

May 4, 2016

Michael Babbitt, Chair
West Linn Planning Commission
22500 Salamo Road
West Linn, OR 97068

**Chene Blanc Subdivision
SUB-15-03/WAP-16-03
West Linn, Oregon**

Dear Chair Babbitt,

This letter has been prepared in order to specifically request that the Commission consider reopening the public record for the project to consider additional written and verbal testimony from the Applicant. During the April 20th hearing, a motion was made to approve the proposed subdivision. Deliberation on the motion resulted in a tie vote. We understood that the basis for the tie vote for approval of the subdivision application were related to two primary issues. We understood these to be the adequacy of public facilities within the area (85.200) and the City's Double Fronted Lot Standards (85.200.B.5).

In light of the tie vote, no decision has yet been formally rendered on the applications and the Commission has several options for proceeding with the proposed subdivision. Because the hearing concluded without a decision, a decision ultimately needs to be issued and findings in support of the Commission's decision also need to be provided. Because notice has been provided to those all parties with standing that the Commission's deliberations will be continued, the Commission may:

- Continue deliberations with a closed record, or
- Reopen the record to allow for additional testimony, then close the record and continue deliberations.

The Applicant wishes to address the Commission on the issues related to adequate public facilities and double fronted lots. The Applicant has prepared a series of additional findings and exhibits which are important for the Commission to consider. It is our belief that the additional information contained within this letter will be critical in allowing the Commission to conclude that the proposed subdivision meets the City's approval criteria and that the record should be reopened to allow for the introduction of this material.

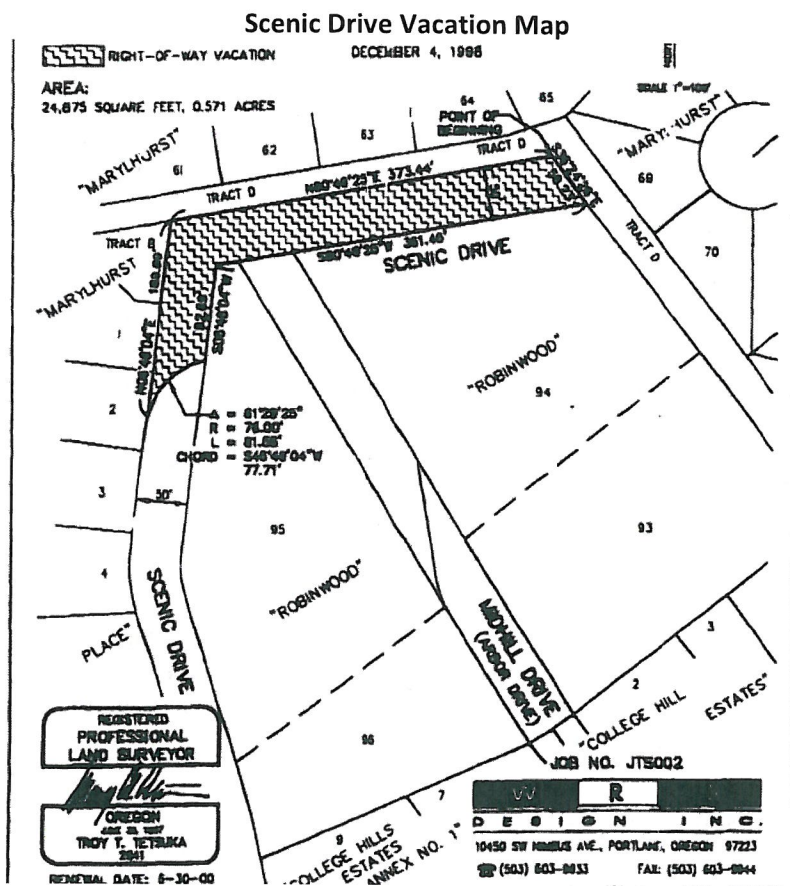
A summary of the information that we wish to submit into the record has been provided below:

Double Fronted Lots

The Commission expressed concern in approving the proposed application due to the lot configuration which would be created on the adjoining property to the west through the proposed improvements to Hillside Drive. The lots that would share two frontages are located within the City of Lake Oswego between Woodhurst Place and Hillside Drive.

We believe that it is important to understand the context within which these adjoining lots were created and to understand the City's previous actions related to the current configuration of Hillside Drive. The Marylhurst Place Subdivision Plat was approved by the City of Lake Oswego in 1995. It is our understanding that the Marylhurst Place Subdivision was approved with lots adjacent to Hillside Drive in order to prevent any potential for future connectivity between the City of West Linn and Lake Oswego.

Hillside Drive (shown on the map below as Scenic Drive) was initially created and platted in 1923 as part of the original Robinwood Subdivision Plat. In 1999, the City of West Linn's City Council approved a request to vacate a portion of Scenic Drive in order to allow for the development of the site with the Hidden Grove Townhomes, an application which was approved by the City in 2001. The Hidden Grove Townhome Application proposed to retain a portion of Hillside Drive in its existing configuration because the road layout then, as now, is appropriate to overcome specific disadvantages of topography and orientation. A map of the vacation area is shown below:



The map clearly shows that the Hillside vacation left a portion of the existing Hillside right-of-way in place, in anticipation of development of the subject property after the Marylhurst Place lots were created. Within the vacation ordinance, the City Council clearly found this configuration to be acceptable. The commission also found that the owners of the adjoining lots along Woodhurst had not objected to the street's vacation and reconfiguration. The Council unanimously approved the Vacation Ordinance.

The City's code regarding double fronted lots reads as follows:

5. Double frontage lots and parcels. Double frontage lots and parcels have frontage on a street at the front and rear property lines. Double frontage lots and parcels shall be avoided except where they are essential to provide separation of residential development from arterial streets or adjacent non-residential activities, or to overcome specific disadvantages of topography and orientation. A planting screen or impact mitigation easement at least 10 feet wide, and across which there shall be no right of access, may be required along the line of building sites abutting such a traffic artery or other incompatible use.

The City's staff report reviewed the application against these criteria and concluded as follows:

"There are double frontage lots in the City of Lake Oswego between Woodhurst Place and Hillside Drive that are adjacent to this subdivision. They are not part of this application."

The Applicant agrees with this finding but would add that the configuration for the lots in question and the configuration for Scenic Drive, have been contemplated at length by the City and have been determined to be acceptable within their current configuration.

As the existing sections of Hillside are platted public roadways under the jurisdiction of the City of West Linn, any Applicant seeking to subdivide or develop the land adjacent to these rights-of-ways is required to provide frontage improvements. Section 85.200.A of the City's Community Development Code states within paragraph three that:

"Internal streets are the responsibility of the developer. All streets bordering the development site are to be developed by the developer with, typically, half-street improvements or to City standards prescribed by the City Engineer."

The Applicant's proposal to improve an existing street along the project's border is consistent with the City's Approval Criteria for subdivision.

Adequacy of Public Facilities

The issue of adequate public facilities within the site's vicinity was raised by the project's neighbors and also discussed by members of the Planning Commission. The code specifies that approval criteria for street improvements generally apply only to streets within or abutting the subdivision. CDC 85.200.A.1. ("Internal streets are the responsibility of the developer. All streets bordering the development site are to be developed by the developer with, typically, half-street improvements or to City standards prescribed by the City Engineer.") CDC 200 A.4. ("The decision-making body shall consider the City Engineer's recommendations on the desired right-of-way width, pavement width and street geometry of the various street types within the subdivision....") CDC 85.200.A.10 ("Additional right-of-way for existing streets. Wherever existing street rights-of-way adjacent to or within a tract are of inadequate widths based upon the standards of this chapter, additional right-of-way shall be provided at the time of subdivision or partition.")

With respect to improvements for off-site streets that do not abut the development, CDC 85.200.A.22 delegates the determination of proportional off-site improvements “to the City Manager or the Manager’s designee based on the transportation analysis to mitigate off-site impacts of the subdivision. However, while site improvements are typically limited to a subdivision’s internal and abutting streets, and off-site improvements are limited to the City Manager’s determination of mitigation of proportional impacts, the Applicant recognizes that redevelopment and/or City initiated improvements to the local roadways surrounding the project are likely to take many years to complete.

In the interest of providing benefit to the neighborhood and ensuring that the circulation system surrounding the site is safe and efficient for both existing and future residents, the Applicant has proposed to complete the following off-site improvements in addition to those identified by the City Manager based on review of the transportation study

Along Arbor Drive:

Sidewalks do not exist along Arbor Drive between Upper Midhill and Highway 43. The Applicant would accept a condition of approval requiring the construction of a sidewalk along the northern side of Arbor Drive. It should be noted that much of the area required for sidewalk construction is located within the right-of-way but would require the removal of significant stands of existing mature vegetation which is being used for screening purposes. A map of this area is shown below:

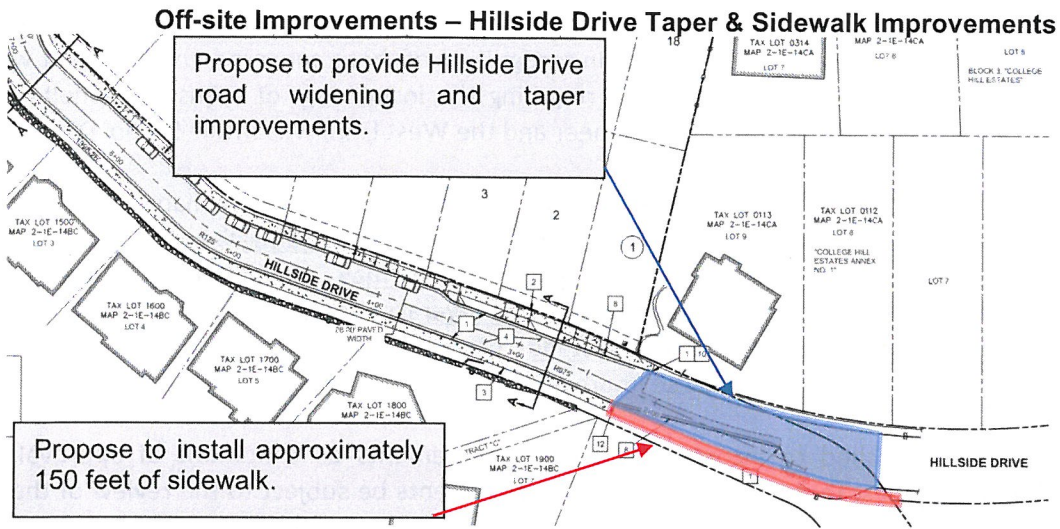
Off-site Improvements – Upper Midhill Drive | Arbor Drive Sidewalk (Source: Google Earth)



Along Hillside Drive:

The Applicant had initially proposed limited improvements along Hillside drive to connect a narrow portion of an existing street to the newly improved portions of Hillside. The Applicant now proposes

to extend the pavement from the site by approximately 150 feet further south along Hillside in order to provide a more standard paved width. Two maps showing these improvements are shown below:



Along Upper Midhill:

Between Arbor drive and the site's extension of Upper Midhill the roadway is quite wide however there are some gaps between sidewalks, particularly at the southern end as the road approaches Arbor. If the Applicant is conditioned to provide sidewalks along Arbor Drive, a connection between the end of the sidewalk along the eastern side of Upper Midhill should also be provided to connect

to the end of the new sidewalk along Arbor. The portion of the sidewalk to be improved is shown wrapping around the corner on the exhibit showing the improvements to Arbor.

Bus Stop

Several comments were made during the public hearing which referenced the student population area and the safety of the areas bus routes. In recognition of these concerns, the Applicant would be willing to accept a condition of approval requiring the installation of a Bus Stop Shelter at a location which is acceptable to the City's Engineer and the West Linn/Wilsonville School District.

The Applicant's proposed off-site improvements are significant in that nearly than 1000 linear feet of off-site improvements could be completed. The proposed off-site sidewalk improvements, while contributing to pedestrian safety within the neighborhood, may be regarded to be extremely disruptive within the neighborhood as reconstruction of several existing driveways would be required as would the removal of several significant stands of existing vegetation. The dedication of additional right-of-way to complete these improvements does not appear to be necessary.

If the commission wished to incorporate these improvements as conditions of approval, the Applicant would request that the design of the improvements be subject to the review of the City Engineer and that the value of these improvements be eligible for System Development Charge Credits.

Conclusion

The Applicant appreciates the Commission's consideration of this request for reopening of the record for the Chene Blanc Subdivision and appreciates the Commission's thorough review of the issues presented in the Application. The applicant requests the opportunity to speak to the commission tonight regarding this request to reopen the record and to answer any questions about the request. The applicant recognizes that if the record is reopened, there would be another hearing date set with notice to surrounding neighbors so that they could respond to any new evidence that the commission accepts. The applicant would agree to again extend the time for final decision to accommodate that additional hearing.

Most Sincerely,



Andrew Tull
Principal Planner
3J Consulting, Inc.

Attached: Vacation Ordinance 99-114675
Map Showing Other Double Fronted Lots within the City of West Linn

Copy: Ms. Megan Thornton, Assistant City Attorney
Mr. John Boyd, City of West Linn
Mr. Peter Spir, City of West Linn
Mr. Ryan Zygar, Tieton Homes, LLC
Mr. David Noren, Attorney
Mr. Aaron Murphy, PE, 3J Consulting, Inc.



159
75
10
75

AFTER RECORDING, RETURN TO:
PATRICIA A. RICH
ADMINISTRATIVE STAFF ASSISTANT
CITY OF WEST LINN
22500 SALAMO ROAD
WEST LINN, OR 97068

ORDINANCE 1430
WEST LINN, OREGON

AN ORDINANCE VACATING A PORTION OF SCENIC DRIVE WITHIN THE CITY OF WEST LINN, OREGON.

WHEREAS, on November 23, 1998, the West Linn City Council initiated the vacation of a portion of Scenic Drive, West Linn, Oregon, as more particularly described in the attached Exhibit A, pursuant to ORS 271.130; and

WHEREAS, the City Council called for a public hearing on the proposed vacation of Scenic Drive to be held on January 25, 1999; and

WHEREAS, after publication and posting of notice in accordance with the requirements of ORS 271.110, the City Council opened a public hearing on the vacation of Scenic Drive on January 25, 1999 and continued the public hearing on February 8, 1999 and deliberated on the matter on February 22, 1999; and

WHEREAS, the City Council had made the findings in the attached Exhibit B, which the City Council expressly adopts and incorporates into this ordinance; and

WHEREAS, the City Council has concluded, based on the findings, that all requirements of ORS 271.130, including the notice requirements of ORS 271.110, for the vacation of the portion of Scenic Drive have been met, and expressly determines that the majority of the property owners affected by the street vacation have not objected to the proposal and that the proposed street vacation will not substantially affect the market value of abutting properties; NOW, THEREFORE;

THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

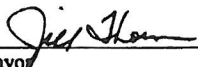
Section 1: The portion of Scenic Drive, a public street, described in the attached Exhibit A, in the City of West Linn, Clackamas County, Oregon, is hereby vacated subject to the following condition:

This ordinance shall not become effective until, and the actions required by ORS 271.140 and 271.150 shall not be taken until, a land use application is approved through final appeal that substantially relies upon the street vacation areas as approved. Minor modifications to the street alignments in the land use application shall be deemed to satisfy this condition of approval. If land use approval had not

been obtained by December 31, 2002, this ordinance shall be void unless prior to that date it is extended by motion of the City Council. The motion of the City Council shall extend the December 31, 2002 date to a new date certain. Amendment of this ordinance shall not be necessary to accomplish this change of date.

Section 2: The findings supporting the vacation of Scenic Drive, attached hereto as Exhibit B, are hereby adopted by the City Council.

PASSED AND APPROVED this 15th day of March, 1999.



Mayor

ATTEST:



Witness

jmo/scm/96030/scenicvac.or 1(3/3/99)

EXHIBIT A Page 1**Scenic Drive**

STREET VACATION
 PORTION OF SCENIC DRIVE, PLAT OF "ROBINWOOD"
 JOB. NO.: JTS002
 DECEMBER 4, 1998

LEGAL DESCRIPTION:

A STRIP OF LAND 50 FEET IN WIDTH BEING A PORTION OF SCENIC DRIVE, PLAT OF "ROBINWOOD", CLACKAMAS COUNTY SURVEY RECORDS, LOCATED IN THE GABRIEL WALLING DLC NO. 63 AND IN THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, CITY OF WEST LINN, CLACKAMAS COUNTY, OREGON, SAID STRIP OF LAND DESCRIBED SPECIFICALLY AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY NORTHEAST CORNER OF SAID PLAT OF "ROBINWOOD", SAID POINT ALSO BEING THE RE-ENTRANT CORNER TO TRACT "D", PLAT OF "MARYLHURST", SAID COUNTY SURVEY RECORDS; THENCE ALONG THE EASTERLY LINE OF SAID PLAT OF "ROBINWOOD" AND THE WESTERLY LINE OF SAID TRACT "D" SOUTH $38^{\circ}24'26''$ EAST, 58.23 FEET TO THE NORTHEAST CORNER OF LOT 94 OF SAID PLAT OF "ROBINWOOD"; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 94 AND LOT 95 OF SAID PLAT SOUTH $80^{\circ}49'25''$ WEST, 381.48 FEET TO THE NORTHWEST CORNER OF SAID LOT 95; THENCE ALONG THE WESTERLY LINE OF SAID LOT 95 SOUTH $06^{\circ}48'04''$ WEST, 82.68 FEET TO THE BEGINNING OF A NON-TANGENT CURVE; THENCE LEAVING SAID WESTERLY LINE ALONG THE ARC OF A 78.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF $61^{\circ}29'25''$ (THE LONG CHORD BEARS SOUTH $48^{\circ}48'04''$ WEST, 77.71 FEET) A DISTANCE OF 81.66 FEET TO A POINT ON THE WESTERLY LINE OF SAID PLAT OF "ROBINWOOD" AND THE EASTERLY LINE OF LOT 2, PLAT OF "MARYLHURST PLACE", SAID COUNTY SURVEY RECORDS; THENCE ALONG SAID WESTERLY LINE, SAID EASTERLY LINE OF LOT 2 AND THE EASTERLY LINES OF LOT 1 AND TRACT "B" OF SAID PLAT OF "MARYLHURST PLACE" NORTH $06^{\circ}48'04''$ EAST, 189.89 FEET TO THE NORTHERLY LINE OF SAID PLAT OF "ROBINWOOD" AND THE SOUTHERLY LINE OF SAID TRACT "D"; THENCE ALONG SAID NORTHERLY AND SOUTHERLY LINE NORTH $80^{\circ}49'25''$ EAST, 373.44 FEET TO THE POINT OF BEGINNING.

CONTAINS 24,876 SQUARE FEET OR 0.571 ACRES, MORE OR LESS.




EXHIBIT A Page 2 Scenic Drive

EXHIBIT MAP

FOR A STREET VACATION
A PORTION OF SCENIC DRIVE, PLAT OF "ROBINWOOD"
LOCATED IN THE GABRIEL WALLING DLC NO. 83
AND IN THE SW 1/4 OF SECTION 14,
IN T 2 S, R 1 E, WILLAMETTE MERIDIAN
CITY OF WEST Linn
CLACKAMAS COUNTY, OREGON
DECEMBER 4, 1988

LEGEND:

 RIGHT-OF-WAY VACATION

AREA:

24,875 SQUARE FEET, 0.571 ACRES

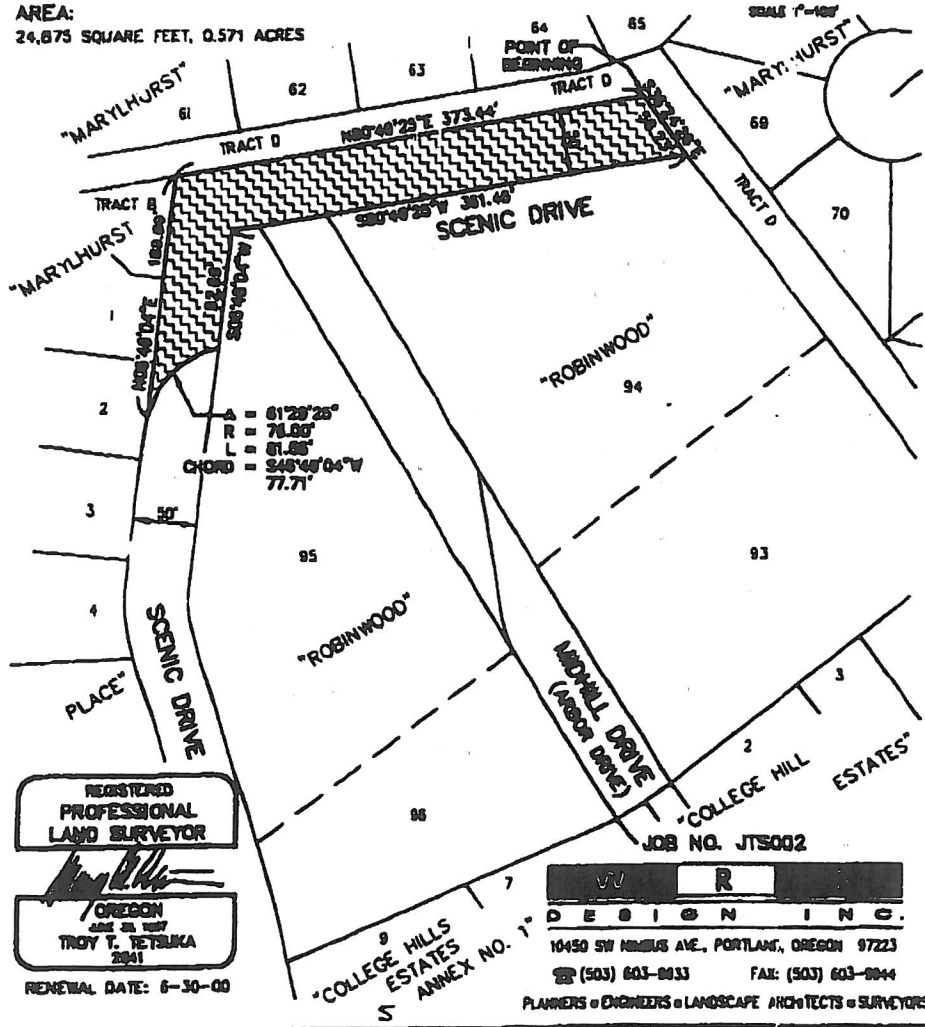


EXHIBIT B

BEFORE THE CITY COUNCIL OF WEST LINN, OREGON

In the matter of a City Council initiated)	Findings of Fact and Conclusions of
vacation of Upper Midhill Drive and)	Law
Scenic Drive, both City of West Linn,)	
Oregon streets, pursuant to ORS 271.130)	City of West Linn File Nos. MISC
)	98-50 (Upper Midhill Drive) and
)	MISC 98-54 (Scenic Drive)

I. PROCEDURAL STATUS

A. Request to Initiate Street Vacations.

The City Council received a request from the J.T. Smith Companies on October 12, 1998 to initiate street vacations pursuant to ORS 271.130 of unimproved portions of Scenic Drive and Upper Midhill Drive. The City Council considered the request on its November 23, 1998 consent agenda (Agenda Bill 98-11-09 and Agenda Bill 98-11-10). The agenda bills stated that the City Council would set a public hearing date of January 25, 1999 for the street vacations. Counselor John Jackley moved to approve the consent agenda and Counselor Burch seconded the motion which carried by a vote of 4-0.

B. Public Hearings on the Street Vacations.

The West Linn City Council opened the public hearing on the street vacations on January 25, 1999 and continued it until February 8, 1999. No person objected to the continuance. ORS 271.130(2) allows intersecting street vacations to be considered in one proceeding. The City Council considered both street vacations in one proceeding. No person objected to this procedure.

The City Council opened the public hearing on the street vacations on February 8, 1999. Mayor Thorn announced that each speaker would be limited to five (5) minutes. The Mayor also announced that the public hearing on the street vacations would be combined but that the City Council would take separate votes.

The Mayor described the procedure for the public hearing. The Mayor announced that the City Council would begin with a discussion of its jurisdiction, impartiality of the City Council members and any site visits by City Council members. The staff would provide a report to City Council. Those persons supporting the street vacations would be allowed to testify, followed by those persons opposing the street vacations and concluding with neutral testimony. The Mayor announced that rebuttal would be allowed for those in support.

Mayor Thorn and Counselors Neff and McFarland announced that they had visited the site. No person questioned the Mayor or either counselor on the site visits nor requested an opportunity to rebut any information gained during the site visits. No party challenged the impartiality of the counselors nor the jurisdiction of the City Council to consider the street vacations.

Gordon Howard presented the staff report to the City Council. On the wall before the City Council were colored tax lot maps for each of the street vacations. Mr. Howard described the applicable approval criteria contained in ORS 271.130 as follows:

"(1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacations shall not be made before the date set for hearing, nor if the owners of the majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide."

Mr. Howard explained that the staff found that the street vacation proceedings were properly initiated because they were authorized by 271.080, that the city had given proper notice as required by ORS 271.110, that the owners of the majority of the area affected computed on the basis provided in ORS 271.080 had not objected in writing to the street vacations, that the consent of some but not all of the owners of the abutting property had been obtained and that the market value of the abutting properties for which consent had not been obtained would not be substantially affected by the street vacations.

The City Council heard testimony by those supporting the street vacations and those opposed to the street vacations. At the conclusion of testimony, based on an objection from an opponent, and upon the proponent's waiver of right to rebuttal, the City Council voted to close the public hearing and to continue the street vacations to the February 22, 1999 City Council meeting for deliberation only and a tentative decision.

The City Council considered the street vacations at its February 22, 1999 meeting. Mayor Thorn announced that the public hearings were closed and the City Council was in deliberation. Mr. Howard presented a staff memorandum summarizing six issues but containing no new evidence. No person objected to the inclusion of the February 19, 1999 staff memorandum into the record. Mr. Howard recommended approval of both street vacations.

Counselor Burch disclosed an ex parte contact. He said that Ms. Bell, Ms. Hennessey and others had attempted to show him a sketch of how the City of Lake Oswego interpreted street vacations. The City Council finds that this document was not included in the record before it.

Counselor Burch moved to approve the vacation of a portion of the unimproved right-of-way of Upper Midhill Drive with a condition of approval providing that the street vacation ordinance would not become effective prior to land use approval using the street vacation area through final appeal. Counselor Neff seconded the motion. The motion passed 5-0.

Counselor Burch moved to approve the vacation of a portion of the unimproved right-of-way of Scenic Drive with the same condition of approval. Counselor McFarland seconded the motion. The motion passed 5-0. The City Council directed that staff prepare findings for its consideration and adoption at its meeting on March 15, 1999.

C. Content of the Record.

The City Council finds that the record consists of all documents in the Planning Department's street vacation file concerning the initiation of the street vacations, beginning with the applicant's request on October 12, 1998 and the City Council's initiation of the street vacations on November 23, 1998. The record also consists of all documents in the Planning Department street vacation file regarding the public hearings on the street vacations on February 8, 1999 and February 22, 1999, including all documents submitted to and not rejected by the City Council at the public hearing on February 8, 1999 and including the staff memorandum dated February 19, 1999.

II. APPLICABLE APPROVAL CRITERIA

The applicable approval criteria are found in ORS 271.130. These findings describe why the City Council believes that each of the applicable approval criteria for each of the street vacations is satisfied.

A. The City Council Finds That it Properly Initiated the Street Vacations.

ORS 271.130(1) authorizes the City Council to initiate street vacations authorized by ORS 271.080. The City Council finds for the reasons set forth below that these street vacations were authorized by ORS 271.080(2).

B. The City Council Finds That it Caused Notice of the Public Hearings to Be Given as Provided by ORS 271.110.

ORS 271.110 requires that notice of the street vacation hearings be given by publication in the city's official newspaper once each week for two consecutive weeks prior to the hearing. ORS 271.110(2) requires that within five (5) days after the first date of publication of the notice, the city is required to post at or near each end of the proposed street vacation a copy of the notice containing certain information. Further, the first day of publication is required to be not less than fourteen (14) days before the hearing, or no later than January 11, 1999.

The record includes a January 27, 1999 memorandum from Dan Drentlaw, West Linn Planning Director, to the West Linn City Council. The memorandum summarizes the notices of the street vacation hearing.

The City Council finds that the city provided published notice of the street vacation hearing as required by ORS 271.110. The notice of the public hearing on January 25, 1999 was published in the West Linn Tidings on January 7, 1999 and January 14, 1999. The record includes an affidavit of publication by Community Newspapers, Inc., publisher of the West Linn Tidings and signed by Kathy Snyder attesting that publication of a notice of public hearing for January 25, 1999 for the hearing was published on January 7, 1999 and January 14, 1999. The first date of publication was at least fourteen (14) days prior to the first hearing date of January 25, 1999. No person objected to the City Council's continuation of the public hearing from January 25, 1999 until February 8, 1999.

The City Council also finds that the published notices contained the information required by ORS 271.110(1). The statute requires that the notice "describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered."

The published notices describe the ground covered by the City Council initiated street vacations, the date the City Council initiated street vacations and that "oral and written testimony may be submitted to the City Council at the January 25, 1999 hearing. Any objections or remonstrances may be submitted in writing to the City Council . . ." The City Council finds that no person objected to the content or timing of the published notices.

The City Council also finds that proper posting of notice of the hearing was made. ORS 271.110(2) requires within five (5) days after the first date of publication (January 12, 1999), the city was required to post at or near each end of the proposed street vacations a copy of the notice. The City Council finds that the record contains an affidavit of posting by Gordon Howard on January 8, 1999 of four (4) notices. Mr. Howard's affidavit states that he posted the notices at each end of the Scenic Drive street vacation area and at each end of the Upper Midhill Drive street vacation area. The City Council also finds that the record contains a copy of the notice of street vacation hearing for Upper Midhill Drive and Scenic Drive. Further, the City Council finds that posted notices contain the information required by ORS 271.110(2). The statute requires that the notice contain a particular title. In this case, the notices were entitled "Notice of Street Vacation Hearing". The City Council finds that this title satisfies ORS 271.110(2). The City Council finds that no person objected to the content of the posted notices, to their location or to their timing of posting.

C. The owners of a majority of the area affected did not object in writing to the street vacations.

1. Upper Midhill Drive.

ORS 271.080(2) describes the affected area calculation as follows:

"The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted."

The record includes a map depicting the area of Upper Midhill Drive proposed to be vacated, the affected area calculated pursuant to ORS 271.080(2) and a legal description of the area proposed to be vacated. The City Council finds for the reasons described below that less than fifty (50) percent of the affected area property owners have remonstrated in writing against the street vacation of Upper Midhill Drive.

The City Council has proposed to vacate Upper Midhill Drive to its northern terminus where it intersects with Scenic Drive. The affected area is extended 200 feet on either side of the portion of Upper Midhill Drive proposed to be vacated. The City Council finds this includes property in the Marylhurst Subdivision and Tax Lots 14CA-200W and 14CA-200E.

The affected area also includes 200 feet on either side of the street for 400 feet along the street's southerly course beyond the part proposed to be vacated. This area includes tax lots 14CA-200W and 14CA-200E and lots in the College Hill Estates Subdivision.

The affected to the north of the terminus of Upper Midhill includes only "the land embraced in an extension of the street for a distance for 400 feet" beyond the terminus. This affected area includes land within an open space tract owned by the Marylhurst Subdivision Homeowner's Association and lots within the Marylhurst Subdivision.

Based on this description above, the City Council finds that it has not received written remonstrances from the owners of more than fifty (50) percent of the affected area. Therefore, the City Council finds that the affected area requirement for the Upper Midhill Drive street vacation is satisfied.

The City Council finds that it has correctly interpreted the affected area requirement in ORS 271.080(2) with respect to the area north of the terminus of Upper Midhill Drive. The City Council finds that ORS 271.080(2) is ambiguous and can be read several ways. However, the City Council finds that the better reading of this portion of ORS 271.080(2) is that when a street is proposed to be vacated to its termini (including a terminus), the affected area includes only the extension of the street for 400 feet beyond the terminus. The City Council finds that the statute is properly read in this way because the statute separately describes how to calculate the affected area when a street is proposed to be vacated to its termini and when it is not to be proposed to be vacated to its termini. In the event of a proposed vacation not to the termini of the street, the 400 foot extension along the street's course is called for in the statute and includes the 200-foot lateral distance along the 400 foot extension. The City Council finds that the phrase "shall also be counted" is properly read to mean that when a street is vacated to its termini or terminus, because the course of the street cannot be followed, then the street area is extended for the affected area calculation but without the 200 foot lateral distance. The City Council notes that the evidence before it shows that the City of Portland follows this interpretation. Finally, the City Council finds that the land beyond the terminus of Upper Midhill Drive has access to streets in the City of Lake Oswego and that access is unaffected by this street vacation.

The City Council finds that the unvacated portion of Scenic Drive to the west of Upper Midhill Drive is not a "parallel" street of Upper Midhill Drive. Nevertheless, the City Council finds that the affected area controlled by opponents to the street vacations is approximately 100,000 square feet. Because the Hidden Grove project property owners control approximately 180,000 square feet of the affected area, the City Council finds that it has not received written remonstrances for more than fifty (50) percent of the owners of the affected area.

Further, the City Council finds that the written remonstrances it has received from owners of property within the affected area are inadequate. The City Council finds that ORS 271.130(1) requires that the owners of a majority of the area affected object in writing to the street vacation. The City Council believes that evidence of ownership, such as a tax statement or the latest county tax assessment roll, or a remonstrance of an owner notarized before an officer authorized to take acknowledgment of deeds, is required. In this case, the City Council has before it several types of written remonstrances. The first type is petitions addressed to Mayor Jill Thorn and members of the City Council from residents of the College Hill Estates Subdivision. While the petition states that the signers are "real property owners", the petition signatures contain no acknowledgment, no evidence of ownership, or any other objective basis on which the City Council could definitively conclude that the signers are owners of property in the affected area.

The record also includes letters from residents in Lake Oswego. The letters state that the signers are "owners" of particular tax lots. As with the petitions, the letters are not acknowledged and contain no objective evidence that the persons signing them are owners. The City Council finds that the burden of proof in ORS 271.130(1) is upon objectors to the street vacation. Because substantial evidence in the record demonstrates to the City Council that a majority of owners of the affected area have not objected in writing, the City Council finds that this criterion for Upper Midhill Drive is satisfied.

2. Scenic Drive.

The record contains a map showing the area of Scenic Drive proposed to be vacated and its affected area. Scenic Drive is proposed to be vacated to its eastern terminus. The Council calculates the affected area beyond the terminus in the same manner and for the same reasons that it calculated the affected area beyond the terminus of Upper Midhill Drive. The affected area north of Scenic Drive extends to Brookhurst Drive, a parallel street. The affected area west of Scenic Drive extends to Woodhurst Court, a parallel street. For the reasons explained in the February 19, 1999 staff report in the record, the City Council finds that less than a majority of the owners of the affected area for Scenic Drive have objected in writing to the street vacation.

The City Council rejects the opponents' argument that Brookhurst Drive and Woodhurst Court are not parallel streets to the Scenic Drive vacation. ORS 271.080(2) provides that the lateral distance of the affected area shall extend for 200 feet but not beyond a parallel street. Brookhurst Drive is parallel to the north of Scenic Drive. Woodhurst Place is parallel to the west of Scenic Drive. Both streets provide access to the residential lots within the affected area. Both streets run generally along the Scenic Drive right-of-way and do not intersect with it. The City Council does not believe that mathematical precision is required to find that a parallel street cuts off the 200-foot lateral distance and, in this case, both Brookhurst Drive and Woodhurst Place are improved streets which are parallel to Scenic Drive. The Council interprets the parallel street limitation in ORS 271.080(2) to mean that the Legislature intended that the area affected is to include land to which access may be affected by the proposed street vacation. In construing the statute in this case, the area affected is only extended to the north and west to the next street that provides access to the lots. All land to the north and west that abuts Brookhurst Drive and Woodhurst Court has access to those streets, and the land beyond those streets also has access that will be unaffected by this street vacation.

D. The Market Value of Abutting Property Will Not Be Substantially Affected by the Street Vacations.

1. Upper Midhill Drive.

The only abutting properties to the vacation of Upper Midhill Drive are tax lots 14CA-200W and 14CA-200E. The City Council finds that these abutting property owners have not objected to the street vacation. For this reason, the City Council finds that this criterion for the vacation of Upper Midhill Drive is satisfied.

2. Scenic Drive

Scenic Drive contains four (4) abutting properties. The first abutting property is Tract "D" in the Marylhurst Subdivision. No residential lots in the Marylhurst Subdivision abut Scenic Drive. The record contains evidence that Condition of Approval 5 on the recorded plat for Marylhurst Subdivision requires Tract "D" to be maintained as open space. Further, Condition of Approval 17 on the plat for Marylhurst Subdivision provides that Tract "D" is owned by the Marylhurst Subdivision Homeowner's Association. The City Council finds that Tract "D" has no market value since it must be maintained as private open space. The City Council makes this finding based on the fact that the conditions of approval of the Marylhurst Subdivision require Tract "D" to be maintained as open space and to be owned by the Homeowner's Association. Therefore, it is unlikely and highly speculative that Tract "D" can be conveyed for any use other than open space and, consequently, the City Council finds that it has no market value.

The City Council finds that the burden of proof is on an abutting property owner to demonstrate substantial affect on market value. In this case, the City Council finds that the Homeowner's Association, the owner of Tract "D", has not alleged that the market value would be affected. No other person or entity owns tract "D", so the City Council finds that there is no evidence of a substantial affect on its market value. Additionally, the City Council believes that in the case of substantial affect on market value, the evidence must be related to the loss of access. The City Council relies on a January 13, 1999 memorandum from James M. Coleman of the City Attorney's office.

The other three (3) abutting properties are lots 1, 2 and 3 in the Marylhurst Place Subdivision. These lots are owned by Mr. Art Piculell. Mr. Piculell is the subdivider of the Marylhurst Place Subdivision. The record contains evidence that the Marylhurst Place Subdivision was approved by the City of Lake Oswego in 1995. As part of that subdivision application, Mr. Piculell caused to be submitted a February 11, 1995 memorandum to the City of Lake Oswego. The memorandum states at page 5 that Scenic Drive should be vacated and new roads designed to serve this area. The City Council finds that this is substantial evidence showing that the owner of lots 1, 2 and 3 of the Marylhurst Place Subdivision believes the vacation of Scenic Drive will not have a substantial affect on the market value of those lots.

Finally, the City Council finds that the record contains a letter dated February 8, 1999 from Mark Crandall. Mr. Crandall states that in his professional opinion, the proposed Scenic Drive street vacation will not substantially damage the property owners abutting the portion of the street proposed to be vacated. The City Council finds that this is substantial evidence to support its findings that the value of the properties abutting Scenic Drive will not be substantially affected.

For the reasons described above, the City Council finds that the consent of owners of abutting properties is not required because the vacation of Scenic Drive will not substantially affect the market value of the abutting property.

B. The Public Interest Will Not Be Prejudiced.

The City Council finds that ORS 271.120 is not applicable to a City Council initiated street vacation. However, the City Council finds that if this statute were applicable, the public interest will not be prejudiced by the vacation of Upper Midhill Drive and Scenic Drive. The City Council finds that both streets were platted in 1923. The platting did not take into account the topography of the area, but rather followed lot lines. Since that time, political boundaries have changed, the opportunity for extension of these streets to the north, west and east has been foreclosed, by development approved by the City of Lake Oswego, and the streets are no longer needed for a public street purpose, at least in their present configuration. The City Council finds that with an appropriate condition of approval as described below, it is appropriate to vacate a portion of these unimproved rights-of-way.

The City Council finds that the following Condition of Approval will address the opponents' concern that the streets might be vacated for no reason if the Hidden Grove land use application is not approved. Notwithstanding the fact that the City Council finds that the land use application has no bearing on the applicable approval criteria for the street vacations, the City Council desires to impose this condition of approval. The condition of approval shall substantially provide as follows:

"The Upper Midhill Drive and Scenic Drive street vacation ordinances adopted by the West Linn City Council shall not become effective until, and the actions required by ORS 271.140 and 271.150 shall not be taken until, a land use application is approved through final appeal that substantially relies upon the street vacation areas as approved. Minor modifications to the street alignments in the land use application shall be deemed to satisfy this condition of approval."

III. CONCLUSION

For the reasons contained herein and based on the substantial evidence before it, the West Linn City Council hereby approves the vacations of the described portions of Upper Midhill Drive and Scenic Drive subject to the condition of approval above.

Dated: March 15, 1999.

JILL THORN, Mayor

jms/acm/96030/stvacfindings.42(3/3/99)

CERTIFICATION OF PUBLIC RECORD
OF THE CITY OF WEST LINN, OREGON

I, Nancy L. Davis, hereby certify that I am the duly appointed, qualified,
and acting Custodian of Records of the City of West Linn, Oregon; and

I further certify that the attached photocopy of Ordinance No. 1430, an
ordinance vacating a portion of Scenic Drive within the City of West Linn,
Oregon, passed and approved the 15th day of March 1999 is a true and correct
copy of said ordinance, consisting of 14 pages.

Witness my hand and the Seal of the City of West Linn, Oregon, this 14th
day of December, 1999.

Nancy L. Davis
Nancy L. Davis, Custodian of Records

15

STATE OF OREGON 99-114675
CLACKAMAS COUNTY
Received and placed in the public
records of Clackamas County
RECEIPT# AND FEE: 104483 \$135.00
DATE AND TIME: 12/14/99 11:25 AM
JOHN KAUFFMAN, COUNTY CLERK

