

## **BEFORE THE WEST LINN CITY COUNCIL**

**AP-10-03**

### **Findings and Conclusions**

#### **IN THE MATTER OF THE PROPOSAL OF A TWO-YEAR EXTENSION OF APPROVAL AND LOT LINE ADJUSTMENT FOR A 289,000 SQUARE FOOT OFFICE COMPLEX (PREVIOUS APPROVAL FILE AP-07-01) AT THE NORTHWEST CORNER OF THE INTERSECTION OF TANNLER DRIVE AND BLANKENSHIP ROAD**

##### **PROCEDURAL POSTURE**

On March 3, 2007, the West Linn City Council denied an appeal from the Tanner Basin Neighborhood Association and upheld the Planning Commission's approval of an application from Blackhawk, LLC to construct a three-building office complex at the northwest corner of Tannler Drive and Blankenship Road (city case file AP-07-01).

West Linn Community Development Code (CDC) Section 55.040 provides a period of up to three years for developers to complete substantial construction toward their approved proposals. Where substantial construction does not take place within that three year period, development entitlements lapse and the approval is void.

In December 2009, the West Linn City Council adopted a procedure to authorize two-year extensions for previously approved land use decisions where applicants can demonstrate that their plans conform to current CDC criteria, and where their plans have also been corrected for misrepresentations, errors, omissions or changes in facts discovered since the original approval. The approval granted to Blackhawk, LLC for the construction of a three-building office complex at the northwest corner of Tannler Drive and Blankenship Road expired on March 23, 2010, as the developer failed to complete substantial construction by that date. On June 11, 2010, Blackhawk, LLC submitted a request for a two-year extension of their recently expired land use approval accompanied by a request for a new lot line adjustment.

On October 13, 2010, the West Linn Planning Commission found that the applicant's request for a two-year extension and a lot line adjustment, satisfied the criteria in CDC Section 99.325 and 85.210 and approved the applicant's request with nine additional conditions correcting for errors, omissions, changes in facts and new CDC criteria enacted since the applicant's original approval.

On November 3, 2010, the Savanna Oaks Neighborhood Association (SONA) filed an appeal of the Planning Commission's decision to approve the extension, citing that the Commission failed to adequately respond to: the project's traffic impact; noise generation; site drainage and slope issues; underground stormwater detention; the size and location of Building "A"; phased

development; and, the long-term viability of the undeveloped northern one-third of the project site. The Planning Commission's approval of the lot line adjustment was not appealed.

At a hearing on November 29, 2010, the City Council voted four-to-one to deny the appeal from the SONA and uphold the decision of the Planning Commission in MISC-10-14 – granting a two-year extension for the previously approved three-building office complex.

### COUNCIL FINDINGS

This is an appeal of a decision by the Planning Commission to approve an application for a two-year extension for a three-building office complex at the northwest corner of Tannler Drive and Blankenship Road. The criteria applicable to this decision are found in West Linn CDC Sections 99.325 and 85.210. The City Council adopted the findings of the West Linn Planning Commission in support of its decision to deny the SONA's appeal and uphold the approval of the two-year extension, which incorporated the findings proposed by staff in the Staff Report for the Planning Commission. The City Council's supplementary findings as well as those adopted from the Planning Commission's decision in MISC-10-14/LLA-10-03 are set forth below:

1. Per CDC Section 99.325(B), the two-year extension of this approval expires on March 23, 2012.
2. The City Council found that the hearing was conducted in the manner prescribed for de novo proceedings consistent with Oregon Revised Statutes 227.137 and applicable city code provisions. Additionally, the City Council found that SONA's representative at the hearing, Mr. Rittenhouse, failed to explain how his substantial rights were prejudiced by the manner in which the hearing was conducted, and concluded that because both the Planning Commission and City Council hearings had been conducted de novo, all participants presenting testimony were afforded a full and fair opportunity to present their case.
3. The City Council found that the only changes in fact which impact the project included a lot line adjustment at the Tannler East property and reduced area traffic volumes. The City Council also found the applicant's testimony and evidence presented in support of reduced peak hour traffic volumes was the only credible testimony regarding comparison of 2007 and 2010 traffic impacts, and was sufficient to support its decision to retain the original traffic mitigation improvements approved in the City Council's decision in AP-07-01 and the Planning Commission's decision in MISC-10-14/LLA-10-03. Regarding the project's anticipated traffic impact, the City Council found the appellant offered inadequate evidence to support their claim that area traffic volumes had increased and therefore found no basis for the appellant's request for additional traffic mitigation.

4. The City Council hereby incorporates in its entirety the Planning Commission decision consisting of four pages, including the staff findings adopted by the Planning Commission in the Staff Report for the Planning Commission dated October 13, 2010, and adopts such findings as its own. In the event of a conflict between the Planning Commission decision and findings and these findings, these findings shall control:
  - a. The Planning Commission found that the provision of bumper stops near walkways adjacent to interior parking spaces was unnecessary as the applicant's plans indicated that such walkways were proposed to be two-feet wider than the required minimum width of six-feet; therefore, satisfying the criterion in CDC Section 46.150(A)(11). The Planning Commission further determined that because Condition of Approval 3(a) is still relevant to staff finding number four (regarding the need to submit signage detail and detail for possible bumper guards elsewhere on site), the condition would be modified to only remove that language requiring consistency with 46.150(A)(11).
  - b. The Planning Commission found that Condition of Approval number 3(b) included a scrivener's error and modified the reference in that condition from CDC Section 46.080(H) to 46.090(H).
  - c. The Planning Commission found that the City lacked the necessary authority to enforce Condition of Approval 5, which required the applicant to modify the proposed location of the site access onto Tannler Drive. CDC Section 48.025(B)(6) requires that established driveways, which have access onto collector roadways, be spaced a minimum of 150-feet apart. The Planning Commission found that although the existing configuration of the Tannler East property limited their future access to a point along Tannler Road that would be less than 150-feet from the applicant's proposed driveway location on Tannler Road, the access separation requirement refers to established driveways and therefore the applicant's proposal satisfied CDC Section 48.025(B)(6).
  - d. The City Council determined that testimony presented in opposition to the application regarding building location, inadequate noise study, improper phasing, deferred compliance with CDC criteria, underground stormwater detention, and traffic mitigation, was not subject to further review in this decision per CDC Section 99.325 as it did not pertain to errors and omissions, code changes, or other changes in fact.
  - e. The Planning Commission found that the applicant's traffic analysis update, dated June 11, 2010, with traffic counts conducted in May 2010 (pp.112-133 of staff report), was adequate to support the validity of the applicant's original traffic impact analysis prepared August 2006 and adequate to satisfy criterion 99.325(A)(2) regarding "changes in fact that directly impact the project". The Planning Commission further determined that because the Veteran's

Administration (VA) clinic opened in April 2010, the traffic analysis update did include at least a portion of the new trips generated by that facility.

- f. The Planning Commission determined that two-year extensions of land use entitlements as granted under CDC Section 99.325 were not limited to small projects or individual homeowners as raised during public testimony, as no text in Section 99.325 provides for such limitations in the applicability of extensions.
- g. The Planning Commission found that the City's notice satisfied CDC Section 99.090 and reflected the City Council's intent of de novo hearings for two-year extension requests.

### COUNCIL DECISION

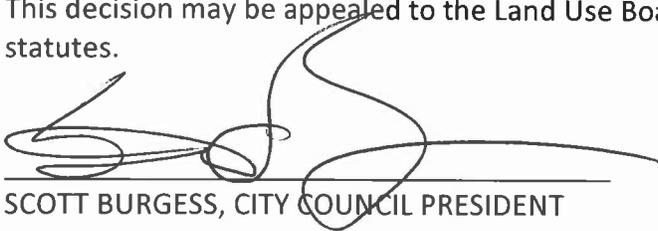
Based upon the Planning Commission's findings and the additional findings above, a motion was made by City Council President Burgess and seconded by Councilor Carson to deny the appeal and uphold the decision of the West Linn Planning Commission to approve the application, with the following conditions of approval:

1. Site Plan. With the exception of modifications required by these conditions, the project shall conform to the site plan in Exhibit PC-3, sheet C2.1, dated August 4, 2010.
2. Previous Approval. Unless modified by these conditions, the project shall conform to the conditions of original approval contained in file AP-07-01.
3. Parking.
  - a. The applicant shall provide to the City Engineer detailed specifications for signage and bumper guards with the submittal of the construction plan package.
  - b. The applicant shall identify the quantity and location of car/vanpool parking, consistent with CDC Section 46.090(H), at time of submittal of the construction plan package.
  - c. The applicant shall sign three of the 17 ADA accessible parking spaces as "Wheelchair Use Only," and include a clear aisle of at least 96 inches in width per CDC Subsection 46.150(B)(5). Detail regarding the location and design of these spaces, including the required signage, shall be submitted with the construction plan package.
  - d. The applicant shall indicate the location and design of on-site signage directing bicyclists to appropriate bicycle parking facilities at time of submittal of the

construction plan package. Also, prior to the construction plan submittal, the applicant shall modify their plans to ensure that no bicycle parking is located more than 50-feet from the entrances to the three proposed buildings. The applicant shall maintain at least 15 covered bicycle parking spaces upon the relocation of these facilities to within 50-feet of the proposed building entrances.

4. Drainage. Prior to the issuance of grading permits, the applicant shall modify the drainage plan to prevent storm water drainage from crossing the designated walkway between the north entrance to proposed Building A and the proposed parking structure, subject to the City Engineer's approval consistent with Subsection 46.150(A)(17).
5. Curb Cuts. The applicant shall modify their plans to show a curb cut width for the access driveway onto Tannler Drive no greater than 36-feet, as measured at the face of the curb from curb wing-tip-to curb wing tip. These plans shall be submitted with the construction plan package.
6. Lot Line Adjustment. The applicant shall modify the proposed configuration of lots 801 and 200 to reduce the number of deviations from generally straight segments per CDC Section 85.210(A)(4) while maintaining consistency with the dimensional standards in 85.210(A)(2), as approved by the Planning Director.

This decision may be appealed to the Land Use Board of Appeals under the applicable rules and statutes.



SCOTT BURGESS, CITY COUNCIL PRESIDENT

12-6-10  
DATE

This decision was mailed on December 7, 2010.

Therefore, this decision becomes effective at 5 p.m., December 28, 2010.

