

**WEST LINN CITY COUNCIL
FINAL DECISION AND ORDER
MISC 15-11**

**IN THE MATTER OF A PROPOSAL FOR A ONE-YEAR TEMPORARY USE
PERMIT TO ESTABLISH EQUIPMENT AND MATERIAL STORAGE AND
STAGING AREAS FOR THE LAKE OSWEGO TIGARD PARTNERSHIP
PIPELINE CONSTRUCTION PROJECT**

I. Overview

This application was submitted by Coluccio Construction (“Applicant”) after the City received complaints in October from a neighboring property owner that construction activities were taking place at 3777 Mapleton Drive (“the site”). The City notified the Applicant that a Temporary Use Application was required for its activities, and this application was submitted.

The West Linn City Council (“Council”) held a public hearing on December 14, 2015, to consider approval of the Applicant’s proposal for a one-year temporary use permit for equipment and material storage and staging areas for the Lake Oswego Tigard Partnership pipeline construction project. The approval criteria for MISC 15-11, a Temporary Use Permit, are found in Chapters 11, 32, 35, 42, 46, 48 and 99 of the Community Development Code (CDC). The hearing was conducted pursuant to the provisions of CDC Chapter 99.

The hearing commenced with a staff report presented by John J. Boyd AICP, Planning Manager. Jeff Argov of Coluccio Construction presented as the Applicant. Gwen Sieben, Yvonne Davis, Jenne Henderson, Lamont King, Angela Hajihashemi, and Amy Hajihashemi provided additional public testimony. There was testimony that the Applicant may have engaged in construction staging activities on site as early as summer 2015. The record was closed and a motion was made by Councilor Frank and seconded by Councilor Perry to continue the hearing until December 21, 2015, at 6:00 p.m.

On December 21, 2015, the hearing commenced with council discussion and deliberations. Councilor Martin made a motion to approve the application subject to the conditions of approval modified at the December 21, 2015, meeting. The motion was seconded by Councilor Perry, and the motion passed unanimously to approve the application subject to the conditions of approval.

II. The Record

The record was closed at the December 14, 2015, hearing. The record includes the entire file from MISC 15-11, including written testimony received after the Staff Report was published.

Any information received by the City after the December 14 hearing was not included in the record or considered by the City Council and is expressly rejected.

III. Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The applicant is Jeff Argov of Coluccio Construction.
- 3) The Council finds that it has received all information necessary to make a decision based on the Staff Report and attached findings; public comment, if any; and the evidence in the whole record, including any testimony and evidence received at the hearing.

IV. Findings

The Council adopts the Staff Report for the hearing dated December 14, 2015, with attachments, including specifically the Addendum dated December 14, 2015, which are incorporated by this reference, and the following supplemental findings.

35.030 TEMPORARY USE STANDARDS

A. Temporary uses shall be approved if they meet the following standards:

- 1. Sites accommodating a temporary use shall be appropriate for the proposed use, as determined by the approval authority with consideration of the following:*

...

- d. The proposed temporary use shall not be materially detrimental to the public welfare, or injurious to the property or improvements in the immediate vicinity.*

Tree Protection

The testimony at the December 14 hearing illustrated that there are two competing concerns: 1) protecting trees that are marked as significant trees ("trees"), and 2) allowing the temporary use permit so that the LOT pipeline project can be completed as quickly as possible. The site is needed to reduce the number of truck trips and to shorten the time required to complete construction of the water pipeline. The testimony and the record, Exhibit PM-4, also clarified that there are five significant trees on the site that are outside the WRA buffer zone. These five trees are marked with an "X", which indicates that the five trees are approved for removal; therefore, the trees are not protected. The property owner also testified that the five trees were approved for removal in an earlier partition decision for the property.

The conditions of approval aim to protect the significant trees until the owner removes the trees, while recognizing that restricting access to the rear of the site is likely to result in substantial delays to the pipeline construction project. To protect the trees to the greatest extent possible, the trees are separated into two groups: 1) trees along the vehicle route, and 2) trees not along the vehicle route.

In order to allow access to the northern soil stockpile and prevent further delays to the construction project, mitigation measures for the trees along the vehicle route will begin as soon as access to the soil stockpile is no longer needed. However, mitigation measures for the trees that are not impacted by the vehicle route must begin immediately. The arborist report states that removing materials and debris within the tree protection area, removing compacted gravel in the root zone, installing protective fencing, fracturing the compacted soil, and fertilizing the trees will give the trees the best chance of survival. Condition of approval 3 incorporates these measures to protect the trees and prevent further injury to the property. In addition, condition of approval 4(e) also requires the Applicant to place a deposit with the City for the tree mitigation fees in accordance with the West Linn Municipal Code. If one of the trees dies before the end of the temporary use permit, the Applicant will have to complete mitigation or have its deposit reduced. The Council finds that conditions of approval 3 and 4 prevent the temporary use from being injurious to the property.

WRA Protection

During the hearing on December 14 the testimony indicated that there is asphalt in the WRA that is not indicated on the site plan. Development in the WRA protection zone is prohibited and such development is injurious to the property. Therefore, the asphalt must be removed and restoration of the WRA is required. The conditions of approval require the Applicant to have an environmental professional evaluate the asphalt in the WRA and propose a mitigation plan. The Council finds that condition of approval 2 ensures that the proposed temporary use will not be injurious to the property or WRA.

Noise

At its December 14 hearing, the Council heard testimony that the construction noise occurring on the site, especially at the north of the site within close proximity to a neighboring home, is negatively impacting the livability of the neighbors' property; thereby causing a detriment to the public welfare. The Applicant has installed a sound barrier that has marginally reduced the impact of the noise on the neighbors. The noise can be further mitigated by additional measures, such as including conditions of approval that:

- 1) limit the use of high pitch tone alarms to signal trucks reversing;
- 2) limit construction hours to the allowed times for construction activities in the West Linn Municipal Code and prohibit construction on national holidays;
- 3) prohibit the idling of commercial trucks for more than five minutes; and
- 4) require the Applicant to discontinue use of the northern portion of the site where the soil stockpile is located no later than February 6;
- 5) restrict staging activities to the area of the site within 100 feet of Mapleton Drive as soon as the northern stockpile is no longer needed; and

- 6) agree to noise mitigation measures with the property owner to the north and discuss noise mitigation measures with the property owner to the west of the site.

Limiting the use of high pitch tone alarms, truck idling time, and construction hours will mitigate some of the harm from the construction activities. Requiring the Applicant to limit use of site to the area adjacent to Mapleton Drive by February 6 increases the distance between the adjacent neighbor's home to the north and further reduces the detrimental impacts of the noise. The Council finds that including conditions of approval 5(a) to 5(d) and 6 reduces the impact of the noise and protects the public welfare.

Diesel Fueling Tank

The diesel fueling tank was not depicted on the application, and the Applicant testified that the tank had been removed from the site. Therefore, the diesel fueling tank is not approved as part of the temporary use permit.

35.050 DURATION OF TEMPORARY USES

Temporary uses may be allowed for up to 60 days, with one additional renewal for no greater duration than the original approval, except as follows:

A. Construction trailers and associated parking and staging areas beyond the site approved for the associated development may be allowed for the duration of active construction projects.

B. Drop boxes, structures serving a similar function, and trailers authorized under CDC 35.030(A) will be allowed indefinitely, but they will be revoked if they are unused or abandoned for a period of 60 days or if material is not contained by the drop box or trailer and allowed to accumulate outside of the drop box, structure, or trailer. Upon revocation of the approval, the applicant shall be responsible for removing the drop box, structure, or trailer unless it is abandoned; in that case, removal shall be the responsibility of the property owner.

C. Temporary uses approved by the City Council pursuant to CDC 99.060(C)(1)(d) shall be for up to one year with one possible renewal of up to one year, for a maximum of two years.

The application states: "The proposed temporary use is for staging construction activities related to the Lake Oswego/Tigard Water Partnership Raw and Finished Water Pipelines Project, Schedule 3, Mapleton. This project will last longer than 60 days. The temporary use will terminate with the completion of the water pipeline project. Currently it is anticipated that the need for the temporary use will run through June of 2016." The original project was approved as part of a separate land use decision, Conditional Use Permit 12-03, which was approved in 2013. The Applicant requested that the temporary use permit be granted for one year, which is allowed pursuant to CDC 35.050(A) and (C). The one year permit duration will begin after approval of the permit. However, in accordance with the above findings and condition of approval 6, the use of the entire site, and the northern part of the site in particular, shall be discontinued as soon as it is no longer needed. If use of the site as a construction staging area concludes prior to the one year period, the Applicant must immediately begin the mitigation required by the conditions of approval.

V. Order

The Council concludes that MISC 15-11 is approved based on the Record, Findings of Fact and Findings above, subject to the following conditions:

1. Site Plan. With the exception of any modifications required by these conditions, the project shall conform to the Site Plan dated October 22, 2015. The applicant shall update the site plan and submit it to the City within ten days of this approval to correctly depict: 1) tree protection areas for trees identified as significant in MIP 14-05 and as attached in Exhibit PM-4, 2) gravel and stockpile areas, and 3) the asphalt area located in the WRA. A diesel fueling station or other petroleum fueling operations are not permitted on the site and shall not be shown on the site plan.
2. Site Protection. No development or activities are permitted in the areas identified as WRA Buffers (shown on Exhibit PM-5). The Applicant shall have an environmental consultant complete and provide to City staff within 30 days: 1) an assessment of the asphalt area in the WRA, and 2) a mitigation plan, to be approved by City Staff. The asphalt in the WRA must be removed at the earlier of: 1) the end of temporary use permit, 2) upon cessation of activity in asphalt area of the site, or 3) immediately at the direction of City staff if staff determines the asphalt is creating additional impacts to the WRA. After the asphalt is removed, the site must be restored including, at a minimum, the replacement of soil and native vegetation. The plan for WRA restoration must be approved by City staff prior to implementation and inspected by staff upon its completion.
3. Tree Protection. Using Exhibit PM-4 , which identifies trees as significant:
 - a. Limit vehicle traffic on the site to the route approved by the City Arborist to prevent further tree damage. When the northern part of the site is no longer being used for construction staging activities, the applicant must institute the mitigation measures described in subsections (c) and (d) for trees along the route.
 - b. Remove all equipment, debris, materials, fencing, including the noise fencing, if applicable, and compacted gravel from the tree protection areas, except for the gravel along the City Arborist's approved vehicle route.
 - c. Install tree protection fencing according to the specifications in the West Linn Tree Technical Manual and in accordance with the City Arborist's recommendation.
 - d. The following mitigation measures shall be taken immediately for significant trees not along the City Arborist's approved vehicle route prior. Significant trees that are along the approved vehicle route are subject to these mitigation measures as described in subsection (a) above.
 - i. Remove the compacted gravel in the root zone. This must be done carefully to prevent damage to the roots during the process. Hand

digging may be necessary when excavation is done near any trunk or around shallow root systems.

- ii. Fracture the compacted soil with an air tool and add small layers of an extra-fine compost to the drip zones of the trees.
- iii. Fertilize the trees and inject the soil with mycorrhizae biannually in the early spring and early winter to help correct nutrient deficiencies and promote new healthy growth.
- e. Require a deposit for tree mitigation fees in accordance with the West Linn Municipal Code before issuance of the Permit. The tree mitigation fee will be returned at the end of the temporary use permit for each of the significant trees that survive.
- f. Provide a second arborist's report, approximately twelve months from the date of permit issuance and prior to discontinuance of the temporary use, that evaluates the tree areas for damage that may have occurred due to applicant's activities and complete any mitigation required by the City Arborist or reduce the deposit of tree mitigation fees by the amount authorized under the West Linn Municipal Code.

4. Dust, Erosion and Mud Mitigation.

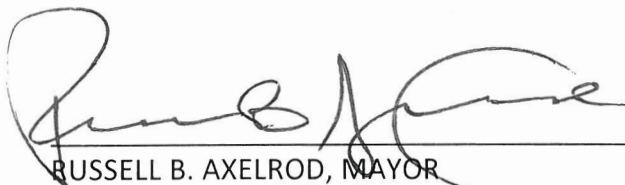
- a. The applicant shall install and maintain a paved or graveled surface on the site sufficient to avoid dust generation and keep any sediment and mud on site.
- b. If necessary, utilize additional erosion control measures that are consistent with Clackamas County Erosion Prevention and Sediment Control Planning and Design Manual, rev. 2008, to keep sediment and mud on site.
- c. The applicant shall provide daily street sweeping on days when the site is used to mitigate the impact of any dust, sediment, or mud that is tracked off site by traffic.
- d. After staging activities are discontinued in any area of the site, the applicant shall stabilize the area by providing permanent erosion control measures in accordance with the Clackamas County Erosion Prevention Planning and Design Manual.

5. Noise.

- a. The applicant shall not be permitted to use single high pitch tone alarms, also known as back-up beepers, as a reverse alarm for on-site construction equipment, not including over the road trucks; spotters or other alternative methods approved by OSHA are required.
- b. Noise generating construction activities outside the hours of 7:00 AM to 7:00 PM on weekdays, 9:00 AM to 5:00 PM on weekends, and on federal holidays may only be permitted with written approval from the City Manager. Any request to the City Manager to extend work hours shall include justification for the

proposed construction outside allowed work hours, beginning and end dates, a description of the equipment and activities proposed during that time, and documentation that this information was presented at least 7 days earlier to the Robinwood Neighborhood Association president, unless emergency work is required that makes advanced notice impracticable.

- c. Commercial trucks are prohibited from idling for more than five minutes pursuant to ORS 825.605.
 - d. The applicant will reach agreement with the owner of the property along the north property line regarding noise mitigation. The applicant shall also discuss noise mitigation measures with the owner of the property along the west property line.
6. Site Usage. The applicant shall discontinue its use of the northern portion of the site containing the soil stockpile no later than February 6, 2016. When use of the soil stockpile ends, the applicant must immediately begin restoration measures on the northern part of the site and limit all construction staging activities to within 100 feet of Mapleton Drive.



RUSSELL B. AXELROD, MAYOR
WEST LINN CITY COUNCIL

12/22/15

DATE

This decision may be appealed to the Land Use Board of Appeals pursuant to the provisions of Chapter 99 of the Community Development Code and any other applicable rules and statutes. This decision will become effective 21 days from the date of mailing of this final decision as identified below.

Mailed this 22 day of December, 2016.5

Therefore, this decision becomes effective at 5 p.m., January 13, 2016.

Devrev/projects folder/projects MISC-15-11 final decision

