



PLANNING COMMISSION
draft Meeting Notes of July 15, 2020

Commissioners present: Gary Walvatne, Charles Mathews, Joel Metlen, Jim Farrell, Carrie Pellett, Lamont King, and Margot Kelly

Council Liaison present: none

Members of the Public: Michael Robinson, applicant representative, Matt Bell, Kittelson & Associates, Steve Miller, Planning Consultant, Tyler Corb, Applicant Engineer, Tim Ralston, property owner, Jason Harra, public, John Robins, public, Oren Barkan, public, and Scarlett and Chris Harris, public

Staff present: Darren Wyss, Acting Planning Manager, Tim Ramis, City Attorney, Jennifer Arnold, Associate Planner, and Lynn Schroder, Administrative Assistant

- 1. Call To Order (time stamp 00:00:10)**
Chair Walvatne called the meeting to order at 6:30 pm. Interim Planning Manager Wyss called the role.
- 2. Public Comment Related To Land Use Items Not On The Agenda (time stamp 00:00:20)**
None.
- 3. Public Hearing: MISC-20-04, Two-year extension of approval for 34-lot subdivision at 18000 Upper Midhill Drive (SUB-15-03/AP-17-01) (time stamp 00:01:17)**
Chair Walvatne called the public hearing for MISC-20-04, a two-year extension of an approval for 34-lot subdivision at 18000 Upper Midhill Drive (SUB-15-03/AP-17-01) to order. City Attorney Ramis reviewed the legal matters related to quasi-judicial hearings and the criteria for consideration of MISC-20-04. Responding to the question of conflict of interest, no Commissioners declared a conflict of interest. Responding to the question of site visits and ex parte contacts, Commissioner Kelly noted that she visited the site on July 15, 2020. Commissioner King noted that he also recently visited the site. No ex parte contacts were declared. John Robins stated his objection to the Planning Commission's jurisdiction on the matter because the public was not given a rationale for the application. City Attorney Ramis noted the objection, but stated that objection did not preclude the Planning Commission hearing the matter. There were no other objections to the Planning Commission's jurisdiction. Ramis asked if there were any objections to impartiality and disclosures of the Commissioners. There were no challenges to Commissioners impartiality on the application.

Planner Jennifer Arnold presented a staff report. The applicant requested a two-year extension to a previously approved 34-lot subdivision (SUB-15-03/AP-17-01) at 18000 Upper Midhill Drive. West Linn Community Development Code Chapter 85.090 requires the final subdivision plat be recorded with the County within three years from the date of approval, unless an extension is granted. The City Council Final Decision and Order became effective on July 19, 2017. The applicant requested an extension in order to complete the conditions of approval and record the final subdivision plat. There were no modifications to the original subdivision tentative plan. The applicant proposed five locations where the previously approved 24-foot pavement width will be extended to 28-feet wide to provide additional on-street parking.

The Code provides that an extension may be granted by the original decision-making body by an additional two years from the effective date of approval upon finding that:

1. The applicant has demonstrated that the application is in conformance with applicable CDC provisions and relevant approval criteria enacted since the application was initially approved; and
2. There are no demonstrated material misrepresentations, errors, omissions, or changes in facts that directly impact the project, including, but not limited to, existing conditions, traffic, street alignment and drainage; or
3. The applicant has modified the approved plans to conform with current approval criteria and remedied any inconsistency with subsection (A)(2) of this section, in conformance with any applicable limits on modifications to approvals established by the CDC

Staff found that the proposed extension meets the required approval criteria. Staff recommended adding a condition of approval to require the five locations where the street will be extended to 28-feet wide. Staff recommended approval of application MISC-20-04, based on the findings submitted by the applicant, supplementary staff findings, and the addition of conditions of approval.

Michael Robinson, applicant representative, stated that the property has not changed ownership, however there has been a change in project representation since the original application. Steve Miller stated that the original application has not changed with the exception of widening the roadway to 28 feet in five locations. This change was made at the request of the City Engineer. He noted that construction was delayed because of the 2017 LUBA appeal of the original decision. Other considerations lead to additional delays. He stated that the applicant is not obligated to justify the extension request.

Commissioner Metlen asked if there have been any changes in traffic conditions since the original application. Mr. Miller stated that the applicant submitted a letter on July 15, 2020 that addressed the current traffic conditions. Matt Bell of Kittelson & Associates stated that the most recent data available from ODOT is from 2018. The data did not show a material change in traffic facts that directly impact the project since 2017. He projected a 1% growth rate in traffic over the next few years.

Commissioner King asked about the submittal by Greenline Engineering that noted that traffic was growing at 5% per year. Mr. Miller responded that the information submitted by Greenline Engineering is not a "change of facts" because it was submitted and rejected by the City Council in 2017 and by LUBA in 2018.

Commissioner Farrell asked if the applicant had considered new vehicle trips from the approved condominium project and the proposed Mary's Woods project. Mr. Miller stated that the traffic analysis did account for the approved condominium project but not the proposed Mary's Wood project because Mary's Woods has not been approved yet and has not resulted in a "change in fact". He noted that the developer of Mary's Woods would need to mitigate their traffic impacts.

Commissioner Farrell asked the applicant to demonstrate a need for a time extension. Mr. Miller responded that the approval criteria do not require the applicant to demonstrate good cause or need for the extension. Tyler Corb of Emerio Design noted that the design and DEQ certification of the stormwater facility took several months.

Commissioner Farrell asked about Construction Traffic on Upper Midhill Drive Mr. Miller responded that the City Council imposed Condition of Approval 11 requiring a Traffic Management Plan, including truck traffic.

Commissioner Kelly expressed her concern with the narrowness of Upper Midhill and the availability of off-street parking. Mr. Miller responded that each lot would accommodate at least four off-street parking spaces but that the Applicant has not designed the dwellings. Additionally, as requested by the City Engineer, the applicant five areas for additional on-street parking by removing the landscaping strip in these areas. Mr. Miller noted that the City does not have a requirement for 28-foot streets at this time.

City Attorney Ramis noted that the extension approval criteria are very narrow and the 28-foot street requirement not been adopted in the Code.

Commissioner Kelly asked if the intersection of Highway 43 and Arbor will be widened as part of this development. Acting Planning Manager Wyss stated that the future intersection of Willamette Drive and Arbor Drive will have protected and dedicated turn lanes, thus improving traffic safety.

Commissioner Walvatne asked if the property owners within 500 feet were notified. Staff Planner Arnold stated that the affidavit of notice to property owners within 500 feet part of the staff report.

Commissioner Farrell asked about the public comment about medical waste disposed of on the project. Property Owner Tim Ralston stated that he was unaware of any waste. The soils tests did not uncovered any medical waste.

Chair Walvatne opened the public testimony.

Orrin Barken stated that stormwater from the development would drain to his property.

John Robins stated was also concerned about stormwater and how it will drain from the property. He wanted to review the proposed stormwater design.

Jason Harra stated that the Greenline Engineering traffic study was not allowed to be considered as part of the original decision. He stated that Arbor Drive and Willamette Drive intersection currently failing. He stated that Upper Midhill Drive is too narrow to allow safe construction activities.

Scarlett Harris deferred to her husband Chris Harris. Mr. Harris expressed his concern about safety. He noted that Chapter 85 addresses traffic safety. He stated that there has been a change in facts regarding increased traffic congestion, safety of Arbor Drive and HWY 43 intersection, habitat removal.

Chair Walvatne asked the applicant for a rebuttal to the public testimony.

Mr. Robinson responded that the extension request is not an opportunity to revisit the original approval. The City Council and LUBA addressed these issues. He asked that the Planning Commission limit their consideration of the extension application to the approval criteria found in Chapter 99.325.A.1-3.

Mr. Robinson stated that the approved subdivision plan shows that stormwater will drain to Tract C and then to City of West Linn stormwater facilities. No evidence was provided that showed that stormwater will drain to adjacent lots. The stormwater plan is a public document available for citizens to review.

The applicant responded that that the information submitted by Mr. Harra is not a "change of facts" because it was submitted and rejected by the City Council in 2017 and by LUBA in 2018.

The applicant requested a continuance as to develop a more detailed final written argument with no new information.

Commissioner Pellett asked if the applicant would address added stormwater impacts because of the added paving area in the five areas. The applicant said it would agree to a condition of approval requiring it to do so. The applicant did not think that the small area of additional paving will significantly impact the project.

Chair Walvatne moved to hold the record open for seven days for applicant to submit a final written argument with no new information and continue the hearing on August 19, 2020 at 6:30 pm. **Commissioner King seconded. Ayes: Commissioners Metlen, Pellett, King, Kelly, Mathews, and Walvatne. Nays: Farrell. Abstentions: None. The motion passed 6-1-0.**

The applicant agreed to extend 120-deadline from October 8 to October 15, 2020.

Chair Walvatne closed the public hearing.

4. Items Of Interest From The Planning Commission **(time stamp 02:44:00)**

Commissioner Kelly asked for an update on the Tannler Drive house access issue. City Attorney Ramis responded that the Community Development and Public Works have looked at the issue with the applicant. The applicant may submit a variance request.

5. Items Of Interest From Staff **(time stamp 002:47:27)**

Acting Planning Manager Wyss asked for Commissioners support for Chair Walvatne to sign a letter of support for a grant request for Highway 43 rezone project. Commissioners supported the grant request.

Wyss is working on providing information on the Oregon City Project to Commissioners.

Wyss will provide a link of the ODOT presentation to the City Council on the I-205 tolling proposal to Commissioners.

Wyss is reaching out to ODOT to come to the PC to provide an update on the Highway 43/Arbor Drive project.

6. Adjourn **(time stamp 02:55:00)**

Chair Walvatne adjourned the meeting at approximately 9:42 pm.