

WEST LINN PLANNING COMMISSION

FINAL DECISION AND ORDER

SUB-15-03, WAP-16-03

IN THE MATTER OF A 34-LOT SUBDIVISION AND WATER RESOURCE AREA PERMIT AT 18000 UPPER MIDHILL DRIVE

I. Overview

Upper Midhill LLC (Applicant) filed its application on October 21, 2015, and it was deemed complete on February 23, 2016. The approval criteria for the application are found in Community Development Code (CDC) Chapters 85, 32, and 14. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

The Planning Commission (Commission) held the public hearing on April 20, 2016. The hearing commenced with a staff report presented by Peter Spir, Associate Planner. Andrew Tull presented for the applicant. The Commission heard public testimony from 15 individuals and accepted letters and photographs as exhibits.

After deliberations, a motion was made by Commissioner Myers to approve the application with nine conditions of approval. In addition to the eight conditions of approval proposed in the April 20, 2016, staff report, Commissioner Myers added a condition to require the developer to “verify that tree #3439 is on the applicant’s property prior to removal.” Commissioner Knight seconded the motion. Then Commissioner Farrell made a motion to amend the initial motion to include an additional condition of approval requiring the applicant to make improvements on Midhill Drive and Arbor Drive to bring those streets up to City standards. This motion to amend was seconded by Commissioner Matthews. After discussion, the motion to amend failed and the initial motion by Commissioners Myers and Knight was put to a vote with Commissioners Matthew, Farrell and Walvatne opposed and Commissioners Myers, Babbitt and Knight voting in favor. The motion failed to pass with a tie vote and the application was denied.

Some of the community concerns raised at the public hearing include:

1. The projected 389 trips per day generated by this application will worsen the level of service on area streets including Upper Midhill Drive, Hillside Drive Arbor Drive and Willamette Drive.
2. Arbor Drive at Willamette Drive is already a dangerous intersection and will be made more dangerous by the additional trips.
3. There were concerns about the wetlands being filled.
4. The incompatibility of the site’s R-4.5 zone with surrounding lower residential density was questioned.
5. Potential storm water and drainage problems were mentioned.

6. There was concern regarding the loss of trees (particularly tree #3439).
7. The creation of double frontage lots in Lake Oswego was stated to be problematic.
8. Neighborhood disruption caused by construction of the subdivision and subsequent home building (noise, vibration, glare, street damage, etc.) was a concern.
9. There is a potential for glare from the new street lights.
10. There were concerns about neighborhood safety associated with increased traffic generated by 34 homes and heavy truck traffic during the construction phase.

II. The Record

The record was finalized at the April 21, 2016, hearing. The record includes the entire file from SUB-15-03, WAP-16-03.

III. Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The applicant is the Upper Midhill LLC.
- 3) The Commission finds that it has received all information necessary to make a decision based on the Staff Report; public comments; and the evidence in the whole record, including any exhibits received at the hearings.

IV. Findings

The Commission adopts the April 20, 2016, Staff Report for SUB 15-03, WAP 16-03, with attachments, including specifically the Addendum dated March 25, 2016, and the Applicant's Submittals, including without limitation the narratives, as its findings, which are incorporated by this reference, except for CDC 85.200 regarding adequate public facilities will be available to provide public service and 85.200(B)(5) regarding double frontage, which for the reasons stated below essentially results in a denial of this application.

DOUBLE FRONTAGE

"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."

Three members of the Commission found that the application and staff report demonstrated this criterion was met. The staff report concluded that there are no double frontage lots in West Linn. Staff and the applicant noted that the Hillside Drive right of way that is being improved as part of this development was dedicated with the original Robinwood Plat. Hillside Drive is on the West Linn side of the Lake Oswego-

West Linn border. After the Robinwood Plat, a development in Lake Oswego occurred with the back of the lots abutting Hillside Drive, but that development did not improve Hillside Drive. Instead the Lake Oswego development put Woodhurst Place in at the front of the lots for access.

Now the applicant is proposing to improve Hillside Drive and utilize it as the access for a number of lots. The applicant stated that its application does not create any double frontage lots because the right of way was previously dedicated. In addition, the applicant noted that the double frontage lots are not located in West Linn. The lots are located in Lake Oswego; therefore, the subdivision does not create double frontage lots in West Linn, and the criterion is met. Finally, it was noted that the applicant was required to use this right of way to construct the connection between Hillside Drive and Upper Midhill Drive.

The remaining three members of the Commission that participated disagreed, and determined that 85.200 and 85.200(B)(5) were not met. First, Hillside Drive, although dedicated, has not been improved; therefore, it is the creation of this subdivision with the improvement of the street that is ultimately creating the double frontage lots in Lake Oswego with this application. Second, it was discussed that the City has to be aware of how its developments impact surrounding communities. In this instance, the improvement of the street will result in lots that have rights of way on two sides of the Lake Oswego properties that take access off of Woodhurst Place. West Linn's Code requirements do not only apply within the subdivision, within the City, but the Code should apply across the City's boundary to consider the impact on neighboring communities.

For reasons stated above, a majority of the Planning Commission was unable to find that this criterion is met. In land use matters, the applicant carries the burden to demonstrate that each criterion is met. Therefore, a split on the Commission shows that the applicant did not carry its burden, resulting in a defacto denial based on this criterion.

V. Order

The Commission concludes that the vote to approve the application for SUB-15-03, WAP-16-03 resulted in a three to three vote. The motion to approve did not pass; therefore, the tie vote is equivalent to a denial of the application. The denial of this application is based on the Record, Findings of Fact and Findings above.



MICHAEL BABBITT, CHAIR
WEST LINN PLANNING COMMISSION

5-5-16

DATE

This decision may be appealed to the City Council pursuant to the provisions of Chapter 99 of the Community Development Code and any other applicable rules and statutes. This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearing(s), or signed in on an attendance sheet or testimony form at a hearing(s), may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.

Mailed this 5th day of May, 2016.

Therefore, this decision becomes effective at 5 p.m., May 19, 2016.