lots and driveways to be hard surfaced, so Condition of Approval 7 in the AP-09-02 staff report requires that they use a pervious pavement that is hard surfaced (as opposed to gravel or something similar). The criterion is met.

8. *Chapter 48, Access.*

FINDING NO. 21:

The section of the driveway that provides the only access to the street (and therefore needs to be two-way) is 23 feet wide, so Condition of Approval 10 in the AP-09-02 staff report requires it to be 24 feet wide to be compliant with 48.040(A)(1). 48.040(A)(1) requires this width for two-way driveways. This widening will reduce, by 0.5 feet each, the parking spaces along this section of the driveway (between the parking lot proper and the street). However, a majority of the spaces on site will remain the full 9 x 18 foot spaces (required for a majority of spaces on site per 46.150[A][1]) and the spaces reduced in size will still meet the minimum size for compact spaces.

The remainder of the travel lanes, which can be one way and have a minimum required width of 15 feet, are proposed to be 23 feet in width. Tualatin Valley Fire and Rescue (TVFR) staff has commented to City staff that they have enough access concerns with the site plan to warrant improvements in the construction of the building. Condition of Approval 9 requires building construction standards be implemented to satisfy TVFR and the building official, ensuring that any alternate construction methods needed to make the building fire safe are employed at building permit issuance. The main driveway can also serve as a service driveway, so service driveway requirements are also met. The criterion is met.

9. *Chapter 52, Signs.*

10. *Chapter 54, Installation and Maintenance of Landscaping.*

B. *The provisions of Chapter 55, Design Review, apply to all uses except detached single-family dwellings.*

FINDING NO. 22:

See Finding No. 6 above.

DESIGN REVIEW FINDINGS REQUIRED BY 60.070(A)(6)

55.100 APPROVAL STANDARDS - CLASS II DESIGN REVIEW

The approval authority shall make findings with respect to the following criteria when approving, approving with conditions, or denying a Class II design review application. (ORD. 1408)

A. *The provisions of the following chapters shall be met:*

1. *Chapter 33, Storm Water Quality and Detention. (OR D. 1463)*

FINDING NO. 23:

The applicant's site plan shows a stormwater treatment facility for all new impervious surfaces on site that will drain to the drainageway, and the street improvements required by Condition of Approval 2 ensure that a raingarden will also be built along the street to treat street and sidewalk runoff, in place of a planter strip. Condition of Approval 1 also requires native plants to be planted in the on-site facility. Because of spatial constraints on site, the on-site stormwater facility will encroach 25 feet into the transition area of the water resource area, but development on site will be mitigated for by the mitigation plan required by Chapter 32. The criteria of Chapter 33 are met.

2. *Chapter 34, Accessory Structures.*
3. *Chapter 38, Additional Yard Area Required.*
4. *Chapter 40, Building Height Limitations and Exceptions.*
5. *Chapter 42, Clear Vision Areas.*
6. *Chapter 44, Fences & Screening Outdoor Storage.*

FINDING NO. 24:

There will be no accessory structures. The building meets height limits, and no additional yard area is required. The proposal meets clear vision requirements as no structures are proposed near the intersection of the existing driveway and Willamette Falls Drive. The trash area will be screened. The criteria are met.

7. *Chapter 46, Off-Street Parking and Loading.*

FINDING NO. 25:

See Finding No. 20 above. Chapter 46 criteria are met.

8. *Chapter 48, Access.*

FINDING NO. 26:

See Finding No. 21 above. Chapter 48 criteria are met.

9. *Chapter 52, Signs.*

FINDING NO. 27:

On wall signs are proposed. For these or any other signs proposed, the applicant will have to get a separate permanent sign permit after the application is approved. The criterion is not applicable at this time.

10. Chapter 54, Landscaping.

FINDING NO. 28:

Staff adopts the applicant's findings regarding meeting the landscaped area square footage required. The landscaped areas in the parking lot are over 5 feet wide, and the trash/recycling facility is screened. The criterion is met.

B. Relationship to the natural and physical environment.

1. *The buildings and other site elements shall be designed and located so that all heritage trees, as defined in the Municipal Code, shall be saved. Diseased heritage trees, as determined by the City Arborist, may be removed at his/her direction.*
2. *All heritage trees, as defined in the Municipal Code, all trees and clusters of trees (cluster is defined as three or more trees with overlapping driplines; however, native oaks need not have an overlapping dripline) that are considered significant by the City Arborist, either individually or in consultation with certified arborists or similarly qualified professionals, based on accepted arboricultural standards including consideration of their size, type, location, health, long term survivability, and/or numbers, shall be protected pursuant to the criteria of subsections 2(a-f) below. In cases where there is a difference of opinion on the significance of a tree or tree cluster, the City Arborist's findings shall prevail. It is important to acknowledge that all trees are not significant and, further, that this code section will not necessarily protect all trees deemed significant.*
 - a. *Non-residential and residential projects on Type I and II lands shall protect all heritage trees and all significant trees and tree clusters by either the dedication of these areas or establishing tree conservation easements. Development of Type I and II lands shall require the careful layout of streets, driveways, building pads, lots, and utilities to avoid heritage trees and significant trees and tree clusters, and other natural resources pursuant to this code. The method for delineating the protected trees or tree clusters ("dripline + 10 feet") is explained in subsection (b) below. Exemptions of subsections (c), (e), and (f) below shall apply.*
 - b. *Non-residential and residential projects on non-Type I and II lands shall set aside up to 20 percent of the area to protect trees and tree clusters that are determined to be significant, plus any heritage trees. Therefore, in the event that the City Arborist determines that a significant tree cluster exists at a development site, then up to 20 percent of the non-Type I and II lands shall be devoted to the*

protection of those trees, either by dedication or easement. The exact percentage is determined by establishing the driplines of the trees or tree clusters that are to be protected. In order to protect the roots which typically extend further, an additional 10-foot measurement beyond the dripline shall be added. The square footage of the area inside this "dripline plus 10 feet" measurement shall be the basis for calculating the percentage (see figure below). The City Arborist will identify which tree(s) are to be protected. Development of non-Type I and II lands shall also require the careful layout of streets, driveways, building pads, lots, and utilities to avoid significant trees, tree clusters, heritage trees, and other natural resources pursuant to this code. Exemptions of subsections (c), (e), and (f) below shall apply. Please note that in the event that more than 20 percent of the non-Type I and II lands comprise significant trees or tree clusters, the developer shall not be required to save the excess trees, but is encouraged to do so.

- c. Where stubouts of streets occur on abutting properties, and the extension of those streets will mean the loss of significant trees, tree clusters, or heritage trees, it is understood that tree loss may be inevitable. In these cases, the objective shall be to minimize tree loss. These provisions shall also apply in those cases where access, per construction code standards, to a parcel is blocked by a row or screen of significant trees or tree clusters.*
- d. For both non-residential and residential development, the layout shall achieve at least 70 percent of maximum density for the developable net area. The developable net area excludes all Type I and II lands and up to 20 percent of the remainder of the site for the purpose of protection of stands or clusters of trees as defined in CDC Section 55.100(B)(2).*
- e. For arterial and collector street projects, including Oregon Department of Transportation street improvements, the roads and graded areas shall avoid tree clusters where possible. Significant trees, tree clusters, and heritage tree loss may occur, however, but shall be minimized.*
- f. If the protection of significant tree(s) or tree clusters is to occur in an area of grading that is necessary for the development of street grades, per City construction codes, which will result in an adjustment in the grade of over or under two feet, which will then threaten the health of the*

tree(s), the applicant will submit evidence to the Planning Director that all reasonable alternative grading plans have been considered and cannot work. The applicant will then submit a mitigation plan to the City Arborist to compensate for the removal of the tree(s) on an "inch by inch" basis (e.g., a 48-inch Douglas Fir could be replaced by 12 trees, each 4-inch). The mix of tree sizes and types shall be approved by the City Arborist.

3. *The topography and natural drainage shall be preserved to the greatest degree possible. (ORD. 1408)*
4. *The structures shall not be located in areas subject to slumping and sliding. The Comprehensive Plan Background Report's Hazard Map, or updated material as available and as deemed acceptable by the Planning Director, shall be the basis for preliminary determination.*
5. *There shall be adequate distance between on site buildings and on site and off site buildings on adjoining properties to provide for adequate light and air circulation and for fire protection.*

FINDING NO. 29:

There are no heritage trees on site. The City Arborist has determined that there are also no significant trees on site, except for the large Oregon White Oak tree which is located near the border of the site and the property to the east. The site plan has been redesigned to preserve this significant tree. There is adequate distance between the proposed building and other buildings off site. The proposed building will be the only building on site. The site is not in an area subject to slumping and sliding. The topography will not change severely, and the site will still drain to the natural drainageway on site. The criteria are met.

6. *Architecture.*
 - a. *The predominant architecture of West Linn identified in the West Linn vision process was contemporary vernacular residential designs emphasizing natural materials: wood with brick and stone detail. Colors are subdued earth tones: greys, brown, off-whites, slate, and greens. Pitched roofs with overhanging eaves, decks, and details like generous multi-light windows with oversized trim are common. Also in evidence are the 1890s Queen Anne style homes of the Willamette neighborhood. Neo-traditional homes of the newer subdivisions feature large front porches with detailed porch supports, dormers, bracketed overhanging eaves, and rear parking for cars. Many of these design elements have already been incorporated in commercial and office architecture.*

- b. *The proposed structure(s) scale shall be compatible with the existing structure(s) on site and on adjoining sites. Contextual design is required. Contextual design means respecting and incorporating prominent architectural styles, building lines, roof forms, rhythm of windows, building scale and massing, materials and colors of surrounding buildings in the proposed structure.*
- c. *While there has been discussion in Chapter 24 about transition, it is appropriate that new buildings should architecturally transition in terms of bulk and mass to work with, or fit, adjacent existing buildings. This transition can be accomplished by selecting designs that "step down" or "step up" from small to big structures and vice versa (see figure below). Transitions may also take the form of carrying building patterns and lines (e.g., parapets, windows, etc.) from the existing building to the new one.*
- d. *Contrasting architecture shall only be permitted when the design is manifestly superior to adjacent architecture in terms of creativity, design, and workmanship, and/or it is adequately separated from other buildings by distance, screening, grade variations, or is part of a development site that is large enough to set its own style of architecture.*
- e. *Human scale is a term that seeks to accommodate the users of the building and the notion that buildings should be designed around the human scale (e.g., his/her size and the average range of their perception). Human scale shall be accommodated in all designs by, for example, multi-light windows that are broken up into numerous panes, intimately scaled entryways, visual breaks (exaggerated eaves, indentations, ledges, parapets, awnings, engaged columns, etc.) in the facades of buildings, both vertically and horizontally.*

The human scale is enhanced by bringing the building and its main entrance up to the edge of the sidewalk. It creates a more dramatic and interesting streetscape and improves the "height and width" ratio referenced in this section.

FINDING NO. 30:

There is currently no structure on site. The proposed architecture and colors are compatible with the older neighborhood of Willamette near the site and are not incompatible with newer commercial buildings in the area. The colors are mainly subdued earth tones. The building is

taller than nearby buildings, but its distance from nearby buildings is enough that this does not pose an incongruous or unattractive look. The building is next to the slope up to I-205 within the ODOT ROW, which will de-emphasize its height. To make use of space with sufficient viability on a constrained site, the applicant has fulfilled his need to come close to the height limit, but still does not exceed the height limit. The architecture as proposed is varied enough on each building side that human scale is able to be appreciated. The criteria are met.

- f. *The main front elevation of commercial and office buildings shall provide at least 60 percent windows or transparency at the pedestrian level to create more interesting streetscape and window shopping opportunities. One side elevation shall provide at least 30 percent transparency. Any additional side or rear elevation, which is visible from a collector road or greater classification, shall also have at least 30 percent transparency. Transparency on other elevations is optional. The transparency is measured in lineal fashion. For example, a 100-foot long building elevation shall have at least 60 feet (60% of 100) in length of windows. The window height shall be, at minimum, three feet tall. The exception to transparency would be cases where demonstrated functional constraints or topography restrict that elevation from being used. When this exemption is applied to the main front elevation, the square footage of transparency that would ordinarily be required by the above formula shall be installed on the remaining elevations at pedestrian level in addition to any transparency required by a side elevation, and vice versa. The rear of the building is not required to include transparency. The transparency must be flush with the building elevation. (ORD. 1463)*

FINDING NO. 31:

The original plan has been modified to have over 60% transparency with 3 foot tall windows, complying with this standard. The front will have 75% transparency, and the sides 35% transparency, exceeding the 30% that is required for at least one side. The criterion is met.

- g. *Variations in depth and roof line are encouraged for all elevations.*

To vary the otherwise blank wall of most rear elevations, continuous flat elevations of over 100 feet in length should be avoided by indents or variations in the wall. The use of

decorative brick, masonry, or stone insets and/or designs is encouraged. Another way to vary or soften this elevation is through terrain variations such as an undulating grass area with trees to provide vertical relief.

- h. Consideration of the micro-climate (e.g., sensitivity to wind, sun angles, shade, etc.) shall be made for building users, pedestrians, and transit users, including features like awnings.*

FINDING NO. 32:

Staff adopts the applicant's analysis and finds the criteria are met.

- i. The Vision Statement identified a strong commitment to developing safe and attractive pedestrian environments with broad sidewalks, canopied with trees and awnings.*

FINDING NO. 33:

Staff adopts the applicant's findings. An 8-foot sidewalk is required by Condition of Approval 2, with a 6 foot raingarden strip with trees separating the sidewalk from the street.

- j. Sidewalk cafes, kiosks, vendors, and street furniture are encouraged. However, at least a four foot wide pedestrian accessway must be maintained per Chapter 53, Sidewalk Use.*

FINDING NO. 34:

Unlike the nearby historic Willamette downtown area, this is a commercial site that is separated from the street by a wetland. This is not a downtown atmosphere. While as much connection as possible is being forged between the building and street, the features listed in (j) are arguably not appropriate for the site. The wetland and drainageway constraints on site prevent the building from being built along the street itself.

- 7. Transportation Planning Rule (TPR) compliance. The automobile shall be shifted from a dominant role, relative to other modes of transportation, by the following means:*
 - a. Commercial and office development shall be oriented to the street. At least one public entrance shall be located facing an arterial street; or, if the project does not front on an arterial, facing a collector street; or, if the project does not front on a collector, the local street with highest traffic levels. Parking lots shall placed behind or to the side of commercial and office development. When a large and/or multi-building development is occurring on a large undeveloped tract (3+ acres), it is acceptable to focus*

internally; however, at least 20 percent of the main adjacent right-of-way shall have buildings contiguous to it unless waived per CDC Section 55.100(B)(7)(c). These buildings shall be oriented to the adjacent street and include pedestrian-oriented transparencies on those elevations. For individual buildings on smaller individual lots, at least 30 lineal feet or 50 percent of the building must be adjacent to the right-of-way unless waived per CDC Section 55.100(B)(7)(c). The elevations oriented to the right-of-way must incorporate pedestrian-oriented transparency. (ORD. 1425)

- b. *Multi-family projects shall be required to keep the parking at the side or rear of the buildings or behind the building line of the structure as it would appear from the right-of-way inside the multi-family project. For any garage which is located behind the building line of the structure, but still facing the front of the structure, architectural features such as patios, patio walls, trellis, porch roofs, overhangs, pergolas, etc. shall be used to downplay the visual impact of the garage, and to emphasize the rest of the house and front entry. (ORD. 1442)*

The parking may be positioned inside small courtyard areas around which the units are built. These courtyard spaces encourage socialization, defensible space, and can provide a central location for landscaping, particularly trees, which can provide an effective canopy and softening effect on the courtyard in only a few years. Vehicular access and driveways through these courtyard areas is permitted. (ORD. 1408)

- c. *Commercial, office, and multi-family projects shall be built as close to the adjacent main right-of-way as practical to facilitate safe pedestrian and transit access. Reduced frontages by buildings on public right-of-ways (a, b, c, above) may be allowed due to extreme topographic (e.g., slope, creek, wetlands, etc.) conditions or compelling functional limitations, not just inconveniences or design challenges. (ORD. 1408)*

FINDING NO. 35:

This project, separated from the street by a wetland, is exempt from (a) via (c). Subsection (b) only applies to multi-family projects. The criteria are met.

- d. *Accessways, parking lots, and internal driveways shall*

accommodate pedestrian circulation and access by specially textured, colored, or clearly defined foot paths at least six feet wide. Paths shall be eight feet wide when abutting parking areas or travel lanes. Paths shall be separated from parking or travel lanes by either landscaping, planters, curbs, bollards, or raised surfaces. Sidewalks in front of storefronts on the arterials and main store entrances on the arterials identified in CDC Section 85.200(A)(3)(e) shall be 12 feet wide to accommodate pedestrians, sidewalk sales, sidewalk cafes, etc. Sidewalks in front of storefronts and main store entrances in commercial/OBC zone development on local streets and collectors shall be eight feet wide.

- e. Paths shall provide direct routes that pedestrians will use between buildings, adjacent rights-of-way, and adjacent commercial developments. They shall be clearly identified. They shall be laid out to attract use and to discourage people from cutting through parking lots and impacting environmentally sensitive areas. (ORD. 1425)*

FINDING NO. 36:

Condition of Approval 3 requires a 6 foot pedestrian path to connect the building to Willamette Falls Drive. This is provided on the final site plan. Condition of Approval 2 requires an 8-foot wide sidewalk on the arterial Willamette Falls Drive. Criterion (d) is met upon the application of these conditions of approval. Criterion (e) is met as well by Condition of Approval 2, regarding connection to the ROW. Spatial limitations, building layouts, and wetland and drainageway locations prevent the practical possibility of trails connecting this to nearby commercial properties and undeveloped GC-zoned properties. Criterion (e) is met.

- f. At least one entrance to the building shall be on the main street, or as close as possible to the main street. The entrance shall be designed to identify itself as a main point of ingress/egress.*

FINDING NO. 37:

The location of the wetlands and drainageway prevent the entrance from being closer to the street than it is proposed to be. The port cochere is designed to be distinctive as the main point of access to the building.

- g. Where transit service exists, or is expected to exist, there shall be a main entrance within a safe and reasonable distance of the transit stop. A pathway shall be provided to facilitate a direct connection. (ORD. 1425)*

FINDING NO. 38:

There is transit service and the sidewalks required by conditions of approval 2 and 3 provide a safe paved path to the closest stops; these will be as direct as possible considering the location of the drainageway and wetlands, and the applicant's environmentally appropriate plan of using only the existing point of access across the wetlands. The criterion is met.

- h. Projects shall bring at least part of the project adjacent to, or near the main street right-of-way in order to enhance the height-to-width ratio along that particular street. (The height-to-width ratio is an architectural term that emphasizes height or vertical dimension of buildings adjacent to streets. The higher and closer the building is, and the narrower the width of the street, the more attractive and intimate the streetscape becomes.) For every one foot in street width, the adjacent building ideally should be one to two feet higher. This ratio is considered ideal in framing and defining the streetscape. (ORD. 1425)*

FINDING NO. 39:

The building cannot be any closer to the street than it is proposed because of the location of the drainageway and wetlands. The criterion is met as much as possible.

- i. These architectural standards shall apply to public facilities such as reservoirs, water towers, treatment plants, fire stations, pump stations, power transmission facilities, etc. It is recognized that many of these facilities, due to their functional requirements, cannot readily be configured to meet these architectural standards. However, attempts shall be made to make the design sympathetic to surrounding properties by landscaping, setbacks, buffers, and all reasonable architectural means. (ORD. 1408)*
- j. Parking spaces at trailheads shall be located so as to preserve the view of, and access to, the trailhead entrance from the roadway. The entrance apron to the trailhead shall be marked: "No Parking," and include design features to foster trail recognition.*

FINDING NO. 40:

There are no trailheads or public facilities. The criteria are not applicable.

C. Compatibility between adjoining uses, buffering, and screening.

- 1. In addition to the compatibility requirements contained in Chapter 24, buffering shall be provided between different types of land uses; for example, buffering between single-family homes and apartment blocks. However, no buffering is required between single-family*

homes and duplexes or single-family attached units. The following factors shall be considered in determining the adequacy of the type and extent of the buffer:

- a. The purpose of the buffer, for example to decrease noise levels, absorb air pollution, filter dust, or to provide a visual barrier.*
 - b. The size of the buffer required to achieve the purpose in terms of width and height.*
 - c. The direction(s) from which buffering is needed.*
 - d. The required density of the buffering.*
 - e. Whether the viewer is stationary or mobile.*
- 2. On-site screening from view from adjoining properties of such things as service areas, storage areas, and parking lots shall be provided and the following factors will be considered in determining the adequacy of the type and extent of the screening:*
- a. What needs to be screened?*
 - b. The direction from which it is needed.*
 - c. How dense the screen needs to be.*
 - d. Whether the viewer is stationary or mobile.*
 - e. Whether the screening needs to be year around.*
- 3. Roof top air cooling and heating systems and other mechanical equipment shall be screened from view from adjoining properties.*

FINDING NO. 41:

Staff adopts the applicant's findings regarding these criteria and finds the criteria are met.

D. Privacy and noise.

- 1. Structures which include residential dwelling units shall provide private outdoor areas for each ground floor unit which is screened from view by adjoining units.*
- 2. Residential dwelling units shall be placed on the site in areas having minimal noise exposure to the extent possible. Natural appearing*

sound barriers shall be used to lessen noise impacts where noise levels exceed the design standards of Table 1 below.

3. *Structures or on site activity areas which generate noise, lights, or glare shall be buffered from adjoining residential uses in accordance with the standards in Section 55.100(C) where applicable. Businesses or activities that can reasonably be expected to generate noise shall undertake and submit appropriate noise studies and mitigate as necessary. (See Sections 55.110(B)(11) and 55.120(M).)*

To protect the health, safety, and welfare of the citizens of West Linn, the following design standards are established in Tables 1 and 2. In the case of land uses that are expected to be close to adopted noise standards, followup studies in the first year of operation may be required by a conditional of approval or required by the Planning Director as appropriate in order to monitor compliance. (ORD. 1442)

Ambient degradation associated with new noise sources. Any new commercial or industrial development to be built on a vacant or previously unused industrial or commercial site shall not cause or permit the operation of a noise source if the noise levels generated, or indirectly caused by that noise source, would increase the ambient statistical noise levels, L50 or L10, by more than 5 dBA in any one hour. In some instances, the ambient degradation standard may establish lower allowable dBA levels than those established in Table 1, and in those instances, the lower level shall apply. Ambient noise levels shall be determined by a licensed acoustical engineer. (ORD. 1442)

FINDING NO. 42:

Criteria (1) and (2) do not apply to this commercial project. The sound study concludes that the activities associated with the proposed use at the site will not violate CDC rules regarding maximum ambient or intermittent sound, as heard by sensitive residential uses across Willamette Falls Drive. Therefore further buffering is not needed. The criteria are met.

*E. **Private outdoor area.** This section only applies to multi-family projects.*

*F. **Shared outdoor recreation areas.** This section only applies to multifamily projects and projects with 10 or more duplexes or single-family attached dwellings on lots under 4,000 square feet. In those cases, shared outdoor recreation areas are calculated on the duplexes or single-family attached dwellings only. It also applies to qualifying PUDs under the provisions of Section 24.170. (ORD. 1463)*

FINDING NO. 43:

These criteria do not apply to this commercial project.

G. *Demarcation of public, semi-public, and private spaces. The structures and site improvements shall be designed so that public areas such as streets or public gathering places, semi-public areas, and private outdoor areas are clearly defined in order to establish persons having a right to be in the space, to provide for crime prevention, and to establish maintenance responsibility. These areas may be defined by:*

1. *A deck, patio, fence, low wall, hedge, or draping vine;*
2. *A trellis or arbor;*
3. *A change in level;*
4. *A change in the texture of the path material;*
5. *Sign; or,*
6. *Landscaping.*

Use of gates to demarcate the boundary between a public street and a private access driveway is prohibited. (ORD. 1463)

FINDING NO. 44:

The entire site consists of one hotel. There are no separate residential uses, and rooms/suites of the hotel do not have their own outdoor spaces. Staff adopts the applicant's finding and finds that the criterion is met appropriately.

H. **Public transit.**

1. *Provisions for public transit may be required where the site abuts an existing or planned public transit route. The required facilities shall be based on the following:*
 - a. *The location of other transit facilities in the area.*
 - b. *The size and type of the proposed development.*
 - c. *The rough proportionality between the impacts from the development and the required facility. (ORD. 1442)*
2. *The required facilities shall be limited to such facilities as the following:*

- a. *A waiting shelter with a bench surrounded by a three-sided covered structure, with transparency to allow easy surveillance of approaching buses.*
 - b. *A turnout area for loading and unloading designed per regional transit agency standards. (ORD. 1442)*
 - c. *Hard-surface paths connecting the development to the waiting and boarding areas.*
 - d. *Regional transit agency standards shall, however, prevail if they supersede these standards. (ORD. 1442)*
3. *The transit stop shall be located as close as possible to the main entrance to the shopping center, public or office building, or multifamily project. The entrance shall not be more than 200 feet from the transit stop with a clearly identified pedestrian link.*
 4. *All commercial business centers (over 3 acres) and multi-family projects (over 40 units) may be required to provide for the relocation of transit stops to the front of the site if the existing stop is within 200-400 yards of the site and the exaction is roughly proportional to the impact of the development. The commercial or multi-family project may be required to provide new facilities in those cases where the nearest stop is over 400 yards away. The transit stop shall be built per 8(b) above. (ORD. 1442)*
 5. *If a commercial business center or multi-family project is adjacent to an existing or planned public transit, the parking requirement may be reduced by the multiplier of .9 or ten percent. If a commercial center is within 200 feet of a multi-family project, with over 80 units and pedestrian access, the parking requirement may be reduced by ten percent or by a .90 multiplier. (ORD. 1425)*
 6. *Standards of Section 85.200(D), "Transit Facilities," shall also apply.*

FINDING NO. 45:

The nearest transit stops are on both sides of the street just east of the site. One is in front of the next site to the east, which is a separate commercial building, and the other is across the street in front of residential properties on Willamette Falls Drive. This project is not over 3 acres and is not a commercial business center or multi-family project, so the stops do not have to be moved closer to the project. Due to the sidewalks required in conditions of approval 2 and 3, the building will be connected via hard surface paths to the transit stops. The required parking requirement has been reduced by 10% as discussed in (5) above, due to the site being adjacent to the transit stops.

Therefore the requirement is only 63 instead of 70, and 63 spaces have been provided, all within the required 200 foot distance in Chapter 46. The criterion is met.

I. Public facilities.

An application may only be approved only if adequate public facilities will be available to provide service to the property prior to occupancy. (ORD.1544)

- 1. Streets. Sufficient right-of-way and slope easement shall be dedicated to accommodate all abutting streets to be improved to City's Improvement Standards and Specifications. The City Engineer shall determine the appropriate level of street and traffic control improvements to be required, including any off-site street and traffic control improvements based upon the transportation analysis submitted. The City Engineer's determination of developer obligation, the extent of road improvement and City's share, if any, of improvements and the timing of improvements shall be made based upon the City's systems development charge ordinance and capital improvement program, and the rough proportionality between the impact of the development and the street improvements. (ORD. 1442) (ORD. 1526)*

In determining the appropriate sizing of the street in commercial, office, multi-family, and public settings, the street should be the minimum necessary to accommodate anticipated traffic load and needs and should provide substantial accommodations for pedestrians and bicyclists. Road and driveway alignment should consider and mitigate impacts on adjacent properties and in neighborhoods in terms of increased traffic loads, noise, vibrations, and glare. (ORD. 1442)

The realignment or redesign of roads shall consider how the proposal meets accepted engineering standards, enhances public safety, and favorably relates to adjacent lands and land uses. Consideration should also be given to selecting an alignment or design that minimizes or avoids hazard areas and loss of significant natural features (drainageways, wetlands, heavily forested areas, etc.) unless site mitigation can clearly produce a superior landscape in terms of shape, grades, reforestation, and is fully consistent with applicable code restrictions regarding resource areas.

Streets shall be installed per Chapter 85 standards. City Engineer has the authority to require that street widths match adjacent street widths. Sidewalks shall be installed per Section 85.200(A)(3)(e) for commercial and office projects, and Sections 85.200(A)(16)

and 92.010(H) for residential projects, and applicable provisions of Chapter 55, Design Review.

Based upon the City Manager or Manager's designee determination, the applicant shall construct or cause to be constructed, or contribute a proportionate share of the costs, for all necessary off-site improvements identified by the transportation analysis commissioned to address CDC 55.125 that are required to mitigate impacts from the proposed development. Proportionate share of the costs shall be determined by the City Manager or Manager's designee who shall assume that the proposed development provides improvements in rough proportion to identified impacts of the development. (ORD. 1544)

2. *Drainage. A registered civil engineer shall prepare a plan and statement which shall be supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts. The plan and statement shall, at a minimum, determine off site impacts from a 25-year storm. The City Engineer shall adjust storm drainage facilities for applications which contain permeable parking surfaces based upon a quantitative analysis of the increased water retention and water quality characteristics of the permeable parking surface.*

Catch basins shall be installed and connected to pipelines leading to storm sewers or drainageways.

All plans will then be reviewed by the City Engineer.

3. *Municipal water. A registered civil engineer shall prepare a plan for the provision of water which demonstrates to City Engineer's satisfaction, the availability of sufficient volume, capacity, and pressure to serve the proposed development's domestic, commercial, and industrial fire flows. All plans will then be reviewed by the City Engineer.*
4. *Sanitary sewers. A registered civil engineer shall prepare a sewerage collection system plan which demonstrates sufficient onsite capacity to serve the proposed development. The City Engineer shall determine whether the existing City system has sufficient capacity to serve the development.*
5. *Solid waste and recycling storage areas. Appropriately sized and located solid waste and recycling storage areas shall be provided. Metro standards shall be used.*

FINDING NO. 46:

The applicant will provide an 8-foot wide sidewalk and minimum 6-foot wide planter strip to be built as a raingarden that also includes appropriate street trees, per Condition of Approval 2. The applicant's proposed half-street improvements include widening this side of Willamette Falls Drive. The Engineering Department has yet to determine whether the existing street pavement has to be replaced as well. Therefore the applicant will provide half street improvements to the satisfaction of the Engineering Department per Condition of Approval 2, allowing the Department to make this determination. The utility plan and site plan show the above criteria to be met. Condition of Approval 5 also requires the water line in the driveway/parking area to be installed in a way that allows for a line looping west to 8th Court to eventually be installed connecting to it.

The applicant's site plan shows a stormwater treatment facility for all new impervious surfaces on site that will drain to the drainageway, and the street improvements required by Condition of Approval 2 ensure that a raingarden will also be built along the street to treat street and sidewalk runoff, in place of a planter strip. Condition of Approval 1 also requires native plants to be planted in the on-site facility. Because of spatial constraints on site, the on-site stormwater facility will encroach 25 feet into the transition area of the water resource area, but development on site will be mitigated for by the mitigation plan.

There is currently a gravel area adjacent to the ROW in the southwest area of the site used informally for parking by the law office building to the west. After the improvements discussed here are constructed, access to the parking area would involve vehicles driving through the street trees, curb, and raingarden planter strip. Therefore Condition of Approval 6 prohibits this area from continued use as a parking area.

The criteria are met.

J. *Crime prevention and safety/defensible space.*

1. *Windows shall be located so that areas vulnerable to crime can be surveyed by the occupants.*
2. *Interior laundry and service areas shall be located in a way that they can be observed by others.*
3. *Mail boxes, recycling, and solid waste facilities shall be located in lighted areas having vehicular or pedestrian traffic.*
4. *The exterior lighting levels shall be selected and the angles shall be oriented towards areas vulnerable to crime.*
5. *Light fixtures shall be provided in areas having heavy pedestrian or vehicular traffic and in potentially dangerous areas such as parking lots, stairs, ramps, and abrupt grade changes.*

6. *Fixtures shall be placed at a height so that light patterns overlap at a height of seven feet which is sufficient to illuminate a person. All commercial, industrial, residential, and public facility projects undergoing design review shall use low or high pressure sodium bulbs and be able to demonstrate effective shielding so that the light is directed downwards rather than omni-directional. Omnidirectional lights of an ornamental nature may be used in general commercial districts only.*
7. *Lines of sight shall be reasonably established so that the development site is visible to police and residents.*
8. *Security fences for utilities (e.g., power transformers, pump stations, pipeline control equipment, etc.) or wireless communication facilities may be up to eight feet tall in order to protect public safety. No variances are required regardless of location. (ORD. 1408)*

K. *Provisions for persons with disabilities.*

1. *The needs of a person with a disability shall be provided for. Accessible routes shall be provided between all buildings and accessible site facilities. The accessible route shall be the most practical direct route between accessible building entries, accessible site facilities, and the accessible entry to the site. An accessible route shall connect to the public right-of-way to at least one on-site or adjacent transit stop (if the area is served by transit). All facilities shall conform to, or exceed, the Americans with Disabilities Act (ADA) standards, including those included in the Uniform Building Code.*

FINDING NO. 47:

Staff adopts the applicant's findings and finds the criteria are met.

L. *Signs.*

1. *Based on considerations of crime prevention and the needs of emergency vehicles, a system of signs for identifying the location of each residential unit, store, or industry shall be established.*
2. *The signs, graphics, and letter styles shall be designed to be compatible with surrounding development, to contribute to a sense of project identity, or, when appropriate, to reflect a sense of the history of the area and the architectural style.*
3. *The sign graphics and letter styles shall announce, inform, and*

designate particular areas or uses as simply and clearly as possible.

4. *The signs shall not obscure vehicle driver's sight distance.*
5. *Signs indicating future use shall be installed on land dedicated for public facilities (e.g. parks, water reservoir, fire halls, etc.).*
6. *Signs and appropriate traffic control devices and markings shall be installed or painted in the driveway and parking lot areas to identify bicycle and pedestrian routes.*

FINDING NO. 48:

There will be no residential units and only one business, so (1) is not applicable. Presumably the corporate logo, as shown on the applicant's color and material examples (pictures of the Astoria Holiday Inn Express) will comprise the sign. This will be sufficiently compatible with the architecture and surroundings. The signs will be on-wall only, so they will not obscure drivers' sight. Pedestrian routes will be obvious and there are no separate bike routes within the site. The applicant will eventually have to apply for a permanent sign application separately and be tested against all Chapter 52 criteria at that time. The above criteria are met at this time.

M. Utilities. The developer shall make necessary arrangements with utility companies or other persons or corporations affected for the installation of underground lines and facilities. Electrical lines and other wires, including but not limited to communication, street lighting, and cable television, shall be placed underground, as practical. The design standards of Tables 1 and 2 above, and of sub-section 5.484(C) of the West Linn Municipal Code relative to existing high ambient noise levels shall apply to this section. (ORD. 1442)

N. Wireless Communication Facilities (WCF). This section only applicable to WCFs.) WCFs as defined in CDC Chapter 57 may be required to go through Class I or Class II design review. The approval criteria for Class I design review is that the visual impact of the WCF shall be minimal to the extent allowed by CDC Chapter 57. Stealth designs shall be sufficiently camouflaged so that they are not easily seen by passersby in the public right of-way or from any adjoining residential unit. WCFs that are classified as Class II design review must respond to all of the approval criteria of this chapter.

FINDING NO. 49:

The applicant has agreed to the provisions of (M). (N) is not applicable to this project as no WCFs are proposed.

7

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. CUP-09-01/AP09-02 Applicant's Name V. KRW, Inc.
Development Name Conditional Use - Appeal Holiday Inn Express
Scheduled Meeting/Decision Date 5/11/09

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) 4/17/09 (signed) uf
 B. Affected property owners (date) 4/17/09 (signed) uf
C. School District/Board (date) _____ (signed) _____
 D. Other affected gov't. agencies (date) 4/17/09 (signed) uf
 E. Affected neighborhood assns. (date) 4/17/09 (signed) uf
 F. All parties to an appeal or review (date) 4/17/09 (signed) uf

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

Tidings (published date) 4/30/09 (signed) 13
City's website (posted date) 4/20/09 (signed) 130

NOTICE: Notices were sent at least 14 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check one below)

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) _____

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) 4/22/09 (signed) John Dome

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 FOR A CONSOLIDATED HEARING FOR
HOLIDAY INN EXPRESS; INCLUDING CONDITIONAL USE PERMIT AND
APPEAL HEARING**

FILE NO. AP-09-02 AND FILE NO. CUP-09-01

The West Linn City Council is scheduled to hold a public hearing on **Monday May 11, 2009**, starting at 6:30 p.m. in the Council Chambers of City Hall (located at 22500 Salamo Road, West Linn, OR,). This hearing will be on VKNW, Inc.'s proposal to build a 70-unit hotel at 2400-50 Willamette Falls Drive (north side of street between 6th and 7th Streets). This hearing will in part be a continuation of the hearing for appeal file AP-09-02, which is a City Council call-up to review the Planning Commission approval of DR-08-01/VAR-08-01/WAP-08-01. Such call ups function as appeals. DR-08-01/VAR-08-01/WAP-08-01 was an application for Class II Design Review with a Water Resources Area permit due to Bernert Creek and wetlands on site, and with a Class II Variance for the amount of square footage to be developed in the water resource transition area (also note VAR-08-09 was a Class II Variance application that was originally part of the DR-08-01/VAR-08-01/WAP-08-01 application, but which became moot due to site plan redesign and was not approved).

A Conditional Use Permit (CUP-09-01) has also been applied for by VKNW, Inc. for the proposed hotel use on this site, as is required per the City' CDC. The May 11th hearing will consolidate the requested Conditional Use Permit as well the appeal file AP-09-02. Design Review criteria are found in Chapter 55 of the 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. Conditional Use criteria can be found in Chapter 60 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 in the CDC.

You have been notified of this proposal because County records indicate that you own property within 500 feet of the proposed 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, and/or because you have established standing for application DR-08-01/VAR-08-01/WAP-08-01, AP-09-02, or CUP-09-01, and/or as required by Chapter 99 of the West Linn Community Development Code.

Complete applications of the above noted files are available for inspection at no cost and copies can be obtained for a minimal charge per page. Information related to the application is also on the City's web site. At least ten days prior to the hearing, copies of the staff reports for File No. AP-09-02 and File No. CUP-09-01 will be available for inspection. Copies of these two staff reports will be attainable for a minimal charge per page. For further information, please contact Chris Kerr, Acting Planning Director, at City Hall, 22500 Salamo Road, West Linn, OR 97068, ckerr@westlinnoregon.gov, or 503-723-2538.

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. As part of

either oral or written testimony, members of the public should present their name and street address and their comments on the application(s) as related to the applicable criteria. 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

p:\devrvw\pc notices\notice-Holiday Inn appeal and CUP

MAILED

3-10-09 / 106

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~~DON HATCH
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rec'd Apr. 14 '09

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April 14, 2009

Planning Department
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Re: CUP Cover Letter - Holiday Inn Express – Willamette Falls Dr. lots 2400-2450

Dear City Staff,

In regards to the land use applications to build a new hotel at lots 2400-2450 on Willamette Falls Drive, this is our cover letter outlining the CDC requirements that have been addressed to complete the application. The requirements are present in either the planning commissions approved packet previously submitted or in the more recently submitted CUP application.

In regards to the CUP application, we (the applicant) have followed Chapter 60 Conditional Uses to meet the application requirements. To provide a complete application, we must meet the provisions set forth in Chapter 60 section sections 60, 70, and 80. The application has been submitted as required and the narrative has been provided that shows how the development intends to comply with the approval standards and conditions. A site plan and Map have been provided as required. The provided site plan has been approved by the Planning Commission. A narrative explaining how the requirements of the CUP have been addressed has been provided in a separate letter and is part of the file of record for the current application.

In regards to the Design Review application, we (the applicant) submitted this application for approval prior to the CUP. This application included a Water Resource area permit and variance(s). As you know, this application has been approved by the Planning Commission. To provide a complete application, we were required to comply with all applicable chapters of the CDC in addition to Chapter 60. These include:

Chapter 19 Neighborhood Commercial

- The proposed use is a hotel (transient lodging). This section requires the conditional use.

Chapter 31 Erosion Control

- Erosion control has been preliminarily designed. The engineer of record will complete the design and meet or exceed all requirements. This will take place during the building permit phase.

Chapter 32 Water Resource Area Protection

- A narrative response outlining how the development complies with this section has been submitted with the previously submitted Water resource permit application. All criteria have been addressed. See power point presentation, wetland report, revegetation plan, mitigation plan and submitted site plans.

Chapter 33 Stormwater Quality and Detention

- Stormwater quality and detention has been preliminarily designed. The engineer of record will complete the design and meet or exceed all requirements. This will take place during the building permit phase.

Chapter 40 Building Height Limitations and Exceptions

- We comply with the height limit set forth in Chapter 19. The required fire access stair tower is non-habitable space that exceeds the building height limit but meets the exception for non-habitable tower. The tower is required and only allowed to be used for maintenance and fire department emergency roof access.

Chapter 42 Clear Vision Areas

- We comply with this provision. See the Landscape plan showing the required vision triangle at the access road off Willamette Falls Drive.

Chapter 46 Off-Street Parking, loading and Reservoir Areas

- The application provides the required off-street parking, loading and handicap parking stalls. We have also provided the required driveway areas.

Chapter 48 Access, Egress and Circulation

- A required Traffic Study has been submitted to the city with the previous design review application. The study describes the traffic impact on the existing roadways. Also, early on in the design process, during the pre-application conference, the city staff required that only one access point be allowed onto Willamette from the property. As required, the driveways are constructed of hard surface pavement. Bicycle and pedestrian ways have been provided pursuant to Chapter 55 Design Review.

Chapter 52 Signs

- No signage is being applied for at this time. All signage applications will be applied for separately. No pole or monument signs are foreseen. Flat wall signs are typical for this type of hotel. The sign is typically electric and self illuminating. Again, though proposed signage is shown on the submitted elevations, we know that this application does not assume that the signage location will be approved because we have not applied for sign approval.

Chapter 54 Landscaping

- The purpose of this chapter is to provide an attractive natural balance to built areas, to reduce runoff, to provide shade, to screen or buffer uses, and to frame or compliment views. See the submitted landscape plan. The landscaping provided on this site has a very important role. From shading parking lot and creek to providing neglected vegetation for the creek, the landscaping proposed for this site enhances the quality of life in West Linn by protecting the creek from erosion, pollution and sedimentation. All of the significant trees have been saved. More than 20% of the gross site areas have been reserved for landscaping as required. More than 10% of the interior parking lot areas

have been reserved for landscaping and shade trees will be provided around the parking lot to reduce heat generated on sunny days. An irrigation system will be provided to ensure the long term success of the landscaping. All of the parking lot setbacks and buffers have been provided. The required plants and spacing will be confirmed during the building permit phase.

Chapter 55 Design Review

- A narrative addressing all of the individual requirements of this section has been submitted to the city. See narrative previously submitted.

Chapter 60 Design Review

- A narrative addressing all of the individual requirements of this section has been submitted to the city. See narrative previously submitted.

We thank the city for reviewing our application. If there are any questions, comments or clarifications required, please let us know.

Sincerely,

Brad Kaul
Steven P. Elkins Architects Inc PS PC



11000 NE 33rd Place, Suite 101
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April 6, 2009

Planning Department
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Re: Holiday Inn Express – Willamette Falls Dr. lots 2400-2450

Dear City Staff;

This is the required narrative for the conditional use.

Conditional Use Narrative:

According to the West Linn CDC Transient Lodging Facilities (Hotels) are not permitted in the General Commercial Zone without a Conditional Use. An application for a conditional use shall include the completed application form and a narrative which addresses the approval criteria set forth in Section 60.070 and which sustains the applicant's burden of proof; and, a site plan as provided by Section 60.080.

Approval Standards and Conditions are provided below. The applicant narrative describing how the development meets these conditions follows each standard in italics:

60.070.A.1. The site size and dimensions provide:

- a. Adequate area for the needs of the proposed use; and,
- b. Adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses.

- (applicant response) Adequate area is provided for the proposed use. This includes the code required parking, landscaping, street access and building. We do not foresee any adverse effects on the surrounding properties or uses. The nature of the site separates the development from the road by a creek and revegetated water resource area. This provides a generous landscaped buffer. This buffer along with the great width of Willamette Falls Drive, provides adequate area between the development and single family residences that mitigates possible noise or light that may escape the property. Also, the proximity to I-205 and Willamette Falls Drive will provide white noise that will drown out most noise created by the day to day operation of this hotel. Therefore,

adequate area has been provided on this site to buffer adverse effects that may have been caused by this development.

60.070.A.2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.

- (applicant response) This provision seems similar to that of the previous condition requiring adequate area for the needs of the proposed use (size and shape). As for location, this is a very good location for a hotel due to it's proximity to I-205, businesses and amenities in the area. The topography is not a problem. We are building on top of an old road grade and we have situated the parking and building to take advantage of the existing slopes. There are few natural features present. Bennet Creek flows along the southern portion of the site. The drainage channel is not natural and has been rerouted and altered a few times in its life due to the construction of Willamette Falls Drive and I-205. This proposed use will upgrade the condition of the existing natural features through revegetation with native species and the eradication of invasive species. Also, the old culvert will be replaced with a new bottomless culvert.

60.070.A.3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.

- (applicant response) The community does not yet have a hotel facility. This community needs a hotel. This proposal also provides needed transportation facilities (sidewalks and bike paths), as well as upgrades to parks, storm water facilities, and water resource areas.

60.070.A.4. Adequate public facilities will be available to provide service to the property at the time of occupancy.

- (applicant response) This requirement is echoed in the City Comprehensive Plan Goal 11. It requires that essential public facilities and services (transportation, storm drainage, sewer and water service) be in place.*
- Transportation facilities are in place. Within 300 feet of the property there exists a transit stop. The site has an existing access point off of Willamette Falls Drive.*
- Adequate water is in place to provide both domestic and fire related water services.*
- There is an existing sewer man-hole near the existing access to the site.*
- Natural storm drainage is provided. Prior to storm water being released into the natural system, the water will be filtered, detained and released at a rate less or equal to existing conditions. The conditions of the natural drainage way will be upgraded to reduce run-off, sedimentation and erosion.*
- New public facilities will be constructed as a part of this development. Those will be sidewalks, bike paths, and park improvements.*
- Being that this property is in a commercial zone, these properties are typically located in areas that have plentiful public facilities in place. This site is no different. Willamette Falls Drive is a major arterial which provides access to the*

site which allows for police protection, garbage pick-up, fire and rescue, and access to the city at large.

60.070.A.5. The applicable requirements of the zone are met, except as modified by this chapter.

- (applicant response) Yes, all other requirements of the general commercial zone have been addressed.

60.070.A.6. The supplementary requirements set forth in Chapters 52 to 55, if applicable, are met.

- (applicant response) See narrative for Chapters 52 and 55 submitted earlier for the design review application.

60.070.A.7. The use will comply with the applicable policies of the Comprehensive Plan.

Goal 2

- **Comp Plan Goal – develop commercial facilities that will reduce dependence on services outside the city** – Currently, citizens of West Linn have no other choice but to depend of Hospitality services that reside outside the city. With development of the Holiday Inn Express, citizens will have the choice to have family, friends, or business groups stay locally.*
- **Comp Plan Goal – protect surrounding residential areas from adverse effects due to loss in privacy, noise, lights and glare** – The location of this property is situated between I-205 and the very busy Willamette Falls Drive. The width of the Willamette Falls falls drive is roughly 100 feet at this section of the road. This tremendous width or buffer lessens the impact of the development on the adjacent properties. Hotel developments do not have a lot of traffic or noise associated with them, especially those without a restaurant or large conference center such as this. Therefore, according to the acoustical engineering study, the hotel development will be impacted by noise from I-205 and Willamette Falls Drive in far greater proportion than that of the Hotel impacting the surrounding residential areas. As for light and glare, the parking lot will implant lighting standards that retain light on site.*

Goal 5.

- **Comp Plan Goal- protect environmental features** – the hotel development aims to protect the onsite and offsite water resource area. This will be done by controlling run-off through new storm water controls. Currently, the site has large gravel areas and unvegetated areas that contribute to higher stream temperatures and uncontrolled sedimentation being released into the stream. The new development will provide lower stream temperatures by providing additional shade to the stream, filtering water through rain gardens, and keeping uncontrolled surface run-off from entering the stream without treatment. Last,*

the water resource area acts as a buffer between the stream and development. The water resource area should function as a natural filter. Unfortunately, due to previous development of roads and interstates, this site has been left in an unhealthy state and is covered with gravel, asphalt, and invasive plant species that do not allow the water resource area to function. Therefore, the development will increase the function of the water resource area through revegetation which will allow the water resource area to better filter water and decrease sedimentation and erosion.

- **Comp Plan Goal- Preserve trees in natural areas** - *the hotel development will save all significant trees on the site. Currently, the stream has very few trees that provide shade which promote lower stream temperatures. We will supplement these existing shade trees with additional trees during the revegetation process. There is also a large white oak that resides on the Northeast portion of the site. Once this tree was identified by the city arborist, the site has been redesigned to save this tree and provide a proper buffer to ensure that the construction does not have an affect. The tree buffer and water resource area will be protected with a chain link fence during construction so that these areas are not accidentally damaged.*

Goal 6.

- **Comp Plan Goal- reduce pollution from vehicle emissions by providing connectivity that reduces number of miles traveled** - *Currently, residents of West Linn must travel long distances to and from hotels. By having a hotel within the city limits, travel distances will be decreased and therefore, vehicle emissions will be decreased.*
- **Comp Plan Goal- reduce pollution from vehicle emissions by providing connectivity that reduces number of miles traveled** - *Currently, Willamette Falls is not a walk able street due to dead end sidewalks. In particular, sidewalks and bike lanes are lacking in front of the subject property. When this project is realized, a significant length of Willamette Falls Drive will have sidewalk and bike lane extensions. This will eventually allow people to walk or bike from business to business which will decrease emissions due to vehicle trips.*

Goal 7.

- **Not Applicable**

Goal 8.

- **Not Applicable**

Goal 9.

- **Comp Plan Goal – - The economic vitality of the city is tied to a strong tax base which will create financial resources to maintain the infrastructure and services to retain and improve the quality of live in West Linn-** *That being said, hotels generate generous bed tax revenues. These revenues help diversify the cities “portfolio” of tax resources.*

*- **Comp Plan Goal – encourage businesses that enhance the community** – hotels have always enhanced the communities in which they serve. They provide places for families to stay close. They provide meeting space for existing cities, businesses, and family gatherings.*

*- **Comp Plan Goal – provide wanted services** – As we have been going through this process we have heard over and over again from neighborhood associations to business associations how dearly a hotel is needed in this area.*

*- **Comp Plan Goal – provide small locally owned businesses with strong ties to the community** – This project is being developed by a small group of investors who all reside in the Portland Metro area. The group is a family operated business that provides living wages with strong ties to the metro area.*

*- **Comp Plan Policy – Maintain Public Facilities, specifically right-of-way improvements** – This project will be investing significant dollars in right-of-way improvements as addressed above to sidewalks, bike paths, creek restoration, and storm water controls.*

Goal 10.

- **Not Applicable**

Goal 11.

- **See response to 60.070.A.4. Adequate public facilities will be available to provide service to the property at the time of occupancy (above).**

Goal 12

- **Transportation facilities** – As a result of this project, transportation facilities will be upgraded. The upgrades include a wider street and an extension of the sidewalk and bike path systems.

Goal 13.

- **Comp Plan Goal- reduce travel outside the City to obtain goods and services** - As discussed earlier, residents and visitors must travel outside the city to obtain the services of a hotel.
- **Comp Plan Goal- Control Access onto major roadways to maintain traffic flow** – Hotel developments have a positive impact on traffic flows. Typically, trips generated by hotels are very small compared to other commercial uses. Also, trips generated to and from hotels typically occur at off-peak hours.
- **Comp Plan Goal- Encourage the construction and maintenance of sidewalks and bike paths/ways to promote alternative modes of transportation** – We will be building new sidewalks and bike paths as encouraged by this policy of the comprehensive plan.
- **Comp Plan Goal- Promote energy-efficient methods of architecture** – Energy efficient appliances and equipment will be employed throughout the hotel. Also, care will be taken to ensure that the building is properly detailed to provide not only adequate insulation and energy efficient windows but promote natural

ventilation while discouraging air infiltration. Last, all walls within a hotel are insulated to control noise. A byproduct is greater energy efficiency.

Goal 14.

- *Not Applicable.*

Goal 15.

- *Not Applicable.*

60.070.B. An approved conditional use or enlargement or alteration of an existing conditional use shall be subject to the development review provisions set forth in Chapter 55.

- (applicant response) The development review provisions of Chapter 55 have been addressed previously in the design review application.

60.070.C. The Planning Commission may impose conditions on its approval of a conditional use which it finds are necessary to assure the use is compatible with other uses in the vicinity.

- (applicant response) The city staff has imposed conditions on approval. Most conditions have been outlined in the staff report.

60.080. SITE PLAN AND MAP

- (applicant response) A site plan complying with all provisions of this section has been submitted for review.

Sincerely,

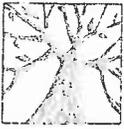
Brad Kaul
Steven P. Elkins Architects Inc PS PC

A Holiday Inn Express hotel would be a positive addition to the city of West Linn. The hotel would provide a source of lodging tax revenue, and would help increase tourism spending in the area.

The city is hosting the 26th Oregon Senior Amateur Championship in October 2009, and with no current hotel/lodging facilities in the city, local businesses would lose potential tourism revenue to other cities such as Oregon City, Lake Oswego, and Clackamas. By having a Holiday Inn Express in the city, guests attending events such as these in the future, could stay in the city, and spend their dollars in the city.

The location of the hotel is a key for both the developers and other city businesses. With the hotel being visible from the busy I-205 freeway this would attract business to both the hotel and the surrounding local businesses. Guest staying at the hotel, are more likely to eat or shop locally and not venture outside the city. The location of the hotel is in the center of the city, which would provide a place to stay for out of town guests visiting local city residents.

The hotel will be a positive asset in helping the city of West Linn grow in the future.



West Linn

DEVELOPMENT REVIEW APPLICATION

CU-09-01

TYPE OF REVIEW (Please check all boxes that apply):

- | | |
|---|---|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures |
| <input type="checkbox"/> Appeal and Review * | <input type="checkbox"/> One-Year Extension * |
| <input checked="" type="checkbox"/> Conditional Use | <input type="checkbox"/> Planned Unit Development |
| <input type="checkbox"/> Design Review | <input type="checkbox"/> Pre-Application Meeting * |
| <input type="checkbox"/> Easement Vacation | <input type="checkbox"/> Quasi-Judicial Plan or Zone Change |
| <input type="checkbox"/> Extraterritorial Ext. of Utilities | <input type="checkbox"/> Street Vacation |
| <input type="checkbox"/> Final Plat or Plan | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Flood Plain Construction | <input type="checkbox"/> Temporary Uses * |
| <input type="checkbox"/> Hillside Protection and Erosion Control | <input type="checkbox"/> Tualatin River Greenway |
| <input type="checkbox"/> Historic District Review | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Legislative Plan or Change | <input type="checkbox"/> Water Resource Area Protection/Wetland |
| <input type="checkbox"/> Lot Line Adjustment * /** | <input type="checkbox"/> Willamette River Greenway |
| <input type="checkbox"/> Minor Partition (Preliminary Plat or Plan) | <input type="checkbox"/> Other/Misc |

Home Occupation / Pre-Application / Sidewalk Use Application * / Permanent Sign Review * / Temporary Sign Application require individual application forms available in the forms and application section of the City Website or at City Hall.

TOTAL FEES/DEPOSIT _____

* No CD required / ** Only one copy needed

<u>Vipul Patel 12700 SE McLoughlin Milwaukie, OR 97222</u>				
OWNER'S	ADDRESS	CITY	ZIP	PHONE(res.& bus.)
<u>Same</u>				<u>503-449-8165</u>
APPLICANT'S	ADDRESS	CITY	ZIP	PHONE(res.& bus.)
CONSULTANT	ADDRESS	CITY	ZIP	PHONE

SITE LOCATION Willamette Falls Dr. Lots 2400-2450

Assessor's Map No.: _____ Tax Lot(s): _____ Total Land Area: _____

- All application fees are non-refundable (excluding deposit).
- The owner/applicant or their representative should be present at all public hearings.
- A denial or grant may be reversed on appeal. No permit will be in effect until the appeal period has expired.

4. **Four (4) complete hard-copy sets (single sided) of application materials must be submitted with this application. One (1) complete set of digital application materials must also be submitted on CD in PDF format.**

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application.

SIGNATURE OF PROPERTY OWNER(S)
X [Signature] Date 4-6-09

SIGNATURE OF APPLICANT(S)
X [Signature] Date 4-6-09

BY SIGNING THIS APPLICATION, THE CITY IS AUTHORIZED REASONABLE ACCESS TO THE PROPERTY. ACCEPTANCE OF THIS APPLICATION DOES NOT INFER A COMPLETE SUBMITTAL. COMPLETENESS WILL BE DETERMINED WITHIN 30 DAYS OF SUBMITTAL.

PLANNING AND BUILDING; 22500 SALMON RD #1000; WEST LINN, OR 97068; PHONE: 656-4211 FAX: 656-4106

INDEX

DISCRETIONARY PROVISIONS

60.000 CONDITIONAL USES

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DISCRETIONARY PROVISIONS

60.000 CONDITIONAL USES

60.010 PURPOSE

The purpose of this chapter is to provide standards and procedures under which conditional uses may be permitted, enlarged, or altered if the site is appropriate and if other conditions can be met.

- A. The Planning Commission may approve an application subject to a specific time period, at the termination of which there will be a renewal hearing. The decision at the renewal hearing shall be based on the factors in B1 and B2 below.
- B. Approval of a conditional use shall be void after one year or such lesser time as the approval may specify, unless substantial construction pursuant thereto has taken place. The Planning Commission after a public hearing as provided by Section 99.060(B) may extend authorization for an additional period not to exceed one year, on request and a finding that:
 - 1. There have been no changes in the facts on which the approval was based; and,
 - 2. There have been no changes in the policy or applicable standards on which the approval was based.

60.030 ADMINISTRATION AND APPROVAL PROCESS

- A. Conditional use applications shall be decided by the Planning Commission in the manner set forth in Section 99.060(B). A petition for review by Council may be filed as provided by Section 99.240(B).
- B. All approved conditional use applications shall be subject to Design Review under the provisions of Chapter 55, and in the manner set forth in Section 99.060(B).

60.040 TIME LIMIT ON A CONDITIONAL USE APPROVAL

Approval of a conditional use by the Commission shall be void after three years if:

1. Substantial construction of the approval plan has not begun within that three-year period.
2. Construction on the site is a departure from the approved plan.

(ORD. 1408)

60.050

BUILDING PERMITS FOR AN APPROVED CONDITIONAL USE

- A. Building permits for all or any portion of a conditional use shall be issued only on the basis of the conditional use plan and conditions as approved by the Planning Commission.
- B. Any change in the conditional use plan or conditions of approval shall require a new application and hearing pursuant to the provisions set forth in this Chapter and Section 99.120(B).

60.060

THE APPLICATION

- A. A conditional use application shall be initiated by the property owner or the owner's authorized agent.
- B. A prerequisite to the filing of an application is a pre-application conference at which time the Director shall explain the requirements and provide the appropriate forms as specified in Section 99.030(B) and (C).
- C. A pre-requisite to the filing of an application is a meeting with the respective City recognized neighborhood association, per CDC Section 99.038, at which time the applicant will present his/her proposal and receive comments. (ORD. 1401)

- D. An application for a conditional use shall include the completed application form and:

1. A narrative which addresses the approval criteria set forth in Section 60.070 and which sustains the applicant's burden of proof; and,

2. A site plan as provided by Section 60.080.

One original application form must be submitted. Three copies at the original scale and three copies reduced to 11 X 17 or smaller of all drawings and plans must be submitted. Three copies of all other items

must be submitted. When the application submittal is determined to be complete, additional copies may be required as determined by the Planning Department. (ORD. 1442)

E. Names and addresses of all who are property owners of record within 300 feet of the site shall be determined by the Director.

F. The applicant shall pay the requisite fee.

60.070

APPROVAL STANDARDS AND CONDITIONS

A. The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, except for a manufactured home subdivision in which case the approval standards and conditions shall be those specified in Section 36.030, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:

1. The site size and dimensions provide:
 - a. Adequate area for the needs of the proposed use; and,
 - b. Adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses. (ORD. 1291)
2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.
3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.
4. Adequate public facilities will be available to provide service to the property at the time of occupancy. (ORD. 1544)
5. The applicable requirements of the zone are met, except as modified by this chapter.
6. The supplementary requirements set forth in Chapters 52 to 55, if applicable, are met.
7. The use will comply with the applicable policies of the Comprehensive Plan.

B. An approved conditional use or enlargement or alteration of an existing

conditional use shall be subject to the development review provisions set forth in Chapter 55.

- C. The Planning Commission may impose conditions on its approval of a conditional use which it finds are necessary to assure the use is compatible with other uses in the vicinity. These conditions may include, but are not limited to, the following:
1. Limiting the hours, days, place, and manner of operation.
 2. Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor, and dust.
 3. Requiring additional setback areas, lot area, or lot depth, or width.
 4. Limiting the building height, size or lot coverage, or location on the site.
 5. Designating the size, number, location and design of vehicle access points.
 6. Requiring street right-of-way to be dedicated and the street to be improved including all steps necessary to address future street improvements identified in the adopted Transportation System Plan. (ORD. 1544)
 7. Requiring participation in making the intersection improvement or improvements identified in the Transportation System Plan when a traffic analysis (compiled as an element of a condition use application for the property) indicates the application should contribute toward. (ORD. 1544)
 8. Requiring landscaping, screening, drainage, and surfacing of parking and loading areas.
 9. Limiting the number, size, location, height, and lighting of signs.
 10. Limiting or setting standards for the location and intensity of outdoor lighting.
 11. Requiring berming, screening, or landscaping and the establishment of standards for their installation and maintenance.

12. Requiring and designating the size, height, location, and materials for fences.
 13. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.
- D. Aggregate extraction uses shall also be subject to the provisions of ORS 541.605.

(ORD. 1408) (ORD. 1544)

60.080

SITE PLAN AND MAP

- A. All site plans and maps shall include the name, address, and telephone number of the applicant, the scale of the site plan, north arrow, and a vicinity map.
- B. The applicant shall submit a site plan drawn to an appropriate scale (in order of preference, 1" = 10' to 1" = 30') which contains the following information:
 1. The subdivision name, block, and lot number or the section, township, range, and tax lot number.
 2. The parcel boundaries, dimensions, and gross area.
 3. The applicant's property and the surrounding property to a distance sufficient to determine the relationship between the applicant's property and proposed development to the adjacent property and development.
 4. The location, dimensions, and names of all existing and platted streets and other public ways and easements on adjacent property and on the site.
 5. The location, dimensions, and setback distances of all:
 - a. Existing structures, improvements, utilities, and drainage facilities on adjoining properties;
 - b. Existing structures, improvements, utilities, and drainage facilities to remain on the site; and,
 - c. Proposed structures or changes to existing structures,

improvements, utilities, and drainage facilities.

6. The existing and proposed dimensions of:
 - a. The entrances and exits to the site;
 - b. The parking and circulation areas;
 - c. Loading and service areas for waste disposal, loading and delivery;
 - d. Pedestrian and bicycle circulation area;
 - e. On-site outdoor recreation spaces and common areas; and,
 - f. Above ground utilities.
 7. The location of areas to be landscaped and the proposed landscape plan.
 8. The location of all trees having a six-inch caliper at a height of five feet.
- C. The applicant shall submit the site plan on a map showing two-foot contours up to 20 percent grade and 10-foot contours on grades above 20 percent.

(AMENDED PER ORD. 1442; 10/99; ORD. 1547 2/07)

p:\devrvw\cdc\60

CITY OF WEST LINN
 22500 Salamo Rd.
 West Linn, OR. 97068
 (503) 656-4211

PLANNING RECEIPT
 Receipt: # 934409
 Date : 04/10/2009
 Project: #CU-09-01
 BY: WS

 NAME : VKNW, INC
 ADDRESS : 12700 SE MCLOUGHLIN BLVD
 CITY/STATE/ZIP: MILWAUKIE, OR 97222
 PHONE # : 449-8165

SITE ADD. : 2400 WILLAMETTE FALLS DR

 TYPE I HOME OCCUPATIONS HO \$
 PRE-APPLICATIONS Level I (), Level II () DR \$
 HISTORIC REVIEW Residential Major (), Minor (), New () DR \$
 Commercial Major (), Minor (), New ()
 SIGN PERMIT Face (), Temporary (), Permanent () DR \$
 SIDEWALK USE PERMIT DR \$
 APPEALS Plan. Dir. Dec. (), Subdivsion (), DR \$
 Plan Comm./City Coun. (), Nbhd ()
 LOT LINE ADJUSTMENT LA \$
 CITY/METRO BUSINESS LICENSE BL \$

 The following items are paid by billing against the up-front deposit estimate.
 If the amount of time billed to your project exceeds the amount covered by the
 deposit, additional payment may be required.

DESIGN REVIEW Class I (), Class II () RD \$
 VARIANCE Class I (), Class II () RD \$
 SUBDIVISION Standard (), Expedited () RD \$
 ANNEXATION "Does Not Include Election Cost" RD \$
 CONDITIONAL USE RD \$
 ZONE CHANGE RD \$
 MINOR PARTITION RD \$
 MISCELLANEOUS PLANNING RD \$
 Boundry Adjustments ()
 Modification to approval () Water Resource
 Code Amendments () Area Protection ()
 Comp. Plan Amendments () Street Vacations ()
 Temporary Permit Admin. () Easement Vacations ()
 Temporary Permit Council () Will. River Greenway ()
 Flood Management () Tualatin River Grwy. ()
 Inter-Gov. Agreements N/C () Street Name Change ()
 Alter Non-Conforming Res. () Code Interpretations ()
 Alter Non-Conforming Comm. () Type II Home Occ. ()
 Measure 37 Claims () Planned Unit Dev. PUD ()

TOTAL REFUNDABLE DEPOSIT RD \$ 0.00
 GENERAL MISCELLANEOUS Type: PM \$

 TOTAL Check # Credit Card () Cash () \$ 0.00

W 668
L 1666

DEVELOPMENT REVIEW APPLICATION

DR-08-01
WA-08-01
VA-08-01

TYPE OF REVIEW (Please check all boxes that apply):

- | | | | |
|-------------------------------------|--|-------------------------------------|--|
| <input type="checkbox"/> | Annexation | <input type="checkbox"/> | Non-Conforming Lots, Uses & Structures |
| <input type="checkbox"/> | Appeal and Review * | <input type="checkbox"/> | One-Year Extension * |
| <input type="checkbox"/> | Conditional Use | <input type="checkbox"/> | Planned Unit Development |
| <input checked="" type="checkbox"/> | Design Review | <input type="checkbox"/> | Pre-Application Meeting * |
| <input type="checkbox"/> | Basement Vacation | <input type="checkbox"/> | Quasi-Judicial Plan or Zone Change |
| <input type="checkbox"/> | Extraterritorial Ext. of Utilities | <input type="checkbox"/> | Sidewalk Use App * |
| <input type="checkbox"/> | Final Plat or Plan | <input type="checkbox"/> | Sign Review * |
| <input type="checkbox"/> | Flood Plain Construction | <input type="checkbox"/> | Street Vacation |
| <input type="checkbox"/> | Hillside Protection and Erosion Control | <input type="checkbox"/> | Subdivision |
| <input type="checkbox"/> | Historic District Review | <input type="checkbox"/> | Temporary Uses * |
| <input type="checkbox"/> | Legislative Plan or Change | <input type="checkbox"/> | Tualatin River Greenway |
| <input type="checkbox"/> | Home Occupation App (except Type II) * | <input checked="" type="checkbox"/> | Variance |
| <input type="checkbox"/> | Lot Line Adjustment * / ** | <input type="checkbox"/> | Wetland |
| <input type="checkbox"/> | Minor Partition (Preliminary Plat or Plan) | <input type="checkbox"/> | Willamette River Greenway |
| <input checked="" type="checkbox"/> | Natural Drainageway Protection | <input type="checkbox"/> | Other/Misc |

TOTAL FEES/DEPOSIT _____

* No CD required / ** Only one copy needed

VKNW, Inc.	12700 SE McLoughlin Blvd, Milwaukie, OR 97222	449-8165
OWNERS	ADDRESS	PHONE (res. & bus.)
Same as above	CITY	503.594.8866
APPLICANT'S	ADDRESS	CITY
Schott & Associates, Inc.	F.O. Box 509, Aurora, OR 97002	PHONE (res. & bus.)
CONSULTANT	ADDRESS	CITY
	2400 Willamette Falls Dr	PHONE
		503.678.8007

SITE LOCATION North side of Willamette Falls Drive

Assessor's Map No.: 21E 35D & 21E35DD Tax Lot(s): 3400 & 3500 Parcels 1&4
Total Land Area: 1.58 Acres

- All application fees are non-refundable (excluding deposit).
- The owner/applicant or the ir representative should be present at all public hearings.
- A denial or grant may be reversed on appeal. No permit will be in effect until the appeal period has expired.

4. **Three (3) complete hard-copy sets (single sided) of application materials must be submitted with this application. One (1) complete set of digital application materials must also be submitted on CD in PDF format.**

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application.

SIGNATURE OF PROPERTY OWNER(S)

X [Signature]

Date 12-18-07

SIGNATURE OF APPLICANT(S)

X [Signature]

Date 12-18-07

BY SIGNING THIS APPLICATION, THE CITY IS AUTHORIZED REASONABLE ACCESS TO THE PROPERTY. ACCEPTANCE OF THIS APPLICATION DOES NOT INFER A COMPLETE SUBMITTAL. COMPLETENESS WILL BE DETERMINED WITHIN 30 DAYS OF SUBMITTAL.

PLANNING AND BUILDING; 22500 SALAMO RD #1000; WEST LINN, OR 97068;
PHONE: 855-4211 FAX: 855-4108

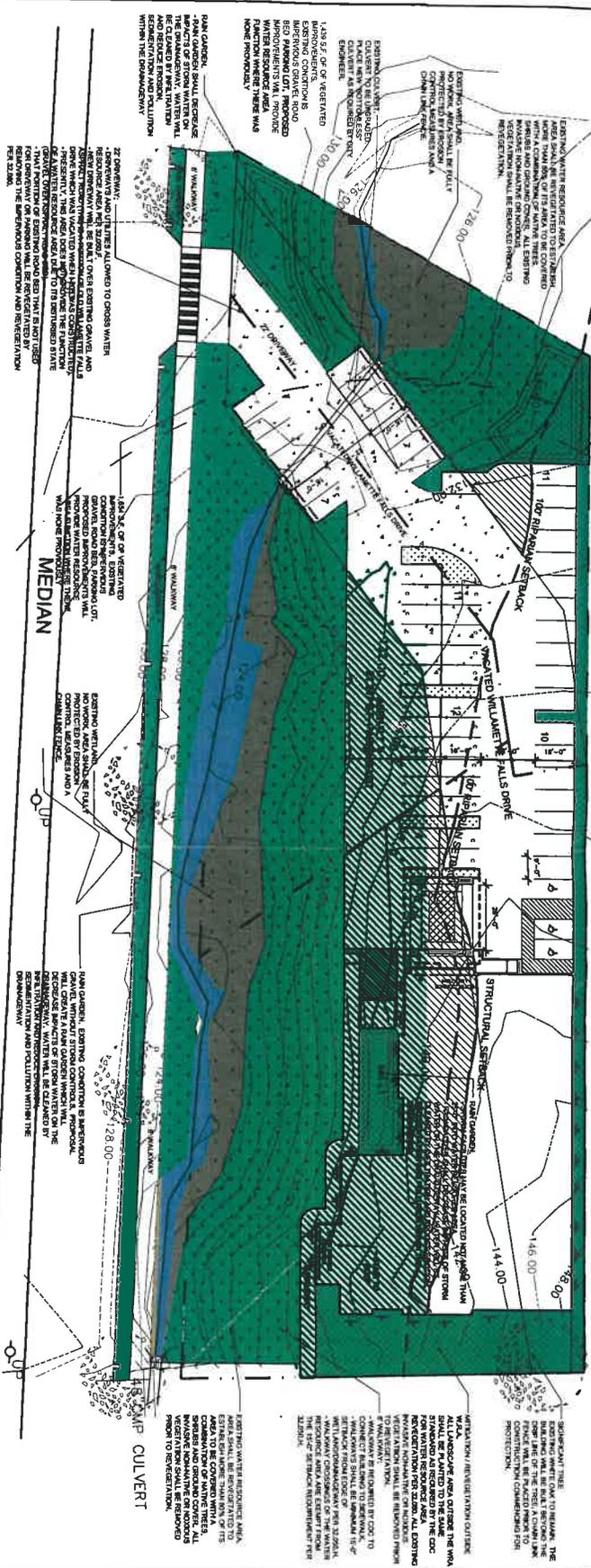
A (60)

ATTENTION: REGENERATION OUTSIDE W.R.A. - STORM FACILITIES MAY BE LOCATED NOT MORE THAN 10 FEET FROM THE EDGE OF THE DRIVEWAY. ALL EXISTING AND PROPOSED FACILITIES SHALL BE PROTECTED BY THE SAME STANDARDS AS REQUIRED BY THE LOCAL WATER RESOURCES AREA REGENERATION PLAN PER WAC 173-201-020. ALL EXISTING AND PROPOSED FACILITIES SHALL BE REMOVED PRIOR TO REGENERATION.

ATTENTION: REGENERATION OUTSIDE W.R.A. - STORM FACILITIES MAY BE LOCATED NOT MORE THAN 10 FEET FROM THE EDGE OF THE DRIVEWAY. ALL EXISTING AND PROPOSED FACILITIES SHALL BE PROTECTED BY THE SAME STANDARDS AS REQUIRED BY THE LOCAL WATER RESOURCES AREA REGENERATION PLAN PER WAC 173-201-020. ALL EXISTING AND PROPOSED FACILITIES SHALL BE REMOVED PRIOR TO REGENERATION.

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WILLAMETTE FALLS DRIVE MEDIAN



LEGEND	LEGEND	LEGEND
EXISTING AREA OUTSIDE WATER RESOURCE AREA	EXISTING NON-FUNCTIONING WATER RESOURCE AREA	EXISTING WATER RESOURCE AREA
VEGETATED AREA OUTSIDE WATER RESOURCE AREA THAT SHALL BE REGENERATED PER WATER STANDARDS.	EXISTING PAVED AREA EXCEPT DRIVE AREAS THAT SHALL BE REGENERATED PER WATER STANDARDS.	DRAINAGE WAY - (EVERYTHING DRAINS HERE)
	EXISTING PAVED AREA WITHIN WATER RESOURCE AREA TO REMAIN IN NON-FUNCTIONING STATE. STORAGE CONTROLS SHALL BE ADDED TO THIS AREA.	WETLAND
	EXISTING WATER RESOURCE AREA TO BE REGENERATED TRANSITION AREA	TRANSITION AREA IN NEED OF REGENERATION
		FUNCTIONING WATER RESOURCE AREA TO BE PERMANENTLY DISTURBED
		WATER RESOURCE BOUNDARY
		MINIMUM WIDTH OF W.R.A. STR. 32.090C AND SETBACK FOR WALKWAYS

WATER RESOURCE AREA PROTECTION/IMPACTS:		
LOT 1:	LOT 2:	LOT 3:
<p>EXISTING W.R.A. UNDISTURBED:</p> <ul style="list-style-type: none"> -TOTAL AREA: 16,286 S.F. -AREA OF WETLAND: 2,022 S.F. -EXISTING UNPAVED W.R.A.: 6,300 S.F. -EXISTING PAVED W.R.A.: 5,395 S.F. <p>PROPOSED CONDITIONS:</p> <ul style="list-style-type: none"> -TOTAL AREA: 16,786 S.F. -AREA OF WETLAND: 2,022 S.F. -EXISTING REGENERATED W.R.A.: 7,243 S.F. -DISTURBED W.R.A.: 4,440 S.F. 	<p>EXISTING W.R.A. UNDISTURBED:</p> <ul style="list-style-type: none"> -TOTAL AREA: 17,486 S.F. -AREA OF WETLAND: 2,359 S.F. -EXISTING UNPAVED W.R.A.: 11,300 S.F. -EXISTING PAVED W.R.A.: 5,418 S.F. <p>PROPOSED CONDITIONS:</p> <ul style="list-style-type: none"> -TOTAL AREA: 17,486 S.F. -AREA OF WETLAND: 2,359 S.F. -EXISTING W.R.A. UNDISTURBED: 9,042 S.F. -DISTURBED W.R.A.: 7,676 S.F. 	<p>EXISTING W.R.A. UNDISTURBED:</p> <ul style="list-style-type: none"> -TOTAL AREA: 34,397 S.F. -AREA OF WETLAND: 1,516 S.F. -EXISTING W.R.A.: 21,308 S.F. <p>PROPOSED CONDITIONS:</p> <ul style="list-style-type: none"> -TOTAL AREA: 34,397 S.F. -AREA OF WETLAND: 1,516 S.F. -EXISTING W.R.A. UNDISTURBED: 1,853 S.F. -DISTURBED W.R.A.: 9,453 S.F.

1100 N. 3rd Ave, Suite 101
Bellevue, Washington 98004
Phone: (206) 837-3332
Fax: (206) 837-9174

Member, American Institute of Architects

Project: HOLIDAY INN EXPRESS
2400 Block Willamette Falls Drive
West Linn OR 97068

Client: Vic Patel
13700 SE Me Lapointe
Mundwinville, OR 97222

Drawn: [Name]
Checked: [Name]
Date: [Date]

Scale: 1" = 20'-0"

Sheet: REDUCED IMPACT SITE PLAN EXHIBIT B

Copyright © 2008, [Company Name]

Soppe, Tom

From: Kerr, Chris
Sent: Monday, April 27, 2009 1:42 PM
To: Soppe, Tom
Subject: FW: 120 day clock confirmation

For the record – and especially- any response from them

From: Kerr, Chris
Sent: Monday, April 27, 2009 1:42 PM
To: 'vipul patel'; 'David@meadsmith.com'
Cc: bill.monahan@jordanschrader.com
Subject: 120 day clock confirmation

Vic: For the record, I need to clear up a point regarding the 120 day clock:

Upon reviewing the DVD of the City Council meeting of March 30th, we have confirmed that the 120 day clock was extended to May 22, 2009 (not May 21st). This was offered by the applicant and agreed to by the Council at the hearing. We have traded previous correspondence and had discussions stating that the date was May 21, 2009. For the record, and to make certain that there are no misunderstandings about this - I will need you to confirm that the 120 day clock was extended to May 22nd in writing (this can be an email stating that you agree).

Thanks – call me if you disagree and cannot provide an email to confirming that this is correct date.

Chris Kerr
Senior Planner

City of West Linn
22500 Salamo Road, Suite 1000
West Linn, OR 97068
503-723-2538
fax-503-656-4106

MAILED
4-23-09 *wf*



CITY HALL 22500 Salamo Rd. West Linn Oregon 97068

telephone: (503) 657 0331

fax: (503) 650 9041

West Linn

April 23, 2009

Mr. David P. Smith
Mead Smith PC
1672 SW Willamette Falls Drive, Suite D
West Linn, OR 97068

RE: Holiday Inn Express, AP 09-02 and Conditional Use Application

Mr. Smith:

In reference to your letter dated April 20, 2009 addressed to me, I wanted to confirm for you that your extension of the 120 day clock at the March 30th Council meeting did not waive any rights or claims against the City that you might have.

However, I do want to clarify the City's position on two points made in your letter:

1. You ask that I, "let you know if there are any materials the City will require in connection with the CUP submittal that has not already been provided". I have issued a letter stating that the application was deemed 'complete' for processing purposes and that the CUP application will be advertised and scheduled for the May 11th Council meeting. But please be aware that the burden of proof is always on the applicant, not City Staff, to address all approval criteria and to place evidence into the record showing that the approval criteria have been met to the satisfaction of the decision making body. The Council is an independent decision maker and may require more details to be convinced that the evidence demonstrates that the application can be approved. I have provided your clients, in writing, with a summary of questions and concerns provided by the City Council as well as a letter with specific concerns raised by the Deputy Fire Marshall of TVF&R; I also strongly recommended that they provide a detailed response to these since they may expect to hear these concerns raised at the public hearing. I have not received a response to either of these items.
2. With regard to your position that, "the January 22, 2009 final decision is in fact final, and has not been appealed, or called up for review, according t the CDC"; we respectfully disagree. The call up for review was accomplished in accordance with the CDC by the City Council within the timeframe afforded to them following an established process.



West Linn

I am always happy to discuss via telephone or a meeting any items related to the application.

Sincerely,

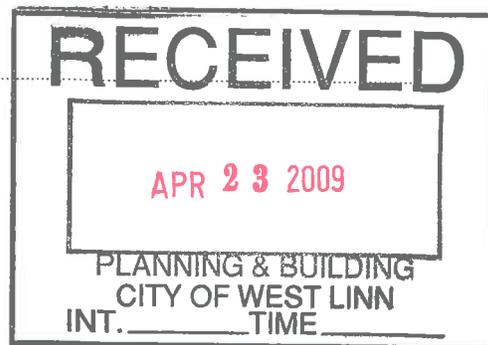
A handwritten signature in blue ink, appearing to read "CK", is written over the word "Sincerely,".

Chris Kerr, AICP
Acting Planning Director

cc: Vic Patel; VK Northwest, Inc. 12700 SE McLoughlin Blvd., Milwaukie, OR 97222
Brad Kaul; Steven P. Elkins Architects, Inc., 11000 NE 33rd Pl., Ste. 101, Bellevue, WA 98004
Chris Jordan; City Manager, City of West Linn

Soppe, Tom

From: GARY [REDACTED]
Sent: Thursday, April 23, 2009 9:48 AM
To: Kerr, Chris; Soppe, Tom; Planning Commission
Cc: City Council; 'Karie Okee'; Jordan, Chris; Galle, Patti
Subject: RE: Concerns on Consolidated Hearing for Holiday Inn Express



My intent was to inform the City of my concerns and was not necessarily sent for the official record. I assume that in sending this email to the City Council and yourself that it needs to go into the official record because you are compelled to do so? My intent has always been that this application would have been settled by now through earnest collaboration and discussion.

The applicant appears to have really messed this up and took the risk; unwittingly or not, it doesn't matter. Sending this back through the process as stipulated by Chapter 60 would save the Council much headache and grief. I think this Planning Commission is well equipped to deliberate AFTER the applicant has decided to enter into this project in good faith.

Again, how many hotels has this client done? In how many cities has this client built successful projects? Any unsuccessful projects?

And how many has West Linn done?

As with every project, economics are driving this opportunity and the applicant appears to have tried to save money on the front end by cheating on the requirements and playing "dumb". The consultants they hired are professionals and very adept and skilled at what they do. I don't believe for a second that the applicant was cheated out in any meaningful way. This is now an issue of enforcement. The way the City is going about this is wrong and obscene because of the precedent it is setting.

Since we appear to be jumping ahead on economic hardship, how will the City factor the \$100,000 dollar investment on the property? Who will pick up the tab on added congestion in the streets, added pollution into the Willamette, and lost property values of nearby homes IF the project turns out to be an abysmal failure? These are the real issues, partly because 32.090 is poorly contrived and was adopted hastily. How will economic burdens that are taken on by the City Council be factored into our collective tax burden? The potential problems will be costly and the money for this will not come from the nearby trees.

With such an important issue at stake, why are we allowing anybody to leap frog over other well written and proven codes? In this case, not only is staff unwilling to enforce the codes, the City Council is aiding and abetting.

THIS can go into the record, please.

Respectfully, Gary Hitesman

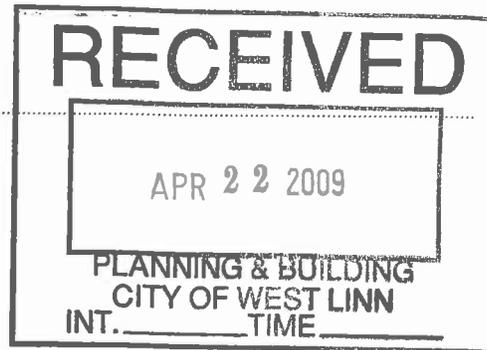
From: Kerr, Chris [mailto:ckerr@westlinnoregon.gov]
Sent: Thursday, April 23, 2009 9:10 AM
To: GARY; Soppe, Tom; Galle, Patti
Cc: City Council; Karie Okee; jneill@wftvmedia.org; Jordan, Chris
Subject: RE: Concerns on Consolidated Hearing for Holiday Inn Express

Gary - Thanks for your comments-

I'll put these into the official record.

Soppe, Tom

From: GARY [REDACTED]
Sent: Wednesday, April 22, 2009 3:39 PM
To: Kerr, Chris; Soppe, Tom; Galle, Patti
Cc: City Council; 'Karie Okee'; jneill@wftvmedia.org
Subject: Concerns on Consolidated Hearing for Holiday Inn Express



I recieved notice for the upcoming schedule Appeal No. AP-09-02 & No. CUP-09-01. The questions are mostly rhetorical.

As I have stated, Chapter 19 and Chapter 60 were ignored by applicant and the application is incomplete. It appears that the applicant reviewed the code for compliance and continued with the process at their own risk. The applicant's latest response and inability to submit a bonafide submittal appear to willingly subvert the process in a disengenuous fashion.

I would have hoped that the City had scheduled the May 11 hearing as it did in an effort to afford the applicant the necessary time to meet Chapter 60 and provide the public an opportunity to comment on the applicant's response to the conditional use criteria. Assuming that the process as stated in the CDC was not followed, the discussion will be the first time the public has a chance to comment. With the apparent lack of due process and lack of City oversight and review, I am baffled that the application is being allowed to move forward as advertised.

Although I would like to hold the applicant solely responsible for meeting the burden of proof in this application, I am perplexed at the apparent fluidity and obfuscations that emanate from untimely posted signs and letters in the mail from the City.

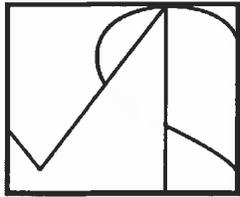
I believe the applicant still needs to meet the burden of proof. Is the City willing to waive this requirement? Where in the code does language give such authority to the City Council? Without a Planning Director, does the Interim Planning Director carry all the authority and responsibilities for enforcement? Is the City truly fulfilling all its' obligations in a responsible manner? The application and this "consolidated hearing" appears to push the boundaries of prudent and effective municipal governance and protections to the welfare of West Linn citizens.

Aside from the incomplete application which does not satisfy Chapters 19, 32, 55, 60, and 75, the City's last announcement that the hearing would now be consolidated under new interpretations of Section 99 appears without precedent. A disregard towards Oregon Goal One objectives is also apparent. How come the March 11 meeting was not broadcast at the same time the meeting took place? Will the May 11 meeting be similarly blacked out?

I find the proceedings as advertised without precedent and potentially undermines the appearance of fairness from the City Council. I assume this will all be water under the culvert when the May 11 meeting is continued due to "additional information"? As the notice states, "If a person submits evidence in support of the application, any party is entitled to request a continuance of the hearing". Will such a request be honored? Is knowing that the meeting will need to be continued meet the intent of public comment and involvement? Are the previous sins and misinterpretations of legal counsel absolved in this action?

I hope someone shows up who will know what it is that they are doing. So far, I do not expect that from the City, legal counsel, the applicant, or the public at large, including me. I am relying on the collective council for proper jurisprudence.

Your Planning Commission appears to me to be the only equitable and regulated body that should be hearing this application. Anything else, at best, is a stretch.



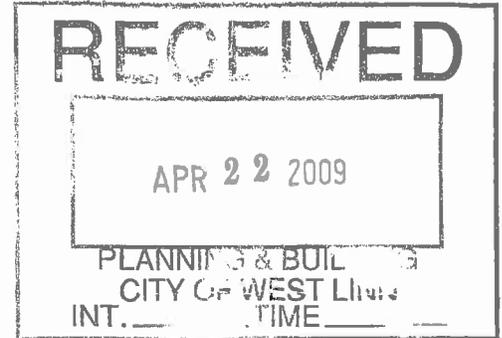
MEAD
SMITH
P.C.

1672 WILLAMETTE FALLS DRIVE, SUITE D
WEST LINN, OREGON 97068
503-636-3660
FAX: 503-636-2797

ATTORNEYS AT LAW

David P. Smith
Admitted: Oregon and Washington
David@meadsmith.com

April 20, 2009



Chris Kerr, Interim Planning Director
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Re: Holiday Inn Express Application
2400 Willamette Falls Dr., West Linn, OR 97068

Dear Mr. Kerr:

I am receipt of your April 1, 2009 letter in connection with the above-referenced matter. Thank you for clarifying the City's position in connection with the March 30, 2009 City Counsel hearing. But, for purposes of clarifying your letter, please also note that my client voluntarily granted an extension of the 120-day clock only on the condition that any and all claims against the City were not waived by the voluntary extension, and that my client will not be estopped from pursuing any future claims should they be filed.

Thank you for your offer to meet with me and my client in connection with the CUP submittals. I have discussed this matter with my client, and I understand that they have met with you several times in connection with the CUP submittal, and that from their end, they have been informed that all of the relevant materials required under CDC Chapter 60 have either recently been submitted, or are already part of the original application. In this regard, please let me, and more importantly, my client, know if there are any materials the City will require in connection with the CUP submittal that has not already been provided by VKNW.

Finally, the only note I would have in connection with your letter is that once again, it is my client's position that the January 22, 2009 final decision is in fact final, and has not been appealed, or called up for review, according to the CDC. Accordingly,

MEADSMITH, PC

City of West Linn

Page 2

4/20/2009

should either one of the applications not be approved, my client may proceed forward with either a mandamus action to compel the City to acknowledge the final decision, or a suit for damages based on the City's mishandling of the applications.

Very truly yours,

A handwritten signature in black ink, appearing to read "David P. Smith". The signature is stylized with a large, sweeping initial "D" and a horizontal line extending to the right.

David P. Smith

DPS:wrr

Soppe, Tom

From: Kerr, Chris
Sent: Friday, April 17, 2009 9:51 AM
To: vipul patel; kaul931@hotmail.com
Cc: bradkaul@spe-architects.com; Soppe, Tom
Subject: FW: File Review CUP-09-01
Attachments: CUP 09-01 HEX.doc

Vic/Brad – I am forwarding you the response I received from TVFR on the Conditional Use application. She has included the same comment letter that was previously provided and is still identifying areas of concern. I believe this question was included in the letter I provided to you that includes Council concerns. You have previously indicated that the plans are in compliance the Fire Code. I would encourage you to clarify, in writing on the record, how you are addressing TVFR's issues. If you can provide them prior to the 22nd, I can include them in my Staff Report.

Also, can you confirm which email address is appropriate for Brad K.

Thanks

*Chris Kerr
723-2538*

From: Mohling, Karen A. [mailto:Karen.Mohling@tvfr.com]
Sent: Thursday, April 16, 2009 6:28 PM
To: Kerr, Chris
Subject: RE: File Review CUP-09-01

Chris,

Attached is my fire plan review letter which I updated to reflect latest submittal reference.

In summary, the major deficiencies of this proposal include: there are not two points of access to the site; the fire access road is not within 150' of the back of the building; and there is no access for aerial truck operations.

As proposed, it would be difficult to stage a fire fighting or rescue effort on this project site.

Karen
503-612-7012

From: Kerr, Chris [mailto:ckerr@westlinnoregon.gov]
Sent: Monday, April 13, 2009 9:57 AM
To: Mohling, Karen A.
Subject: FW: File Review CUP-09-01

Karen – For some history: The Planning Commission approved this plan already. It is being reviewed by the council. As part of their review, the Conditional use permit application needed to be submitted. This plan is the same one that was approved by the Planning Commission previously– but I need to send out the plans again anyway. All of the previous conditions approval still apply. Call me with any questions or if you have any new comments. Thanks

*Chris K.
723-2538*

From: Zak, Teresa
Sent: Monday, April 13, 2009 9:26 AM
To: Karen Mohling
Cc: Kerr, Chris
Subject: File Review CUP-09-01

Good Morning Karen,
I lieu of a hard copy I ma sending you the link for CUP-09-01, the conditional use permit for the Holiday Inn, can you please respond with any comments to Acting Planner Director Chris Kerr at ckerr@westlinnoregon.gov (Cc'd) by Friday 11/17/09. Thank you very much, if you need any additional info please call.

*Teresa Zak
City of West Linn
Planning Department Administrative Assistant
503.723.2533
tzak@westlinnoregon.gov*

Kerr, Chris

From: Mohling, Karen A. [Karen.Mohling@tvfr.com]
Sent: Thursday, April 16, 2009 6:28 PM
To: Kerr, Chris
Subject: RE: File Review CUP-09-01

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Karen
503-612-7012

From: Kerr, Chris [mailto:ckerr@westlinnoregon.gov]
Sent: Monday, April 13, 2009 9:57 AM
To: Mohling, Karen A.
Subject: FW: File Review CUP-09-01

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*Chris K.
723-2538*

From: Zak, Teresa
Sent: Monday, April 13, 2009 9:26 AM
To: Karen Mohling
Cc: Kerr, Chris
Subject: File Review CUP-09-01

Good Morning Karen,
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*Teresa Zak
City of West Linn
Planning Department Administrative Assistant*

503.723.2533

tzak@westlinnoregon.gov



TUALATIN VALLEY FIRE & RESCUE - SOUTH DIVISION
COMMUNITY SERVICES • OPERATIONS • FIRE PREVENTION

Rec'd 4-17-09

April 16, 2009

Chris Kerr
Planning Director
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Re: CUP 09 – 01 Holiday Inn Express Site Plan – Exhibit B

Dear Mr. Kerr;

Thank you for the opportunity to review the proposed site plan surrounding the above named development project. Tualatin Valley Fire & Rescue does not endorse this proposal until the following items have been addressed and approved:

- 1) **FIRE APPARATUS ACCESS ROAD DISTANCE FROM BUILDING AND TURNAROUNDS:** Provide an access road(s) that is within 150 feet of all portions of the exterior wall of the first story of the building as measured by an approved route around the exterior of the building. An approved turnaround is required if the remaining distance to an approved intersecting roadway, as measured along the fire apparatus access road, is greater than 150 feet. (IFC 503.1.1)
- 2) **ADDITIONAL ACCESS ROADS – COMMERCIAL:** Where buildings exceed 30 feet in height or three stories in height **shall have at least two separate means of fire apparatus access.** Buildings or facilities having a gross area of more than 62,000 square feet shall be provided with at least two separate means of fire apparatus access. Buildings up to 124,000 square feet provided with fire sprinklers may have a single access. (IFC D104)

Please provide building height information for review.

- 3) **AERIAL FIRE APPARATUS ACCESS:** Buildings or portions of buildings or facilities exceeding 30 feet in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway. Fire apparatus access roads shall have a minimum unobstructed width of 26 feet in the immediate vicinity of any building or portion of building more than 30 feet in height. At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to one entire side of the building. (IFC D105)

Requirement depends on building height - buildings over 30 feet are required to provide access for Aerial Fire Fighting Apparatus.

- 4) **REMOTENESS:** Where two access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses. (IFC D104.3)
- 5) **FIRE APPARATUS ACCESS ROAD WIDTH AND VERTICAL CLEARANCE:** Fire apparatus access roads shall have an unobstructed width of not less than 20 feet, and an unobstructed vertical clearance of not less than 13 feet 6 inches. Where fire apparatus roadways are less than 26 feet wide, "NO PARKING" signs shall be installed on both sides of the roadway and in turnarounds as

needed. Where fire apparatus roadways are more than 28 feet wide but less than 32 feet wide, "NO PARKING" signs shall be installed on one side of the roadway and in turnarounds as needed. Where fire apparatus roadways are 32 feet wide or more, parking is not restricted. (IFC 503.2.1)

- 6) **FIRE APPARATUS ACCESS ROADS WITH FIRE HYDRANTS:** Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet. (IFC D103.1)
- 7) **NO PARKING SIGNS:** Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "No Parking" signs shall be installed on one or both sides of the roadway and in turnarounds as needed. Roads 26 feet wide or less shall be posted on both sides as a fire lane. Roads more than 26 feet wide to 32 feet wide shall be posted on one side as a fire lane. Signs shall read "NO PARKING - FIRE LANE" and shall be installed with a clear space above grade level of 7 feet. Signs shall be 12 inches wide by 18 inches high and shall have red letters on a white reflective background. (IFC D103.6)
- 8) **SURFACE AND LOAD CAPACITIES:** Fire apparatus access roads shall be of an all-weather surface that is easily distinguishable from the surrounding area and is capable of supporting not less than 12,500 pounds point load (wheel load) and 75,000 pounds live load (gross vehicle weight). You may need to provide documentation from a registered engineer that the design will be capable of supporting such loading. (IFC D102.1)
- 9) **TURNING RADIUS:** The inside turning radius and outside turning radius shall be not less than 28 feet and 48 feet respectively, measured from the same center point. (IFC 503.2.4 & D103.3)
- 10) **PAINTED CURBS:** Where required, fire apparatus access roadway curbs shall be painted red and marked "NO PARKING FIRE LANE" at approved intervals. Lettering shall have a stroke of not less than one inch wide by six inches high. Lettering shall be white on red background. (IFC 503.3)
- 11) **GATES:** Gates securing fire apparatus roads shall comply with all of the following: (IFC D103.5)
 - Minimum unobstructed width shall be 16 feet, or two 10 foot sections with a center post or island.
 - Gates shall be set back at minimum of 30 feet from the intersecting roadway.
 - Gates shall be of the swinging or sliding type
 - Manual operation shall be capable by one person
 - Electric gates shall be equipped with a means for operation by fire department personnel
 - Locking devices shall be approved.
- 12) **COMMERCIAL BUILDINGS - REQUIRED FIRE FLOW:** The required fire flow for the building shall not exceed 3,000 gallons per minute (GPM) or the available GPM in the water delivery system at 20 psi, whichever is less as calculated using IFC, Appendix B. A worksheet for calculating the required fire flow is available from the Fire Marshal's Office. (IFC B105.2)

Please provide a completed Fire Flow calculation worksheet for approval - instructions are available on our website: www.tvfr.com. Also, please provide a current fire flow test of the nearest fire hydrant demonstrating available fire flow at 20 psi residual pressure.

- 13) **FIRE HYDRANTS – COMMERCIAL BUILDINGS:** Where a portion of the building is more than 400 feet from a hydrant on a fire apparatus access road, as measured in an approved route around the exterior of the building, on-site fire hydrants and mains shall be provided. This distance may be increased to 600 feet for buildings equipped throughout with an approved automatic sprinkler system. (IFC 508.5.1)

Please provide hydrant locations for approval.

- 14) **FIRE HYDRANT NUMBER AND DISTRIBUTION:** The minimum number and distribution of fire hydrants available to a building shall not be less than that listed in Appendix C, Table C 105.1.

Considerations for placing fire hydrants may be as follows:

- Existing hydrants in the area may be used to meet the required number of hydrants as approved. Hydrants that are up to 600 feet away from the nearest point of a subject building that is protected with fire sprinklers may contribute to the required number of hydrants.

- Hydrants that are separated from the subject building by railroad tracks shall not contribute to the required number of hydrants unless approved by the fire code official.
 - Hydrants that are separated from the subject building by divided highways or freeways shall not contribute to the required number of hydrants. Heavily traveled collector streets only as approved by the fire code official.
 - Hydrants that are accessible only by a bridge shall be acceptable to contribute to the required number of hydrants only if approved by the fire code official.
- 15) **FIRE HYDRANT DISTANCE FROM AN ACCESS ROAD:** Fire hydrants shall be located not more than 15 feet from an approved fire apparatus access roadway. (IFC C102.1)
 - 16) **REFLECTIVE HYDRANT MARKERS:** Fire hydrant locations shall be identified by the installation of reflective markers. The markers shall be blue. They shall be located adjacent and to the side of the centerline of the access road way that the fire hydrant is located on. In case that there is no center line, then assume a centerline, and place the reflectors accordingly. (IFC 508.5.4)
 - 17) **FIRE HYDRANT/FIRE DEPARTMENT CONNECTION:** A fire hydrant shall be located within 100 feet of a fire department connection (FDC). Fire hydrants and FDC's shall be located on the same side of the fire apparatus access roadway. FDCs shall normally be remote except when approved by the fire code official. (IFC 912.2) ***Show FDC location for approval.***
 - 18) **ACCESS AND FIRE FIGHTING WATER SUPPLY DURING CONSTRUCTION:** Approved fire apparatus access roadways and fire fighting water supplies shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. (IFC 1410.1 & 1412.1)
 - 19) **KNOX BOX:** A Knox Box for building access may be required for this building. For gates securing an emergency access road a Knox box or Knox padlock will be required; a Knox switch will be required for electrically operated gates. Please contact the Fire Marshal's Office for an order form and instructions regarding installation and placement. (IFC 506)
 - 20) Complete the Building Survey Form prior to the issuance of the Building Permit:
http://www.tvfr.com/Dept/fm/brochures/document_files/building_survey_form_ifc.pdf
 - 21) Resubmit plans for final approval.

If you have questions, please call me at (503) 612-7012.

Sincerely,

Karen Mohling

Karen Mohling
Deputy Fire Marshal

CITY OF WEST LINN
LAND USE APPLICATION COMMENT FORM

Type of review (check box): Completeness check Review comments

To Attention of: ^{Kha Le} Mike Perkins
^{Faren Mobley - via} De-mae Date sent: 4/11/09 Date due: 4/17/09 am

Project Name: Holiday Inn Express File No. CUP-09-01

Type of Land Use Application: Conditional Use Permit

Project Planner: Chris Kerr Phone No.: 1538

Date of staff review meeting (if applicable): _____ Time: _____

Staff review meetings, if scheduled, will be held in the Willamette Conference Room, City Hall, 22500 Salamo Road, in the Planning & Building Department. Contact the project planner for more information.

.....
PLEASE SUBMIT ALL COMMENTS IN WRITING. Comments can also be e-mailed to the project planner.

The following does not apply to completeness checks. Your comments, if relevant to the application, will be addressed in the staff report. Include conditions of approval relating to such issues as sanitary sewer, water, storm drainage, streets, dedication, and resource protection. Please justify why the conditions of approval are needed.

SAME CONDITIONS AS REQUIRED FOR LAND USED APPLICATION
WITH PERMIT NO. AP-09-02, DR-08-01, VAR-08-01, WAP-08-01

KQL. 04-15-09

(Continue comments on next page if needed.)

Kerr, Chris

From: Kerr, Chris
Sent: Wednesday, April 15, 2009 10:14 AM
To: 'vipul patel'
Subject: RE: cover letter

Vic- attached is the required completeness letter from the City – please forward to Brad as well. Thanks

Chris Kerr

From: vipul patel [mailto:vcp16@hotmail.com]
Sent: Tuesday, April 14, 2009 3:12 PM
To: Kerr, Chris
Subject: cover letter

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CITY OF
West Linn

April 15, 2009

Mr. Brad Kaul
Steven P. Elkins Architects, Inc.
11000 NE 33rd Place, suite 101
Bellevue, WA 98004-1460

**SUBJECT: Conditional Use Permit application (CUP-09-01)- Holiday Inn Express:
Willamette Falls Dr. lots 2400-2450**

Dear Mr. Kaul:

The Planning and Engineering departments find that the CUP application is complete as of the date of this letter. The City now legally has 120 days (August 13, 2009) to exhaust all local review per state statute. However, as you are aware, this application is being consolidated with your current related applications and are scheduled for a City Council hearing on May 11, 2009. Please contact me at 503-723-2538, or by email at ckerr@westlinnmoregon.gov if you have any questions or comments.

Sincerely,

Chris Kerr
Acting Planning Director

Soppe, Tom

From: Kerr, Chris
Sent: Monday, April 13, 2009 3:05 PM
To: vipul patel
Cc: bradkaul@spe-architects.com; Soppe, Tom
Subject: cover letter for CUP application

Vic – Per your call –

My strong suggestion is that you, or Brad, write a short letter to the City clarifying that you have submitted a complete CUP application and that it includes:

1. A narrative addressing how the application satisfies the Conditional Use criteria; and
2. Copies of the site plan that was reviewed and approved by the Planning Commission. You should state this plan depicts the development for which you are seeking CUP approval.

I would also recommend that you include a statement that explains that all of the other submittal requirements for a CUP (Chapter 60) have already been submitted and are part of the file of record under your current application.

You can email me this letter to my attention – or call me with any questions.

Thanks –

Chris K.
723-2538

Memorandum

Date: April 7, 2009

To: Vic Patel, VK Northwest, Inc.
Brad Kaul; Steven P. Elkins Architects, Inc.

From: Chris Kerr, Acting Planning Director 

Subject: Requests for clarification related to the Holiday Inn Express application

Please find below several requests for clarification/information for your attention which I assembled from members of the City Council. I am forwarding these to you to allow you the opportunity to provide supplemental information into the record to address these issues. Most of these questions can be addressed by providing more detailed information on the specific elements in your application and plans. While you are under no obligation to respond to these items, I would expect these questions to be asked during your May 11, 2009 public hearing. I will include any responses that you would like to provide to the Council upon receipt; and will of course, include them into the official public record, along with this Memorandum. Please call me with any questions.

1. Section 32.090 specifically requires that the applicant provide evidence that the strict application of Chapter 32 would deprive the owner of, "*all economically viable use of the land*". Additional evidence that could be provided to support this would include information related to the sale price and true value of the property. Particularly as the value of the property relates to the zoning designation of the site.
2. Section 32.090.B(1): As evidence that without the reduction the owner would be denied "economically viable use of the property" of the site, this Section requires that no other application could result in "permission for an economically viable use of the subject property." It clearly states that the application shall "include a list of uses allowed on the subject property." The record lists only three carefully chosen uses. The applicant then contends that these alternative uses have "virtually identical impacts" to the applicant's hotel. Additional economic viability information, such as calculations of additional alternative businesses located in the area would be helpful. Detailed comparables, which could include return on investment analysis and. Note the Code is specific that if evidence cannot be provided to demonstrate this, the request must be denied.
3. It should be understood that all development applications are reviewed against the CDC at the time that the application is submitted, not when the pre-application is submitted. Your application was reviewed pursuant to the requirements of Chapter 32 at the time of your submittal, which includes a 100 foot setback from the creek.

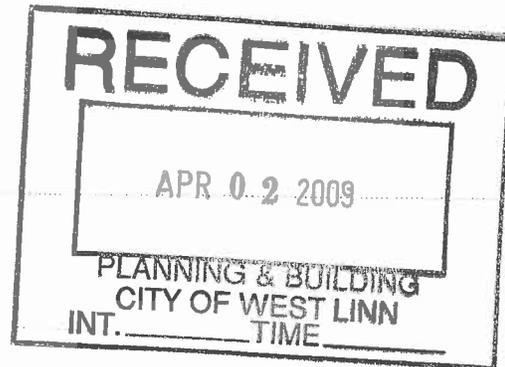
This setback is specifically noted in your pre-application meeting summary notes of March 14, 2007. You have indicated in the record that you believe the “zoning changed without notice to the applicant”, you may want to clarify this statement.

4. It appears that the eight foot sidewalk along Willamette Falls Drive, which will include a six foot wide rain garden swale strip will extend into the designated water resource area. You may want to confirm that, if so, this will not result in an alteration of the water course. Additionally, this additional impact would have to be included into your mitigation plan.

CC: Chris Jordan, City Manager

Soppe, Tom

From: Kerr, Chris
Sent: Thursday, April 02, 2009 4:09 PM
To: Soppe, Tom
Subject: FW: Holiday Inn



Tom -for the file

From: Kovash, John
Sent: Thursday, April 02, 2009 8:37 AM
To: Kerr, Chris
Cc: Jordan, Chris; Kovash, John
Subject: FW: Holiday Inn

Hi Chris,
This the second draft and the Mayor would like to see this as soon as you and I take a first look.
Thanks,

John

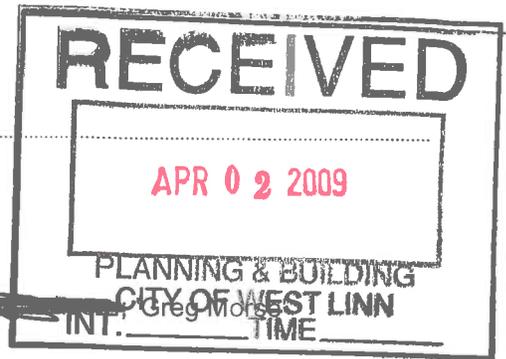
Issues of concern with Holiday Inn application.

1. Present a concise list of all variances requested for the application.
2. Price paid for the land should be disclosed as this has a bearing on the economically viable use of the property.
3. Economically viable use of the property (32.09B) Applicant must show that no other application could result in permission for an economically viable use of the property. To show "economic viability" the application simply lists three uses, evidently of the applicants' choice. The applicant then declares that these alternatives have "virtually identical impacts" to the applicant's hotel. No economic viability information or calculations are presented nor are alternatives presented that are comparable to other business in the area that are much smaller but seem economically viable. It seems reasonable to require comparables, which include return on investment analysis and it should be emphasized that the applicant **MUST SHOW THAT NO OTHER APPLICATION COULD RESULT IN PERMISSION FOR AN ECONOMICALLY VIABLE USE OF THE PROPERTY.** If such viability cannot be shown, the application fails.
4. The Mayor, you and I discussed Metro's setback policy and you thought their approach might be helpful.
5. The application did not specifically state that the code at the time of application is the code that is applicable to the application.
6. Staff should have an analysis of the relevance of applicant's discussion of setbacks and references to economic impact of what the applicants refers to as "the zoning changed without prior notice to the applicant."
7. When the code changed, the applicant did not alter plans to have a smaller footprint: For example design a parking garage.
8. Site plan statistics are by lot without totals, thereby masking the impact of proposed development.
9. Condition of approval 2 requires an 8 foot wide sidewalk along Willamette Falls Drive, plus a 6 foot wide rain garden swale strip between the sidewalk and the street. It does appear that this 14 foot development extends into the WRA. If that is the case additional WRA would be disturbed and the water course would have to be altered.
10. Is the City of West Linn liable for replacing the culvert that was washed out?

11. Staff might review the essence of land use planning in Oregon and its relationship to code, purchase price and economic viability. Prior to Measure 37 current code took precedent over superseded code or the code at the time of purchase. Measure 37 allowed development under the code at the time of purchase. Measure 37 was quickly overturned by Measure 57 which reverted back to applications being required to conform to current code.
12. Applicant states "Due to hardship – applicant requests a variance to build a parking lot and building structure within the Water Resource Protection Area to Retain Economic Viability of Land that has been lost due to the increased setback from the wetland/drainageway from 35 feet to 100 feet. This is the essence of the request for variance and leads to the question: is the City of West Linn prepared to grant variances for declarations of economic loss, or further, for alleged economic loss that is undocumented, and if so, to what extent? It would seem reasonable to ask for the extent of the "hardship" being claimed as "hardship" is the stated reason for declaring certain code provisions (such as structural setbacks) not applicable to this application.
13. What design criteria was used to make the Holiday Inn compatible with the architecture of the Willamette area?
14. I think it would be helpful to have an opinion on some of these issues (particularly items 11 and 12) from a knowledgeable planner outside of West Linn.
15. 32.090 requires the applicant to "include a list of uses allowed on the subject property." If this requirement had been met, the applicant, staff, Planning Commission and public would have known that a hotel was not an allowed use in the commercial zone.
16. Has TVFR approved site plan?

Soppe, Tom

From: GARY ██████████
Sent: Thursday, April 02, 2009 10:38 AM
To: Soppe, Tom
Cc: Kerr, Chris; City Council; Galle, Patti; Teri Cummings; ██████████
Subject: RE: Holiday Inn Express application comment _Chp 60 Process



Tom,

Thank you. My interpretation of the code also shows that the LCDC and Fire Marshal should approve the site layout prior to meeting with the council. With or without approvals in place, please allow enough time to give your public an opportunity to review and comment.

I also thought Peter Spir's original suggestion about entering the site from the east has more validity today. Peter Spir is one sharp cookie. Especially since the water runoff from Salamo Road and I-205 caused the existing soils on their property to be washed further down stream. I strongly recommend the City include the LCDC into the conversation and use the agency to broker an equitable solution with the applicant. A crude diagram indicates that there is available area to maintain setbacks while providing for "adequate areas" for the project. Using the TSP, the City could quickly incorporate the new roadway into 8th Court with a "river walk" that uses erosion control mechanisms to slow down future torrential rains. BECAUSE the riparian area has been destroyed by poor engineering practices upstream and Mother Nature, I believe the impacted riparian corridor can be sculpted to meet both City, LCDC, and applicant needs while meeting intent and upholding the applicant's hardship clause. However, instead of cheap mitigation measures in Willamette Park, which do NOTHING, mitigation should occur along the same stream, across Willamette in the ravine that was also damaged in the recent storm. With LCDC approval, any area of water retention lost on the proposed site would be applied with a multiplier on the other side. Instead of paying the ensuing costs of litigation, the money would be better spent on implementing a REAL mitigation effort. As Michael Scott from the Office would say; "This is a Win-Win-Win."

Gary

To: Soppe, Tom
Cc: Kerr, Chris; City Council; Galle, Patti; Planning Commission; karieoke@aol.com; 'Teri Cummings'; 'Greg Morse'
Subject: Holiday Inn Express application comment _Chp 60

In greater clarity, because 3 minutes is not enough time to explain my observations, is what I was saying last Monday night.

Goal: To allow the Council the opportunity to discuss CDC 32.090, CDC 75, and 55 in relationship to the Holiday Inn Express Application.

Problems:

1.) Applicant was approved without Planning Staff or the Planning Commission adequately enforcing

(84)

4/2/2009

process. This is not really a missed responsibility or due to poor management. An accidental oversight (thus the inadequacy) that everybody missed and was unfortunately recognized later than sooner. (A dot was forgotten over one 'i', which is still less than the number of apparent shortcomings in the application .)

2.) Applicant apparently submitted an incomplete application, provided incomplete mitigation plans, and either willfully or ignorantly did not provide enough work that addressed all relevant sections of the CDC. Shared burden discussions aside, the applicant did a woeful job of providing the burden of proof. (It is almost silly to conceive that a prominent and EXPERIENCED applicant whose business it is to build and manage many successful hotels claims they were misled. How many hotels have they done and how many has our Planning Department done? One 'wonders' if the applicant is complicit in leading our City astray to seek added advantages towards economics and/or favorable decisions on reducing site improvement costs that adequately address the existing riparian corridor. Although not a crime, the level of disingenuousness appears suspiciously high.)

Insult to Injury: The City's obstinacy in heading down a wrong procedural path. (I do **not** believe Counsel's instructions to Council at the last meeting will find merit in an appeal to LUBA.)

Solution:

The May 11 date allows sufficient time to coordinate with the applicant and perform the required steps as listed in CDC 60.060 A through F.

Once those steps have been completed and in order, there will be sufficient discussion and proof that the conditions of CDC 60 are met.

Planning staff should facilitate a schedule to expedite the applicant through the process without taking a leadership position or taking responsibility.

Once CDC 60 is affirmed then the real debate regarding CDC 32.090, 55, and 75 can be conducted.

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.0.238 / Virus Database: 270.11.35/2033 - Release Date: 04/01/09 06:06:00

Wednesday, April 01, 2009

Received by email
from Gary Hitesman, 4-1-09

PROJECT LEAD A HORSE TO WATER

Statement: Planning is not rocket science but a symbol of how a government self regulates and an outward sign of how the organization manifests itself towards its constituents.

Goal: To allow the Council the opportunity to discuss CDC 32.090, CDC 75, and 55 in relationship to the Holiday Inn Express Application.

Problems:

- 1.) Applicant was approved without Planning Staff or the Planning Commission adequately following process. (I suggest a checklist be developed, as this would have prevented this mess in the first place.)
- 2.) Applicant submitted an incomplete application, provided incomplete mitigation plans, and either willfully or ignorantly did not provide enough work that addressed all relevant sections of the CDC. Shared burden discussions aside, the applicant did a woeful job of providing the burden of proof. Actually, the client failed in proving burden. (It is almost silly to conceive that a prominent and EXPERIENCED applicant whose business it is to build and manage many successful hotels claims they were misled. How many hotels have they done and how many has our Planning Department done? One 'wonders' if the applicant is complicit in leading our City astray to seek added advantages towards economics and/or favorable decisions on reducing site improvement costs that adequately address the existing riparian corridor. Although not a crime, the level of disingenuousness appears suspiciously high.)

Insult to Injury: The City's obstinacy in heading down a wrong procedural path. (I do not believe Counsel's instructions to Council at the last meeting will find merit in an appeal to LUBA.)

Solution: Stop handicapping these proposals and applicant by the metaphorical equivalent of "sitting on your hands." The May 11 date allows sufficient time to coordinate with the applicant and perform the required steps as listed in CDC 60.060 A through F. Once those steps have been completed and in order, there will be sufficient discussion and proof that the conditions of CDC 60 are met. Planning staff should facilitate a schedule to expedite the applicant through the process without taking a leadership position or taking responsibility. **Once CDC 60 is affirmed then the real debate regarding CDC 32.090, 55, and 75 can be conducted.**

END.

Appendix I: Following below is a copy of the relevant code sections and requirements. I respectfully disagree with Councilor Burgess's contention that the criteria have been met. Listen carefully and do the opposite of what he says. (His work trends to more problems and backwards thinking than any other force of nature I have ever studied.) His intent appears to approve the project and castigate neighborhood advocates when the appeal is made to LUBA or any other subsequent opportunity.

Appendix II: Applicant shall provide documents for Planning Staff review that conditions have been met. (See next page.)

Wednesday, April 01, 2009

A. A conditional use application shall be initiated by the property owner or the owner's authorized agent. *This needs to be done. The City has initiated the process and that is the first mistake the City made in allowing this issue to be heard.*

B. A prerequisite to the filing of an application is a pre-application conference at which time the Director shall explain the requirements and provide the appropriate forms as specified in Section 99.030(B) and (C). *A pre-application is required so that approval standards are vetted by the local neighborhoods*

C. A pre-requisite to the filing of an application is a meeting with the respective City recognized neighborhood association, per CDC Section 99.038, at which time the applicant will present his/her proposal and receive comments. (ORD. 1401) *If adequately met, then check this off and place into the record.*

D. An application for a conditional use shall include the completed application form and:
1. A narrative which addresses the approval criteria set forth in Section 60.070 and which sustains the applicant's burden of proof; *(This is a requirement that the public should be able to review and comment on.)*and,
2. A site plan as provided by Section 60.080. One original application form must be submitted. Three copies at the original scale and three copies reduced to 11 X 17 or smaller of all drawings and plans ***must*** be submitted. Three copies of ***all other items must be submitted.*** When the application submittal is determined to be complete, additional copies may be required as determined by the Planning Department. (ORD. 1442)

E. Names and addresses of all who are property owners of record within 300 feet of the site shall be determined by the Director.

F. The applicant shall pay the requisite fee.

!! Then the public has the right to see the applicants' response AND be given the right to address comment per Chapter 99.

60.070 APPROVAL STANDARDS AND CONDITIONS

A. the Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, except for a manufactured home subdivision in which case the approval standards and conditions shall be those specified in Section 36.030, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:

1. The site size and dimensions provide:
 - a. Adequate area for the needs of the proposed use; and,
 - b. Adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses. (ORD. 1291)
2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.
3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.

4. Adequate public facilities will be available to provide service to the property at the time of occupancy. (ORD. 1544)
 5. The applicable requirements of the zone are met, except as modified by this chapter.
 6. The supplementary requirements set forth in Chapters 52 to 55, if applicable, are met.
 7. The use will comply with the applicable policies of the Comprehensive Plan.
- B. An approved conditional use or enlargement or alteration of an existing conditional use shall be subject to the development review provisions set forth in Chapter 55. *This is important because this step is a pre-requisite to Chapter 55*
- C. The Planning Commission may impose conditions on its approval of a conditional use which it finds are necessary to assure the use is compatible with other uses in the vicinity. These conditions may include, but are not limited to, the following: (City Council)
1. Limiting the hours, days, place, and manner of operation.
 2. Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor, and dust.
 3. Requiring additional setback areas, lot area, or lot depth, or width.
 4. Limiting the building height, size or lot coverage, or location on the site.
 5. Designating the size, number, location and design of vehicle access points.
 6. Requiring street right-of-way to be dedicated and the street to be improved including all steps necessary to address future street improvements identified in the adopted Transportation System Plan. (ORD. 1544)
 7. Requiring participation in making the intersection improvement or improvements identified in the Transportation System Plan when a traffic analysis (compiled as an element of a condition use application for the property) indicates the application should contribute toward. (ORD. 1544)
 8. Requiring landscaping, screening, drainage, and surfacing of parking and loading areas.
 9. Limiting the number, size, location, height, and lighting of signs.
 10. Limiting or setting standards for the location and intensity of outdoor lighting.
 11. Requiring berming, screening, or landscaping and the establishment of standards for their installation and maintenance.
 12. Requiring and designating the size, height, location, and materials for fences.
 13. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.
- D. Aggregate extraction uses shall also be subject to the provisions of ORS 541.605. (I will advocate that applicant, City and Council look up relevant ORS sections.)

CONCLUSION of APPENDIX:

Everyone we hold accountable for following and enforcing these requirements have either acted ignorantly, feigned ignorance, overlooked, or just plain acted unprofessional. Since I deal with Staff at an irregular basis, this is not a staff complaint. Staff consistently does an outstanding job given what they are FORCED to work with. This is a complaint about the apparent shoddy work of a supposedly experienced applicant and manifestation of poor leadership, apparently from the *former* Planning Director. Since the Planning Director is still on the payroll, I feel the position is fair game for comment. It is unfortunate that he was not given a fair shake to provide a better transition than the one we are all suffering through.

The appeal from the applicant appears to be unhelpful and lacks apparent knowledge about process and requirements, which suggests the real reason why this application is having problems.

Soppe, Tom

From: Kerr, Chris
Sent: Wednesday, April 01, 2009 1:49 PM
To: vipul patel; bradkaul@spe-architects.com; jayrpatel@comcast.net; kaul931@hotmail.com
Cc: Jordan, Chris; Bill Monahan; Soppe, Tom
Subject: FW: Conditional Use Narrative
Attachments: Conditional_Use_Letter_3-31-09.doc

Thanks Vic –

Obviously, we will formally respond to the actual submittal when it comes in – but I do have some informal comments based on what you provided that I hope are helpful to you. Generally, keep in mind that the intent of the narrative is to provide responses that indicate specifically how your application meets the standards in this chapter. The more detail that you can provide, the better. Remember, the burden of proof always remains with the applicant to show that the standards are met, this narrative is your opportunity to do so. Note 60.070 A.7 below in particular.

60.070A.3. - I think you should expand in your answer to clarify how the hotel is needed in this particular community. Such as market analysis, demonstrated need, etc.

A.4 – I would not recommend stating 'as far as we know", please state if, and how, adequate public facilities will be available at c/o.

A.6 – be specific about what the supplementary requirements are that are discussed and how this application satisfies them.

***A.7 – I think this is the item that your should definitely address in much more detail. Our Comp. plan includes many Policies that are germane to a new hotel use near our Will. District. These include Policies related to environmental protections, economic development, location policies, compatibility of comm. uses, etc. In order to demonstrate compliance with Policies of the Plan - you will need to cite specific Policies in our Plan and then discuss how this application complies with them. The link to our Comp. Plan is here:
<http://westlinnoregon.gov/planning/comprehensive-plan>***

60.070.C. – there is no for you to comment on this item.

Lastly, I can't emphasis enough the importance of making certain that you submit an application that exactly meets our CDC submittal requirements. Since we are under a tight timeline for the review –I don't want us to waste any time or miss a requirement under the Code that will inadvertently cause an issue later. The requirements for submittal are clearly specified in chapt. 60 –

I would recommend forwarding this to your attorney and to Brad as well since it appears that my response may not reach him –

Thanks – call me with any questions.

Chris K. 723-2538

From: vipul patel [mailto:vcp16@hotmail.com]
Sent: Tuesday, March 31, 2009 1:01 PM

To: Kerr, Chris; manish patel; jayrpatel@comcast.net; katenpatel@aol.com
Subject: FW: Conditional Use Narrative

please read attachment, i will be turning this in with are application today.

To: Vcp16@hotmail.com
Subject: Fwd: Conditional Use Narrative
Date: Tue, 31 Mar 2009 14:45:56 -0400
From: vcp16@aol.com

-----Original Message-----
From: Brad Kaul <kaul931@hotmail.com>
To: vcp16@aol.com; spe_architects@msn.com
Sent: Tue, 31 Mar 2009 11:37 am
Subject: Conditional Use Narrative

Vic,
Attached is the conditional use narrative. Please review and let me know what you think.

My office e-mail is not working. Please respond to my hotmail with any comments.

Brad

Express your personality in color! Preview and select themes for Hotmail®. [See how.](#)

Need a job? [Find employment help in your area.](#)

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CITY OF
West Linn

April 1, 2009

Mr. David P. Smith
Mead Smith PC
1672 SW Willamette Falls Drive, Suite D
West Linn, OR 97068

Re: Holiday Inn Express, AP 09-02 and Conditional Use Application

Mr. Smith:

The purpose of this letter is to clarify in writing Staff's understanding of the City Council's actions related to the above referenced application taken at the March 30, 2009 meeting and to make clear the process that Council will follow in reviewing your anticipated Conditional Use Permit (CUP) application. The Council's actions at the meeting were based on Staff's recommendation, along with your conditional concurrence as noted on the record, to allow for an expeditious review of a CUP application in full accordance with all requirements of the City's Community Development Code (CDC). That review will take place at a public hearing on May 11, 2009 along with the review of AP 09-02.

Specifically, at their March 30, 2009 meeting, the City Council continued the hearing until May 11, 2009 at 6:30 PM. During the hearing, you, on behalf of the applicant, voluntarily granted an extension of their 120 day clock to May 21, 2009. Additionally, the Council determined that at the May 11, 2009 de novo hearing it will consolidate the application currently under review (AP 09-02) with the pending CUP application. The Council further determined that it has authority to consolidate the review under CDC 99.070 to be the initial decision making body for the CUP.

As you know, in order to schedule a CUP application for review at the May 11th Council meeting, a complete CUP application must be provided to the City in order to allow for all mandatory public notice requirements to be met. Assuming the May 11th Council hearing, Staff must have a complete CUP application by April 17, 2009 at the latest. I would be pleased to meet with you in advance of that date to review the CUP submittal requirements and approval criteria (see CDC Chapter 60) in more detail or to discuss any other elements of the review process.

Regarding the May 11th Council meeting, we intend to hold a consolidated de novo public hearing on the two items as described, but be aware that the Council will be voting on each



West Linn

application (CUP and AP 09-02) separately. Because the CDC requires a CUP for the proposed use, the Council will be voting on the CUP request first, and will then vote on the appeal under review. Therefore, regardless of Staff's recommendation on the CUP application, if the Council does not grant approval of the requested CUP on May 11th Staff will recommend that the review of the Planning Commission decision lead to a denial since the hotel application cannot be approved without a required CUP.

Please let me know if you disagree with any items in this letter or would like to discuss them further.

Sincerely,

Chris Kerr, AICP
Acting Planning Director

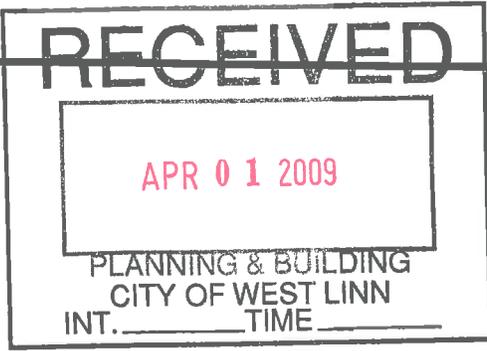
cc: Vic Patel; VK Northwest, Inc. 12700 SE McLoughlin Blvd., Milwaukie, OR 97222
Brad Kaul; Steven P. Elkins Architects, Inc., 11000 NE 33rd Pl., Ste. 101, Bellevue, WA 98004
Chris Jordan; City Manager, City of West Linn



11000 NE 33rd Place, Suite 101
Bellevue, WA 98004-1460

425.827.3252 phone
425.889.9174 fax
e-mail: steve@spe-architects.com

Draft, not actual app. submitted



March 31, 2009

Planning Department
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Re: Holiday Inn Express – Willamette Falls Dr. lots 2400-2450

Dear City Staff;

This is the required narrative for the conditional use.

Conditional Use Narrative:

According to the West Linn CDC Transient Lodging Facilities (Hotels) are not permitted in the General Commercial Zone without a Conditional Use. An application for a conditional use shall include the completed application form and a narrative which addresses the approval criteria set forth in Section 60.070 and which sustains the applicant's burden of proof; and, a site plan as provided by Section 60.080.

Approval Standards and Conditions are provided below. The applicant narrative describing how the development meets these conditions follows each standard in italics:

60.070.A.1. The site size and dimensions provide:

- a. Adequate area for the needs of the proposed use; and,
- b. Adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses.

- (applicant response) Adequate area is provided for the proposed use. This includes the code required parking, landscaping, street access and building. We do not foresee any adverse effects on the surrounding properties or uses. The nature of the site separates the development from the road by a creek and revegetated water resource area. This provides a generous landscaped buffer. This buffer along with the great width of Willamette Falls Drive, provides adequate area between the development and single family residences that mitigates possible noise or light that may escape the property. Also, the proximity to I-205 and Willamette Falls Drive will provide white noise that will drown out most noise created by the day to day operation of this hotel. Therefore,

adequate area has been provided on this site to buffer adverse effects that may have been caused by this development.

60.070.A.2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.

- (applicant response) This provision seems similar to that of the previous condition requiring adequate area for the needs of the proposed use (size and shape). As for location, this is a very good location for a hotel due to it's proximity to I-205, businesses and amenities in the area. The topography is not a problem. We are building on top of an old road grade and we have situated the parking and building to take advantage of the existing slopes. There are few natural features present. Bennet Creek flows along the southern portion of the site. The drainage channel is not natural and has been rerouted and altered a few times in its life due to the construction of Willamette Falls Drive and I-205. This proposed use will upgrade the condition of the existing natural features through revegetation with native species and the eradication of invasive species. Also, the old culvert will be replaced with a new bottomless culvert.

60.070.A.3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.

- (applicant response) The community does not yet have a hotel facility. This community needs a hotel.

60.070.A.4. Adequate public facilities will be available to provide service to the property at the time of occupancy.

- (applicant response) Yes, as far as we know, adequate fire, police, water, sewer and electrical services are available to service this facility.

60.070.A.5. The applicable requirements of the zone are met, except as modified by this chapter.

- (applicant response) Yes, all other requirements of the general commercial zone have been addressed.

60.070.A.6. The supplementary requirements set forth in Chapters 52 to 55, if applicable, are met.

- (applicant response) Yes, all of the supplementary requirements of Chapters 52 and 55 have been addressed.

60.070.A.7. The use will comply with the applicable policies of the Comprehensive Plan.

- (applicant response) Yes, we are not aware of any policies of the comprehensive plan that we do not comply with.

60.070.B. An approved conditional use or enlargement or alteration of an existing conditional use shall be subject to the development review provisions set forth in Chapter 55.

- (applicant response) The development review provisions of Chapter 55 have been addressed.

60.070.C. The Planning Commission may impose conditions on its approval of a conditional use which it finds are necessary to assure the use is compatible with other uses in the vicinity.

- (applicant response) The city staff has imposed conditions on approval. Most conditions have been outlined in the staff report.

60.080. SITE PLAN AND MAP

- (applicant response) A site plan complying with all provisions of this section has been submitted for review.

Sincerely,

Brad Kaul
Steven P. Elkins Architects Inc PS PC

Kerr, Chris

From: Kerr, Chris
Sent: Wednesday, April 01, 2009 8:55 AM
To: Soppe, Tom
Subject: RE: Conditional Use Narrative

Thanks

From: Soppe, Tom
Sent: Wednesday, April 01, 2009 8:49 AM
To: Kerr, Chris
Subject: RE: Conditional Use Narrative

Looks pretty good- they could go through the comp plan and address which policies they think this specifically helps fulfill, but we can do that discussion in our staff report instead.... They do provide a response to A7 so it's not like it's "incomplete" per se.

Also it's "Bernert" Creek, so that's just a spelling error. I think the rest is all right.

Tom Soppe
Associate Planner
City of West Linn
22500 Salamo Road
West Linn, OR 97068

From: Kerr, Chris
Sent: Wednesday, April 01, 2009 7:45 AM
To: Soppe, Tom
Subject: FW: Conditional Use Narrative

Tom – please review this and let me know your comments.

From: vipul patel [mailto:vcp16@hotmail.com]
Sent: Tuesday, March 31, 2009 1:01 PM
To: Kerr, Chris; manish patel; jayrpatel@comcast.net; katenpatel@aol.com
Subject: FW: Conditional Use Narrative

please read attachment, i will be turning this in with are application today.

To: Vcp16@hotmail.com
Subject: Fwd: Conditional Use Narrative
Date: Tue, 31 Mar 2009 14:45:56 -0400
From: vcp16@aol.com

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

From: Brad Kaul <kaul931@hotmail.com>
To: vcp16@aol.com; spe_architects@msn.com
Sent: Tue, 31 Mar 2009 11:37 am
Subject: Conditional Use Narrative

Vic,

Attached is the conditional use narrative. Please review and let me know what you think.

My office e-mail is not working. Please respond to my hotmail with any comments.

Brad

Express your personality in color! Preview and select themes for Hotmail®. [See how.](#)

Need a job? [Find employment help in your area.](#)

Hotmail® is up to 70% faster. Now good news travels really fast. [Find out more.](#)

Kerr, Chris

From: Kerr, Chris
Sent: Monday, March 30, 2009 9:30 AM
To: 'David@meadsmith.com'
Cc: Jordan, Chris; 'Bill Monahan'
Subject: Holliday Inn Express

Mr. Smith – Per our request, this is to follow-up to our phone conversation this morning.

Your letter 3-27-09 requests that we advise you about whether, “*the City seeks to have VKNW’s entire team....in attendance*” at the hearing this evening. For the record, I would advise bringing anyone to the meeting that you think is required to present your case to the City Council.

You also stated that your client was never informed about the content of the meeting. At a minimum, they were provided written notice of the hearing within all State and local required timeframes for such notice. Additionally, the appeal hearing has been discussed via several emails and verbally with your clients by me personally.

Please call me if you are having any questions about the meeting this evening.

Chris Kerr, AICP
Acting Planning Director

City of West Linn
22500 Salamo Road, Suite 1000
West Linn, OR 97068
503-723-2538
fax-503-656-4106

SUBMITTED
 3-30
 CC = [unclear]
 [unclear]
 CC [unclear]

City of West Linn
PRE-APPLICATION CONFERENCE MEETING
SUMMARY NOTES
March 14, 2007

SUBJECT: Holiday Inn Express at 2400 and 2450 Willamette Falls Drive

ATTENDEES: Applicants: Bob Wright, Cindy Hovind, Vic Patel, Katen Patel, Manish Patel
 Staff: Dennis Wright (Engineering), Peter Spir (Planning) David Davies (Building)
 Willamette Neighborhood Association: Fran Peake

The following is a summary of the meeting discussion provided to you from staff meeting notes. Additional information may be provided to address any "follow-up" items identified during the meeting. These comments are PRELIMINARY in nature. Please contact the Planning Department with any questions regarding approval criteria, submittal requirements, or any other planning-related items. Please note disclaimer statement below.

Project Details

The proposal would create about a four story Holiday Inn Express at 2400/2450 Willamette Falls Drive with about 65 units. The 42,162 square foot property is zoned "General Commercial".

The dominant natural feature of the site is a wetland and the Bennett Creek riparian corridor. It occupies the southern half of the properties. The wetland is 30-65 feet wide in the north-south dimension. The wetlands are well defined by a four-foot tall slope that runs around the edge of the area. The wetland is sustained by Bennett Creek, which, at the west end, emerges from a culvert under an old vacated section of Willamette Falls Drive. From the point that it daylights, the creek is an open channel all the way through the wetlands to the extreme east edge of the site where it goes into another culvert and under the Willamette Falls Drive. Also, there is another tributary of Bennett Creek on the property to the west whose transition and setback have to be contended with.

City Council recently changed the Community Development Code for Water Quality Resource Areas (WRA). Bennett Creek is identified in City inventories as a riparian area. Thus the standards for riparian areas will apply as shown in table below: 100 feet from the thread of the creek or 50 feet from the edge of the wetland boundary, whichever is greater, plus structural setback of 7.5 feet. Either way you calculate the transition and setback the applicant's proposed site plan shows the driveway and parking areas in the transition zone and one corner of the building intrudes into the setback. This represents an initial assessment and would have to be verified in the field by wetland delineation and by survey. The other creek on the property to the west is not a riparian corridor so it has a 50-foot transition plus structural setback.

Table 32-1. Required Widths of Setback and Transition Area.

Protected Water Feature Type (see CDC Chapter 2 Definitions)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Setback and Transition Area on each side of the water feature
--	---	--	--

Wetland, Major Drainageway, Minor Drainageway	0% - 25%	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of wetland 	50 feet plus structural setback.
Wetland, Major Drainageway, Minor Drainageway	≥ 25% to a distinct top of ravine ¹	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of wetland 	Distance from starting point of measurement to top of ravine ¹ (30 foot minimum), plus an additional 50-foot setback, plus structural setback.
Wetland, Major Drainageway, Minor Drainageway	≥ 25% for more than 30 feet, and no distinct top of ravine for at least 150 feet	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of wetland 	200 feet, plus structural setback
Riparian Corridor	any	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level 	100 feet or the setback required under major and minor drainageway provisions, whichever is greater., plus structural setback
Formerly Closed Drainage Channel Reopened (see 32.050(N))	n/a	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level 	Variable: See CDC 32,050(N)



Per code, roads, driveways, utilities, or passive use recreation facilities may be built in and across water resource areas when no other practical alternative exists. Construction shall minimize impacts. Construction to the minimum dimensional standards for roads is required. Full mitigation and revegetation is required, with the applicant to submit a mitigation plan pursuant to CDC Section 32.070 and a revegetation plan pursuant to CDC Section 32.080. To this end a one way in and one way out option would be the minimum dimensional intrusion into the WRA. That way the eastern 23-foot wide driveway could be reduced to 15 feet wide.

But the bottom line is that the applicant has two options:

- 1) redesign the building and parking areas to keep out of the transitions and setbacks and use the existing point of ingress/egress; or,
- 2) apply for a Class II variance to allow intrusion into the transition and setback area. Mitigation is required either on-site or off-site.

MITIGATION PLAN

A mitigation plan shall be required if any portion of the water resource area is proposed to be permanently disturbed by development.

- A. *All mitigation plans must contain an alternatives analysis demonstrating that:*
1. *No practicable alternatives to the requested development exist that will not disturb the water resource area; and,*
 2. *Development in the water resource area has been limited to the area necessary to allow for the proposed use; and,*
 3. *An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to the water resource area will be avoided and/or minimized.*
- B. *A mitigation plan shall contain the following information:*
1. *A description of adverse impacts that will be caused as a result of development.*
 2. *An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, the revegetation provisions of CDC Section 32.050(K).*
 3. *A list of all responsible parties including, but not limited to, the owner, applicant, contractor, or other persons responsible for work on the development site.*
 4. *A map showing where the specific mitigation activities will occur.*
 5. *An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting, and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife water work periods.*
 6. *Assurances shall be established to rectify any mitigation actions that are not successful. This may include bonding or other surety.*
 7. *Evidence that a Joint Permit Application (to the U.S. Army Corps and OR DSL) if impacts to wetlands are greater than 0.10 acres, has been submitted and accepted for review.*
- C. *Mitigation of any water resource areas that are not wetlands that are permanently disturbed shall be accomplished by creation of a mitigation area equal in size to the area being disturbed. Mitigation areas may be land that is either*

1. *On-site, not within the water resource area, and is characterized by existing vegetation qualifying that does not meet the standard set forth in CDC Section 32.050(K), or*
2. *Off-site, and is characterized by existing vegetation that does not meet the standard set forth in CDC Section 32.050(K).*

The applicant shall prepare and implement a revegetation plan for the mitigation area pursuant to CDC Section 32.080, and which shall result in the area meeting the standards set forth in CDC Section 32.050(K). Adequacy of off-site mitigation areas on city property must be consistent with and meet approval of the City Department of Parks and Recreation. Any off-site mitigation occurring on privately-owned land shall be protected with a conservation easement.

The limited site size suggests that on-site mitigation is unlikely. Off site mitigation seems to be the most reasonable. Mitigation does not have to be in the same drainageway corridor. Past applications have used Willamette Park for mitigation. The challenge is will be how the Planning Commission interprets section (A)(1) above: *No practicable alternatives to the requested development exist that will not disturb the water resource area.* With that in mind, the 23 foot wide east entryway may need to be reduced to a one-way driveway 15 feet wide. Engineering however does not want to have two driveways next to each other and the property to the east already has its driveway near to the proposed driveway location. Engineering suggested that the applicant contact the owner of the property to the east and see if he will agree to your using his parking lot/driveway for access. Another option would be to have a single point of ingress/egress at the west end. Turnarounds and all other TVFR standards would have to be met.

Putting aside the WRA issue, there are architectural concerns with this building. Given its location at the gateway to the Willamette Historic area, the design should be deferential to the architecture along that street. A stock design will not do. Typically, large corporations like Holiday Inn have a wide variety of designs in their architectural portfolios that would work well. Staff would encourage the applicant to visit the Willamette Falls Drive Commercial area or the Willamette Historic residential district and try to incorporate some of the design elements in this design. Fran Peake, representing the Willamette Neighborhood Association, proposed a design similar to a Holiday Inn in Astoria. It showed a lot of variations (pop outs/indents) on the front elevation. The applicant stated that they had done the Cannery Hotel in Astoria and were expecting to put similar effort into the design of this hotel. Fran Peake also noted that there is a need for a center turn lane so traffic won't back up on Willamette Falls Drive behind a car waiting to turn into the hotel driveway.

There are very few trees on the property. Nonetheless, the applicant must map the trees, number them in the field and identify them on the map by location, type and size (DBH). The City Arborist then visits the site to determine if the trees are significant or not. If the trees are significant, the applicant may be required to redesign the site plan to save some or all of them. The applicant is reminded that

no trees may be removed prior to review of this application otherwise it will be very prejudicial to the application.

A noise study conducted by an acoustic engineer will be required for “previously unused commercial property” to demonstrate compliance with noise standards in CDC Chapter 55.

This site is not able to take advantage of the provisions of CDC 52.300 regarding signs for business centers near I-205 since the site would have to be four acres in size. A Class II variance would be required to achieve the height of I-205 travel lanes. Staff would not support such an application.

Parking standards of CDC chapter 46 require one space per guest room. Parking may exceed the minimum standard by just 10%. Landscaping requires 20% of the gross site to be landscaped and 10% of the interior area of the parking lot is to be landscaped. Please see also table CDC 54.070.

Engineering Comments

Streets:

- Frontage improvements: Additional pavement width may be required. Half-street improvements required including 6-foot sidewalk, 6-foot planter strip, and 5-foot bike.
- Right-of-way (ROW), width: 120-foot, no additional ROW required.
- No access on east border of property as possible traffic conflict with business to the east. Possible to coordinate joint access/driveway at east property line?
- Street illumination plan required along property frontage to ensure development’s improvements provide street lighting to City standards.
- Applicant should provide a traffic study highlighting impact of the development both upon the intersections within the 10th Street corridor and the intersection of WFD and Willamette Drive (Hwy 43).
- Street SDC based upon Trip Generation Manual.

Storm:

- Treatment and detention will be required. Impervious area from frontage improvements must be included in calculations. Alternative designs from City of Portland Stormwater Manual (as allowed by City codes) to mitigate storm drainage impact must be approved by City Engineer prior to construction. May want to consider pervious pavement for parking lot to minimize new impervious area.
- Easement or dedication may be required for Goal 5 wetlands on property.
- Public stormwater facility shall be constructed by developer to treat and detain stormwater to City standards (available on line).
- Stormwater discharge location to open drainageway in a location and method as approved by the City Engineer most likely along property frontage.
- Stormwater SDC

Water:

- Water pressure zones: Willamette zone.
- Water service available via 18-inch ductile iron line across WFD from property.
- While water transmission is satisfactory, water storage not available for build-out. Water meters available on a first come-first serve basis.
- Water SDC \$\$

Sanitary Sewer:

- System capacity sufficient to serve development.
- Service available via manhole located on tax lot 2400 (15-inch line).
- 20-foot easement for sanitary sewer line traversing tax lots 2000 and 2400 must be provided or sanitary sewer line relocated at developer's expense.
- SS SDC \$\$

Other Utilities:

- Underground existing overhead utilities entering property from across WFD. All new utilities shall be undergrounded.

All public improvements must be constructed in accordance with City of West Linn Public Works Design and Construction Standards.

Dave Davies, Building Official, commented on the SDC charges and noted that mechanical and structural code changes are due April 1, 2007 and would apply.

Process

Schedule and conduct a neighborhood meeting pursuant to CDC Section 99.038. Follow the code requirements exactly. The Willamette Neighborhood Association meets on the second Wednesday of the month. Contact Ruth Offer, President, at 657-1350.

Then complete the design review, water resource area protection permit application forms and submit them to the Planning Department with deposit/fees based upon the fee schedule. Accompanying this will be a full and complete submittal and full response to the approval criteria per the requirements of Design Review and WRA chapters: CDC Chapters 55.30 and 55.32 respectively. (specifically 55.040, 55.050, 55.070, and 55.100) A Class II Variance will require response to CDC Chapter 75.

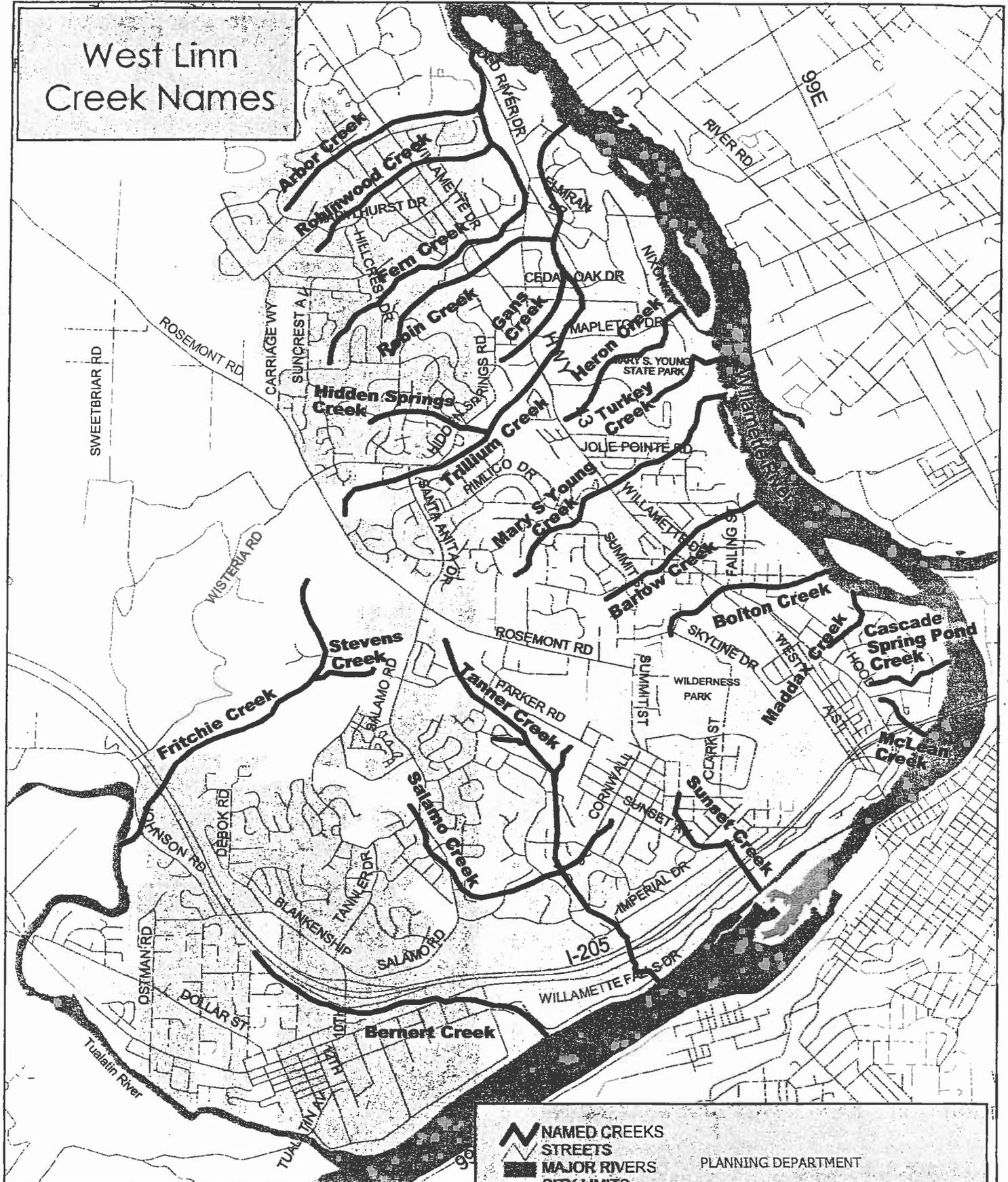
The City has 30 days to determine if the application is complete or not, 21 days if an expedited land division is submitted. Most applications are incomplete, usually due to inadequate responses to approval criteria or stating "NA" in response to submittal requirements or approval criteria. The applicant has 180 days to make it complete, although usually it is complete within three months of the original submittal. Once complete, the City has 120 days to exhaust all local review and appeals, 63 days if an expedited land division is submitted.

Typical land use applications can take 6-10 months from beginning to end.

DISCLAIMER: This summary discussion covers issues identified to date. It does not imply that these are the only issues. The burden of proof is on the applicant to demonstrate that all approval criteria have been met. These notes do not constitute an endorsement of the proposed application. Staff responses are based on limited material presented at this pre-application meeting. New issues, requirements, etc. could emerge as the application is developed. Also, these notes have a limited "shelf life" in that future code language changes could modify staff's position or the approval criteria.

p:/devrvw/pre-apps/pre ap sumry.3-14-07-HolidayInn

West Linn Creek Names



NAMED CREEKS
STREETS
MAJOR RIVERS
CITY LIMITS

PLANNING DEPARTMENT

This map and other information have been compiled for preliminary and general purposes. They are not intended to be complete and accurate for any other purposes. Specifically, this information is not intended to be complete for purposes of land use restriction zoning, title, size, and suitability of the property for specific uses.

0 0.25 0.5 Miles

GIS / STREAMNAME / AHA 5-10-01 PDF 7-24-03



Submitted by Coln. Cummings, 3-30
-09



Oregon

Theodore R. Kulongoski, Governor

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 378-3805
FAX (503) 378-4844
www.oregonstatelands.us.

05 JAN 21 AM 11:40
CITY OF WEST LINN

January 19, 2005

State Land Board

Norm King
David Dodds, Mayor
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Theodore R. Kulongoski
Governor

Bill Bradbury
Secretary of State

Randall Edwards
State Treasurer

Re: Approval of the City of West Linn Local Wetlands Inventory and Assessment

Dear Mayor Dodds:

I am pleased to notify you that the Department of State Lands (DSL) has approved your Local Wetlands Inventory (LWI) and assessment. We appreciate your planning staff and the wetland consultant working with our staff to ensure that the inventory meets state LWI requirements (OAR 141-86-180 to 240) and the city's needs. The final inventory requirement is for the city to notify property owners with wetlands mapped on their property within 120 days of this approval. Please provide us with a copy of the landowner notification, indicating the date of notification when notification has been completed.

Approval by DSL means that the LWI becomes part of the Statewide Wetlands Inventory. The LWI must now be used by the city instead of the National Wetlands Inventory for the Wetland Land Use Notification Process (ORS 227.350). The LWI and functional assessment also form the foundation for your wetland planning under Statewide Planning Goal 5, and the LWI must be adopted by the city per the Goal 5 requirements. Please note when significant wetlands are designated by the city, "non-significant" wetlands may be coded to distinguish them from "significant wetlands" but must not be removed from the approved LWI maps. These wetlands are still subject to state and federal permit requirements.

While considerable effort has been made to identify accurately most wetlands within the study area, DSL's approval does not guarantee that all regulated wetlands have been mapped. The mapped wetland boundaries are estimated boundaries, they have not been surveyed, and there are inherent limitations in mapping accuracy. DSL advises persons proposing land alteration on parcels containing mapped wetlands first to contact DSL or to obtain a wetland boundary delineation by a qualified consultant and submit it to DSL for approval prior to the land alteration.

It will be important to annotate your map (and associated database, if any) as new wetland delineations are completed and approved by DSL in order to keep your LWI updated. A few approved delineations have been completed since the LWI review draft(s). We will forward

copies of the delineations to the city planning department and recommend the DSL file number be noted on the affected tax lots. Future wetland delineation approvals will be provided to the planning department.

We are pleased that the City of West Linn has conducted a thorough wetlands inventory and has made wetland planning a high priority. We look forward to working with you and your staff as you continue on the Goal 5 wetland planning effort. Please feel free to contact Kathy Verble at extension 295 with any questions you may have about the LWI or its use.

Sincerely,



Ann Hanus
Director

c: Kristi Crowell, Associated Planner, City of West Linn (enclosure)
Kevin Cronin, DLCD
Tim Brooks, Winterbrook Planning
Yvonne Vallette, EPA
Jim Goudzwaard & John Barco, Corps of Engineers (enclosure)
John Marshall, FWS, Portland Field Office
Patty Snow, ODFW
Tom Melville, DEQ
Jon Hall, FWS Regional Office
Steve Morrow, DSL
John Lilly, DSL

Kerr, Chris

From: Jordan, Chris
Sent: Monday, March 30, 2009 1:45 PM
To: Kerr, Chris; 'Bill Monahan'
Subject: RE: Holliday Inn Express

I might have the Council change the order and approve the IGA with ODOT first. That won't take longer than about 1 minute.

From: Kerr, Chris
Sent: Monday, March 30, 2009 12:56 PM
To: Jordan, Chris; Bill Monahan
Subject: FW: Holliday Inn Express

I spoke with Dave – he simply wanted to confirm that their item will be first on the agenda.

From: David Smith [mailto:David@MEADSMITH.COM]
Sent: Monday, March 30, 2009 11:17 AM
To: Kerr, Chris
Cc: Jordan, Chris; Bill Monahan
Subject: RE: Holliday Inn Express

Could you please advise on the order of issues for the Council. My clients would like to go first, if at all possible.

David P. Smith
MEAD SMITH, P.C.
1672 Willamette Falls Dr., Suite D
West Linn, Or. 97068
503.636.3660 ph
503.636.2797 fx

email: david@meadsmith.com

The information contained in this e-mail transmission may be privileged and confidential. If you are not the intended recipient, do not read, distribute, or reproduce this transmission. If you have received this e-mail transmission in error, please advise by replying to the sender. Thank you.

From: Kerr, Chris [mailto:ckerr@westlinnoregon.gov]
Sent: Monday, March 30, 2009 9:30 AM
To: David Smith
Cc: Jordan, Chris; Bill Monahan
Subject: Holliday Inn Express

Mr. Smith – Per our request, this is to follow-up to our phone conversation this morning.

Your letter 3-27-09 requests that we advise you about whether, "*the City seeks to have VKNW's entire team....in attendance*" at the hearing this evening. For the record, I would advise bringing anyone to the meeting that you think is required to present your case to the City Council.

You also stated that your client was never informed about the content of the meeting. At a minimum, they were provided written notice of the hearing within all State and local required timeframes for such notice. Additionally, the appeal hearing has been discussed via several emails and verbally with your clients by me personally.

Please call me if you are having any questions about the meeting this evening.

Chris Kerr, AICP
Acting Planning Director

City of West Linn
22500 Salamo Road, Suite 1000
West Linn, OR 97068
503-723-2538
fax-503-656-4106

Soppe, Tom

From: Kerr, Chris
Sent: Monday, March 30, 2009 9:55 AM
To: Soppe, Tom
Subject: FW: Holliday Inn Express

*Tom – for the record
Thanks*

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Sent: Monday, March 30, 2009 9:30 AM
To: 'David@meadsmith.com'
Cc: Jordan, Chris; 'Bill Monahan'
Subject: Holliday Inn Express

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Chris Kerr, AICP
Acting Planning Director

City of West Linn
22500 Salamo Road, Suite 1000
West Linn, OR 97068
503-723-2538
fax-503-656-4106

Kerr, Chris

From: ~~XXXXXXXXXXXX~~
Sent: Friday, March 27, 2009 12:47 PM
To: Kerr, Chris; City Council
Cc: Wyatt, Kirsten; Jordan, Chris
Subject: Re: Holiday Inn Express

Mr. Kerr;

Thank you for your reply and the CC email address. I could not find an address for the entire CC on the City web site, so I made a logical stab at it. I would suggest that you post it on the CC page. I appreciate that each individual councilor's email is posted. Also, I think that citycouncil@westlinnoregon.gov better identifies the recipients, whereas ccouncil@westlinnoregon.gov implies it is the address of an individual with the first initial C and last name Council; the format the City uses for individuals.

Thank you for correcting the contents of the web site Project Files, for the CC file and the PC file regarding the Holiday Inn, to contain their respective documents.

However, **I find a very important change to the web site** that needs to be made as soon as possible. See <http://westlinnoregon.gov/planning/cc-call-pc-decision-holiday-inn-2400-willamette-falls-drive> This web page, which has the Project Files of AP-09-02 CC review of Holiday Inn, should be accessed from the "Public Meetings and Notices" web page. Most likely, Joe Public, will seek to find more information about the CC meeting on Mar. 30 by clicking "Agendas" from the Home page and "View Meeting Details".

Currently, this web page is accessed from the "City Land Use=2 0Cases and Projects" web page. It is unlikely that Joe Public, who is interested in more info on Mar. 30 meeting, will click on "Land Use" from the Home page.

To summarize, both the PC file (<http://westlinnoregon.gov/planning/2400-willamete-falls-drive>) and the CC file (<http://westlinnoregon.gov/planning/cc-call-pc-decision-holiday-inn-2400-willamette-falls-drive>) for the Holiday Inn should be listed to access under "Land Use Cases and Projects On This Meeting Agenda" for CC Meeting on Mar. 30, 2009.

It is not like the City does not know how these meeting details should be posted. See <http://westlinnoregon.gov/citycouncil/council-call-planning-commission-decision-holiday-inn-2400-willamette-falls-drive> This page is accessed by "View Meeting Details" for CC Meeting on 03/09/09, the original date of the Holiday Inn hearing. You will see that this page lists both files for access as I summarized above.

This is a unfortunate error, because as I know from my experience in land use issues, Joe Public has it difficult enough in understanding these issues, without the added frustration of not being able to find simple meeting details.

At best, Joe Public would not have the information to effectively participate in land-use decisions and at=2 0worst, Joe Public would be deterred from any participation.

I am interested in knowing your plan to avoid such an error in the future. Would it possible that the City

(111)

3/27/2009

Planner check that his projects are correctly posted on the City web site? I would appreciate it if the City would exercise more diligence in it's review of the City web site.

Thank you very much,
Karie Oakes

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

From: Kerr, Chris <ckerr@westlinnoregon.gov>
To: ~~XXXXXXXXXXXX~~; City Council <CCouncil@westlinnoregon.gov>
Cc: Wyatt, Kirsten <kwyatt@westlinnoregon.gov>; Jordan, Chris <cjordan@westlinnoregon.gov>
Sent: Thu, 26 Mar 2009 5:08 pm
Subject: FW: Holiday Inn Express

Karie – The email you had for the Council was not correct – use this one ccouncil@westlinnoregon.gov – in the future.

When I 'replied to all' from your email it bounced it back to me. I am resending this to them with the corrected email to make sure that the Council receives it.

*Thanks again.
Chris*

From: Kerr, Chris
Sent: Thursday, March 26, 2009 5:00 PM
To: ~~XXXXXXXXXXXX~~; Jordan, Chris; citycouncil@westlinnoregon.gov
Cc: Soppe, Tom
Subject: RE: Holiday Inn Express

Karie- thanks, my comments are below. I always welcome your diligent review and comments on the website – (to be frank, we don't get as much=2 0feedback on it as I would like) they have helped us improve the site tremendously over the past 6 months. Please keep in mind that the official file is always kept in the planning office, rather than online.

Call me with any other comments at 723-2538.

Chris Kerr

From: ~~XXXXXXXXXXXX~~ [mailto:~~XXXXXXXXXXXX~~]
Sent: Thursday, March 26, 2009 3:24 PM
To: Kerr, Chris; Jordan, Chris; citycouncil@westlinnoregon.gov
Subject: Holiday Inn Express

Dear Chris Kerr:

Your memo to Chris Jordan recommending denial of the Holiday Inn application should be posted on the City web site in the "Project Files" for ID #AB-09-02: City Council Call Up of Planning Commission Decision of Holiday Inn Express at 2400 Willamette Falls Drive. **[Kerr, Chris]** thanks – I'll have them post it there as well asap.

It is presently found at: http://westlinnoregon.gov/files/projects/2009-2-18_Staff_memo_to_City_Manager.pdf, in the "Project Files" for when the application was before the Planning Commission as ID #DR-08-01 / VAR-08-01 / VAR-08-09 / WAP-08-01.

It is imperative that the PC files and the CC files for this application be kept accurate. It is also important that the public be given reasonable opportunity to access information regarding this application. It is likely the public is not aware that you recommend denial because the applicant has not satisfied the criteria for a conditional use permit.

Please include my comment and your reply in the public record for ID #AB-09-02. *[Kerr, Chris]* I will.

Also, please confirm that the City Council will hold a public hearing for #AB-09-02, where it will receive public testimony, on March 30, 2009 at 6:30 PM. *[Kerr, Chris]* Yes, they will.

Thank you,
Karie Oakes

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Kerr, Chris

From: ~~XXXXXXXXXX~~
Sent: Friday, March 27, 2009 12:52 PM
To: Kerr, Chris; City Council
Cc: Wyatt, Kirsten; Jordan, Chris
Subject: Web site Posting of Holiday Inn

Dear Chris Kerr:

I have found, again, where the web site posting of information regarding the CC review of the Holiday Inn decision should be improved. I emailed you and copied you an email to Tom Soppe regarding the others yesterday.

See http://westlinnoregon.gov/files/projects/2009-2-18_Staff_memo_to_City_Manager.pdf
While this is listed in the "Project Files" for AP-09-02 as "**2009-03-18 Staff Memo to City**" **it contains the 1 page memo and 10 pages of other information, including coorespondance and affidavit of notice.** I would have overlooked the other information had I not opened this page and noticed the total page numbers on my computer was eleven. A person looking in the Project Files for public comments would not have found them.

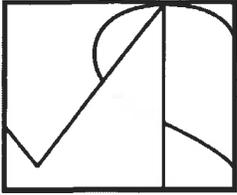
It would be most helpful if the listings in the project file accurately described the documents they contain.

In your email on 3/09/09 (found on pgs 10-11 on link above,) to Vic Patel, your original message is truncated to the point that there is no message. Mr. Patel's reply requests an extention of the 120 days. I would like to know what you communicated to him to elicit such a reply.

Please send me a copy of your email message, post it on the web site and include it in the record for AP-09-02.

Thank you,
Karie Oakes

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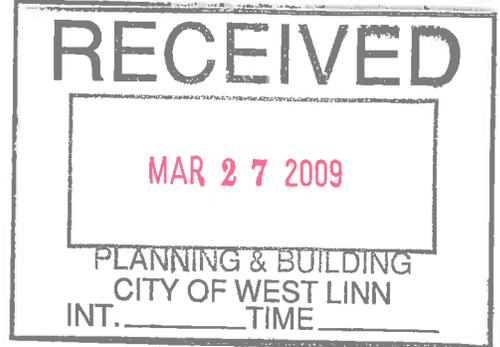
**MEAD
SMITH
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ATTORNEYS AT LAW

David P. Smith

Admitted: Oregon and Washington
David@meadsmith.com



March 27, 2009

VIA HAND DELIVERY

Chris Jordan, City Manager
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Mayor Patti Galle
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Jody Carson, City Council President
City of West Linn
22500 Salamo Road
West Linn, OR 97068

John Kovash, City Councilor
City of West Linn
22500 Salamo Road
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Scott Burgess, City Councilor
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Teri Cummings, City Councilor
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Chris Kerr, Interim City Planner
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Re: Holiday Inn Express Application
2400 Willamette Falls Dr., West Linn, OR 97068

We represent VK Northwest, Inc. (VKNW”) in connection with the above-referenced matter. We are in receipt of a March 19, 2009 memorandum from Chris Kerr, the interim planning director, to Chris Jordan indicating that the City is attempting to reverse the West Linn Planning Commission’s Final Decision Notice, which was approved, with conditions (the “Final Notice”). The purpose of this letter is to notify the City of West Linn of VKNW’s position in advance of the hearing scheduled for March 30, 2009, which is that the City must retract its call to review, and acknowledge the Final Notice. Otherwise, my client will file suit.

The Final Notice was issued on January 22, 2009, which was adopted with a unanimous vote, with a few conditions approving the variance was met to be economically viable for the site. A few days after the notice became final, Tom Soppe advised my client that two city council members wanted to look over the approval of the planning commission regarding the project, but did not provide any specific concerns regarding the application or the process, a written notice of the call-up or appeal, or the two e-mails written by the counsel members. In fact, other than the March 19, 2009 memorandum, my client has received no notice or correspondence to indicate that the Final Notice is not enforceable.

On March 7, 2009, two days prior to the March 9, 2009 City Council meeting, Mr. Kerr, erroneously told my client that there was no land use application filled out and according to West Linn law, having no land use application would mean that they would have to start the entire process all over and it would be an immediate denial by the city council on this project. Mr. Kerr also erroneously advised my client that if the City Council denied our project that we would have to wait another 12 months in order for our application to be reviewed again.

It was not until March 12, 2009, that my client obtained, by having gone to City Hall, the two e-mails purportedly calling the matter up for counsel review, one from Mayor Patti Galle, and the other from new councilman John Kovash, but once again, the e-mails provided no specific reason for the review. Furthermore, the calls for review were never served on VKNW.

On March 23, 2009, my clients were provided with the March 19, 2009 memorandum from Mr. Kerr. In the memorandum, Mr. Kerr states that Conditional Use Permit Application was never submitted and "regrettably, was never previously requested by City Staff." He goes on to note his personal disappointment in the City for failing to identify the oversight earlier. While I am encouraged to see that he believes that matter can be resolved before the March 30, 2009 hearing, he, once again, erroneously states that "staff must recommend denial of the application as currently submitted." Mr. Kerr's error suggests that the staff has any authority or standing to reverse its previous unanimous Final Notice.

Given that the City has failed to provide any notice or further information to my client, other than Mr. Kerr's March 19, 2009 memorandum, my client can only assume that the only purported dispute with the application relates to the nature of the conditional use of the property.

To say that the application is not a "Conditional Use" application, and was not processed by the City in such a way as to comply with the "applicable provisions of the CDC" is a gross misstatement. In fact, each of the criteria set forth in Chapter 60 of the CDC have been complied with by VKNW, as discussed in more detail below.

While I will endeavor to limit the discussion below to only the conditional use issue, I cannot overlook the grossly negligent handling of this process by the City.

Discussion

In October 2004, VKNW purchased the subject property for the intention of developing in the City of West Linn. The site was chosen because at that time there was plenty of space to build an 80 to 90 unit plus hotel, which would be an excellent addition to both the West Linn residential and business community, since no hotel existed in the city and there was an overwhelming need.

In November 2006, VKNW met with City advisers on proposing a hotel on the commercial land on Willamette Falls Drive asking the planners to let us know what applications were needed and what the buffer zone was at the time being told it was 35ft. The pre-application conference was held in March 2007 with Mr. Spir, the staffs contact for the City of West Linn, and other city engineers to meet and discuss the surveys, plans and City requirements to develop the site on Willamette Falls Drive. After meeting and talking with the City, additional land was purchased in April 2007 from the neighbors of the property to properly develop the site and have ample parking for the hotel.

1. Pre-application Meeting.

At the conclusion of the March 2007 pre-application conference, the city required that the development provide: 1) wetland study; 2) traffic study; 3) acoustical analysis; 4) civil engineering; 5) a design that adheres to the city's design review guidelines and per the Neighborhood Association, specifically referencing a design that was similar to that of the Astoria Holiday Inn Express; and 6) a complete redesign due to the lack of feasibility in the pre-application site plan, which did not comply with multiple City restrictions.

2. March 2007 – September 2007.

During the time period the City was involved in multiple substantive decisions regarding the design, all of which related to the applicable zoning and site specific requirements. The Site plan was redesigned and coordinated with city staff. Proposals for wetland, traffic, and acoustical studies received and signed by VKNW, in reliance on the City's multiple indications of ultimate approval. Also, in reliance on the representations by the City, Permit drawings were initiated by all disciplines. The Wetland area was identified and the site plan was solidified through coordination with the City of West Linn, wetland biologist, civil engineer and architect.

The City also made several blatant mistakes during this period including when my client's architect asked the City if design review is required. The City erroneously stated that design review is not required.

3. December 2007.

By December 2007, based on the City's intimate participation in the project, the application process was finally nearing end and the Permit drawings were completed and ready

to be submitted to the Building Department. But the Building Department denied submittal since VKNW was required to submit for design review, despite the erroneous statements above. The Building Department informed VKNA that this process will take 6 months to review.

VKNW, its owners, advisors, architects, and engineers repeatedly sought the City's input regarding City requirements to develop on this vacant commercial site and were never notified by City Planners that the buffer zone had changed from 35ft at the end of December 2007 to 100ft in the beginning of January 2008. If this information had been provided, their application would have been submitted in December 2007 instead of January 2008 having the use of 35ft buffer zones.

4. January 2008 – July 2008 (Design Review Process)

As a result of the City's errors, the design review process occurred during this period, and once again, VKNW worked intimately with the City to move the process along as quickly as possible. The City provided VKNW with a virtual exhaustive list of items required for submittal, and VKNW timely provided each and every item. Despite VKNW's compliance, after City review, multiple additional items were required by the City in addition to the original list. But this did not just happen once, it happened over and over again, which caused the process to be delayed 6 more months.

In June 2008, the City accepted the design review submittals and wrote a letter to the Planning Commission with a recommendation of approval. The Planning Commission meeting was then set with a date in July 2008. But once again, to the surprise of VKNW, one week before the meeting to approve the project, the City required that the project meet with approval of the Neighborhood Association and removed the development from its scheduled Planning Commission meeting, despite never even discussing this phase with VKNW earlier.

5. August 2008 – present.

By this time the review process had already taken well over a year, grossly longer than it should have. The Neighborhood Association meeting scheduled a meeting at their earliest convenience which was August 27, 2008. The Neighborhood Association approval process actually moved along in a timely manner, and meeting minutes were approved and submitted to the City.

It was not until October 2008, four days before a meeting with the Development Commission, that VKNW received notice by Tom Soppe that the planners had discovered one significant tree on the property and advised VKNW to postpone the meeting with the Commission to a later date so as to accommodate necessary changes to the site plans moving the entire building. VKNW was also advised that they would need to prepare a variance waiver form or Mr. Soppe would recommend denial on the basis that the tree is significant and does not meet code. The meeting was postponed to November 2008 with the necessary changes made by their engineers. VKNW's architect asked Tom Soppe if there was anything else needed before

going to the Planning Commission, and he did not advise their architect of anything or whether we needed our scientists for the variance portion.

In November 2008, the City held the first Planning Commission meeting. Mr. Soppe presented on our behalf to the commission. The new fire marshal presented stating that changes needed to be made to the plans from which the prior fire marshal had already recommended, despite their previous review. Mr. Soppe presentation was very poorly done to the point the Commission was not able to have their questions answered effectively. The Commission also thought his write up was poorly written, unorganized and ultimately asked that he rewrite the findings. Once again, the board decided to extend the meeting to a later date.

In November 2008, the new fire marshal wanted changes done to the building fire codes and parking lot to accommodate their fire rescue vehicles. VKNW was told that the previous fire marshal over looked the hotel plans and for that reason there were no codes given until the new marshal was elected. All fire codes and parking lot adjustments where made to compliance.

In December 2008, City Planning Commission met, once again, to review the application. We advised Mr. Soppe that we will have are own team present consisting of our civil engineer, wetland scientist and architect. The Commission, once again, asked to extend the meeting to January 2009 to look over all the information provided to them and make a final decision at the next meeting with no more testimony needed. The City Planning Commission then scheduled a new meeting, and issued its final notice of approval in January 2009.

VKNW complied with additional information required by City Planners giving them the proper information on a timely manner whether it was a traffic survey, wetland survey, topography survey, soil samples and etc. Again, as noted by Mr. Kerr, at no time did the City advise my client that the application was in any way incomplete or defective. VKNW relied on the many members of the City staff during the over two-year process, seemingly to their detriment. Consequently, the City has either waived any further requirements it may assert, or will be estopped from arguing non-compliance on the part of VKNW. Frankly, they say that my client's application should be denied at this stage because a box on the application that was submitted a year and half ago is absurd. As acknowledged by Mr. Kerr, and corroborated by the City's file, this was an error by the City, and given the massive amount of review by the City, the City's oversight should not interfere with my client's intended development of the property.

The City's handling of the application has already caused significant damage to my client. When my client began the application process, they had exclusive territorial rights with Holiday Inn which spanned Oregon City and Clackamas. Based on the City's delays, they have already lost their territorial rights with Clackamas and Oregon City, which have caused the value of their franchise to drop dramatically. Furthermore, the City's delays have put their remaining rights in the franchise in jeopardy of being lost altogether. If they do not break ground by June 2009, which is already impossible, they will be in default of the Franchise Agreement, and may lose any right to build the hotel, or additional territory rights. Obviously, this will cause significant additional damages. If the City acknowledges the Final Decision, and withdraws any

appeal rights, my client is optimistic that they can negotiate an extension. But if the City does not, they will have little to no bargaining position with the franchise, particularly in light of the fact that the City has delayed so long that even if a mandamus suit is successful, it will come after the franchise is in default.

Finally, it should also be noted that during the entire process there were multiple errors committed by the City staff, Planning Commission, and the City Counsel. Most notably, for purposes of the hearing on March 30, 2009, the City failed to follow its own procedures adopted in Chapter 99 of the CDC. In particular, the City violated the appeal and review procedures found in section 99.080, 99.090, 99.160, 99.240, 99.250, 99.260, 99.270. To date, VKNW has received no written notice of the City Counsel's appeal or review, or the specific basis, nor does it appear that there is any such document in the City's file. As a result, it would appear that the appeal or review was untimely, and failed to comply with the applicable notice provisions. There may be additional errors as well.

It is the policy of my client, and this firm, to resolve matters, if at all possible, prior to litigation. That being said, the City has delayed, both intentionally, and through its gross mismanagement of the review process, for far too long. During the entire process, something of a significant nature always came up at the last minute delaying the process and costing a lot of money to VKNW. Now that the project was unanimously approved by the City Planning Commission, on a process that took over two years, and once again, the City is attempting to delay the project again, my client's patience is at an end. Accordingly, if the City does not acknowledge in writing the validity of the Final Notice at the meeting on March 30, 2009, my client will file suit, as such please consider this letter my client's demand.

Finally, the scope of the issues to be addressed at the Monday hearing are extremely vague. As a result, please advise no later than Monday morning at 9 a.m. whether the City seeks to have VKNW's entire team, including their architect and engineer in attendance, as it is an additional cost and expense to my client. If we do not hear otherwise, my client will assume that the scope of the hearing is limited to the City's errors in the application process, and that there is no need to have their entire team attend.

Very truly yours,



David P. Smith

DPS:wrr
cc: client