

Memorandum

Date: May 28, 2009

To: Chris Jordan, City Manager

From: Chris Kerr, Acting Planning Director

Subject: Holiday Inn Express; AP-09-02 / CUP-09-01 - Suggested Findings, new potential conditions of approval, and final conditions list

To assist the Council with their June 8, 2009 deliberations on the Holiday Inn Express applications, Staff has prepared the following information for their consideration:

- (1) Suggested Findings to be approved regardless of the outcome of their decision;
- (2) Suggested Findings (both for and against) for the Council to consider; and,
- (3) Based on the discussion at the May 18th hearing, several new potential conditions of approval and associated Findings for your consideration.
- (4) A complete, final, set of the proposed conditions of approval.

I. Recommended additional Findings applicable regardless of decision

Staff strongly recommends the council ADOPT the following 6 additional Findings of Fact regardless of whether or not they decide to approve or deny the requests. The Findings address the notice and consolidated review process utilized by the Council for the applicant's hearings.

Consolidation Finding No. 1

The City Council had authority to call up DR-08-01/VAR-08-01/WAP-08-01 pursuant to authority within CDC 99.170 G.2. The CDC provides that two members of the Council have the right to order the review of a Planning Commission decision within fourteen days of the final decision. The final decision was issued on January 27, 2009 and the Council finds that the record contains two individual written requests for a review of the decisions submitted via e-mail by Councilor John Kovash and Mayor Patti Galle, present members of Council, and who were members at the time of the call up. The requests were received by the planning staff prior to the established deadline of February 10, 2009. Council finds that both requests were submitted in a timely manner thus CDC 99.170 G.2 was met and a review by Council was taken.

Consolidation Finding No. 2

The Council finds that the written requests submitted by the two members of Council conform to the requirements for a call up of a Planning Commission decision as they are in writing and reference the application sought to be reviewed. The written requests are in the record at pages 6 and 7 of the binder given to Council for the March 3, 2009 hearing. The Council finds that the code does not require that grounds be submitted because the hearing will be de novo. Council finds that CDC 99.250 D. provides that an application for review "may state grounds" for the

review, but it is not required. Council finds that the notices contain sufficient details as required by CDC 99.250 to comply with the Code for proper application for a Council review, and the Code requirements are met.

Consolidation Finding No. 3

Following the timely call up of DR-08-01/VAR-08-01/WAP-08-01 pursuant to authority within CDC 99.170 G.2, city planning staff prepared a notice of the review. The record for AP-09-02 contains the affidavit of notice and the mailing list used for the notice. The affidavit shows that the applicant was sent the notice of the initially scheduled call-up hearing legally. The applicant was sent a notice of the originally scheduled call-up hearing on February 10, 2009, at least 20 days ahead of the March 2, 2009 hearing. The Council finds that the notice, found in the record of AP-09-02, is adequate to conform to the requirements of CDC 99.260 that requires that review notices be given to all persons with standing. The contents of the notice conform to the requirements of CDC Chapter 99, including notice that the appeal will be de novo.

Consolidation Finding No. 4

Prior to conducting the review hearing, it was determined by Council that in addition to the applications previously reviewed and approved by the Planning Commission, the application required a conditional use review to allow transient housing in the general commercial zone. The conditional use determination is needed before a review of DR-08-01/VAR-08-01/WAP-08-01 is completed. Due to the time constraints related to the 120 day time limits for review of DR-08-01/VAR-08-01/WAP-08-01, the Council determined that the conditional use application should be expedited. The applicant stated that it was not willing to allow for further delay beyond the time needed for it to prepare a conditional use application and for the city to prepare a revised hearing notice. Rather than send the conditional use application to the planning commission, the initial review body specified by the Code, the Council exercised its rights under CDC 99.070, consolidation of proceedings. The Council interpreted the Code to allow it to be the initial review body for the conditional use application allowing it to finalize the conditional use decision before taking final action on review of DR-08-01/VAR-08-01/WAP-08-01. Council finds that it is the only local review authority authorized by the Code to review a planning commission action under CDC 99.170. Council finds that it had original jurisdiction of the review of the planning commission decision, given the status of the applications at that time. The Council finds that when the need for a conditional use was determined, the language of CDC 99.070 allowed for consolidation of the proceedings with the Council the appropriate reviewer. Council finds, given the hierarchy established by CDC 99.070, that it was appropriate for it to conduct a consolidated review of the applications with a two step vote on the applications, with the conditional use vote occurring first.

Consolidation Finding No. 5

Council finds there is no local right for an appeal of any decision made at the Council level as the appropriate appeal body is the Oregon Land Use Board of Appeals. A conditional use decision made by the planning commission is subject to appeal to the City Council. Council finds that CDC 99.070 provides for consolidation of proceedings and identifies the City Council as the highest review authority in the hierarchy thus the Code anticipates that the City Council will be the initial reviewer of an application that is consolidated with another City Council review. Based upon

this, the Council finds that applications that usually are reviewed by the planning commission with right of appeal to the City Council have no local appeal right when they are consolidated at the City Council review level. Council finds that the conditional use application decision made by the Council is subject to appeal to the Oregon Land Use Board of Appeals.

Consolidation Finding No. 6

CDC 99.038 requires that an applicant contact and discuss an application with the affected neighborhood. CDC 99.038 1. states that the purpose of neighborhood contact is to identify potential issues or conflicts regarding a proposed application so they may be addressed prior to filing. Council finds that in this case all potential issues or concerns that could arise from the CUP application were sufficiently reviewed by the neighborhood in September, 2008 when the neighborhood reviewed DR-08-01/VAR-08-01/WAP-08-01. The review criteria for the CUP are essentially the same as those applied by the planning staff and planning commission in the review of the hotel under DR-08-01/VAR-08-01/WAP-08-01. During the hearing on May 11, 2009, Elizabeth Kieres, a representative of the Willamette Neighborhood Association, testified that the neighborhood reviewed and approved the concept of a hotel at this location at its meeting of September, 2008. The issues that the neighborhood raised, according to the neighborhood association representative, were addressed at the planning commission. Council finds that the conditional use application CUP- 09-01, to allow a hotel in the General Commercial zone, was not required to conform to CDC 99.038 1. because the Willamette Neighborhood Association had reviewed the hotel proposal earlier.

II. Additional suggested Findings to consider

Depending on the outcome of hearing (approved/deny), Staff has prepared the following recommended Findings of Fact for the Council to consider.

If the Council decides to APPROVE the request and uphold the PC approval, Council may want to consider the following Finding (which would be in additional to those already found in the Staff Report and PC approval):

Additional Finding of approval

The City Council finds that the testimony presented, including the economic feasibility study submitted by the applicant at the May 11, 2009 hearing, as well as the written argument presented after the close of the hearing demonstrate that the proposal meets applicable criteria because no other land use application at this site could result in an adequately economically viable use of the property. City Council finds that the hardship provisions of 32.090 and the variance provisions of 75.060 are both satisfied.

If the Council decides to DENY the application and overturn the PC approval, they may want to consider the following Findings:

Denial Finding No. 1

Regarding sites that are partially within the water resource area and transition area, such as the project site, 32.090(B) allows for reduction in the requirements of Chapter 32 to, " avoid the loss of all economically viable use of a vacant lot recorded

with the County Assessor’s Office on or before the effective date of this ordinance that is partially inside the water resource area is permitted.” In order to obtain development approval under 32.090(B)(1) applicants must demonstrate that “Without the proposed reduction, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that no other application could result in permission for an economically viable use of the subject property.” Council finds that the property has over 19,000 SF of developable land outside the transition area. As shown by the evidence in the record there are businesses in the immediately surrounding area that are economically viable but have less developed square footage than this application. Therefore Council finds that this 32.090(B) is not met.

Denial Finding No. 2

75.060(1) says “Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this ordinance, topography, or other circumstances over which the applicant has no control.” *COUNCIL SHOULD INCLUDE THEIR OWN REASONS HERE WHY THEY DID NOT ACCEPT THE APPLICANT RATIONALE...* The WRA on the property is not an extraordinary circumstance due to the fact that the CDC allows for development opportunities for commercially zoned properties that include a Water Resource Area. Therefore, there is no exceptional or extraordinary circumstance and this criterion is not met.

Denial Finding No. 3

Ch. 75.060(2) states that a variance must be “necessary for the preservation of a property right of the applicant, which is substantially the same as a right possessed by owners of other property in the same zone or vicinity.” There is no violation of the applicant’s right to develop this property because, as demonstrated in the record, the applicant maintains the right to develop more than 19,000 square feet of the site without a variance; therefore, this criterion is not met.

Denial Finding No. 4

The standards to be applied to conditional use approvals include Ch. 60.070 A(2), which states that: “The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features”. The Council finds that the natural features of this site make it unsuitable for the proposed hotel use in the size and configuration proposed and therefore, find that the requested conditional use does not meet the standards of this Chapter.

III. Potential additional conditions of approval and appropriate Findings to support them

Staff has proposed twelve (12) conditions of approval for the project; however, based on the discussions at the May 18th Council hearing, the Council may want to consider the following conditions of approval and Findings of Fact in addition to those already recommended by Staff.

Consolidation of Parcels

One of the issues that Council has discussed is the perceived need and/or benefit of having the four separate parcels that comprise the site combined legally into one parcel. The Condition of Approval for this could read, “*Prior to the issuance of a building permit, applicant shall legally consolidate all*

four parcels that comprise the site into one tax lot of record with the Clackamas County Recorder's Office." The finding to support this condition could read as follows:

Additional Finding:

The possibility of future inappropriate development or future legal access conflicts on site necessitates the legal consolidation of the four parcels comprising the site into one legal parcel of record.

Extension of ROW Sidewalk

Another issue discussed by the Council, and which was volunteered by the applicant at the May 19 hearing, is the possibility including a condition such that the sidewalk along Willamette Falls Drive be extended west to the driveway west of the site. This condition could read: *"Applicant shall extend the proposed sidewalk along Willamette Falls Drive west to the exiting driveway on the adjacent property located at 2350 Willamette Falls Drive."* The finding to support this condition could read as follows:

Additional Finding

The lack of sidewalks on the north side of Willamette Falls Drive west of the site, combined with the compelling need for pedestrian connections to restaurants and other services to the west, justifies the applicant building a sidewalk to the west as well as along the project frontage. The proposed project is a large development which is expected to house many guests who would patronize businesses to the west. Therefore it is within reasonable proportionality for the applicant to provide a sidewalk west to the next site's driveway, as well as along the project frontage. The applicant's representative's verbal agreement at the May 19, 2009 hearing is interpreted to mean the applicant accepts and agrees with this analysis.

Prohibiting Access to Water Resource Areas

Councilors and the applicant also discussed keeping people and pets out of the riparian areas on site when the hotel is operating. The applicant agrees to provide proper signage delineating and restricting these areas. Council has determined that this action will be effective in achieving this objective of protecting this resource. A condition to this effect could read, *"The water resource areas on site shall be clearly delineated with signage identifying them as protected natural resource areas and prohibiting all human and pet access."* The finding to support this condition could read as follows:

Additional Finding No. 3

Operations of this hotel will provide an unintended opportunity for guests and their pets to walk in, recreate in, and otherwise disturb the protected water resource areas on site, if they are not otherwise prevented from doing so. These activities would harm the fragile riparian ecosystem that the provisions of Chapter 32 intend to protect. To prevent the guests and their pets from walking in, recreating in and otherwise disturbing the protected WRA, appropriate signage is needed informing guests that people and pets are not allowed in these areas.

Crosswalk Across Willamette Falls Drive

Councilors also discussed the potential need for a crosswalk connecting the site to the sidewalk on the south side of Willamette Falls Drive. Unlike the sidewalk on the north side of the street, the sidewalk on the south side is continuous all the way from the east end of the site to downtown Willamette. This crosswalk would provide a connection to a safer and more complete pedestrian infrastructure connecting hotel guests to restaurants and other services further west in Willamette. A condition requiring this crosswalk could read, *"The applicant shall install a crosswalk across Willamette Falls Drive. This crosswalk shall be located at the east end of the site. The final exact*

location shall be determined by the City Engineer.” The finding to support this condition could read as follows:

Additional Finding No. 4

The lack of pedestrian paths and sidewalks along parts of Willamette Falls Drive between the site and downtown Willamette provides a compelling need for a crosswalk across Willamette Falls Drive connecting the site to the south side of the street. The south side of the street has continuous sidewalks between the east end of the site and downtown Willamette. The crosswalk shall be at the east end of the site, to directly connect to the sidewalk that connects the hotel building with the street.

IV. Final compilation of Conditions of Approval (including new conditions proposed above)

The following list contains the recommended conditions of approval, as presented in their most updated form in the May 18 “supplemental information” memo from staff to Chris Jordan. The list below also contains the potential conditions as discussed above, provided in the list as conditions 13-16. Please again note that (a) original Condition 7 regarding pervious pavement has been deleted and the following conditions renumbered accordingly, (b) the second sentence of Condition 2 has been added as of the May 18 memo, and (c) Condition 12 was also previously proposed in the May 18 memo to the Council.

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. Excepting the portion of sidewalk adjacent to the southeast corner of the site which shall be sited as close to the roadway as possible to impact creek and wetland as little as possible. 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 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.
8. 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.
9. 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.
10. 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 rain garden in the planter strip.
11. 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. (this Condition was added prior to the
12. Prior to issuance of any engineering permits, applicant shall provide verification that no Department of State Lands or Army Corps of Engineers permits are necessary. If such permits are required, applicant shall provide evidence that they have been obtained prior to the issuance of any site improvement permits.
13. Prior to the issuance of a building permit, applicant shall legally consolidate all four parcels that comprise the site into one tax lot of record with the Clackamas County Recorder's Office.
14. Applicant shall extend the proposed sidewalk along Willamette Falls Drive west to the exiting driveway on the adjacent property located at 2350 Willamette Falls Drive.
15. The water resource areas on site shall be clearly delineated with signage identifying them as protected natural resource areas and prohibiting all human and pet access."
16. The applicant shall install a crosswalk across Willamette Falls Drive. This crosswalk shall be located at the east end of the site. The final exact location shall be determined by the City Engineer