

**Agenda Report**

Date: May 12, 2016

To: Russ Axelrod, Mayor  
Members, West Linn City Council

From: Darren Wyss, Associate Planner, Community Development Department

Through: John Boyd, Interim Community Development Director  
Don Otterman, Interim City Manager

Subject: May 23, 2016 Public Hearing on Appeal of Sunset Primary School Replacement

---

**Purpose**

To consider the appeal (AP-16-01) by Carrie Hansen/Save Our Sunset Park of the West Linn Planning Commission approval of a Conditional Use Permit (CUP-15-03), Class II Design Review (DR-15-17), and two Class II Variances (VAR-15-01/02) for the replacement of Sunset Primary School on the same site at 2351 Oxford Street.

**Question(s) for Council:**

Should the Council uphold the Planning Commission approval or reverse the decision and deny the West Linn-Wilsonville School District's proposal to replace Sunset Primary School at 2351 Oxford Street?

**Public Hearing Required:**

Yes

**Background & Discussion:**

The West Linn-Wilsonville School District submitted a land use application in November 2015 to replace the Sunset Primary School at 2351 Oxford Street. This application was deemed complete on February 1, 2016. The request required approval by the West Linn Planning Commission for a Conditional Use Permit, Class II Design Review, and Class II Variances.

The West Linn Planning Commission held three public hearings on the School District proposal and received both written and oral testimony which can be found as part of the record. The public hearings were held on March 16, 2016, April 6, 2016, and April 13, 2016. At the April 13<sup>th</sup> meeting, the Commission voted to approve the application with 12 conditions of approval.

The Planning Commission approval of CUP-15-03, DR-15-17, and VAR-15-01/02 was appealed, pursuant to CDC 99.250, on April 28, 2016 by Carrie Hansen/Save Our Sunset Park. The appellant contends the West Linn Planning Commission misapplied the following provisions of the West Linn Community Development Code:

- CDC 60.070.A(2)
- CDC 60.070.A(3)
- CDC 60.070.A(6); CDC 55.130.B
- CDC 75.020.B
- CDC 92.010.E

**Budget Impact:**

None

**Council Options:**

1. Uphold the Planning Commission approval of CUP-15-03, DR-15-17, and VAR-15-01/02 by denying the appeal (AP-16-01);
2. Overturn the Planning Commission approval of CUP-15-03, DR-15-17, and VAR-15-01/02 by approving the appeal (AP-16-01), thus denying the West Linn-Wilsonville School District proposal.

**Staff Recommendation:**

Staff supports the Planning Commission decision, and recommends Council approve Motion 1 below and find the West Linn-Wilsonville School District proposal to replace the Sunset Primary School at 2351 Oxford Street met all applicable Community Development Code criteria.

**Potential Motion:**

1. Move to uphold the Planning Commission decision for approval of CUP-15-03, DR-15-17, and VAR-15-01/02 and deny the appeal (AP-16-01), based on findings in the record.
2. Move to overturn the Planning Commission decision for approval on CUP-15-03, DR-15-17, and VAR-15-01/02 and approve the appeal (AP-16-01), based on findings in the record.

**Attachments:**

1. Staff Report for the City Council, dated May 23, 2016
2. The record of CUP-15-03, DR-15-17, VAR-15-01, VAR-15-02

<http://westlinnoregon.gov/planning/2351-oxford-street-conditional-use-permit-class-ii-design-review-and-3-variances-construct>

Video Record of Planning Commission Public Hearings:

<http://westlinnoregon.gov/planning/planning-commission-meeting-96>

<http://westlinnoregon.gov/planning/planning-commission-meeting-97>

<http://westlinnoregon.gov/planning/planning-commission-meeting-98>



# CITY OF West Linn

22500 Salamo Road  
West Linn, OR 97068

## STAFF REPORT FOR THE CITY COUNCIL

**FILE NUMBER:** AP-16-01

**HEARING DATE:** May 23, 2016

**REQUEST:** Appeal of the Planning Commission decision to approve the replacement of the Sunset Primary School at 2351 Oxford Street through a Conditional Use Permit (CUP-15-03), a Class II Design Review (DR-15-17), and two Class II Variances for parking location and bicycle parking location (VAR-15-01/02).

**APPLICABLE CRITERIA UNDER APPEAL:** Community Development Code (CDC):  
 CDC 60.070.A(2)  
 CDC 60.070.A(3)  
 CDC 60.070.A(6); CDC 55.130.B  
 CDC 75.020.B  
 CDC 92.010.E

**STAFF REPORT PREPARED BY:** Darren Wyss, Associate Planner

---

Planning Manager Review QAB

---

## TABLE OF CONTENTS

### STAFF ANALYSIS AND RECOMMENDATION

GENERAL INFORMATION .....	2
BACKGROUND/PROCEDURAL HISTORY/ANALYSIS .....	3-26
PUBLIC COMMENT/RECOMMENDATION .....	26

### EXHIBITS

CC-1 PLANNING COMMISSION FINAL DECISION AND ORDER.....	27-35
CC-2 APPELLANT'S APPLICATION .....	36-89
CC-3 PUBLIC COMMENTS.....	90-114
CC-4 PLANNING COMMISSION DRAFT MEETING NOTES.....	115-121
CC-5 AFFIDAVIT AND NOTICE PACKET.....	122-129

## GENERAL INFORMATION

**APPELLANT:** Carrie Hansen/Save Our Sunset Park  
4760 Bittner Street  
West Linn, OR 97068

**APPEAL DEADLINE:** The appeal deadline was 5:00 p.m. on April 28, 2016. The appellant filed the appeal application at 4:40 p.m. on April 28, 2016, thus meeting the deadline.

**PUBLIC NOTICE:** Public notice was mailed to all persons with standing, neighborhood associations, and property owners within 500-feet on May 3, 2016. The property was posted with a notice sign on May 12, 2016. The notice was published in the West Linn Tidings on May 12, 2016. The notice requirements of CDC Chapter 99 have been met. In addition, the application was posted on the City's website May 3, 2015.

**SITE LOCATION:** 2351 Oxford Street (Sunset Primary School)

**LEGAL DESCRIPTION:** Clackamas County Assessor's Map 2S-1E-25DC, Taxlots 3700, 5800, 6100, 6200, and 6300

**SITE SIZE:** 6.19 acres

**ZONING:** R-10, Single-Family Residential Detached and Attached.

**COMP PLAN DESIGNATION:** Low-Density Residential

**OWNER/APPLICANT:** West Linn-Wilsonville School District  
2755 SW Borland Road  
Tualatin, OR 97062  
Contact: Tim Woodley

**120-DAY PERIOD:** This approved application became complete on February 1, 2016. The 120-day maximum application-processing period ends on May 31, 2016.

## **BACKGROUND**

The West Linn-Wilsonville School District submitted a land use application in November 2015 to replace the Sunset Primary School at 2351 Oxford Street. This application was deemed complete on February 1, 2016. The request required approval by the West Linn Planning Commission for a Conditional Use Permit (CUP-15-03), Class II Design Review (DR-15-17), and Class II Variances (VAR-15-01, VAR-15-02). The School District withdrew a third variance request that was part of the original application, with approval by the Planning Commission, at the April 6, 2016 public hearing.

The proposal was for the purpose of constructing a new Sunset Primary School on the site containing the existing school and included the following improvements:

- Replacing the existing school building with a new 61,680 square foot building
- New on-site circulation and parking
- New sports field and play areas

The project will be conducted in two construction phases to allow the school to operate continuously on the site. The first phase will include construction of the new school building and playground in the general location of the existing playground and sports field. The second phase will commence once the new school building is complete. The second phase includes demolition of the existing school building and constructing a new sports field and parking in that location.

The proposed development site is located in the Sunset Neighborhood and currently contains the existing 54,000 square foot Sunset Primary School and associated driveway, parking, and play areas. The site is zoned R-10, is 6.19 acres, "L" shaped and bordered by Oxford and Bittner Streets, Sunset Park, and residential development. The site is relatively flat and contains a number of significant trees in the southeast portion. Access to the site is provided by Oxford and Bittner Streets, as well as two pedestrian pathways that connect through the residential areas north to Oregon City Boulevard and east to Oregon City Loop.

## **PROCEDURAL HISTORY**

The West Linn Planning Commission held the first of three public hearings on March 16, 2016 to consider the replacement of the Sunset Primary School. The hearing included a staff report, applicant presentation, oral testimony by 11 individuals, several written submittals/exhibits, and applicant rebuttal. The hearing was continued to April 6, 2016 for additional written comments and oral testimony.

The applicant submitted additional materials on March 30, 2016 to address testimony received at the initial hearing. The continued hearing on April 6, 2016 included a staff report, written comments submitted since the previous hearing, oral testimony by four new participants and

four previous participants, and applicant rebuttal. The applicant also offered to withdraw VAR-15-03 and the Commission approved the withdrawal. The Commission closed the hearing, granted seven days until noon on April 13, 2016 for written response to new evidence, and continued the hearing to April 13, 2016 for deliberations.

After deliberations on April 13, 2016, the Commission approved the applicant proposal by finding compliance with the applicable criteria (Exhibit CC-1):

- Chapter 11, Single-Family Residential Detached, R-10;
- Chapter 38, Additional Yard Area Required, Exceptions to Yard Requirements, Storage in Yards, Projections into Yards;
- Chapter 41, Building Height, Structures on Steep Slopes, Exceptions;
- Chapter 42, Clear Vision Areas;
- Chapter 44, Fences;
- Chapter 46, Off-Street Parking, Loading and Reservoir Areas;
- Chapter 48, Access, Egress and Circulation;
- Chapter 52, Signs;
- Chapter 54, Landscaping;
- Chapter 55, Design Review;
- Chapter 60 Conditional Uses;
- Chapter 75, Variances and Special Waivers;
- Chapter 92, Required Improvements;
- Chapter 96, Street Improvement Construction; and
- Chapter 99, Procedures for Decision Making: Quasi-Judicial.

The Planning Commission approval of CUP-15-03, DR-15-17, and VAR-15-01/02 was appealed on April 28, 2016 by Carrie Hansen/Save Our Sunset Park (Exhibit CC-2), pursuant to CDC 99.250. The appellant contends the West Linn Planning Commission misapplied the following provisions of the West Linn Community Development Code:

- CDC 60.070.A(2)
- CDC 60.070.A(3)
- CDC 60.070.A(6); CDC 55.130.B
- CDC 75.020.B
- CDC 92.010.E

The appellant met the application requirements by referencing the application to be appealed, providing a statement of standing, paying the required fee, and identifying the applicable approval criteria that were misapplied. The appellant did not identify grounds for a procedural irregularity, nor did the appellant request the Council re-open the record.

## ANALYSIS

In this analysis, staff has provided the provisions of the West Linn Community Development Code the appellant contends were misapplied, with a summary of the record regarding each provision, including appellant arguments and associated findings or a reference to where the information can be found in the record.

### **APPROVAL CRITERIA #1 CONTENDED TO BE MISAPPLIED**

#### *60.070 APPROVAL STANDARDS AND CONDITIONS*

*A. The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, except for a manufactured home subdivision in which case the approval standards and conditions shall be those specified in CDC 36.030, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:*

*(...)*

*2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.*

**The appellant contends the site may be generally appropriate for use as a primary school, but the location of the development on site is not suitable. The appellant contends the proposed location will result in significant onsite and offsite impacts as a result of redirecting the stormwater and rendering the site unsuitable.**

**The appellants rely on testimony submitted by Malia Kupillas. Ms. Kupillas contends that the proposed onsite stormwater facility will cause negative impacts to downslope trees, change the hydrology of Sunset Creek, impact nearby homes, and potentially cause landslides. Ms. Kupillas submitted her analysis dated March 15, 2016 as Exhibit 1 to the Save Our Sunset Park's Memorandum in Opposition dated March 16, 2016, which can be found in the record and also in attached Exhibit CC-2 of this staff report.**

**As part of her submittal, Ms. Kupillas included maps found in the *Landslide Hazard and Risk Study of Northwestern Clackamas County*. The maps show shallow and deep landslide susceptibility. Ms. Kupillas enlarged the maps from a scale of 1:8,000 to 1:773, which eliminated important information found on the original scaled maps. The following language was included on the original scaled maps:**

Cartography by William J. Burns and Katherine A. Mickelson,  
Oregon Department of Geology and Mineral Industries.

This map also benefited from internal review and comments by  
Ian Madin, DOGAMI Chief Scientist.

**IMPORTANT NOTICE**

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. This publication cannot substitute for site-specific investigations by qualified practitioners. Site-specific data may give results that differ from the results shown in the publication. See the accompanying text report for more details on the limitations of the methods and data used to prepare this publication.

The Planning Commission's adopted findings are found in the Staff Report for the Planning Commission, dated March 16, 2016; the Supplemental Staff Report, dated March 30, 2016; and the Planning Commission Final Decision and Order signed by Chair Babbitt on April 14, 2016. The adopted findings include, but are not limited to:

**Supplemental Staff Report, dated March 30, 2016**

**Section E-1 in the applicant's supplemental submittal dated March 28, 2016**

The existing primary school site has proven to be suitable for the district and the community. The approval of the new bond measure to provide the funding for the new school demonstrates continued community support for the proposed reconstruction of the school. Although the site is smaller than many of the existing primary school sites in the district, the school has demonstrated it can operate in a manner that is compatible with the surrounding neighborhood. Because the capacity of the school will be slightly reduced, the proposed improvements will not pose any new potential impacts for the surrounding neighborhood.

The site design balances the need to have a safe and functional primary school with environmental responsiveness, preservation of the site amenities, and neighborhood compatibility. As noted under criterion #1 above, the school facilities can be successfully accommodated on this site while respecting the property's natural features.

The school has been in continuous use for many years, and this site has proven to be suitable for the primary school, its operation, and for maintaining a compatible relationship with the surrounding neighborhood. As mentioned above, the new primary school will have the advantage of a larger site as a result of the 1.6-acre expansion. The new primary school will function similarly to the existing school by maintaining an enrollment comparable to the existing school.



As shown on the site plan information, the setback distances for buildings, parking, play areas, and related facilities from all property lines will continue to be substantial. The new school will address several problems related to the existing school including:

- More than tripling the deficient on-site parking.
- Improving the safety and convenience of access to the site for all modes.
- Improved bus loading and parent drop-off areas.
- Maintaining the majority of the trees on the site.
- Providing improved landscaping that meets city standards.

Supplemental Staff Report, dated March 30, 2016

Section D-1 in the applicant's supplemental submittal dated March 28, 2016

The selection of the stormwater treatment and detention facility at the Sunset site is a standard best management practice for stormwater. These facilities are very common and typical to all new development, including schools. A rendering of the southwest corner of the new Sunset Primary School with the proposed stormwater facility is shown below. In addition, several examples of constructed facilities of similar size at school sites have also been included.

The function of these facilities is to provide both the water quality and water quantity requirements mandated by the City of West Linn Public Works Design Standards.

**Water Quality:** Provide filtration treatment of the stormwater through a combination of plant biotreatment and growing soil media filtration. The bottom of this facility is recessed 6 inches from the outlet pipe and becomes essentially a stormwater planter to hold a pre-determined quantity of water comprising the "treatment" storm as defined by regulation. For regular small storms, rainwater enters the planter and is cleaned by residence time within the plant environment and by percolating down through the soil media.

There are two types of stormwater treatment planters: flow-through planters and infiltration planters. The type depicted above used for the Sunset project is an infiltration planter. For storm treatment purposes only, rainwater is designed to percolate through the growing media and infiltrate into the native ground below. In the case of the Sunset facility, however, this infiltration will be limited. The growing media is specifically designed to have an infiltration rate range of 2 to 8 inches per hour. Typically, a conservative range of 4 to 6 inches per hour is assumed. For the Sunset site, infiltration testing was performed in the natural soils in the vicinity of the proposed facility. The closest infiltration test (IT-3) indicated varying rates of onsite infiltration from 11 to 13 inches per hour. Based on these results, the infiltration through the planter is controlled by the percolation rate through the growing media...not by the natural soils underlying the site. Consequently, although some natural infiltration will occur, it will not be significant to the operation of the facility. The facility is designed to handle storm flows by temporary storage and slow-metered discharge out the outlet structure.

## Planning Commission Final Decision and Order

3. The Commission relies the testimony by KPFF Engineering and the Preliminary Stormwater Drainage Report, prepared by KPFF, and the letter submitted by Curran Mohney, Engineering Geology Program Leader for the Oregon Department of Transportation, and finds there is no persuasive evidence to draw the inference that there will be any impacts from increased infiltration at the stormwater detention/treatment facility location. The Applicant has provided factual data showing off-site stormwater discharge will be reduced from current levels for the 2-year, 5-year, 10-year, 25-year, and 100-year storm events.

### **APPROVAL CRITERIA #2 CONTENDED TO BE MISAPPLIED**

3. *The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.*

The appellant contends that while a school might be consistent with the overall needs of the community, this application will be adverse to the overall needs of the community. The appellant contends this application will put mature Douglas fir trees, onsite and offsite, at risk, it will increase flooding and the potential for landslides, and it is inconsistent with the ballot measure that approved the sale of the 1.6 acres of Sunset Park to the school district (Exhibit CC-2 of this Staff Report).

The Planning Commission's adopted findings are found in the Staff Report for the Planning Commission, dated March 16, 2016; the Supplemental Staff Report, dated March 30, 2016; and the Planning Commission Final Decision and Order signed by Chair Babbitt on April 14, 2016. The adopted findings include, but are not limited to:

#### Supplemental Staff Report, dated March 30, 2016

#### Section E-1 in the applicant's supplemental submittal dated March 28, 2016

The needs of the community are best expressed by its approval of the bond measure to finance these improvements. Sunset Primary School has been serving the Sunset community, the city of West Linn, and the School District in this location for decades, and there is overall public support to retain a primary school on this site.

The district met with neighbors on August 20, 2015 to review the first concept plan and received a great deal of input. Various changes were made to the design in response to public comment as well as feedback from regulating bodies. The district asked the Sunset Neighborhood Association to host a meeting on October 20, 2015 to review revised plans. The October presentation included many new details as well as various compromises in response to the public comments. The Sunset Neighborhood Association held a second

meeting on November 10, 2015 to review and comment on the proposed school. Questions regarding specific aspects of the facility design were asked, but no significant concerns were raised (see pages 112-113 of City Planning Dept. Staff Report).

**Supplemental Staff Report, dated March 30, 2016**

**Section A-1 in the applicant's supplemental submittal dated March 28, 2016**

This section outlined the public process from 2007 to 2016, which led to the application submittal and site design (Section A-1), including:

6. May 2010: Clackamas County Ballot Measure 3-358 (Exhibit A.6). On May 18, 2010, the City of West Linn placed this question on the ballot, "Shall the City sell 1.6 acres of Sunset Park to the West Linn/Wilsonville School District for \$483,000." The City also provided a "summary" stating, "Agreeing to sell a portion of Sunset Park to the School District would provide sufficient land to allow the District to keep Sunset Primary School at this location". Ballot Measure 3-358 passed with a City-wide vote of 4,849 yes-votes, and 2,160 no-votes (69.18%-30.82%). The Sunset precinct produced 615 yes-votes and 324 no-votes (65.5%-34.5%; Clackamas County Elections Data). [Note: Testimony at the 3/16/16 Planning Commission Hearing produced a petition in opposition with 200+ signatures. It has value to point out that at the time of the Ballot election to sell a portion of the park there were certainly voters in opposition. It is not surprising that there remain voters with the same opinion.]

**Supplemental Staff Report, dated March 30, 2016**

**Section B-1 in the applicant's supplemental submittal dated March 28, 2016**

This section provided a discussion of the City/District Land Exchange Agreement (Section B-1), including:

The "limitations" stated above places three responsibilities on the school district.

1. *"...use its best efforts to cooperate with City when master planning the City Property and adjoining school property owned by District...* As presented in Supplemental Submittal section A.1-A.14, the school district has fulfilled this commitment over the course of almost 9 years with numerous public opportunities; and will continue as West Linn Parks & Recreation develops plans for the remaining Sunset Park site.

2. *"...so as to maximize recreational opportunities..."* (Exhibit B.2, B.3, C.10) The design and replacement of the Sunset School is of regional significance. There are over 25,000 citizens in the City of West Linn; and West Linn-Wilsonville School District 3jt includes almost 10,000 students, 20,000 parents and thousands more that support their schools. The school district Board of Directors and the citizen-based Long Range Planning Committee have contemplated and planned this important project for almost a decade along with City leadership and residents. While there is some belief that maximizing recreational opportunities is accomplished by maintaining the open space and small play equipment on the park parcel, the City and District believe that these recreational opportunities are a function of the entire

school-park site. The value of the proposed design is to accommodate off-street parking to support both school and park activities. A new student playground with new play equipment located in a position to support safe recess play and provide off-hour/summertime enjoyment to children is also proposed. The existing sports field is used by over 3,700 community student athletes year-around and is proposed to be replaced with a new sports field that is marginally smaller yet still supports youth softball, baseball and soccer; and is available for City Parks & Recreation camps and events. This new sports field is currently just sized to allow these youth activities. Adding additional parking or storm water management footprints to the area west of the proposed new school building would significantly diminish “recreational opportunities” for the region by reducing the dimensional size of the sports field where soft-ball, baseball or soccer could not exist. The school building itself is very unique to other district schools in that it includes two community-use rooms at the front plaza of the school with its own entry, kitchenette and restrooms for city and neighborhood meetings as well as after-school/summer in-door recreational gathering. The inclusion of the Sunset park property allows these recreation opportunities to occur by providing space for a required fire lane, 11-parking spaces to achieve code compliance and an area at the lowest elevation of the site for modern, environmentally-responsible, gravity-fed, storm water management facilities. The design of this area is complimentary to a park setting and would not be unusual for any city park property (Exhibit C.10). Further, future improvements to Sunset Park will replace/move the existing, dated small play equipment on the district-owned (old park) parcel and add even more opportunities for recreation for the neighborhood and region. By virtue of the Exchange Agreement, funding (\$483,000) is available.

**3. “...while preserving significant trees to the extent practical while meeting District’s requirements to replace the Sunset Primary School.”** The easterly school/park site currently has an abundance of trees. The School District values these trees and has taken steps to meet the intent of this commitment. The land use application includes arborist reports and concurrence by City arborist describing the existing trees with recommendations for management of trees during construction and after. The district landscape architect is also incorporating best management practice into the design/construction drawings to preserve and enhance existing trees, as well as add new trees in appropriate places. Some trees will require removal, however, many are preserved in excess of minimum required by city code. CUP Condition #10 requires the school district to provide and record a legal “tree conservation easement” that will protect the remaining trees for the future. The new school design, while perhaps not apparent, has responded to neighbors to the east to maintain as many trees as possible by moving the building as close to the street as possible. The location of the south fire-lane and required storm management area also are moved as far north and as close to the street as possible to minimize impact to the trees in this area. The proposed new school design preserves and celebrates the maximum trees possible given the constraints of the site, requirements of city code and the functional requirements of primary school design. Further, the location of the classroom wings and library closest to the existing forested area will provide for nature play experiences for students and the community alike. The existing area under the trees to the east of the proposed building is overgrown and largely inaccessible. By clearing the understory of the trees and providing

appropriate groundcover for play and access, the proposed design will enhance school and community use of this significant resource. In closing, from a total school-park perspective, the current design for the south-eastern portion of the project site will create and preserve a natural, forest/park-like setting that encompasses 1.28-acres. When considering the 1.6 acres purchased, there is a net reduction of 0.32-acres of forest/park-like area. The Exchange Agreement essentially allows the school district to use 20% of the Sunset Park purchase for the purpose of keeping the school in the Sunset neighborhood and conveyed an additional 7.5-acres on Parker Road for City use. (Exhibit B.3).

**Supplemental Staff Report, dated March 30, 2016**

**Section C-1 in the applicant's supplemental submittal dated March 28, 2016**

This section provided a discussion site Design process and evolution of the current design (Section C-1), including:

**Constraints and Opportunities at Sunset Primary School**

The constraints and opportunities presented at Sunset Primary School have been plentiful. Due to the capacity issues in neighboring schools, West Linn – Wilsonville School District decided prior to 2007 to house the existing Sunset Primary School students in their existing building while a new replacement building is constructed onsite. Given the compact nature of the site, the District recognized the need for additional land to accommodate the new building, parking, fields and storm water features and worked with the City to acquire more land in the adjacent Sunset Park in 2011. Since then, a team of school building and site designers with over 100 years of experience between them have been working to develop a design solution that balances the constraints with the incredible opportunities present at Sunset. Concerns about impacts to existing trees had to be balanced with the constraint of maintaining a safe construction distance from the existing school. City code requirements for parking had to be balanced against a desire to maximize play field access for students and the community. The north-eastern property owners concerns regarding the proximity of the building to their properties had to be balanced with the concerns from property owners along Bittner regarding the proximity of parking to the street in front of their homes. This is the nature of design and not unique to this project. It is the role of the building and site designers to address all concerns and design criteria and to attempt to mitigate any potential negative impact to the greatest extent possible.

**Supplemental Staff Report, dated March 30, 2016**

**Section D-1 in the applicant's supplemental submittal dated March 28, 2016**

This section provided a Storm Water Management engineering supplemental report (Section D-1), including:

**Water Quantity:** For temporarily detaining flows from heavy storms, this facility does NOT depend on infiltration. The facility is bermed to provide storage volume for onsite stormwater to be temporarily stored and metered out slowly so that peak discharge from the property is not increased from conditions existing prior to the proposed development. Commonly referred to as “detention,” this is accomplished by providing ponding capacity within the facility and routing the stormwater discharge through an outlet orifice structure

that meters the flow out slowly. The table below illustrates the peak existing condition and proposed new development storm discharge rates.

Design Storm	Existing School Site Peak Stormwater Discharge Offsite		Proposed New School Site Peak Stormwater Discharge Offsite	
	Drainage Basin 1 (No detention – discharge to Exeter system)	Drainage Basin 2 (Downslope runoff from field & tree area)	Drainage Basin 1 (New detention to Lewis & Clark level– discharge to new Bittner storm sewer)	Drainage Basin 2 (Downslope runoff from field & tree area – including bottom of detention facility)
2-Year	1.22 cfs	0.27 cfs	0.32 cfs	0.10 cfs
5-Year	1.49 cfs	0.46 cfs	0.49 cfs	0.18 cfs
10-Year	1.72 cfs	0.63 cfs	0.75 cfs	0.25 cfs
25-Year	2.00 cfs	0.86 cfs	1.01 cfs	0.34 cfs
100-Year	2.34 cfs	1.16 cfs	1.62 cfs	0.46 cfs

Table 1: Sunset Primary School Peak Stormwater Discharge Rates

As Table 1 illustrates, offsite peak stormwater flow rates from the new school are significantly reduced below the existing discharge rates. Discharge to the City of West Linn Long Street storm sewer system has been detained to levels below the existing discharge flows to the Exeter system. And due to the reduction of area for Drainage Basin 2, runoff on the west side of the site has been reduced as well.

The proposed detention facility at Sunset has a maximum graded depth of 4.0 feet (bottom elevation of 536.0 to berm elevation of 540.33). The following table shows these ponding depths for the various design storms.

Design Storm	Water Surface Elevation	Water Depth	Freeboard
Facility Bottom	536.00	0.00'	4.33'
Treatment(6-Month)	536.50	0.50'	3.83'
2-Year	537.96	1.96'	2.37'
5-Year	538.44	2.44'	1.89'
10-Year	538.68	2.68'	1.65'
25-Year	539.01	3.01'	1.32'
100-Year	539.33	3.33'	1.00'

Table 2: Sunset Primary School Detention Storage Depths

It is important to note that these “ponding” events occur infrequently. In general, the pond is designed to detain peak storm flows for storms greater than the 1-year storm. Consequently, ponding for detention occurs typically only a few times a year. Furthermore, even after peak storms, the facilities are designed to drain within 24 hours.

## **Planning Commission Final Decision and Order**

**Use of Ballot Measure 3-358 as criteria to deny the application - The Commission finds any legal challenges to the ballot measure are outside the jurisdiction of the Commission. Those challenges must be brought in a court of competent jurisdiction.**

**The Commission finds the replacement of the Sunset Primary School is consistent with the overall needs of the community for the following reasons:**

- 1. There will be no loss of park space or amenities as a result of the application. Ken Worcester, West Linn Parks & Recreation Director, submitted two letters outlining the partnership between the City and Applicant to cooperatively program recreational opportunities. Mr. Worcester also outlined the current process to redesign Sunset Park, including community input opportunities, and the desire to replace the playground equipment that will be removed during the school replacement project.**
- 2. The Commission relies on the Applicant's Arborist and the City Arborist, and associated reports that trees will be protected to the extent possible with appropriate measures. The Commission rejects the testimony submitted by Darek Czokajlo, Ph.D. as lacking substantive facts to support the assertion that the removal of 12 Douglas Fir trees will create a vulnerable environment for the remaining Douglas Fir trees on and off-site. CDC 55.100.B(2)(b) is met with the Applicant proposal to retain 77 percent of significant tree canopy on-site.**
- 3. The Commission relies the testimony by KPFF Engineering and the Preliminary Stormwater Drainage Report, prepared by KPFF, and the letter submitted by Curran Mohny, Engineering Geology Program Leader for the Oregon Department of Transportation, and finds there is no persuasive evidence to draw the inference that there will be any impacts from increased infiltration at the stormwater detention/treatment facility location. The Applicant has provided factual data showing off-site stormwater discharge will be reduced from current levels for the 2-year, 5-year, 10-year, 25-year, and 100-year storm events.**

**The Commission relies on Applicant's experts to remove any hazardous materials in the existing school in accordance with State and Federal Building Regulations. Replacement of the primary school without disruption to the children through bussing to new locations and the potential need for portable classrooms is in the best interest and overall needs of the community.**

### **APPROVAL CRITERIA #3 CONTENDED TO BE MISAPPLIED**

6. *The supplementary requirements set forth in Chapters 52 to 55 CDC, if applicable, are met.*

**The appellant contends the provisions of CDC 55.130.B were not met, nor addressed appropriately as approval criteria, because City staff advised the Planning Commission this provision was simply a submittal requirement.**

*55.130. Grading Plan.*

*The grading and drainage plan shall be at a scale sufficient to evaluate all aspects of the proposal and shall include the following:*

*B. A registered civil engineer shall prepare a plan and statement that shall be supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts. The plan and statement shall, at a minimum, determine the off-site impacts from a 10-year storm.*

**The appellant contends that even if the applicant's plan and statement were factual data, they are flawed due to reliance on the Presumptive Approach Calculator (PAC). The appellant contends the PAC an inappropriate program to design the stormwater pond. The appellant also contends the applicant submitted a new stormwater plan between the first and second public hearings and did not identify needed mitigation measures to address offsite impacts demonstrated by Malia Kupillas (Exhibit CC-2 of this Staff Report).**

**The Planning Commission's adopted findings are found in the Staff Report for the Planning Commission, dated March 16, 2016; the Supplemental Staff Report, dated March 30, 2016; and the Planning Commission Final Decision and Order signed by Chair Babbitt on April 14, 2016. The adopted findings include, but are not limited to:**

#### **Planning Commission Final Decision and Order**

**The Commission finds both are application submittal requirements, not approval criteria. These submittal requirements were satisfied by the applicant after review by West Linn Engineering.**

**Even if these requirements were approval criteria, the Commission finds the testimony and evidence provided by KPFF Engineering, including the Preliminary Stormwater Drainage Report, prepared by KPFF, and the letter submitted by Curran Mohny, Engineering Geology Program Leader for the Oregon Department of Transportation, to be substantial evidence that there will not be any adverse offsite impacts due to the development. The Commission finds the report and the testimony of KPFF Engineering adequately refutes the testimony of Malia R. Kupillas, and that there is no persuasive evidence that there will be any adverse impacts from increased infiltration on the site, such as the potential impact to trees and downslope landslide hazards due to the development.**



**Supplemental Staff Report, dated March 30, 2016**

**Section E-1 in the applicant's supplemental submittal dated March 28, 2016**

The district contracted with KPFF Consulting Engineers to conduct the civil engineering work for the project, including the grading and storm drainage system design. Prior to submitting the application, the design of the on-site and public improvements was developed in close coordination with the Engineering Division of the West Linn Public Works Department. Because stormwater disposal is recognized as a critical component to evaluate, a *Preliminary Stormwater Drainage Report*, developed by KPFF, was submitted as Exhibit F in the application. The hydraulic analyses were performed in accordance with the *City of West Linn Storm Management Manual*, *City of West Linn Design Manual*, *City of Portland SWMM*, and analytical methods deemed appropriate by the Engineering Division. The report considered the 2-, 5-, 10-, 25-, and 100-year storm events. The report met or exceeded the requirements of this section. Because the storm water is proposed to flow into the existing city storm water system, which has sufficient capacity, downstream impacts are deemed to be insignificant.

In response to some of the comments submitted during the Planning Commission hearing on March 16th, KPFF provided additional clarification in Section D of this supplemental information packet. This criterion is met because the storm water plans were prepared by a registered civil engineer, including factual data regarding the potential off-site impacts for the 2-, 5-, 10-, 25-, and 100-year storm events.

**Supplemental Staff Report, dated March 30, 2016**

**Section D-1 in the applicant's supplemental submittal dated March 28, 2016**

This section provided a Storm Water Management engineering supplemental report (Section D-1), including:

There has been significant testimony during the Sunset Primary School Conditional Use permitting process that the proposed treatment and detention facility could contribute to increased infiltration of stormwater in this location. Concerns have been voiced that the hydrology of the area could be impacted, that the facility could saturate the downslope soil, potentially killing trees and causing flooding.

Some infiltration will naturally occur out of the bottom of the facility. Maintaining this natural infiltration area will be a benefit to maintaining the remaining downslope trees. But, as explained above, the facility is not designed nor intended to infiltrate heavy storms into the ground. While it is true that a larger area of the site will now be routed to this facility, the facility itself has a relatively small footprint. As described in the section above, due to the porosity of the growing media, the infiltration rate out of the bottom of the pond will be limited to a rate below the naturally occurring infiltration rate of the subsoils. The facility is designed primarily to temporarily store heavy storm flows and meter them out slowly through the outlet pipe to the public storm sewer system rather than infiltrate significant

amounts of water into the soil.

Furthermore, the general eastern and southern areas of the site (Drainage Basin 2) that drain downslope to the southeast have been reduced nearly two-thirds from 3.8 acres to 1.2 acres. Two thirds of this original area draining to the southeast will now be captured and routed to the site discharge via the treatment and detention facility. Table 1 above illustrates that calculated peak offsite flows to the southeast from this Drainage Basin 2 correspondingly decrease with the smaller area.

In addition to the concerns about groundwater hydrology and saturation, there has also been testimony indicating that other types of stormwater management practices could/should have been considered. Suggestions have included exploring concepts such as porous pavement, localized planters spread around the site, etc.

As has been stated on multiple occasions, this is a constrained site for the proposed elementary school. Moreover, although the student count is not changing, current code requirements regarding parking, setbacks and fire lane access consume more site area than the current school footprint. Note that the school play field has already been significantly compromised in order to satisfy these minimum code requirements and to preserve as many of the trees on the east side of the site as possible.

As a result, the design team has been forced to optimize the layout on the site as efficiently as possible. This has led to a more centralized approach with respect to stormwater for the following reasons:

- Attempting to place small localized treatment planters around the site was examined and discarded early in the design process. Numerous small planters are not as efficient as one larger planter. Due to topography, irregularities in the building footprint, building code drainage setbacks and the physical realities of plumbing roof drainage, attempting to incorporate these numerous local planters around the perimeter of the building can consume significant real estate. In order to configure the numerous small planters into the layout around the site, the disturbed development area would have expanded further to the east and endangered more trees.
- In addition, if stormwater treatment were achieved in smaller planters throughout the site, a detention facility would still be required to restrict the discharge of heavy storm flows. It would require significantly more space and would be functionally impractical to incorporate multiple small detention facilities throughout the site with multiple access points, water management, flow control and overflow structures.
- Pervious paving is not a realistic alternative for the school. This type of paving has been used in the past for a number of school parking lots with disappointing results. Recent projects have revealed that this type of pavement spalls and unravels very easily with wheel-turning parking maneuvers, resulting in significant aggregate spread around the surface and poor life expectancy. In addition, with the low infiltration soil rates, some additional system of stormwater detention and disposal would still be needed. It would not be feasible to count on disposing of stormwater entirely by infiltration under the paving.

- The design team also considered employing an underground detention temporary storage facility concept for stormwater in lieu of the proposed surface water facility. Per Section 2.0045, surface storage facilities like the one proposed is the first preference listed of available detention options for the City of West Linn. Underground storage (such as a tank, vault or piping) were not desired by the City and would only be considered if native sloped surface enclosure was impracticable.

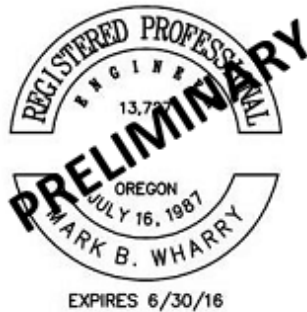
Staff Report, dated March 16, 2016

Preliminary Stormwater Drainage Report – January 2016

## Designer’s Certification and Statement

“I hereby certify that this Stormwater Management Report for the Sunset Primary School project has been prepared by me or under my supervision and meets minimum standards of the City of West Linn and normal standards of engineering practice. I hereby acknowledge and agree that the jurisdiction does not and will not assume liability for the sufficiency, suitability, or performance of drainage facilities designed by me.”

Mark Wharry, PE



This project is analyzed as one basin based on proposed grades to convey all on-site stormwater to the rain garden in the South East corner of the site. Water Quality will be calculated using the City of Portland Presumptive Approach Calculator (PAC) and Water Quantity is evaluated using AutoDesk Storm and Sanitary Analysis 2016.

The hydraulic analyses were performed in accordance with City of West Linn Design Manual using the SBUH method with a 24-hour NRCS Type 1A synthetic rainfall distribution. The calculations were executed with the computer program AutoDesk Storm and Sanitary Analysis 2016 and City of Portland’s PAC Calculator. These methods were used to determine peak flows, pipe conveyance, facility sizing, and orifice flow control.

The 24-hour rainfall depths used in this study were obtained from the City of West Linn Surface Water Management Plan.

Stormwater runoff is treated by use of a vegetated stormwater pond. This project proposes pollution reduction of all proposed impervious surfaces. The proposed pond has been designed using the City of Portland Presumptive Approach Calculator (See Appendix A).

Based on the compliance with the City of West Linn Storm Water Management Manual, City of West Linn Design Standards, City of Portland SWMM, feasibility, and proper engineering techniques, the stormwater runoff for The Sunset Primary School Project will be effectively managed. A single stormwater pond will be used for water quality and water quantity. The pond will have a total volume of 9,230 cubic feet of storage above the water quality requirement. This determination is supported by the PAC and SSA calculations. A conservative infiltration design rate was used for the calculations and design considerations. If higher rates are available, then higher performance and capacity of this pond will be achieved. The proposed pond discharge rates are controlled to the code required pre-development rates, and are substantially lower than the current school discharge rates. No downstream impacts are anticipated.

**Mark Wharry, Civil Engineer, Rebuttal Testimony at April 6, 2016 Public Hearing**

*“I was the one who prepared the supplemental stormwater information that was submitted a week or so ago. There has been very recent testimony that the submittal represents somehow a new plan for the site. That is not true. It is the same plan we have been proposing.”*

*“The pond is designed to work as a combination facility. It is a planter on the bottom to provide the required treatment by the City of West Linn. It also has bermed sidewalls if you will, or sloping banks, to create some volume for detention or slow down stormwater runoff running off the site. There will be some natural infiltration that happens from the pond...our calculations are projecting there will be minor amounts of infiltration.”*

*“There has been testimony about the use of a certain methodology designing the pond, this so called PAC or Presumptive Approach Calculator. The PAC is a model tool used for guidance in determining the required area for treatment. In our Preliminary Stormwater Report we say several times we used a number of tools and that is the tool we used initially for guidance to determine the required area for treatment and we used a different engineered software CAD technology to model the routing of the storms through the pond to determine the detention volume. At no time were we ever using the PAC, as was suggested tonight, to determine the volume for the pond.”*

*“There has been significant testimony about the pond’s potential impact on site infiltration and groundwater hydrology. Again, there is a natural infiltration that will happen with the pond but this is not a retention facility. We are not designing this to route a lot of site stormwater to this one spot and expect it to all infiltrate onsite. It is expected to pond temporarily and slowly discharge offsite.”*

## **APPROVAL CRITERIA #4 CONTENDED TO BE MISAPPLIED**

### *75.020 CLASSIFICATION OF VARIANCES*

*B. Class II Variance. Class II variances may be utilized when strict application of code requirements would be inconsistent with the general purpose of the CDC and would create a burden upon a property owner with no corresponding public benefit. A Class II variance will involve a significant change from the code requirements and may create adverse impacts on adjacent property or occupants. It includes any variance that is not classified as a Class I variance or special waiver.*

**The appellant contends the applicant created the need for the variances by opting for the westerly orientation of the building instead of locating the new building on the footprint of the existing building. The appellant also contends the applicant did not provide sufficient evidence to show the variances are the minimum necessary to make reasonable use of the property.**

**The Planning Commission's adopted findings are found in the Staff Report for the Planning Commission, dated March 16, 2016; the Supplemental Staff Report, dated March 30, 2016; and the Planning Commission Final Decision and Order signed by Chair Babbitt on April 14, 2016. The adopted findings include, but are not limited to:**

- 1. Class II Variance Approval Criteria. The approval authority may impose appropriate conditions to ensure compliance with the criteria. The appropriate approval authority shall approve a variance request if all the following criteria are met and corresponding findings of fact prepared.*
  - a. The variance is the minimum variance necessary to make reasonable use of the property. To make this determination, the following factors may be considered, together with any other relevant facts or circumstances:*
    - 1) Whether the development is similar in size, intensity and type to developments on other properties in the City that have the same zoning designation.*
    - 2) Physical characteristics of the property such as lot size or shape, topography, or the existence of natural resources.*
    - 3) The potential for economic development of the property.*

### **Staff Report, dated March 16, 2016**

**Staff Finding 129: The applicant proposal is to build a new primary school on an existing school site. The proposal requires a conditional use, as do all schools in residential zones. West Linn contains four primary, one middle, and one high school, all in residential zones and similar in size and intensity. These criteria are met.**

**Supplemental Staff Report, dated March 30, 2016**

**Section E-1 in the applicant's supplemental submittal dated March 28, 2016**

**On-site Parking Space Location:**

For a facility like a school, it is extremely difficult to get all parking spaces within 200 feet of the main entrance. This could be possible, but it would mean locating the main entrance a significant distance from the street and surrounding it with parking. To maintain appropriate campus security, the play fields and playgrounds need to be directly adjacent to the school building. Separating the playfield from building with a surface parking lot would reduce the level of security for the students as well as introduce unnecessary conflicts between students crossing the parking area and vehicles. The disabled parking spaces are proposed to be the closest spaces to the building entrance, with a covered walkway to the main entrance. With its "L" shape and natural amenities concentrated on the eastern portion of the site, having the play field and parking on the west side of the site provides the most practical design.

**On-site Bike Parking Space Location:**

Bicycle use at primary schools is relative low, and it will tend to be somewhat higher during good weather. With this in mind, 20 of the required spaces are proposed within 50 feet of the building entrance. The remaining spaces are covered, but approximately 130 feet from the entrance. Unless the proposed canopy is made exceptionally large, providing the required covered bike spaces near the entrance would interfere with pedestrian access in and out of the school. The proposed arrangement offers a reasonable combination of convenience and secure bike parking.

**Supplemental Staff Report, dated March 30, 2016**

**Section C-1 in the applicant's supplemental submittal dated March 28, 2016**

**Constraints and Opportunities at Sunset Primary School**

The constraints and opportunities presented at Sunset Primary School have been plentiful. Due to the capacity issues in neighboring schools, West Linn – Wilsonville School District decided prior to 2007 to house the existing Sunset Primary School students in their existing building while a new replacement building is constructed onsite. Given the compact nature of the site, the District recognized the need for additional land to accommodate the new building, parking, fields and storm water features and worked with the City to acquire more land in the adjacent Sunset Park in 2011. Since then, a team of school building and site designers with over 100 years of experience between them have been working to develop a design solution that balances the constraints with the incredible opportunities present at Sunset. Concerns about impacts to existing trees had to be balanced with the constraint of maintaining a safe construction distance from the existing school. City code requirements for parking had to be balanced against a desire to maximize play field access for students and the community. The north-eastern property owners concerns regarding the proximity of the building to their properties had to be balanced with the concerns from property owners along Bittner regarding the proximity of parking to the street in front of their homes. This is the nature of design and not unique to this project. It is the role of the building and site designers to address all concerns and design criteria and to attempt to mitigate any potential negative impact to the greatest extent possible.

*b. The variance will not result in violation(s) of any other code standard, and the variance will meet the purposes of the regulation being modified.*

**Staff Report, dated March 16, 2016**

**Staff Finding 132:** The proposed variances will not result in violations of other code standards. Parking lot design and dimensional requirements have been met, as well as bicycle parking standards outside of the variance request. Sign standards for the proposed free standing sign have been met. The vehicle parking distance variance will meet the purpose of the code as, for a facility like a school, it is extremely difficult to get all parking spaces within 200 feet of the main entrance. This could be possible, but it would mean locating the main entrance a significant distance from the street and surrounding it with parking. The western parking lot could be brought closer to compliance, but it would mean that the sports field would be removed from the school by a significant distance. The school is different from a commercial development, which would have multiple building entrances and the ability to locate all spaces within 200 feet of at least one entrance. The bicycle parking distance variance will meet the purpose of the code as bicycle use at primary schools is relative low, and it will tend to be somewhat higher during good weather. With this in mind, 20 of the required spaces are proposed within 50 feet of the building entrance. The remaining spaces are covered, but approximately 130 feet from the entrance. Unless the proposed canopy is made exceptionally large, providing the required covered bike spaces near the entrance would interfere with pedestrian access in and out of the school. The proposed arrangement offers a reasonable combination of convenience and secure bike parking.

*c. The need for the variance was not created by the applicant and/or owner requesting the variance.*

**Supplemental Staff Report, dated March 30, 2016**

**Section E-1 in the applicant's supplemental submittal dated March 28, 2016**

The District did not create the need for the variances through any previous actions. The variances are requested to address unique conditions and desired design results for the school operation and appearance. It is recognized that the site does not represent the "ideal" primary school site, which theoretically would be 10-acres, square, and flat with no trees. Obviously, such "ideal" sites are typically unavailable. And in this case, the community supported keeping the school on this site. To sensitively and creatively design a new school while retaining the property's natural features is always a challenge. The variances requested regarding vehicle and bike parking location represent minor adjustment to the city's standards.

*d. If more than one variance is requested, the cumulative effect of the variances results in a project that is consistent with the overall purpose of the zone.*

**Supplemental Staff Report, dated March 30, 2016**

**Section E-1 in the applicant's supplemental submittal dated March 28, 2016**

The three variances represent requests to allow modest deviations from the CDC standards to achieve a practical result that is in keeping with the purpose and intent of the CDC and West Linn Comprehensive Plan. The variances will allow the District to achieve a more desirable result regarding the location of parking and total sign area (*the applicant withdrew the sign variance*).

**APPROVAL CRITERIA #5 CONTENDED TO BE MISAPPLIED**

*92.010 PUBLIC IMPROVEMENTS FOR ALL DEVELOPMENT*

*The following improvements shall be installed at the expense of the developer and meet all City codes and standards:*

*E. Surface drainage and storm sewer system. A registered civil engineer shall prepare a plan and statement which shall be supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site of a 100-year storm, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts commensurate to the particular land use application. Mitigation measures shall maintain pre-existing levels and meet buildout volumes, and meet planning and engineering requirements.*

The appellant contends the civil engineer's plan and statement fails address the adverse impacts and potential mitigation measures identified by Malia Kupillas and there was no factual data showing an absence of adverse runoff impacts or how they could be mitigated (Exhibit CC-2 of this Staff Report).

The Planning Commission's adopted findings are found in the Staff Report for the Planning Commission, dated March 16, 2016; the Supplemental Staff Report, dated March 30, 2016; and the Planning Commission Final Decision and Order signed by Chair Babbitt on April 14, 2016. The adopted findings include, but are not limited to:

**Planning Commission Final Decision and Order**

The Commission finds both are application submittal requirements, not approval criteria. These submittal requirements were satisfied by the applicant after review by West Linn Engineering.

Even if these requirements were approval criteria, the Commission finds the testimony and evidence provided by KPFF Engineering, including the Preliminary Stormwater Drainage Report, prepared by KPFF, and the letter submitted by Curran Mohny, Engineering Geology Program Leader for the Oregon Department of Transportation, to be substantial evidence that there will not be any adverse offsite impacts due to the development. The Commission



finds the report and the testimony of KPFF Engineering adequately refutes the testimony of Malia R. Kupillas, and that there is no persuasive evidence that there will be any adverse impacts from increased infiltration on the site, such as the potential impact to trees and downslope landslide hazards due to the development.

**Supplemental Staff Report, dated March 30, 2016**

**Section E-1 in the applicant's supplemental submittal dated March 28, 2016**

The district contracted with KPFF Consulting Engineers to conduct the civil engineering work for the project, including the grading and storm drainage system design. Prior to submitting the application, the design of the on-site and public improvements was developed in close coordination with the Engineering Division of the West Linn Public Works Department. Because stormwater disposal is recognized as a critical component to evaluate, a *Preliminary Stormwater Drainage Report*, developed by KPFF, was submitted as Exhibit F in the application. The hydraulic analyses were performed in accordance with the *City of West Linn Storm Management Manual*, *City of West Linn Design Manual*, *City of Portland SWMM*, and analytical methods deemed appropriate by the Engineering Division. The report considered the 2-, 5-, 10-, 25-, and 100-year storm events. The report met or exceeded the requirements of this section. Because the storm water is proposed to flow into the existing city storm water system, which has sufficient capacity, downstream impacts are deemed to be insignificant.

In response to some of the comments submitted during the Planning Commission hearing on March 16th, KPFF provided additional clarification in Section D of this supplemental information packet. This criterion is met because the storm water plans were prepared by a registered civil engineer, including factual data regarding the potential off-site impacts for the 2-, 5-, 10-, 25-, and 100-year storm events.

**Supplemental Staff Report, dated March 30, 2016**

**Section D-1 in the applicant's supplemental submittal dated March 28, 2016**

This section provided a Storm Water Management engineering supplemental report (Section D-1), including:

**Water Quantity:** For temporarily detaining flows from heavy storms, this facility does NOT depend on infiltration. The facility is bermed to provide storage volume for onsite stormwater to be temporarily stored and metered out slowly so that peak discharge from the property is not increased from conditions existing prior to the proposed development. Commonly referred to as "detention," this is accomplished by providing ponding capacity within the facility and routing the stormwater discharge through an outlet orifice structure that meters the flow out slowly. The table below illustrates the peak existing condition and proposed new development storm discharge rates.

Design Storm	Existing School Site Peak Stormwater Discharge Offsite		Proposed New School Site Peak Stormwater Discharge Offsite	
	Drainage Basin 1 (No detention – discharge to Exeter system)	Drainage Basin 2 (Downslope runoff from field & tree area)	Drainage Basin 1 (New detention to Lewis & Clark level– discharge to new Bittner storm sewer)	Drainage Basin 2 (Downslope runoff from field & tree area – including bottom of detention facility)
2-Year	1.22 cfs	0.27 cfs	0.32 cfs	0.10 cfs
5-Year	1.49 cfs	0.46 cfs	0.49 cfs	0.18 cfs
10-Year	1.72 cfs	0.63 cfs	0.75 cfs	0.25 cfs
25-Year	2.00 cfs	0.86 cfs	1.01 cfs	0.34 cfs
100-Year	2.34 cfs	1.16 cfs	1.62 cfs	0.46 cfs

Table 1: Sunset Primary School Peak Stormwater Discharge Rates

As Table 1 illustrates, offsite peak stormwater flow rates from the new school are significantly reduced below the existing discharge rates. Discharge to the City of West Linn Long Street storm sewer system has been detained to levels below the existing discharge flows to the Exeter system. And due to the reduction of area for Drainage Basin 2, runoff on the west side of the site has been reduced as well.

In addition to the concerns about groundwater hydrology and saturation, there has also been testimony indicating that other types of stormwater management practices could/should have been considered. Suggestions have included exploring concepts such as porous pavement, localized planters spread around the site, etc.

As has been stated on multiple occasions, this is a constrained site for the proposed elementary school. Moreover, although the student count is not changing, current code requirements regarding parking, setbacks and fire lane access consume more site area than the current school footprint. Note that the school play field has already been significantly compromised in order to satisfy these minimum code requirements and to preserve as many of the trees on the east side of the site as possible.

As a result, the design team has been forced to optimize the layout on the site as efficiently as possible. This has led to a more centralized approach with respect to stormwater for the following reasons:

- Attempting to place small localized treatment planters around the site was examined and discarded early in the design process. Numerous small planters are not as efficient as one larger planter. Due to topography, irregularities in the building footprint, building code drainage setbacks and the physical realities of plumbing roof drainage, attempting to incorporate these numerous local planters around the perimeter of the building can consume significant real estate. In order to configure the numerous small planters into the layout around the site, the disturbed development area would have expanded further to the east

and endangered more trees.

- In addition, if stormwater treatment were achieved in smaller planters throughout the site, a detention facility would still be required to restrict the discharge of heavy storm flows. It would require significantly more space and would be functionally impractical to incorporate multiple small detention facilities throughout the site with multiple access points, water management, flow control and overflow structures.
- Pervious paving is not a realistic alternative for the school. This type of paving has been used in the past for a number of school parking lots with disappointing results. Recent projects have revealed that this type of pavement spalls and unravels very easily with wheel-turning parking maneuvers, resulting in significant aggregate spread around the surface and poor life expectancy. In addition, with the low infiltration soil rates, some additional system of stormwater detention and disposal would still be needed. It would not be feasible to count on disposing of stormwater entirely by infiltration under the paving.
- The design team also considered employing an underground detention temporary storage facility concept for stormwater in lieu of the proposed surface water facility. Per Section 2.0045, surface storage facilities like the one proposed is the first preference listed of available detention options for the City of West Linn. Underground storage (such as a tank, vault or piping) were not desired by the City and would only be considered if native sloped surface enclosure was impracticable.

Staff Report, dated March 16, 2016

Preliminary Stormwater Drainage Report – January 2016

## Designer's Certification and Statement

"I hereby certify that this Stormwater Management Report for the Sunset Primary School project has been prepared by me or under my supervision and meets minimum standards of the City of West Linn and normal standards of engineering practice. I hereby acknowledge and agree that the jurisdiction does not and will not assume liability for the sufficiency, suitability, or performance of drainage facilities designed by me."

Mark Wharry, PE



Based on the compliance with the City of West Linn Storm Water Management Manual, City of West Linn Design Standards, City of Portland SWMM, feasibility, and proper engineering

techniques, the stormwater runoff for The Sunset Primary School Project will be effectively managed. A single stormwater pond will be used for water quality and water quantity. The pond will have a total volume of 9,230 cubic feet of storage above the water quality requirement. This determination is supported by the PAC and SSA calculations. A conservative infiltration design rate was used for the calculations and design considerations. If higher rates are available, then higher performance and capacity of this pond will be achieved. The proposed pond discharge rates are controlled to the code required pre-development rates, and are substantially lower than the current school discharge rates. No downstream impacts are anticipated.

**Mark Wharry, Civil Engineer, Rebuttal Testimony at April 6, 2016 Public Hearing**

***“These ponds have redundant engineered overflow structures that are internal and even at the 100-year flow level, we are still maintaining the minimum of one-foot of freeboard around the pond to prevent any uncontrolled overtopping. It’s our responsibility to provide public safety and safe conveyance of storm flows even at the 100-year level.”***

**PUBLIC COMMENT**

As of the publication date of this report, staff has received 20 submittals from citizens, 19 in favor of the proposal and one in opposition. All comments can be found in Exhibit CC-3.

**RECOMMENDATION**

Staff supports the Planning Commission decision and recommends Council uphold the approval of the West Linn-Wilsonville School Districts proposal to replace the Sunset Primary School at 2351 Oxford Street, by denial of application AP-16-01 based on: 1) the West Linn Planning Commission Final Decision and Order, 2) the staff report dated March 16, 2016, 3) the supplemental staff report dated March 30, 2016, and 4) all other testimony found in the record of CUP-15-03, DR-15-17, VAR-15-01/02

**EXHIBIT CC-1 PLANNING COMMISSION FINAL DECISION AND ORDER**

## WEST LINN PLANNING COMMISSION

### FINAL DECISION AND ORDER

CUP-15-03, DR-15-17, VAR-15-01, VAR-15-02, VAR-15-03

#### IN THE MATTER OF THE REPLACEMENT OF THE SUNSET PRIMARY SCHOOL AT 2351 OXFORD STREET AS A CONDITIONAL USE-SCHOOL, TYPE II DESIGN REVIEW, AND THREE CLASS II VARIANCES FOR PARKING DISTANCE AND BICYCLE PARKING DISTANCE

##### I. Overview

The West Linn-Wilsonville School District (Applicant) filed its application in November 2015 and it was deemed complete on February 1, 2016. The approval criteria for the application are found in Community Development Code (CDC) Chapters 11, 38, 41, 42, 44, 46, 48, 52, 54, 55, 60, 75, 92, 96, and 99. The hearings were conducted pursuant to the provisions of CDC Chapter 99.

The Planning Commission (Commission) held the initial evidentiary hearing on March 16, 2016. The hearing commenced with a staff report presented by Darren Wyss, Associate Planner. Tim Woodley, Applicant, and B. Karina Ruiz, Dull Olson Weekes – IBI Group Architects, Inc., presented for the applicant. The initial hearing was continued to April 6, 2016, for additional written evidence and public testimony. At its April 6 hearing the Applicant offered to withdraw VAR-15-03, and the Commission approved the withdrawal of the variance. The Commission then closed the hearing, granted seven days, until noon on April 13, 2016, for written responses to new evidence, and it continued the hearing to April 13, 2016, for deliberations. The Commission heard public testimony from approximately 15 individuals over the course of the first two meetings and accepted many written submissions.

After deliberations on April 13, 2016, a motion was made and seconded to deny the application. The motion failed. Then a motion was made by Commissioner Knight and seconded by Commissioner Myers to approve the applications with 12 conditions of approval and direct staff to prepare a Final Decision and Order. The motion passed with four votes in favor and two votes opposed.

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

1. Loss of Sunset park space,
2. Poor design of stormwater detention/treatment facility,
3. Impact of construction activities on school children,
4. Large size of the 900 page supplemental submittal by Applicant,
5. Risk to trees from stormwater infiltration on the site,
6. Failure of applicant to propose rain gardens and permeable paving,

7. Need for additional time to work with the School District on solutions to citizen concerns,
8. Improper use of stormwater models ,
9. CDC 55.130.B. and CDC 92.010.E. not being met by the current location and design of the stormwater facilities,
10. Use of Ballot Measure 3-358 as criteria to deny the application,
11. Perceived redesign of stormwater detention/treatment facility after initial application,
12. CDC 75.050.E. allows only two Class II Variances in a 12-month period, and
13. Off-site landslide hazard risk increased by stormwater detention/treatment facility.

## **II. The Record**

The record was finalized at the April 13, 2016, hearing. The record includes the entire file from CUP-15-03, DR 15-17, VAR-15-01, VAR-15-02, and VAR-15-03.

## **III. Findings of Fact**

- 1) The Overview set forth above is true and correct.
- 2) The applicant is the West Linn-Wilsonville School District.
- 3) The Commission finds that it has received all information necessary to make a decision based on the Staff Report and attached findings; Supplemental Staff Report and attached findings; public comment; and the evidence in the whole record, including any exhibits received at the hearings.

## **IV. Findings**

The Commission adopts the March 16, 2016, Staff Report and the March 30, 2016 Supplemental Staff Report for CUP-15-03, DR-15-17, VAR-15-01 VAR-15-02, and VAR-15-03 with attachments, including specifically the Addendum dated March 16, 2016, and the Applicant's Submittals, including without limitation the narratives, as its findings, which are incorporated by this reference.

### **KEY CONCERNS**

The Commission heard several concerns repeatedly throughout this process. Some of the concerns related to applicable criteria and some did not. Before turning to the applicable criteria the Commission wishes to address the repeated concerns and explain the Commission's perspective.

#### **Loss of park space**

The West Linn Parks Director submitted two letters clarifying the partnership between the Applicant and City to provide park and recreation opportunities at Sunset Park and the Sunset Primary School cooperatively. The existing playground on the Applicant's property will be replaced by a playground at Sunset Park. The City is currently working with the community on a new design for Sunset Park and the opportunity for input is available to everyone.

#### Poor design of stormwater detention/treatment facility

The only requirement of the Applicant was to provide a preliminary stormwater report showing no adverse off-site impacts from increased intensity of runoff from a 10-year and 100-year storm. The Applicant clearly provided factual data showing reduced runoff from current conditions after the construction of new stormwater facilities.

#### Impact of construction activities on school children

The number one concern and priority of the Applicant is the safety of the children who attend their schools. All parents entrust their children with the Applicant from the point they arrive at school until they leave for the day. The Applicant has outlined the precautions they will undertake to limit impacts to the learning environment and to ensure the safety of the school children. The Applicant also clearly outlined why the decision was made to construct a new primary school adjacent to the existing school and the Commission feels this is the best option.

#### 900 page supplemental submittal by Applicant

The Commission found there was no new significant information outside of the process dating back to 2007 that led to the decision to submit this application and spoke to the amount of opportunities for input from the community.

#### Risk to trees from stormwater infiltration

The Commission relies on the Applicant's Arborist Report and the City Arborist and reports that the trees will be protected to the extent possible with appropriate measures. The stormwater report also show less off-site runoff from the new stormwater facilities.

#### Alternative use of rain gardens and permeable paving

The use of rain gardens would not eliminate the need for a detention facility onsite. Whether permeable paving may work is not relevant as there is no criteria to mandate its use.

#### Need more time to work on a solution to citizen concerns

The City has 120 days to make a final decision on the complete application. The Commission finds the community had ample opportunity to submit comments and testimony. The Conditions of Approval are straight forward and clearly relate to code requirements.

#### Stormwater model used to design detention facility

The PAC model was not used to design the detention component of the stormwater facility. This was addressed by the Applicant sufficiently at the April 6, 2016, public hearing.

#### Use of Ballot Measure 3-358 as criteria to deny the application

The Commission finds any legal challenges to with the ballot measure are outside the jurisdiction of the Commission. Those challenges must be brought in a court of competent jurisdiction.

#### Redesign of stormwater detention/treatment facility after initial application



The Applicant definitively answered size and function of the stormwater facilities and made it clear that the facilities have not changed since the application was submitted.

### **SUPPLEMENTAL FINDINGS**

The Commission addressed the applicable criteria challenged during the public hearing process and Staff offers the following additional findings.

#### *CDC 55.130 GRADING PLAN*

*B. A registered civil engineer shall prepare a plan and statement that shall be supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts. The plan and statement shall, at a minimum, determine the off-site impacts from a 10-year storm.*

#### *CDC 92.010 Public Improvements For All Development*

*E. Surface drainage and storm sewer system. A registered civil engineer shall prepare a plan and statement which shall be supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site of a 100-year storm, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts commensurate to the particular land use application. Mitigation measures shall maintain pre-existing levels and meet buildout volumes, and meet planning and engineering requirements.*

The Commission finds both are application submittal requirements, not approval criteria. These submittal requirements were satisfied by the applicant after review by West Linn Engineering.

Even if these requirements were approval criteria, the Commission finds the testimony and evidence provided by KPFF Engineering, including the Preliminary Stormwater Drainage Report, prepared by KPFF, and the letter submitted by Curran Mohney, Engineering Geology Program Leader for the Oregon Department of Transportation, to be substantial evidence that there will not be any adverse offsite impacts due to the development. The Commission finds the report and the testimony of KPFF Engineering adequately refutes the testimony of Malia R. Kupillas, and that there is no persuasive evidence that there will be any adverse impacts from increased infiltration on the site, such as the potential impact to trees and downslope landslide hazards due to the development.

#### *60.070 APPROVAL STANDARDS AND CONDITIONS*

*A. The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, except for a manufactured home subdivision in which case the approval standards and conditions shall be those specified in CDC 36.030, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:*

*3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.*

The Commission finds the replacement of the Sunset Primary School is consistent with the overall needs of the community for the following reasons:

1. There will be no loss of park space or amenities as a result of the application. Ken Worcester, West Linn Parks & Recreation Director, submitted two letters outlining the partnership between the City and Applicant to cooperatively program recreational opportunities. Mr. Worcester also outlined the current process to redesign Sunset Park, including community input opportunities, and the desire to replace the playground equipment that will be removed during the school replacement project.

2. The Commission relies on the Applicant's Arborist and the City Arborist, and associated reports that trees will be protected to the extent possible with appropriate measures. The Commission rejects the testimony submitted by Darek Czokajlo, Ph.D. as lacking substantive facts to support the assertion that the removal of 12 Douglas Fir trees will create a vulnerable environment for the remaining Douglas Fir trees on and off-site. CDC 55.100.B(2)(b) is met with the Applicant proposal to retain 77 percent of significant tree canopy on-site.

3. The Commission relies the testimony by KPFF Engineering and the Preliminary Stormwater Drainage Report, prepared by KPFF, and the letter submitted by Curran Mohny, Engineering Geology Program Leader for the Oregon Department of Transportation, and finds there is no persuasive evidence to draw the inference that there will be any impacts from increased infiltration at the stormwater detention/treatment facility location. The Applicant has provided factual data showing off-site stormwater discharge will be reduced from current levels for the 2-year, 5-year, 10-year, 25-year, and 100-year storm events.

The Commission relies on Applicant's experts to remove any hazardous materials in the existing school in accordance with State and Federal Building Regulations. Replacement of the primary school without disruption to the children through bussing to new locations and the potential need for portable classrooms is in the best interest and overall needs of the community.

*55.100 APPROVAL STANDARDS – CLASS II DESIGN REVIEW*

*B. Relationship to the natural and physical environment*

*4. The structures shall not be located in areas subject to slumping and sliding. The Comprehensive Plan Background Report's Hazard Map, or updated material as available and as deemed acceptable by the Planning Director, shall be the basis for preliminary determination.*

The Commission finds, based on the West Linn Comprehensive Plan Background Report's Hazard Map, that structures will not be built in areas subject to slumping or sliding.

The Commission concludes that there is substantial evidence in the record demonstrating that all of the required approval criteria are met.

## V. Order

The Commission concludes that CUP-15-03, DR-15-17, VAR-15-01 and VAR-15-02 are approved based on the Record, Findings of Fact and Findings above. The Commission concludes all of the required approval criteria are met subject to the following conditions of approval:

1. Site Plans. With the exception of modifications required by these conditions, the project shall substantially conform to all Tentative Plan Sheets.
2. Engineering Standards. All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite stormwater, street lighting, easements, easement locations, and connections for future extension of utilities are subject to the City Engineer's review, modification, and approval. These must be designed, constructed, and completed prior to the issuance of the final building certificate of occupancy.
3. Street Improvements. The applicant shall complete full street improvements, including pavement improvements, curbs, planter strips, street trees, street lights, sidewalks, pedestrian crossings, and street storm drainage for those portions of Oxford Street and Bitter Street abutting the subject properties, per Staff Findings 143 and 144. Construction of the half street improvements and storm drainage improvements on the west side of Bittner Street and the south side of Oxford Street shall be reimbursed by the City of West Linn.
4. Overhead Utilities. All existing overhead utilities and associated services must be removed and placed underground per Staff Finding 99. This must be completed prior to the issuance of the final building certificate of occupancy.
5. Carpool Spaces. The applicant shall identify four parking spaces closest to the building entrance for carpools, per Staff Finding 15, and provide signage reading "*Reserved – Carpool/Vanpool Before 9:00 a.m.*"
6. Parking Lot Design. The applicant shall reconfigure the parking areas to meet group of 12 parking design requirements per Staff Finding 25, while maintaining a total of 88 total parking spaces. The new configuration must also meet the 50 percent maximum compact space requirements.
7. Curb Cuts. The applicant shall redesign the three vehicle accessways to comply with the maximum curb cut requirements of 36 feet, per Staff Finding 43, and to also meet West Linn Public Works Standards.
8. No Parking Signs. The applicant shall install signs, per Staff Finding 40, reading "No Parking – Fire Lane" on both sides of the fire access drives. The signs shall be 12 inches

wide by 18 inches high and shall have red letters on a white reflective background. The signs shall be installed with a clear space above grade level of 7 feet.

9. Tree Protection. The applicant shall provide appropriate root zone protections, per Staff Finding 70, for the 14 significant trees that are proposed to be retained and identified in the Arborist Report as needing monitoring. The applicant shall consult with both the project arborist and the City arborist to utilize the most effective measures. This includes the required protection fencing.
10. Tree Conservation Easement. The applicant shall provide a tree conservation easement, per Staff Finding 70, for all significant trees that are retained on site and not already protected by required setbacks. The easement shall extend outwards to the tree dripline plus 10 feet. The easement shall include a legal description and a map of the area. The easement shall be recorded with the County and a copy of the recorded easement shall be provided to the City of West Linn prior to the issuance of the final building certificate of occupancy.
11. Fire Flow. The applicant shall perform a fire flow test, per Staff Finding 91, and submit a letter from Tualatin Valley Fire and Rescue showing adequate fire flow is present prior to the issuance of the final building certificate of occupancy.
12. Sanitary Sewer Improvement. The applicant shall install sanitary sewer improvements to serve Sunset Primary School by either:
  - a. Installing approximately 450 feet of sewer main with the associated manholes and sewer laterals along Bittner Street to the connection point on Long Street in accordance with Exhibit PC-6 and Staff Finding 92, and the City will reimburse the applicant for approximately 175 feet of sewer main, associated manholes, and 12 sewer laterals pursuant to Exhibit PC-6; or
  - b. Connecting the existing sanitary sewer main at Sunset Primary School to the Oregon City Loop sanitary sewer main.

  
\_\_\_\_\_  
MICHAEL BABBITT, CHAIR  
WEST LINN PLANNING COMMISSION

4-14-16  
\_\_\_\_\_  
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

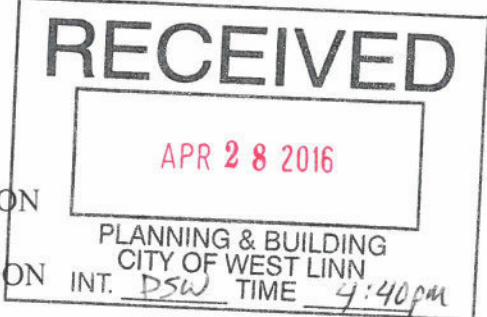
decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.

Mailed this 14<sup>th</sup> day of April, 2016.

Therefore, this decision becomes effective at 5 p.m., April 28, 2016.

**EXHIBIT CC-2 APPELLANT'S APPLICATION**





BEFORE THE PLANNING COMMISSION  
FOR THE CITY OF WEST LINN, OREGON

In the Matter of WEST LINN-WILSONVILLE ) FILE NOS: CUP-15-03, DR-15-17, and  
SCHOOL DISTRICT 3JT's Application for ) VAR-15-01/02/03  
Conditional Use, Design Review, Director's )  
Exception, and Class II Variance Approval to ) **SAVE OUR SUNSET PARK'S**  
allow construction of a new primary school ) **NOTICE OF APPEAL OF PLANNING**  
and related facilities in the R-10 zone. ) **COMMISSION APPROVAL**

**I. INTRODUCTION**

The members of Save Our Sunset Park ("SOS Park") are not opposed to replacement of the Sunset Primary School. However, they believe the West Linn Planning Commission erred in approving the applicant's project, as proposed. SOS Park presented substantial evidence, through expert testimony, showing that the current design will result in multiple adverse impacts, including but not limited to potential flooding, threats to Douglas fir trees, and increased risk of landslides. Also, the current plan is to use the former Sunset Park property for parking and drainage facilities after the City promised West Linn voters that the land would be used to maximize recreational opportunities and save significant trees. These were the express terms and conditions of the sale of 1.6 acres of park land to the school district. A copy of Measure 3-358 is attached as Exhibit 1 to SOS Park's April 6, 2016 Supplemental Memorandum in Opposition. In addition, the current design requires variances for parking vehicles and bicycles, and the Applicant has not met the variance approval criteria.

SOS Park respectfully requests that the City Council reverse the Planning Commission approval. Not only does the approval violate the terms and conditions of the City's sale of 1.6 acres of Sunset Park to the school district, but the proposed development fails to meet the



mandatory approval criteria in the West Linn Community Development Code (“CDC”) for this conditional use and fails to satisfy the CDC variance standards.

## **II. STANDING**

The Appellant, SOS Park, is comprised of a group of West Linn residents who live near Sunset Primary School and Sunset Park. The Appellant and its members appeared orally and in writing before the West Linn Planning Commission and provided their names and addresses. Therefore, SOS Park and its members have standing to appeal this decision.

## **III. GROUNDS FOR REVERSAL OR MODIFICATION OF THE DECISION**

The Planning Commission misapplied the following provisions of the West Linn Community Development Code:

- A. CDC 60.070 (2)
- B. CDC 60.070 (3)
- C. CDC 60.070 (6); CDC 55.130 (B)
- D. CDC 92.010 (E)
- E. CDC 75.020 (B)

The burden of proof is on the Applicant to show compliance with each applicable approval criterion. Failure to meet a single mandatory standard requires denial. CDC 60.070 sets forth the primary approval criteria for conditional uses. CDC 92.010 (E) was specifically listed as an additional approval criterion for this application. CDC 75.020 (B) sets forth the requirements for Type II variances.

The grounds for denial were described in further detail in the following submittals which are attached hereto, and incorporated herein:

- March 15, 2016: David Dodds' March 15, 2016 Submittal
- March 16, 2016: Save Our Sunset Park's Memorandum in Opposition (including copy of Pacific Hydro-Geology, Inc.'s March 15, 2016 Analysis)
- March 30, 2016: David Dodds' March 30, 2016 Submittal
- April 4, 2016: David Dodds' April 4, 2016 Submittal (regarding new information pertaining to storm water drainage plans)
- April 6, 2016: Save Our Sunset Park's Supplemental Memorandum in Opposition (including a copy of Measure 3-358 regarding sale of 1.6 acres of Sunset Park)
- April 11, 2016: David Dodds' April 11, 2016 Submittal

**A. The Planning Commission misconstrued CDC 60.070 (2) which requires that the characteristics of the site be suitable for the proposed use considering size, shape, location, topography, and natural features.**

While the site may be generally appropriate for use as a primary school, the proposed location of the development on the site is not suitable because the new school building, parking lot, and storm water facility would be constructed where the current playground and a portion of the former Sunset Park are located. This plan will result in significant adverse impacts, onsite and offsite, as a result of redirecting the storm water which renders the site unsuitable for the proposed development.

SOS Park's expert hydro-geologist, Malia Kupillas, reviewed the proposed storm water management facilities. She concluded that the configuration of the new primary school and storm water infiltration pond will have the following impacts caused by concentrating the majority of the surface water into one area for infiltration with some water discharged during larger storm events:

1. The amount of water that flows down gradient will increase and impact 14 trees within the area north of the bird houses/property line and a minimum of 6 Douglas fir trees in the park, for a minimum of 20 trees. The Douglas fir trees will be more

susceptible to disease or blow down because the soils will be wetter around their roots. Douglas fir trees do not like wet roots.

2. The overflow from the storm water infiltration pond will change the hydrology of Sunset Creek. It will have more water flowing for a longer period of time which may increase erosion.
3. The back yards of the nearby homes, adjacent to the park on the east, will become wetter with potential flooding if the houses have basements and potentially trigger shallow landslides.
4. Existing shallow landslide areas will be more susceptible to landslides and existing landslides may be reactivated. The area to the east of what is now known as Sunset Park that is currently mapped by the Department of Geology and Mineral Industries as *moderate risk* for landslides could now change to *high risk* for landslides.
5. Other areas down-slope of where the water from the storm water infiltration pond flows on top of the bedrock may develop shallow landslides.

A copy of Pacific Hydro-Geology, Inc.'s March 15, 2016 Analysis is attached as Exhibit 1 to SOS Park's March 16, 2016 submittal, a copy of which is submitted herewith.

The layout of the onsite development (location) results in adverse impacts on existing trees (natural features) onsite and offsite. In addition, the slope of the property (topography), which dictates its drainage patterns, will increase the risk of flooding and landslides on surrounding properties. Accordingly, the site is unsuitable for the project, as proposed, considering location, topography, and natural features. The Planning Commission erred in finding that CDC 60.070 (2) is satisfied.

- B. The Planning Commission erred in finding compliance with CDC 60.070 (3) because the new facility, as proposed, is inconsistent with the overall needs of the community.**

While a new school may be consistent with the overall needs of this community, approval of this application will be adverse to the overall needs of the community because it will put mature Douglas fir trees at risk – onsite and offsite. Moreover, it will increase flooding and the potential for landslides. Furthermore, the conversion of the 1.6 acres of park land to non-recreational use (parking lot and drainage facility) is inconsistent with the overall need of the community to be able to rely on promises made by the City when City-owned park land is sold. See SOS Park’s April 6, 2016 Supplemental Memorandum in Opposition, page 5, for further discussion of the ballot measure condition of sale. The Planning Commission misconstrued the requirements of CDC 60.070 (3) in finding that the project, as designed, is consistent with the overall needs of the community.

**C. The Planning Commission misconstrued the requirements of CDC Section 60.070 (6) which require satisfaction of the applicable provisions of chapter 55 as an applicable approval criterion and the applicant failed to demonstrate compliance with CDC 55.130 (B).**

CDC 55.130 (B) requires that a registered civil engineer prepare a plan and statement that is supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff offsite, or identify all offsite impacts and measures to mitigate those impacts. The plan and statement shall, at a minimum, determine the offsite impacts from a 10-year storm. This is a mandatory approval standard and neither the applicant nor staff address it as such. Notwithstanding the express requirement for factual data regarding adverse impacts and mitigation measures, the Planning Director advised the Planning Commission that this criterion is merely a “submittal requirement” and it is met as long as a civil engineer has prepared the plan.

Even if the applicant's plan and statement could be considered factual data, they are fatally flawed due to the extensive reliance on an inappropriate program. As explained in David Dodds' March 30, 2016, the applicant relied extensively on a Presumptive Approach Calculator ("PAC") program designed by the City of Portland to aid in the design of storm water drainage swales. However, the manager of Portland's storm water program confirmed that the PAC program was never intended to be used in the design of ponds such as the one proposed by the applicant.

The applicant appears to have submitted a new storm water plan between the first evidentiary hearing on March 16, 2016 and the continued hearing on April 6, 2016. The differences between the original plan (which relies heavily on Portland's PAC program) and the new plan (which deletes all reference to the PAC program) are described in David Dodds' April 4, 2016 submittal submitted herewith. Again, the Planning Director stated that the approval criterion merely requires that a civil engineer submit a plan. However, it is the position of SOS Park that any submitted plan must be supported by factual data to address adverse impacts.

In this case, SOS Park submitted substantial evidence (in the form of expert testimony) that there will be adverse impacts resulting from the proposed storm water facility. The applicant never addressed mitigation measures to address these identified impacts. Furthermore, it is unclear whether the substance of either of the applicant's plans was actually reviewed or considered by the Planning Commission.

CDC 55.130 (B) requires more than a mere *submittal*. The express language of the code provision requires that the plan be supported by factual data showing that there will be no adverse impact, or if there are adverse impacts what measures are available to mitigate those impacts. Again, SOS Park's expert hydro-geologist demonstrated that there will, indeed, be offsite impacts

resulting from the current proposal, including impacts to mature Douglas firs, flooding, and potential landslides. She also suggested methods of avoiding or mitigating those impacts. However, the Planning Commission failed to look beyond the fact of mere submittal of a plan and statement in finding that CDC 55.130 (B) is satisfied. There is substantial evidence in the record to support a finding that CDC 55.130 (B) is not met; and there is no evidence in the record showing that the Planning Commission even looked beyond the fact that a civil engineer had submitted a plan. Thus, the Planning Commission erred in finding that CDC 55.130 (B) was satisfied.

**D. The Planning Commission also misconstrued the requirements of CDC 92.010 (E) in finding that mere submittal of a civil engineer’s plan and statement satisfies this approval criterion.**

CDC 92.010 (E) is substantially similar to CDC 55.130 (B) with respect to the need to address adverse impacts from increased intensity of runoff and mitigation measures. However, this standard requires consideration of increased runoff intensity from a 100-year storm event, rather than the 10-year storm event of CDC 55.130 (B). The civil engineer’s plan and statement fails to address the adverse impacts and potential mitigation measures identified by SOS Park’s hydro-geologist. The Planning Commission misconstrued CDC 92.010 (E) by finding this code provision was satisfied when there was no factual data showing an absence of adverse runoff impacts. Furthermore, there was no showing of how potential adverse runoff impacts can be mitigated.

**E. The Planning Commission misapplied 75.020 (B) in approving the requested variances for parking vehicles and bicycles.**

The Class II variance approval criteria require a finding that the proposed variance is “the minimum variance necessary to make reasonable use of the property.” 75.020 (B) (1) (a). The

Planning Commission approved a variance to allow onsite parking (including handicapped parking) to be located 540 feet from the school entrance rather than 200 feet, as required by the CDC. The Planning Commission failed to consider whether this variance was necessary to make reasonable use of the property. As Mr. Dodds pointed out,

the applicant can move the building to the west and either avoid requesting a variance altogether or greatly reduce the scope of variance for parking. There is no topographical difficulty with doing this. Nothing about the lot shape precludes it. It is merely the applicant's preference to avoid the bother and inconvenience of temporary relocation of the students. On that basis alone the level of variance isn't warranted, much less when weighed with all the other issues raised by the opponents. David Dodds' April 11, 2016 Submittal.

A copy of Mr. Dodds' April 11, 2016 full submittal is attached hereto.

The Planning Commission was also required to find that the need for the variance was not created by the applicant. CDC 75.020(B) (1) (c.) Here, the applicant's desire to build a new school in a particular location on the site does not constitute a physical constraint of the property such as size, shape or topography. The applicant has chosen a new westerly orientation, rather than the existing easterly orientation. This choice results in the "need" for a variance. Therefore, the need for the variance was, indeed, created by the applicant.

The variance which increases the distance between the school entrance and the parking area by over 2.5 times the distance allowed by the code will not meet the purpose of the 200-foot limit being modified. This is of particular concern with respect to handicapped parking because it increases the burden on handicapped individuals.

The Planning Commission approved two variances to increase the distance between the school entrance and the parking areas for vehicles and bicycles. The need for the variances was

self-imposed by opting for a westerly orientation and designing the site to accommodate this orientation. In addition, there was no evidence to show that either variance is the minimum adjustment necessary to make reasonable use of the property. Thus, the Planning Commission erred in approving both variances.

#### IV. CONCLUSION

Based on the foregoing, SOS Park respectfully requests that the City Council reverse the Planning Commission's approval of this application, as proposed.

DATED this 28<sup>th</sup> day of April, 2016.

Respectfully submitted,

REEVES, KAHN, HENNESSY & ELKINS



---

Peggy Hennessy, OSB #872505  
Attorney for Save Our Sunset Park  
and its members



To: The West Linn Planning Commission

March 15, 2016

Re: File No. CUP-15-03/DR-15-17/VAR-15-01/02/03

Proposed Sunset Primary School development application

Memoranda in opposition to proposed plan

Primary Author of Memoranda

David Dodds

18931 Old River Drive

West Linn, OR 97068

Additional signers found at end of Memorandum.

Commissioners:

The purpose of this memorandum is to state in detail the reasons why the signers oppose this specific proposal and consequently why this application should be denied. The reasons for denial will be tied directly to the relevant Community Development Code (CDC) approval and submittal requirements.

It is important to establish at the onset that the signers are not opposed to the construction of a primary school on the site, but merely to the characteristics and adverse impacts of this particular proposal. It is the sincere wish of the signers that when this proposal is denied or voluntarily withdrawn that the applicant will work directly with the neighbors and the Neighborhood Association to create a plan that can be enthusiastically supported. Furthermore, the signers believe that the dimensions of the site are more than adequate to accommodate a different school development plan that they could and would support.

In general terms there are two major objections to this application. The first is the orientation of the new building to the east and south of the site and the placement of the parking lot to the south of the new building. The second is the proposed construction of a very large water detention pond in the southern portion of the site. Objections to the pond are further divided into two issues, 1) being aesthetic i.e. that it would be a very big exposed eyesore along Bittner St. and require the removal of at least 9 significant Douglas Fir trees (see site diagram LU 2.01 ), 2) the very profound concern that the environmental and drainage impacts of such a detention facility have been insufficiently addressed or in many instances completely unaddressed by the applicant, the West Linn planning staff or the West Linn engineering staff.

The above concerns are directly related to the extreme unhappiness that a great many Sunset residents have at the prospect of seeing the 1.6 acres of the site that was formerly a part of Sunset Park and was sold to the School District in 2010 that is currently a much loved and heavily used play area transformed into part of a building, a parking lot and huge water detention pond. This unhappiness is exacerbated by the many representations over many years by the applicant that the 1.6 acres while part of the school would retain most of its park qualities. One need look no further than the explanatory statement of Ballot Measure 3-358 authorizing the Sale of the property which states in part "If approved, the terms and conditions related to the sale would include Sunset neighbors in the school planning process, and would maximize recreational opportunities while preserving significant trees at the site". Needless to say the opponents of this proposal can be forgiven for not finding a building, parking lot and storm-water detention pond a maximizing of recreational opportunities.

Before proceeding to the details an underlying assumption of this proposal needs to be addressed. That assumption is that the existing Sunset Primary School needs to remain in use while a new school is built beside it. We believe that this assumption is merely the applicants preference and should not be considered a given. In recent history there have been several instances where district students have been temporarily relocated to other facilities to accommodate new construction or remodeling. Neither the applicant nor planning staff have offered any analysis why this could not be done with this site. If this assumption is dispensed with then the new school could be oriented to the West either on or much closer to the existing school. Such a change in orientation would completely alleviate the need to remove any major fir trees along the eastern edge of the site (see applicants arborist report on page 3 and site plan map LU 2.01). A western orientation would also almost certainly erase the need for all of the requested variances (with the possible exception of the sign variance) and as a consequence be much more compliant with the intent and purpose of the CDC.

#### STORMWATER DETENTION POND:

We are extremely concerned that insufficient analysis has been done on the potential adverse impacts of the proposed pond either by the applicant, their consultants or city staff. In particular we are worried about potential significant trees loss in Sunset park down slope from the Pond, increased ground water in down slope areas bounded by the streets respectively of Long, Charman, Oak, Walden, Leonard, Riverview Ave and perhaps Oregon City Loop. Concerns in this regard include flooding or increase water damage to structures and soil instability. Structures in these areas, including the Sunset Fire Hall itself, have already suffered water infiltration damage in recent memory. Should the pond fail either due to a blockage of the overflow pipe or soil slippage due to soil saturation the result could be (with no exaggeration) truly catastrophic. There is also concern about the effect that flow from the overflow pipe would have on Sunset Creek particularly during extreme storm events. These concerns are unaddressed by either the applicant's consultant or City staff. Except for the development review engineer's initials "KQL"

on the front page of the staff report we could find no written analysis of the detention pond from the City engineering department.

Before detailing our objections to some of the assumptions and methods used to justify the detention pond, as well as providing the Commission with information not included in the applicant's report, we would like to comment on the nature of the report entitled "Preliminary Stormwater Drainage Report" (PSDR). Engineering reports that are meant to be used by decision makers and members of the public who are not engineers should be written in a narrative fashion that are relatively easy to follow where important assumptions and critical data is clearly explained. Merely referencing the name of a computer modeling program or various government reference manuals is inadequate. CDC 99.030C (2) states in part "The application shall be complete and shall contain the information requested on the form, shall address the appropriate submittal requirements and approval criteria in sufficient detail for review and action". This means sufficient for both the Planning commission and public to review.

We found this report poorly written and difficult to follow and as a consequence were forced to make a variety of assumptions in trying to interpret this report. For example on page 6 of the PSDR is the statement "The Pond will have a total volume of 9,230 cubic feet of storage above the water quality requirement". We assume that this means that the pond will hold something approximating 9,000 cf of water when full to the level of the over flow pipe. If that is the case, the pond will hold a little over 69,000 gallons (1cubic foot of water = 7.48 gallons). This is the equivalent of a swimming pool 20 feet wide, 45 feet long and 10 feet deep. It takes little imagination to picture what would happen if one were to suddenly empty such a pool down a hill. As an aside it should be mentioned that we were unable to corroborate this 9,230 cf figure from the PSDR data. Perhaps a Civil engineer could deduce this figure from the page with the heading "Presumptive Approach Calculator ver. 1.2", but such material should be presented in a format that is readily understandable to both Planning commissioner and members of the public.

Page 3 of the PSDR states "while the test results confirmed that 100% on-site infiltration is not possible, partial infiltration should be obtained by locating the facility in the vicinity of the better performing test pits". Since by applicant's consultant's own admission 100% on-site infiltration will not be possible it would have been helpful for a clear narrative explaining at what intensity or volume of rainfall would trigger discharge into the overflow pipe and hence directly into Sunset Creek (a series of graphs without narrative explanation is not particularly helpful). Nor could we find any discussion of what the hydrologic effects of a 10, 25 or 100 year storm would have on Sunset Creek.

It is important to emphasize that once the pond has reached capacity all of the water reaching the pond from the entire 2.94 acres of impervious area of school site will be fed into the overflow pipe. How this could not change the flow characteristics of Sunset Creek we do not understand. CDC 92.010E states in total "Surface drainage and storm sewer system. A registered civil engineer shall prepare a plan and statement which shall be supported by factual data that

*clearly shows that there will be no adverse impacts from increased intensity of runoff off site of a 100-year storm, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts commensurate to the particular land use application. Mitigation measures shall maintain pre-existing levels and meet build out volumes, and meet planning and engineering requirements.”* We believe that the PSDR clearly fails to meet this standard particularly as regards the 100 year storm analysis. Failure to meet CDC 92010E alone is grounds for dismissal or at the very least referral back to applicant for further analysis.

In reference to the above-cited test pits, it is very valuable to note that Carlson Geotechnical who conducted the test pit study clearly states “Because stormwater infiltration facility locations have not been determined yet, the infiltration data presented in this report should be considered preliminary. We understand additional infiltration testing may be required once the civil engineer has a more refined knowledge of where stormwater infiltration facilities will be located” (page A4 appendix A, PSDR). Two questions arise from the above statement: why was more testing not done when the location of the pond was determined, and why should the applicant, city staff, planning commission, or public rely on this data in doing the due diligence to determine the safety and efficiency of this detention pond. This is especially important given the very wide variation in test pit results for a relatively small area. If some of the ground on which the pond would be located has particularly lower infiltration rates or reaches saturation more quickly than assumed, then discharge into the overflow pipe will occur much sooner during rain storms and require much less intense storms to trigger such discharge. This is quite relevant considering that of the 6 test pits 4 had poor to awful infiltration rates (page A-3 Appendix A, PSDR). Also unmentioned is the fact that according to maps contained in the City’s own West Linn Surface Water Management Plan the soils at the site are identified as Cornelius variant silt loam and as hydric and hydric inclusion soil (page 3-5 and figures 3.7 and 3.8 Surface Water Management Plan) soils with moderate to low permeability.

A note of protest must be made that the Carlton report was not made available to the public until March 10, 2016 despite repeated requests well in advance of this date for all relevant material and in violation of city policy that the Staff report and all available documents be available 10 days prior to the first Commission hearing. It is also worth noting that these tests were conducted on June 18<sup>th</sup> and 22<sup>nd</sup> 2015 when May and June were particularly dry and hot, June 2015 breaking records for the Portland area for days above 80 (21 days) degrees, days above 90 (9 days) degrees and dryness (sixth driest June on record) The last measurable rain fall in West Linn falling on June 3<sup>rd</sup> (see article from Stuart Tomilison, Oregonian July 1, 2015 and rain gauge data from USGS web site for Sylvania campus rain gauge).

Up to this point we have focused on the impacts to Sunset Creek. Of even greater concern is what effect the pond would have on the soil, trees, buildings and soil stability down slope from the pond. Assuming that the pond works as outlined in the PSDR the pond will be infiltrating thousands of gallons an hour into the ground water down slope (we were not able to determine exact figures given difficulty of interpreting poorly explained data from PSDR). This will

indisputably be a significant change and increase in volume to the hydrology of this area. However, the potential impacts to this change are completely unaddressed by the applicant or the PSDR with the exception to the bland assurance that “No downstream impacts are anticipated” (PSDR page 6). Essentially the runoff of almost 3 acres (2.94) will be concentrated into one detention pond and except when the overflow pipe is activated all that water is expected to infiltrate into the ground at this site and yet there is no analysis as to what the effect will be on down slope groundwater? How can this possibly satisfy the approval and submittal requirements of CDC 55.130B, C and CDC 92.010E? We maintain that it clearly doesn’t. Even if the trees in Sunset Park were the only issue this would be a major concern. We estimate that a minimum of 25 significant firs in Sunset Park would be in the direct drainage path of this pond. If only half of those were killed due to root rot or blown over due to soil saturation during strong winds the character of the Park would be severely damaged.

Having covered at least somewhat the many environmental concerns associated with the detention pond, let’s turn to its visual aesthetic effect. Most detention ponds are located in natural low areas often abutting stream ways or natural drainage areas. As a consequence whatever lack of visual appeal they have is mitigated by they’re being often out of the way and at least somewhat out of sight. In contrast an open grassy play area on a gentle slope would be replaced by a huge (175 feet at its longest and 100 feet at its widest) drainage pond right out in the open facing Bittner Street. In addition, the pond would for safety reasons certainly need to be fenced (big pond, storm water surges, small children - doesn’t really need elaboration). Combine these two elements and you have a visual blight of tremendous ugliness that will daily confront not just the residents of Bittner Street but everyone who travels along it. Not to mention the 9 significant and beautiful Douglas fir trees that would be removed in the pond’s construction. We feel that this clearly runs counter to the intent of CDC60.070 which states that the plan has “*Adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses*”.

Both the environmental and aesthetic concerns can in our opinion be fully mitigated by adopting the suggestions found in the report of Malia Kupillas of Pacific Hydro-Geology, that the applicant redesign their project using a combination of permeable parking and green building design to obviate entirely the need for a detention pond.

#### VARIANCES:

To begin CDC 75.050E states “*Not more than two Class II variances may be approved for any one lot or parcel in a continuous 12-month period*”. The applicant is applying for three Class II variances (see staff report page 3 and page 34 of applicant submittal), Class II variances to CDC sections 46.070, 46.150 and 52.300. This mandatory and unambiguous criterion is clearly not met. Either the applicant can reduce the number of variances requested by withdrawing and resubmitting the application or the Commission should deny the application.

CDC 75.020B (1) c is one of the approval criteria for Class II variances and states very clearly “*The need for the variance was not created by the applicant and/or owner requesting the variance*”. We adamantly contend that all three variance requests are transparently the creation of the applicant. The applicant’s decision to build the new school adjacent to the existing school rather than demolish the old school and construct the new school with a westerly rather than easterly orientation is the applicant’s choice, not the result of physical constraints such as lot size, shape, topography. As to the sign, there is nothing in the applicant’s submittal (pages 23-24 of applicants report) to explain what is driving the need for a sign that exceeds the relevant code standard by over 100% except applicant’s desire for a large sign.

CDC 75.020B (1) a another approval criterion for Class II variances states in part “ *The variance is the minimum variance necessary to make reasonable use of the property*”. While the applicant does briefly discuss the variance requests (on page 32-34 of the applicant’s submittal) there is only the barest discussion of how the applicant might either fully comply with the code standards or at the least request variances much closer to the standards (the difference between 200ft and 540ft is quite a difference) if alternative site designs were considered. In particular there is no discussion of site designs that did not presuppose retaining the existing school during construction of a new school as a foregone conclusion. We maintain that most if not all opposition (with of course the resolution of the drainage issues) to the application would disappear if the new school was moved to a western orientation. We also strongly suspect that such a site orientation could be designed without the need for any Class II variances.

#### CONDITIONAL USE PERMIT:

As was already alluded to in the introduction and the discussion of variances one driving factor in opposition to this particular application is the east and southward orientation of the project and the proposed transformation of a beloved amenity to the residents of Bittner Street and many other Sunset residents (and even other West Linn residents) into a visual blight that will significantly and permanently reduce their quality of life and their enjoyment of this area. In the three some months that the main author of this memorandum has visited this area I have been amazed at the almost ridiculous amount of use this 1.6 acres enjoys and the level of affection the residents of sunset have towards it.

Who better to know whether something is an important community amenity, a part of its collective identity and an import additive to its quality of life then the people who live by it? It is with that consideration in mind that we think the Commission should look at whether the application meets the requirements of CDC 60.070A (1) b “*adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses*”. With a western orientation we believe that this criterion can be easily met. On the other hand the current proposal fails to meet it and fails badly. The applicant may believe this is an example of design excellence, we politely but emphatically disagree.

CONCLUSION:

Regarding the storm water detention pond, if only a small part of the concerns raised by this memorandum as well as those of Malia Kupillas, Peggy Hennessy and others come to fruition then this pond will be a major problem. If the more severe problems manifest themselves the consequences would be too unpleasant to want to contemplate. In either case remedies would range from the difficult and expensive to the ridiculously difficult and hideously expensive.

Appendix C of the PSDR is a document entitled Preliminary Operation and Maintenance Plan. On page 6 of that plan is the optimistic statement that “the preparer has worked closely with personnel to design a system that be easily maintained by maintenance staff”. Unfortunately almost everything about the rest of this document belies that rosy assessment. Page 4-5 lists numerous maintenance requirements and a page entitled “Simplified O&M Specifications” listing even more maintenance requirements. On page 4 is the requirement that the facility has to be inspected within 48 hour of every rain event in which an inch of rain falls in 24 hours. In 2015 this happened on 8 separate occasions (USGS Sylvania Campus rain gauge, 3 of these were for .99, .96 and .96, others were 2.15, 1.59, 2.41, 2.02 and 1.76. Also on page 4 is this helpful warning: “All components of the system as described above must be inspected and maintained frequently or they will cease to function effectively”.

We included the above paragraph because it highlights a central premise about this pond plan, that it seems to us to have been devised as a direct challenge to Murphy’s Law. The applicant has to be right about this detention pond all the time, we only have to be right about it once. And CDC 55.130B, C and 92.010E lie on the side of protection from adverse off-site impacts

After a careful review of the concerns that have been raised and the various ways in which we believe that this application has failed to meet vitally important approval criteria, we urge the Planning Commission to deny this application; or the Planning Commission could allow the applicant to withdraw the proposal provided that there is a firm commitment from the applicant to work with the neighbors and Neighborhood Association to create a mutually acceptable plan.

Sincerely,

---

David Dodds

BEFORE THE PLANNING COMMISSION  
FOR THE CITY OF WEST LINN, OREGON

In the Matter of WEST LINN-WILSONVILLE ) FILE NOS: CUP-15-03, DR-15-17, and  
SCHOOL DISTRICT 3JT's Application for ) VAR-15-01/02/03  
Conditional Use, Design Review, Director's )  
Exception, and Class II Variance Approval to ) SAVE OUR SUNSET PARK'S  
allow construction of a new primary school ) MEMORANDUM IN OPPOSITION  
and related facilities in the R-10 zone. )

---

**I. INTRODUCTION**

This memorandum is filed on behalf of Save Our Sunset Park (“SOS Park”), which is comprised of a group of West Linn residents who live near Sunset Primary School and Sunset Park. The members of SOS Park are not opposed to replacement of the Sunset Primary School. However, they are opposed to the relocation of the school building to the area where the current playground and former portion of Sunset Park are located. If the new building was reconstructed in the footprint of the existing school, the adverse impacts, including potential flooding, threats to Douglas Fir trees, and increased risk of landslides could be minimized or avoided. In addition, there would be no need for the Director’s Exceptions or all of the requested Class II Variances, which by definition, are inconsistent with the City’s development code. Accordingly, SOS Park respectfully requests that this application, as proposed, be denied. Or, in the alternative, approval should be conditioned upon constructing the new school building on the approximate footprint of the existing building, elimination of the proposed storm water infiltration pond (“SWIP”), and reduction in the amount of impervious surfaces to address the offsite drainage issues, including adverse impacts on mature Douglas Fir trees, flooding, and potential landslides .



## **II. PRELIMINARY MATTERS**

### **A. Postponement of Public Hearing**

The March 16, 2016 public hearing should be postponed because the Carlson Report, which is part of the Staff Report, was not available to the public until March 11, 2016 – less than seven days before the hearing. Members of SOS Park have been monitoring the Sunset Primary School application. The partial Staff Report was available at least seven days prior to the initial evidentiary hearing; however, the available version was incomplete because it failed to include the Carlson Geotechnical infiltration testing results ("Carlson Report"). This information is important because SOS Park has significant concerns regarding offsite impacts of storm water drainage and had hired Milia Kupillas, an expert hydro-geologist with Pacific Hydro-Geology, Inc., to review the proposal and analyze the impacts.

On March 3, 2016, a member of SOS Park made a specific request for information regarding the location of the infiltration test pits, but was told by the City Planner that if it was not in the application, the City does not have it. A week later, on March 10, 2016, the same person made a second request for the Carlson Report and the same City Planner located the 6-page Carlson Report and arranged for an electronic version to be emailed to the SOS Park member on March 11, 2016 – five days before the public hearing. Prior to March 11, 2016, the Carlson Report was not available to the public.

The Carlson Report was listed as Appendix A to the Preliminary Stormwater Drainage Report (at page 174 of the Staff Report), but the reference was followed by a blank page. The Applicant submitted the Preliminary Stormwater Drainage Report as Exhibit F to the Sunset

Primary School application, and the Staff Report incorporated the application, as indicated in the table of contents.

ORS 197.763(4) (a) provides that

[a]ll documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.

Due to the previous unavailability of the Carlson Report, SOS Park made a formal request for postponement of the hearing to allow sufficient time to address the Applicant's evidence. Assistant City Attorney Megan Thornton stated that the Carlson Report "was not submitted to the Planning Department as part of the application by the applicant; therefore, it was not relied upon by the applicant." However, it was clearly part of the application – the Carlson Report was Appendix A to Exhibit F of the Sunset Primary School Application.

Ms. Thornton also states "planning staff did not require the Carlson Report to deem the application complete, nor did staff rely on the Carlson Report to determine that the application met any of the approval criteria in the staff report." The information in the Carlson Report relates to offsite impacts of storm water which is relevant to compliance with CDC 55.130 (B) as well as 92.010 (E), both of which are mandatory approval criteria for this application.

ORS 197.763 (4) requires that all documents upon which the applicant relies be made available to the public, and that the staff report be available at least seven days prior to the public hearing. Not only is the Carlson Report relevant evidence relied upon by the applicant, but it was specifically made part of the Staff Report. The table of contents for the Staff Report includes, "[EXHIBIT] PC-3 APPLICANT'S SUBMITTAL . . . . 61-225." The Carlson Report is referenced at page 174. Accordingly, the entire Staff Report, including the Carlson Report, should

have been – but was not - available seven days prior to the public hearing. Therefore, the initial evidentiary hearing should have been postponed to allow the parties sufficient time to review and analyze the omitted information.

It is not sufficient to allow a continuance after the initial public hearing has been opened because SOS Park has already been denied the opportunity to prepare adequately for the initial hearing. SOS Park has hired its own expert hydro-geologist, Malia Kupillas, to review and analyze the project, as proposed. The untimely disclosure of the Carlson Report has resulted in substantial prejudice to the members of SOS Park because the applicant's entire submittal (which was part of the Staff Report) was not available a full seven days prior to the hearing.

**B. Continuance**

If the Planning Commission proceeds with the public hearing on March 16, 2016, SOS Park requests a formal continuance of the hearing, as allowed by ORS 197.763 (4) (b) and 197.763 (6), to provide a reasonable opportunity to respond to new information, including but not limited to the Carlson Report regarding infiltration testing.

**C. Open Record**

In any event, at a minimum, if the Planning Commission chooses not to continue the hearing, then pursuant to ORS 197.763 (4) (b) and (6), SOS Park hereby requests that the record remain open for a period of at least fourteen (14) days to provide an adequate opportunity to respond to the information presented at the public hearing.

### III. ARGUMENT

#### **A. Purpose of Conditional Use Review**

The purpose of conditional use review is to provide standards and procedures under which conditional uses may be permitted, enlarged, or altered if the site is appropriate and if other conditions can be met. CDC Section 60.010. Schools are allowed as conditional uses in the R-10 zone, but the site must be appropriate for the proposed design and adverse impacts on surrounding properties should be mitigated.

Here, the applicant proposes to alter the site in a manner that will adversely affect the surrounding residential and park properties, including impacts on Douglas Fir trees, increased flooding during storm events, potential landslides, and increased residential intrusion. These adverse impacts could be minimized or avoided by reconstructing the school buildings on the approximate footprint of the existing building, eliminating the storm water infiltration pond (“SWIP”), creating pervious parking areas, creating rain gardens around the new buildings and allowing storm water from impervious surfaces to be evenly distributed across the site.

#### **B. Approval Criteria**

CDC 60.070 sets forth the primary approval criteria for conditional uses. The burden of proof is on the Applicant to show compliance with each applicable criterion and failure to meet a single mandatory approval standard requires denial.

- 1. CDC Section 60.070 (1) (b) requires that the site size and dimensions provide adequate area for the needs of the school and aesthetic design treatment to mitigate any possible adverse effect on surrounding properties.**

Under the Applicant's proposed plan (locating a new building on the former playground and a portion of Sunset Park), the size and dimensions of the site are not adequate, as evidenced by the requested Director's Exception to reduce the setback requirement. In addition, the orientation of the proposed multi-story building will clearly intrude upon the privacy currently enjoyed by the residents of the single family homes located directly across a narrow street, with no buffer between the uses.

Construction of the new building in the approximate location of the old footprint would mitigate this significant intrusion on surrounding properties. The existing building is set back from the residential street and the existing single family homes. Moreover, it is buffered by open space and parking areas. Furthermore, construction of the new building on the old footprint will not require Director's Exceptions to the setback requirements, so it would be more consistent with the West Linn Community Development Code.

Because construction of the new school in the approximate location old footprint would mitigate some of the adverse impacts on surrounding uses while meeting the needs of the school, the Applicant's proposed location and current aesthetic design fail to meet the requirements of CDC 60.070 (1) (b).

**2. CDC Section 60.070 (2) requires that the characteristics of the site be suitable for the proposed use considering size, shape, location, topography, and natural features.**

The Applicant has failed to carry its burden to show compliance with CDC 60.070 (2). While the site may be generally appropriate for use as a primary school, the proposed location of the development on the site is not suitable because the new school building and storm water infiltration pond would be constructed where the current playground and a portion of Sunset Park

are located. This plan will result in significant adverse impacts, onsite and offsite, as a result of redirecting the storm water.

Based on review of the current Application, SOS Park's expert hydro-geologist, Malia Kupillas, concluded that the proposed configuration of the new primary school and SWIP will have the following impacts caused by concentrating all of the surface water into one small area for infiltration:

1. The amount of water that flows downgradient will increase and impact 14 trees within the area north of the bird houses/property line and a minimum of 6 Douglas Fir trees in the park, for a minimum of 20 trees. The Douglas fir trees will be more susceptible to disease or blow down, because the soils will be wetter around their roots. Douglas fir trees do not like wet roots.
2. The overflow from the SWIP will increase flooding and shorten the travel time for water to reach Sunset Creek during large storm events.
3. The back yards of the nearby homes, adjacent to the park on the east, will become wetter with potential flooding if the houses have basements and potentially trigger shallow landslides.
4. Existing shallow landslide areas will be more susceptible to reactivation.
5. Other areas down-slope of where the water from the SWIP flows on top of the bedrock may develop shallow landslides.

A copy of Pacific Hydro-Geology, Inc.'s March 15, 2016 Analysis is attached as Exhibit

1. The (location) of the onsite development results in adverse impacts on existing trees (natural features) and slope of the property (topography) which dictates its drainage patterns render the site unsuitable for the proposed plan. The Applicant plans to relocate the school building, create more impervious surfaces, and construct a SWIP which threatens the existing trees and creates a greater risk of floods and landslides. Therefore, CDC 60.070 (2) is not met.

Page 7 – SAVE OUR SUNSET PARK'S MEMORANDUM IN OPPOSITION

3. **CDC Section 60.070 (3) requires a finding that approval will result in provision of a facility that is consistent with the overall needs of the community.**

While a new school may be consistent with the overall needs of this community, approval of this application, as proposed, will be adverse to the needs of the community because it will put mature Douglas Fir trees at risk – onsite and offsite. In addition, it will increase flooding and the potential for landslides.

If the new school building was built in the same approximate location as the old building, if a pervious parking area was installed, and if storm water was evenly distributed across the site, the new school building would be much more consistent with the overall needs of the community. SOS Park's expert hydro-geologist has recommended that impervious surfaces should be minimized by creating pervious parking areas. She also suggests that storm water from impervious surfaces should be evenly distributed across the site, rather than concentrated in an infiltration pond. Again, SOS Park is not opposed to construction of a new school. However, the members of SOS Park believe the project can be accomplished by reconstruction of the building in the same location, creation of pervious parking areas, and distribution of storm water across the entire site. Accordingly, the proposal does not satisfy the requirements of CDC 60.070 (3) because it is not consistent with the overall needs of the community.

4. **CDC 60.070 (6) requires satisfaction of the provisions of chapter 55 of the CDC as a conditional use approval criterion and the Applicant has failed to meet the requirements of CDC 55.130 (B).**

CDC 55.130 (B) requires that a registered civil engineer prepare a plan and statement that is supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site, or identify all off-site impacts and measures to mitigate those impacts.

The plan and statement shall, at a minimum, determine the off-site impacts from a 10-year storm. This is a mandatory approval standard and neither the Applicant nor Staff address it as such. Furthermore, as SOS Park's expert hydro-geologist has demonstrated, there will, indeed, be off-site impacts resulting from the current proposal, including impacts to mature Douglas Firs, flooding, and potential landslides. The hydro-geologist has also identified ways to avoid or mitigate those impacts, but none are proposed. The applicant has not submitted a plan or supported statement determining the off-site impacts from a 10-year storm. Because the Applicant has not demonstrated compliance with this mandatory approval criterion, the application, as proposed should be denied.

**5. The Application, as proposed, fails to meet the requirements of CDC 92.010 (E).**

CDC 92.010 lists the public improvements required for all developments and the Staff Report does include chapter 92, generally, as an applicable approval criterion for this application. 92.010 (E) requires that a registered civil engineer prepare a plan and statement which shall be supported by factual data clearly showing that there will be no adverse impacts from increased intensity of runoff off site of a 100-year storm, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts commensurate to the particular land use application. Mitigation measures shall maintain pre-existing levels and meet build out volumes, and meet planning and engineering requirements.

Staff has determined compliance with this standard based on the following finding:

**Staff Finding 136:**

The applicant has submitted a Preliminary Stormwater Report that complies with City of West Linn Public Works Standards. The applicant shall install improvements to meet the Standards per Condition of Approval 2, including the



proposed stormwater facility and overflow pipe the length of Bittner Street to connect at the existing infrastructure at Long Street. Subject to the Conditions of Approval, this criterion is met.

Staff appears to find that this standard can be met by installation of the stormwater facility and overflow pipe. However, there is no evidence to support a finding that there will be no adverse offsite impacts. Because no adverse impacts have been identified, there are no measures to mitigate those impacts which have been identified by a civil engineer. Rather the engineer's report merely concludes that "no downstream impacts are anticipated." Staff Report at 162. This statement is not supported by substantial evidence. As discussed above, SOS Park's expert hydro-geologist has shown that there will be adverse downstream impacts, including impacts to mature Douglas Firs, flooding, and potential landslides. Moreover, she has identified measures which could mitigate those impacts by redesigning the project.

The Applicant cannot meet this standard without addressing the increased intensity of offsite runoff from a 100-year storm. Therefore, this standard is not met.

**6. CDC 75.050 (E) restricts the total number of Class II Variances to no more than two per year.**

CDC 75.050 (E) provides:

Not more than two Class II variances may be approved for any one lot or parcel in a continuous 12-month period.

The Applicant has requested three Class II Variances at the same time. The City cannot approve more than two without violating CDC 75.050 (E). Therefore, the application, as proposed, should be denied.

#### **IV. PROPOSED CONDITIONS**

SOS Park does not support approval of this conditional use application, as proposed; however, if approved, SOS Park respectfully requests the imposition of the following conditions as mitigation measures to address the adverse impacts identified above and supported by the attached hydro-geological analysis, including but not limited to threats to mature Douglas Fir trees, increased potential flooding, potential landslides, and negative impacts on surrounding residential properties.

1. Applicant shall construct the new school building in the approximate location of the footprint of the existing school building.
2. Applicant shall eliminate the Storm Water Infiltration Pond and allow the storm water to disburse through the entire site.
3. Applicant shall construct the parking area with permeable material.
4. Applicant shall install rain gardens around the new buildings.

#### **V. CONCLUSION**

Because the entire Staff Report, including the Carlson Report, was not available seven days prior to the hearing, SOS Park respectfully requests that the hearing be postponed to allow additional time for the public to review and analyze the proposal. Alternatively, if the hearing does proceed, SOS Park requests a continuance pursuant to ORS 197.763 (6). Or, if both of these requests are denied, SOS Park requests that the record remain open for a minimum of fourteen (14) days.

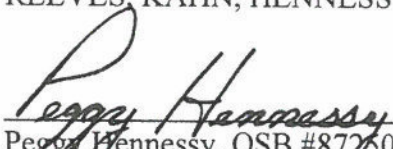
Alternatively, because the proposed conditions are necessary to achieve compliance with mandatory approval criteria, SOS Park respectfully requests that approval of this project be specifically conditioned upon the following conditions:

1. Applicant shall construct the new school building in the approximate location of the footprint of the existing school building.
2. Applicant shall eliminate the Storm Water Infiltration Pond and allow the storm water to disburse through the entire site.
3. Applicant shall construct the parking area with permeable material.
4. Applicant shall install rain gardens around the new buildings.

DATED this 16<sup>th</sup> day of March, 2016.

Respectfully submitted,

REEVES, KAHN, HENNESSY & ELKINS



\_\_\_\_\_  
Peggy Hennessy, OSB #872605

Attorney for the Save Our Sunset Park

*Pacific Hydro-Geology Inc.*

18487 S. Valley Vista Rd.  
Mulino, OR 97042  
(503) 632-5016

March 15, 2016

City of West Linn Planning Commission  
22500 Salamo Road #1000  
West Linn, OR 97068

RE: File CUP-15-03/DR-15-17/VAR-15-01/02/03. New Sunset Primary School and impacts to Sunset Park and downgradient property.

To City of West Linn Planning Commissioners:

The school district is planning on building a new primary school where the current playground and a portion of Sunset Park are located. The existing school facility will then be torn down and additional parking built where the school is currently located. The majority, if not all, of the runoff from precipitation on the all impervious surfaces is to be directed to a storm water infiltration pond (SWIP) located on the existing playground at Sunset Park and north of the birdhouses. It should be noted that this proposed new development increases the amount of impervious surfaces because there will be more parking spaces. The SWIP will hold 9,230 cubic feet (69,040 gallons) of water with overflow to a new public storm main on Bittner Street that discharges into Sunset Creek. Infiltration may occur at rates ranging from 1.5 to 12 inches per hour based on the design infiltration rate and observed infiltration rates from 6 infiltration tests.

On March 3, 2016, Malia Kupillas from Pacific Hydro-Geology (PHG) visited the park and made observations that will be discussed under the section titled "Site Visit." Malia also made a video that will be presented by Noelle Bledy. Malia's qualifications are enclosed with this letter. Malia has also reviewed the Preliminary Storm Water Report, building plans, West Linn Storm Water Management Plan, and other relevant planning, geologic and soils reports. This report also presents data not found in those reports that needs to be considered as a part of the planning process.

PHG has concluded, based on the above information, that the proposed configuration of the new primary school and SWIP will have the following impacts caused by concentrating all of the surface water into one small area for infiltration:

- The amount of water that flows downgradient will increase and impact 14 trees within the area north of the bird houses/property line and a minimum of 6 Douglas fir trees in the park, for a minimum of 20 trees. The Douglas fir trees will be more susceptible to disease or blow down, because the soils will be wetter around their roots. Douglas fir trees do not like wet roots.
- The overflow from the SWIP will increase flooding and shorten the travel time for water to reach Sunset Creek during large storm events.
- The backyards of the nearby homes, adjacent to the park on the east, will become wetter with potential flooding if the houses have basements and potentially trigger shallow landslides.
- Existing shallow landslide areas will be more susceptible to reactivation. See Figures 1 and 2 and section titled "Shallow and Deep Landslide Potential" for additional discussion of landslides.
- Other areas downslope of where the water from the SWIP flows on top of the bedrock may develop shallow landslides.

**Site Visit:**

On March 3, 2016, Malia Kupillas from PHG visited the park and made the following observations:

First, the topography of the park forms a gentle swale from northwest to southeast. Photo 1 shows this swale and the steepness of the slope looking northwest towards the proposed SWIP pond. The majority of the water from the SWIP will follow the slope of the topography and flow to the east or southeast towards areas that have been mapped as intermediate risk for shallow landslides (See section titled "Shallow and Deep Landslide Potential" for additional discussion of landslides).



Photo 1: Looking northwest from near Long St. and the tennis/basketball courts.

Second, many of the Douglas fir trees in the park have buttressed tree roots, which indicate steep and/or wet slopes. Wet slopes are consistent with the hydric soils shown on Figure 3.8 of the West Linn Surface Water Management Plan, 2006. These buttressed tree roots can be seen in Photo 1 above and Photos 2 and 3 below.

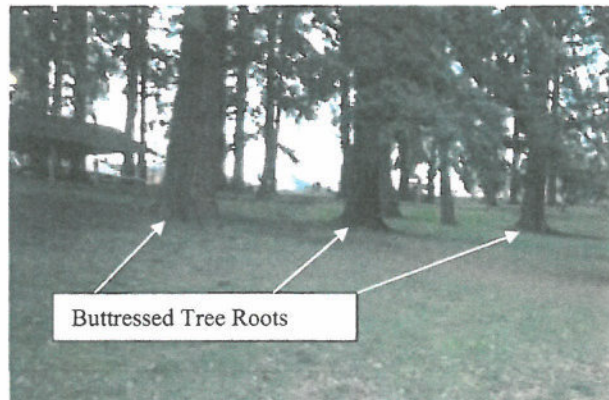
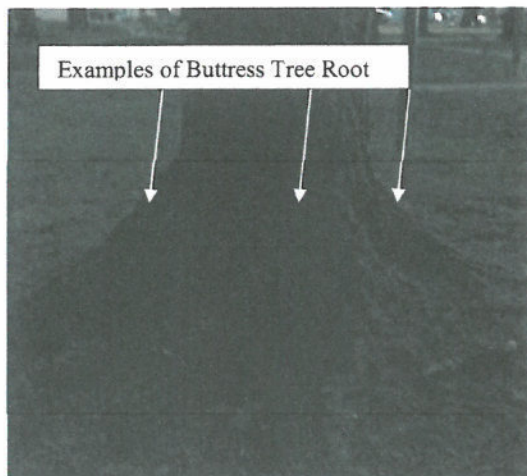


Photo 2 (left). Buttressed roots on Douglas fir (tree number 4446) in park.  
Photo 3 (right). Three Douglas fir trees with buttressed roots.

Third, just the filling of the wading pool has changed the hydrology of the site and created areas with saturated soils days after rain. Infiltrating storm water from the pond will increase the amount of saturated of soils. Photo 4 shows areas of saturated soils below the filled wading pool. Photo 5 shows a close-up the saturated soils.



Photo 4. View looking south from the former wading pool towards the playground. The areas of saturated soils can be seen more easily in the playground area where storm water will try to infiltrate.



Photo 5. View of saturated soils more visible in the playground area. The Douglas fir trees below the playground have buttressed roots.

Fourth, the current plan (Storm Water Drainage Report, January 2016) is to pipe excess water from the pond directly to Sunset Creek at a time when surface water flow will be at its maximum. This will increase

the peak flow level and flooding of properties adjacent to Sunset Creek, which does not meet the West Linn Storm Water Plan Goals (2006) on Pages 2-5 and 2-6 of not influencing the hydrograph of the watershed and prevent new development from increasing the flood threat. In addition, moving all or the majority of the storm water runoff to an infiltration pond will also significantly alter the timing, volume and path the storm water will take to reach the Willamette River through the McLean watershed.

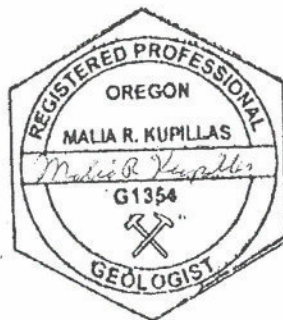
**Land Use Planning Codes:**

PHG has reviewed Community Development Code 92.010E, and Chapter 55.130B,C (design review) and found that the applicant has not fulfilled all the analyses required for offsite impacts.

**Shallow and Deep Landslide Potential:**

The Department of Geology and Mineral Industries (DOGAMI) has mapped this area using Lidar to evaluate landslide hazards and risks and published the information in 2013 as Open-File Report O-13-08 by Burns, Mickelson, Jones, Pickner, Hughes, and Skeeter. This report and corresponding plates are available from DOGAMI's website under publications. The primary school and park are both shown on Plates 45 and 46 of the report for shallow and deep landslides. The areas east of the park where the infiltrated water will flow are shown on Plates 51 and 52. Figure 1 shows an enlarged area of Plates 45 and 51 combined to provide a better picture of where the existing and/or moderate risk for shallow landslides have been mapped, and Figure 2 combines Plates 46 and 52 for the deep landslides. Both of these figures show there are areas nearby or adjacent to the park at intermediate risk for landslides with the current hydrology. Thus, this is an area where it is not good to concentrate storm water into a single area and increase the amount of impervious surface. This is an area where unstable slopes should be avoided and the existing hydrology should be maintained, which is consistent with the West Linn Storm Water Management Plan. Goal 7 should also apply here with areas adjoining the park that are subject to the natural disaster of landslides. Therefore, impervious surfaces should be minimized by creating pervious parking areas, and storm water from impervious surfaces should be evenly distributed across the site. We recommend that the applicant adopt other viable alternatives that would minimize the risks from adverse impacts to the park and adjacent residents. We suggest rain gardens around the buildings, combined with permeable parking, will eliminate the need for the SWIP and maintain current hydrology. These viable alternatives would be more consistent with meeting the requirements of the West Linn Storm Water Management Plan, Community Development Code 92.010E, and Chapter 55.130B,C (design review).

Sincerely,



Malia R. Kupillas, R.G., C.W.R.E.

*Expiration Date 5/31/2016*

Enclosures: Figure 1. Site Location Map and Shallow Landslide Risk  
Figure 2. Site Location Map and Deep Landslide Risk  
Statement of Qualifications

**MALIA ROSNER KUPILLAS, R.G., C.W.R.E.**  
*Pacific Hydro-Geology Inc.*

**PROFESSIONAL REGISTRATIONS:**

Licensed Hydrogeologist, Washington (914) - 2002  
Certified Water Rights Examiner, Oregon (60772WRE) - 1999  
Registered Professional Geologist, Oregon (G1354) - 1993

**PROFESSIONAL COMMITTEES:**

Served six years on the State of Oregon's Ground Water Advisory Committee and was chair for two years  
Oregon Water Resources Department Rules Advisory Committee for Well Construction  
Oregon Geology Map Advisory Committee

**PROFESSIONAL HISTORY:**

Pacific Hydro-Geology Inc., President, 5/1994 to Present  
ATEC Associates, Inc., Staff Scientist, 5/1994 to 2/1995  
Landau Associates, Inc., Senior Staff Hydrogeologist, 8/1988 to 2/1994  
Kansas Geological Survey, Groundwater Section, Research Assistant, 9/1986 to 6/1988  
Ground Water Associates, Subcontractor, June 1986

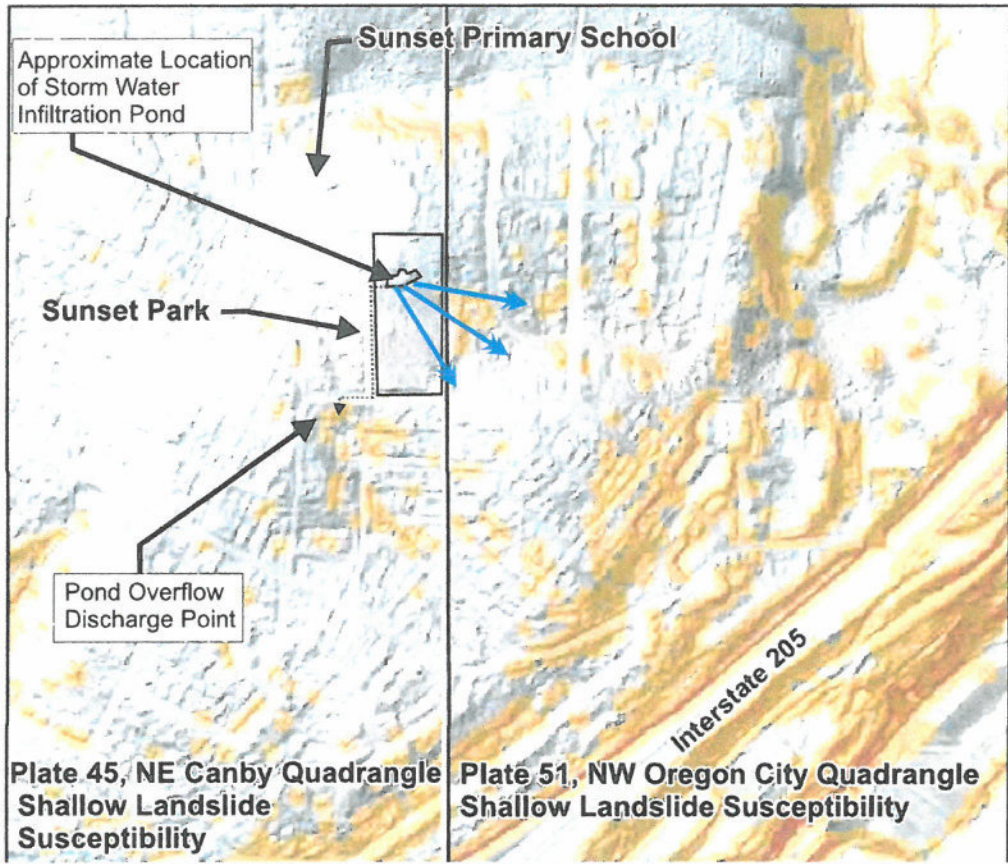
**ACADEMIC/TRAINING HISTORY:**

Certified Water Rights Examiner Workshop, Sponsored by the Oregon Water Resources Department - Fall, 2003 through 2016  
Wetland Sedges, Grasses, and Rushes, Portland State University - 2000  
Wetland Mitigation, Construction, and Installation, Portland State University - 2000  
Native Plant Identification and Use, Oregon State Extension Service, Tree School - 1999  
Rare Plant Identification and Habitat, Oregon State Extension Service, Tree School - 1999  
How to Evaluate Wetland Functions for Wetland Planning Workshop, Society of Wetland Scientists - 1997  
DEQ Certificate of Training for Wellhead Protection Plan - 1996  
Basic Wetland Delineation Training Course, Portland State University - 1996  
Managing Forest Riparian Areas, Field Exercise, Oregon State University Extension Service - 1996  
Managing Your Woodlands, Oregon State University Extension Service - 1995  
Protecting Stream Corridors Workshop - Oregon State University Extension Service - 1995  
DEQ Soil Matrix Cleanup License, Oregon (14262) - 1994 to 1996  
Behavior of Dissolved Organic Contaminants in Groundwater, University of Waterloo - 1992  
OSHA Training  
    OSHA 8-Hour Refresher Course - 2016  
    OSHA 8-Hour Hazardous Waste Supervisor Training - 1990  
    OSHA 40-Hour Hazardous Waste Training - 1988  
M.S. in Geology (Hydrogeology), University of Kansas, Lawrence, Kansas - 1988  
    Thesis: Stratigraphy of the Quaternary Alluvium in the Great Bend Prairie, Kansas.  
B.S. in Geology (minor in mathematics), Wichita State University, Wichita, Kansas - 1986

**PUBLISHED WORKS:**

*Geology near Blue Lake County Park, Eastern Multnomah County, Oregon.* Oregon Geology, 1993. Bet, J. N. and Rosner, M. L. (Describes and maps the subsurface stratigraphy in east Multnomah County).



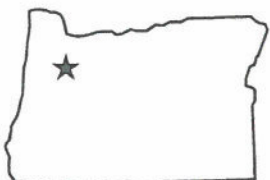


Contributing Factors *	Final Hazard Zone		
	High	Moderate	Low
① Factor of Safety (FOS)	less than 1.25	1.25 - 1.5	greater than 1.5
② Landslide Deposits & Head Scarps (Shallow)	included	—	—
③ Buffers	2H:1V (head scarps)	2H:1V (FOS less than 1.5)	—

Direction of surface and subsurface flow



Scale: Enlarged from a scale of 1:8,000 to 1:773



Source: Landslide Hazard and Risk Study of Northwestern Clackamas County, Oregon. State of Oregon Oregon Department of Geology and Mineral Industries, Open-File Report O-13\_08, Plates 45 and 51.

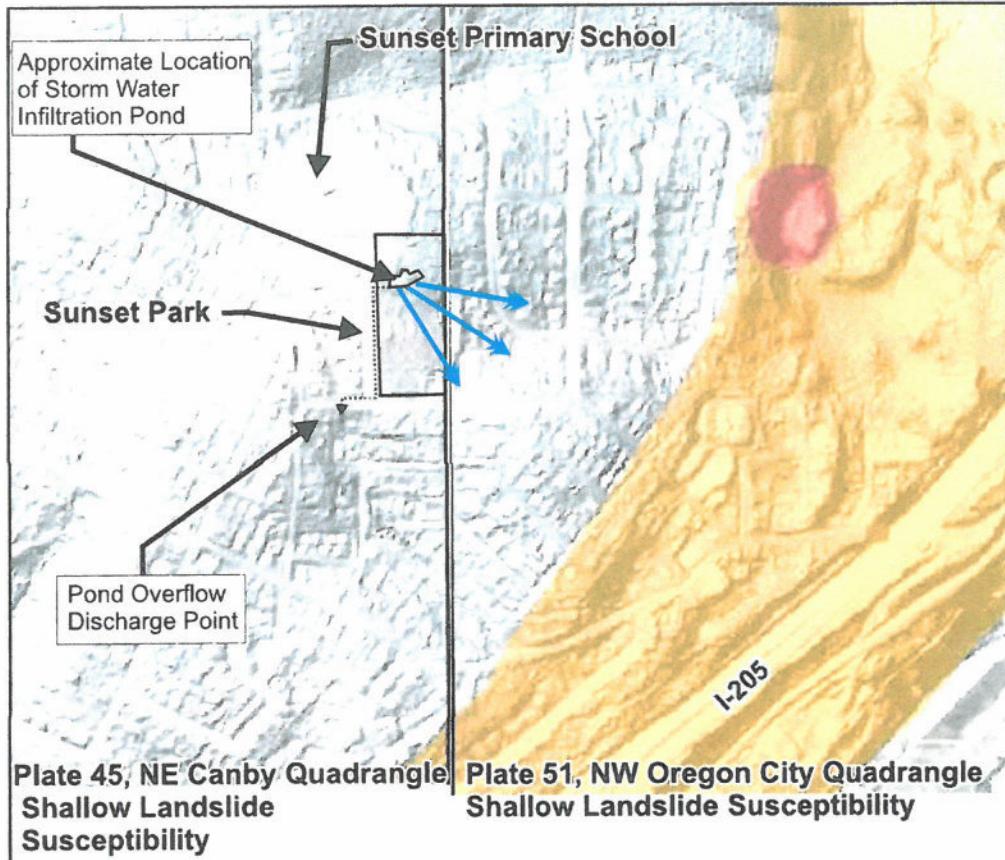
**Figure 1. Site Location Map and Shallow Landslide Risk**

Proposed Sunset Primary School  
Storm Water Infiltration Pond

Pacific Hydro-Geology Inc.

03/2016

SunsetParkFig1Topo.cdr

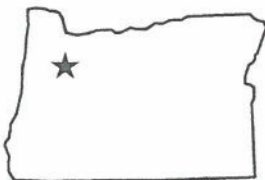


Contributing Factors *	Final Hazard Zone		
	High	Moderate	Low
① Factor of Safety (FOS)	less than 1.25	1.25 - 1.5	greater than 1.5
② Landslide Deposits & Head Scarps (Shallow)	included	—	—
③ Buffers	2H:1V (head scarps)	2H:1V (FOS less than 1.5)	—

Direction of surface and subsurface flow



Scale: Enlarged from a scale of 1:8,000 to 1:773



Source: Landslide Hazard and Risk Study of Northwestern Clackamas County, Oregon. State of Oregon Oregon Department of Geology and Mineral Industries, Open-File Report O-13\_08, Plates 45 and 51.

Figure 1. Site Location Map and Deep Landslide Risk

Proposed Sunset Primary School Storm Water Infiltration Pond

Pacific Hydro-Geology Inc.

03/2016

SunsetParkFig1Topo.cdr

**MALIA ROSNER KUPILLAS, R.G., C.W.R.E.**  
*Pacific Hydro-Geology Inc.*

**PROFESSIONAL REGISTRATIONS:**

Licensed Hydrogeologist, Washington (914) - 2002  
Certified Water Rights Examiner, Oregon (60772WRE) - 1999  
Registered Professional Geologist, Oregon (G1354) - 1993

**PROFESSIONAL COMMITTEES:**

Served six years on the State of Oregon's Ground Water Advisory Committee and was chair for two years  
Oregon Water Resources Department Rules Advisory Committee for Well Construction  
Oregon Geology Map Advisory Committee

**PROFESSIONAL HISTORY:**

Pacific Hydro-Geology Inc., President, 5/1994 to Present  
ATEC Associates, Inc., Staff Scientist, 5/1994 to 2/1995  
Landau Associates, Inc., Senior Staff Hydrogeologist, 8/1988 to 2/1994  
Kansas Geological Survey, Groundwater Section, Research Assistant, 9/1986 to 6/1988  
Ground Water Associates, Subcontractor, June 1986

**ACADEMIC/TRAINING HISTORY:**

Certified Water Rights Examiner Workshop, Sponsored by the Oregon Water Resources Department - Fall, 2003 through 2016  
Wetland Sedges, Grasses, and Rushes, Portland State University - 2000  
Wetland Mitigation, Construction, and Installation, Portland State University - 2000  
Native Plant Identification and Use, Oregon State Extension Service, Tree School - 1999  
Rare Plant Identification and Habitat, Oregon State Extension Service, Tree School - 1999  
How to Evaluate Wetland Functions for Wetland Planning Workshop, Society of Wetland Scientists - 1997  
DEQ Certificate of Training for Wellhead Protection Plan - 1996  
Basic Wetland Delineation Training Course, Portland State University - 1996  
Managing Forest Riparian Areas, Field Exercise, Oregon State University Extension Service - 1996  
Managing Your Woodlands, Oregon State University Extension Service - 1995  
Protecting Stream Corridors Workshop - Oregon State University Extension Service - 1995  
DEQ Soil Matrix Cleanup License, Oregon (14262) - 1994 to 1996  
Behavior of Dissolved Organic Contaminants in Groundwater, University of Waterloo - 1992  
OSHA Training  
    OSHA 8-Hour Refresher Course - 2016  
    OSHA 8-Hour Hazardous Waste Supervisor Training - 1990  
    OSHA 40-Hour Hazardous Waste Training - 1988  
M.S. in Geology (Hydrogeology), University of Kansas, Lawrence, Kansas - 1988  
    Thesis: Stratigraphy of the Quaternary Alluvium in the Great Bend Prairie, Kansas.  
B.S. in Geology (minor in mathematics), Wichita State University, Wichita, Kansas - 1986

**PUBLISHED WORKS:**

*Geology near Blue Lake County Park, Eastern Multnomah County, Oregon.* Oregon Geology. 1993. Bet, J. N. and Rosner, M. L. (Describes and maps the subsurface stratigraphy in east Multnomah County).

To: The West Linn Planning Commission

March 30, 2016

Re: File No. CUP-15-03/DR-15-17/VAR-15-01/02/03

Proposed Sunset Primary School development application

Memorandum concerning Preliminary Stormwater Drainage Report

David Dodds

18931 Old River Drive

West Linn, OR 97068

Commissioners:

In an earlier memorandum I had addressed numerous concerns regarding the applicant's Preliminary Stormwater Drainage Report (PSDR). This memorandum contains entirely new information and is not a repetition of previously covered issues. In the prior memorandum I had stated that I found the PSDR poorly written and difficult to understand. In particular I had difficulty with understanding various assumptions found in the Presumptive Approach Calculator (PAC).

The Presumptive Approach Calculator (PAC) is a computer program designed by the City of Portland to aid in designing stormwater drainage swales. The PSDR cites the PAC on six separate occasions as justification for the design specifications found in the PSDR. To quote: *"This is achieved by the Presumptive Approach Calculation (PAC)", "Water Quality will be calculated using the City of Portland Presumptive Approach Calculator(PAC)", " The calculations were executed with ... City of Portland's PAC Calculator" , "The proposed pond has been designed using the City of Portland Presumptive Approach Calculator (See Appendix A)", "This rate is incorporated into the water quality PAC calculation", " This determination is supported by the PAC"* (pages 3,4,5 and 6 of PSDR).

In light of the importance that the PAC has in the PSDR, and my difficulty in reconciling various numbers found in appendix A, I decided to investigate further. I contacted the City of Portland Bureau of Environmental Services where I was directed to Ms. Amber Clayton, who is the Program Manager for the Stormwater Management Manual. Ms. Clayton is directly responsible for oversight of the Presumptive Approach Calculator (PAC). I was not frankly expecting the conversation to take the direction that it did.

No sooner did I start describing the situation with the PSDR when Ms. Clayton stopped me and told me that the PAC is not intended to design or justify the design of ponds. She was very clear and unequivocal in her statement that the PAC is intended for designing swales not detention

ponds. She said that the City of Portland does not allow the PAC to be used for ponds in Portland. She said that ponds are much more complicated than swales and Portland requires that any proposed ponds in their jurisdiction must be fully and independently engineered. When I described the size and volume of the pond outlined in the PSDR, she stated that the PAC was definitely not intended for facilities of that size. She further stated that Portland explicitly does not intend or authorize that the PAC should be used to justify or design ponds in other jurisdictions either. Ms. Clayton's phone number is 503-823-4356. In addition, she stated that the PAC is not to be used in its current iteration for drainage areas over 1 acre (she did add that this requirement is under review and will probably be revised upwards). At the time the PSDR was produced, the 1 acre limitation would apply (drainage area in the PSDR is 2.98 acres, page 4).

This conversation occurred on March 23, 2016. Needless to say I was somewhat nonplused. I had suspected that the PSDR might have been using some questionable assumptions in preparing its calculations; I did not expect that it might be using the PAC in an entirely inappropriate way.

Given that the PAC is the foundation of the PSDR, ***"The proposed pond has been designed using the City of Portland Presumptive Approach Calculator"*** (page 5 of PSDR), if the PAC has been used in a fundamentally incorrect way then the PSDR is functionally useless. If the PSDR is unusable then the applicant cannot meet the approval criteria for stormwater detention found in CDC 55.130B or CDC 92.010E. If these criteria aren't met the application must be denied.

Should there be any doubt as to the content of this memorandum I urge members of the commission to contact Ms. Clayton directly. I found her to be very professional and extremely knowledgeable about stormwater facilities. Normally I would recommend City staff also follow up, except that I have not noticed any enthusiasm on their part for double checking any of the applicant's work. Thank you in advance for your due diligence on this vitally important issue.

Sincerely,

---

David Dodds

P.S. I had originally intended to submit this earlier, but in light of the applicants March 28, 2016 submittals I decided instead to include it with other memoranda that were subsequently written.

To: The West Linn Planning Commission

April 4, 2016

Re: File No. CUP-15-03/DR-15-17/VAR-15-01/02/03

Proposed Sunset Primary School development

Memorandum concerning Letter from Kpff Engineering dated March 28, 2016

\* A note on referencing page numbers, the letter from Kpff Engineering dated March 28, 2016 is headed with the title "Site Stormwater Narrative" (hereafter SSN) was paginated by city staff as beginning on page 22 and concluding on page 32, I will use those as a reference rather than citing them as page 1-11. In addition Kpff also submitted 5 exhibits designated as D-1 thru D-5, these will be referenced by their exhibit number instead of their page. The original submittal from Kpff, dated January 2016, titled Preliminary Stormwater Drainage Report (hereafter PSDR) will be referenced by the original page numbers or by page title.

David Dodds

18931 Old River Drive

West Linn, OR 97068

Commissioners:

Over the years I have read through a great number of land use applications, but I have seldom if ever read something quite as strange as the letter from Kpff Engineering titled Site Stormwater Narrative (SSN) dated March 28, 2016. When one reads the SSN letter, it would be entirely understandable to believe that you are reading a letter explaining questions relating to a previously submitted stormwater plan. That impression would be completely reasonable provided that you hadn't read and studied the applicant's earlier Preliminary Stormwater Drainage Report (PSDR) and site plans. I literally felt as if I were having a Kafkaesque dream as I read the SSN. I do not believe that there is any way to reconcile these two documents. Later in this memorandum I will be pointing out the differences I find between the two submittals to bolster the argument that these are in fact two very different plans. This leads directly to one central question: is the SSN intended as a new stormwater drainage plan? Has the applicant abandoned the PSDR that was part of the applicant's January development application? If this is so then I object in the strongest possible terms to its acceptance in this current hearing.

There is of course an alternative interpretation that is acceptable to me if it is acceptable to the Commission. That interpretation would be that the SSN is not a new plan, but merely a letter that makes almost no sense as regards to the PSDR. This might seem something of a stretch, but it is

not the responsibility of either the Commission or the opponents to decode the applicant's or applicant's consultant's intent when their submittals are confusing or contradictory. In essence the Commission might collectively state that they have decided to proceed as if the SSN had never been written or submitted. This would cause a minor problem as regards to Planning Staff's letter of March 30, 2016 where in reference to CDC 92.010E (on page 3) it states "***staff incorporates applicant findings as revised by Section E-1 in the applicant's supplemental submittal dated March 28, 2016***". However, since opponents are arguing against numerous staff findings already, adding one more is hardly a difficulty.

Assuming that the SSN is deemed a new stormwater drainage plan, several points need to be made:

- 1) If the applicant wants to submit a new drainage plan, such a plan should be clearly and unmistakably identified as a new plan.
- 2) The applicant should at the very least briefly explain why they are submitting a new plan in favor of the old plan.
- 3) The Planning Commission should decide whether to allow a new plan in what was previously deemed a complete application. In my opinion they absolutely should not allow this. As an alternative I believe that the only other procedurally clean way that this could be accomplished would be if the applicant were allowed to voluntarily withdraw the application and resubmit it with a new storm drainage plan.
- 4) If the Commission does not allow the submittal of a new plan then the application should be judged on the merits or failings of the original PSDR plan.
- 5) If the Commission accepts the submission of a new plan then the new plan must be in compliance with all the relevant submittal and approval criteria including, but not exclusive of, CDC 55.120F(1), 55.130B, 92.010E and 99.070A.
- 6) In reference to point 5, if the SSN is accepted as a new plan then a determination would need to be made as to whether the SSN as submitted on March 28, 2016 is deemed the complete plan for purposes of complying with all relevant submittal and approval criteria. To avoid having to deal with an endless moving target, a clear determination needs to be made as to when exactly the new plan is indeed complete.
- 7) City Staff must acknowledge that the new plan is indeed new and make new findings as to compliance with the relevant CDC submittal and approval criteria.
- 8) If a new plan is accepted then the 120-day clock should be amended to reflect that the application was not in fact complete until a date no earlier than March 28, 2016.

9) In light of the very serious concerns raised about the PSDR (including a separate memorandum dated March 30, 2016 relating to the use of the Presumptive Approach Calculator PAC), I formally request that if the SSN is admitted as a new stormwater detention plan that pursuant to CDC 99.170E(2) the written record be left open at least 30 days to thoroughly review the engineering assumption in the SSN letter.

**Differences between the PSDR and SSN:**

Compare the site plans from applicant’s original submittal on LU1.00, LU1.02, LU1.03, LU1.04 and LU1.05 to that found on exhibits D-2 and D-3 or even on the artist’s rendering on SSN page 25 (figure 1). Clearly the size and shape of the detention facilities between these sets of drawings is distinctly different. Closer inspection of the drawings also reveals other differences, such as the retaining wall found in the LU1.02 that is obviously not the same as depicted in the figure 1 rendering (page 25). Obviously the square footages of the opposing designs would be radically different and one must assume the volume as well.

Even more important than differences between size and shape are I believe a fundamental difference in methodology between the PSDR and the SSN. The PSDR it seems clear is based on dealing with stormwater runoff by on-site infiltration, to quote *“To check for the feasibility of on-site infiltration the geotechnical engineer was directed to perform on-site infiltration tests for the site. While the test results confirmed that 100% on-infiltration is not possible, partial infiltration should be obtained by locating the facility in the vicinity of the better performing test pits”, “A single stormwater pond will be used for water quality and water quantity”*, (pages 3 and 6 PSDR). In contrast the SSN states *“For temporarily detaining flows from heavy storms, this facility does NOT depend on infiltration”* (page 27 SSN).

The facility in the PSDR is described as a pond, *“Stormwater runoff is treated by use of a vegetated stormwater pond... The proposed pond has been designed using the City of Portland Presumptive Approach Calculator”* (page 5 PSDR). On the other hand the SSN describes its facility as a planter *“the Sunset project is an infiltration planter”* (page 26 SSN). This much is more than a semantic difference. In my researching into this issue I found that ponds and planters are not remotely considered similar facilities. Worth noting is Staff finding No. 21 which states in part *“The applicant identifies all stormwater from off-street parking and loading areas to collected and conveyed to the treatment and detention pond”* (page 21 original staff report).

Hopefully the above references make it clear why I contend that the PSDR and SSN cannot be construed to be dealing with the same stormwater plan.

**Conclusion:**

Some might argue that given the objections to PSDR that opponents should be pleased with any plan that seems to shrink the detention facility. Unfortunately I do not believe that the SSN actually contains enough detailed information (or possibly verifiably accurate information) to be



evaluated in its current form or to know whether the SSN would actually be an improvement. I decided not to take the considerably space and effort that a detailed analysis would take in this memorandum or additional memoranda until I knew what the Planning Commission wanted to do with the SSN document.

I strongly urge the Planning Commission to disregard the SSN as being germane to a discussion of the PSDR. It is absolutely unacceptable, in my opinion, to allow any applicant of any land use application to be allowed to introduce a new plan under the guise of responding to an original plan. George Orwell would not be amused and neither am I.

Thanks to the Commission for their due diligence on this matter. I am sorry that it was necessary to force the Commission to trudge through 4 pages on this subject, but on the plus side at least it wasn't 900 pages.

Sincerely,

---

David Dodds

BEFORE THE PLANNING COMMISSION  
FOR THE CITY OF WEST LINN, OREGON

In the Matter of WEST LINN-WILSONVILLE ) FILE NOS: CUP-15-03, DR-15-17, and  
SCHOOL DISTRICT 3JT's Application for ) VAR-15-01/02/03  
Conditional Use, Design Review, Director's )  
Exception, and Class II Variance Approval to ) SAVE OUR SUNSET PARK'S  
allow construction of a new primary school ) SUPPLEMENTAL MEMORANDUM IN  
and related facilities in the R-10 zone. ) OPPOSITION

---

**I. INTRODUCTION**

This supplemental memorandum is filed on behalf of Save Our Sunset Park ("SOS Park") to address additional procedural and substantive issues. Again, we want to stress that SOS Park is not opposed to replacement of the Sunset Primary School, *per se*. However, members of SOS Park are extremely disappointed in the manner in which the project design has been handled. When the West Linn citizens voted in favor of selling park land to the school district, they were promised that the terms of the sale would "maximize recreational opportunities while preserving significant trees at the site." A copy of the City of West Linn Ballot Measure 3-358 is attached as Exhibit 1. The initial drawings were consistent with this representation, showing that the 1.6 acres of park land would be open recreational space; however, the current design includes parking lots and storm water facilities on the former park property – not open recreational space.

In addition to the failure to preserve the 1.6 acres of park land for recreational purposes, it appears that the applicant has described a brand new drainage plan for this project in its supplemental submittal. However, the plan is not identified as a “new plan” and there is no detailed analysis of how this alternate drainage plan meets the applicable provisions of the West Linn Community Development Code (“CDC”). Accordingly, the applicant has not met its burden to show compliance with each mandatory approval criterion.

## **II. PRELIMINARY MATTERS**

### **A. Continued Hearing.**

SOS Park requests that all persons attending the April 6, 2016 hearing be allowed to participate orally and in writing. SOS Park requested a continuance of the March 16, 2016 hearing and the Planning Commission continued the public hearing until April 6, 2016, but stated that people who testified at the March 16, 2016 hearing would not be allowed to testify on April 6, 2016. However, the West Linn Community Development Code (“CDC”) requires that the Planning Commission allow all people to participate where there is new evidence. CDC 99.170 (E) (1) provides, in relevant part, that:

[a]n opportunity shall be provided **at the continued hearing** for persons to present and rebut new evidence, arguments or testimony.

The applicant has submitted extensive new information (over 900 pages) since the March 16, 2016 hearing. Accordingly, all persons should be allowed to present and rebut the new evidence, arguments or testimony at the April 6, 2016 hearing.

**B. Open Record.**

In addition to presentation and rebuttal of the new information at the April 6, 2016 hearing, SOS Park requests that the record remain open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence.

CDC 99.170 (E) (1) further provides, in relevant part, that:

[i]f new written evidence is submitted at the continued hearing, any person may request prior to the conclusion of the continued hearing that the record be left open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence.

Based upon the volume of new written evidence submitted since the first evidentiary hearing (over 900 pages), SOS Park requests that the record remain open for a minimum of twenty-one (21) days to allow sufficient time to analyze and respond to the new information.

**III. ARGUMENT**

**A. The applicant has not carried its burden to show that either drainage plan meets the applicable approval criteria.**

On March 16, 2016, the applicant presented its proposal for a new elementary school, which included a massive Storm Water Infiltration Pond. The members of SOS Park addressed multiple concerns regarding adverse impacts of the proposed infiltration pond. Based upon the applicant's supplemental submittal, it appears that the infiltration pond may no longer be part of the project. However, the storm water drainage plan described in the applicant's March 28, 2016 supplemental submittal has not been identified as a "new" plan, and the applicant has not demonstrated its compliance with the mandatory approval criteria, including CDC 55.120 (F) (1) (site plan setbacks), 55.130 (B) (grading plan), 92.010 (E) (drainage plan submittal requirements).

Neither the applicant nor the staff report addresses the different storm water drainage plans in a meaningful manner. For example, in finding “compliance” with CDC section 55 regarding design review, Staff merely “incorporates the applicant findings as revised by Section E-1 in the applicant’s supplemental submittal dated March 28, 2016.” March 30, 2016 Staff Report at 2. However, Section E-1 provides a Site Stormwater Narrative (“SSN”) which seems to describe a completely new storm water drainage plan and fails to identify it as such. Moreover, the applicant has failed to demonstrate that the “new plan” complies with the applicable approval standards.

The applicant cannot have it both ways. There is either a new drainage plan or there is not. (Please see David Dodds’ discussion of significant differences between the infiltration pond on the plan presented at the March 16, 2016 hearing and the drainage plan described in the kpff March 28, 2016 narrative “SSN”). If there is a new plan, it must be clearly identified and subject to standard review for completion and compliance with the CDC. Staff must make specific findings regarding the new plan’s compliance with the applicable approval standards. If there is not a new plan, the existing infiltration pond must be reviewed on its own merits and the new submittal should not be considered.

In its March 16, 2016 memorandum, SOS Park addressed the failure of the infiltration pond to meet the requirements of the CDC. With respect to the new plan, there are no specific findings, supported by substantial evidence, to show how the approval standards are satisfied. In any event, neither plan meets the applicable approval criteria. Therefore, the applicant has not met its burden and the application should be denied.

**B. Applicant has failed to satisfy CDC 60.070 (A) (3) because the current design is inconsistent with the promises made when the park land was sold to the school district.**

60.070 (A) (3) requires a finding that “the granting of the proposal will provide for a facility that is consistent with the overall needs of the community.” The applicant continues to rely on voter approval to show that the overall needs of the community are met, stating:

The needs of the community are best expressed by its approval of the bond measure to finance these improvements.

However, use of the 1.6 acres of land formerly known as Sunset Park for a parking lot and storm water facilities does not meet the needs of the community. The citizens did approve the bond measure to fund the new school, but they also voted to sell 1.6 acres of park land to the school district on the express condition that the 1.6 acres would be used to **“maximize recreational opportunities while preserving significant trees.”** See Exhibit 1. The West Linn community needs to be able to trust local government. Sunset Park has a long history of being preserved for park and recreational purposes. SOS Park members relied on the City’s promise when they voted to support the sale of this specific 1.6 acres of park land to the school district to be used for recreational opportunities and tree preservation.

The history of Sunset Park (including 1.6 acres sold to the school district) supports the significance of preserving the subject property in its park-like state. When Crown Zellerbach conveyed land for Sunset Park to the City of West Linn back in 1951, the conveyance was subject to a reversionary interest stating that title would revert to the timber company if the land was not used solely for park and recreational purposes. That reversionary interest no longer exists, either because it was extinguished by statute (ORS 105.770) or because Crown Zellerbach’s successors

in interest have now quit-claimed any such interest to the applicant; however, the 1.6 acres at issue here has always been intended, and promised, for park and recreation purposes.

On March 16, 2016, the City attorney advised the Planning Commission that Measure 3-358 is not an approval criterion for this application. However, in looking to the “overall needs of the community,” the public has a right to rely on the explanatory statement of ballot measure designed to induce them to approve the sale of a public park. As proposed, this design plan does not maximize recreational opportunities while preserving significant trees at the site. The applicant cannot rely on a vote of the people to satisfy the approval criterion which requires “consistency with the overall needs of the community,” and ignore a more specific vote of the people for the conditional sale of the subject 1.6-acre parcel which demonstrates “inconsistency with the overall needs of the people.”

The voter approvals of funding the school project while preserving trees and maximizing recreational opportunities on the 1.6 acres of former park land are not mutually exclusive. As demonstrated by the initial drawings, the applicant could accomplish this promised preservation while proceeding with its project. However, the current plan to locate a parking lot and storm drainage system on the 1.6 acres of former park land is totally inconsistent with the City’s representations at the time of the vote which allowed the sale. Accordingly, the applicant has failed to carry its burden to show compliance with 60.070 (A) (3) because the facility, as currently proposed, is inconsistent with the overall needs of the community.

**IV. CONCLUSION**


Based upon the procedural requirements of CDC 99.170 (E) (1), SOS Park respectfully requests that all persons be allowed to present and rebut new evidence, argument and testimony at the hearing. In addition, SOS Park requests that the record remain open for at least seven (7) days, preferable twenty-one (21) days to respond to new evidence.

If the Planning Commission reaches the merits of this case, based upon the substantive approval criteria, SOS Park respectfully requests that the application, as presented, be denied.

DATED this 6<sup>th</sup> day of April, 2016.

Respectfully submitted,

REEVES, KAHN, HENNESSY & ELKINS

  
Peggy Hennessy, OSB #872503  
Attorney for the Save Our Sunset Park



# City of West Linn

## Measure 3-358

### Ballot Title

#### SALE OF PORTION OF CITY PARK LAND TO SCHOOL DISTRICT

**QUESTION:** Shall the City sell 1.6 acres of Sunset Park to the West Linn/Wilsonville School District for \$483,000?

**SUMMARY:** This measure, if approved, would allow the sale of 1.6 acres of Sunset Park to the West Linn/Wilsonville School District for the amount of \$483,000. The School District has indicated that Sunset Primary School needs to be replaced soon and that it's the District's desire to maintain the school at its current location, provided that the School District's property at this location can be expanded. The City-owned Sunset Park property is adjacent to Sunset Primary School. Agreeing to sell a portion of Sunset Park to the School District would provide sufficient land to allow the District to keep Sunset Primary School at this location. The West Linn Charter requires that the sale of any park property be approved by a vote of the community. If this sale is approved by the voters, the City would commit to using the proceeds from the sale of this property for acquiring or developing parks for the use of the West Linn community.

### Explanatory Statement

Voter approval is required for the sale of 1.6 acres of Sunset Park to the West Linn/Wilsonville School District for \$483,000 (Sunset Park is currently 5.1 acres).

The West Linn Charter Section 46 requires that the sale of any property owned by the City of West Linn and designated as a park be approved in advance by City voters. The West Linn City Council approved placing this measure on the May 18, 2010 ballot with a 5-0 vote.

This measure, if approved, would allow the sale of 1.6 acres of Sunset Park to the West Linn/Wilsonville School District. The School District has indicated that Sunset Primary School should be replaced soon. The School District would maintain Sunset Primary School at its current location, provided that the School District's property at this location could be expanded. The City-owned Sunset Park property is adjacent to Sunset Primary School. Agreeing to sell a portion of Sunset Park to the School District would provide sufficient land for the School District to keep Sunset Primary School at its current location.

The Sunset Neighborhood Association Neighborhood Plan includes a primary goal of keeping Sunset Primary School as an element of the Sunset neighborhood. **If approved, the terms and conditions related to the sale would include Sunset neighbors in the school planning process, and would maximize recreational opportunities while preserving significant trees at the site.** The City would use the property sale proceeds for acquiring or developing land for recreational use in West Linn.

In addition to this ballot measure, the West Linn City Council has also submitted for the May 18, 2010 election two related but separate ballot measures. One ballot measure would authorize the issuance of up to \$10.8 million in general obligation bonds to fund the land acquisition and to construct, furnish and equip a new police and court facility at the Parker Road location. The other ballot measure would annex 7.5-acres of real property located at 3332 and 3151 Parker Road. Voter approval is required for each of the ballot measures.

If the three ballot measures are approved, the City would:

- Sell a portion of Sunset Park to the West Linn/Wilsonville School District so Sunset Primary School could be replaced at its current location;
- Purchase the Parker Road property being annexed; and
- Construct a new police and court facility on a portion of the annexed property.

Voters can learn more about this ballot measure online at <http://westlinnoregon.gov>.

*(This information furnished by Tina Lynch, City of West Linn.)*

**NO ARGUMENTS WERE FILED  
IN FAVOR OR IN OPPOSITION  
TO THIS MEASURE.**

To: The West Linn Planning Commission

April 11, 2016

Re: File No. CUP-15-03/DR-15-17/VAR-15-01/02/03

Proposed Sunset Primary School development application

Memorandum concerning CUP approval criteria and variance approval criteria as relates to new testimony by applicant found on pages 15, 16 and 337 of applicant's March 28, 2016 submittal. In particular applicant provides a table (table 1), financial information and staffing information not previously presented by applicant.

David Dodds

18931 Old River Drive

West Linn, OR 97068

Commissioners:

The applicant has been abundantly clear that locating a new school on the footprint of the old school would cause the applicant some problems. What the applicant has not done is demonstrate that building on the original footprint could not be done. Avoiding inconvenience and added expense to an applicant are not valid grounds for approving variances or conditional use permits. This is all the more true when considering that the opponents have presented in great detail and volume the tremendous problems they have with the current development plan.

The old school has lasted for sixty years; it is likely that a new school would last as long if not longer. Given the probable life expectancy of the new school, one year's inconvenience would be a very small price to pay to build a facility that the Sunset neighborhood could enthusiastically embrace. Contrast that outcome with approval of a plan that leaves the Sunset neighborhood angry and embittered for years if not decades to come.

Interestingly enough, the applicant actually touches on a perfectly workable solution when it discusses relocating all the students to Cedaroak Park with the use of portable class rooms (page 16). Cedaroak Park has ample open space and portables have been used there in the past. As regards the issue of overcrowding the applicant provides data that actually weakens their arguments. As can be seen with Trillium Creek on page 15 and the enrollment information on page 337, the district routinely operates schools at over their rated capacity. While that situation might not be ideal, it evidently is far from unusual.

In consideration of the temporary relocation problem, the applicant emphasizes the difficulties while simultaneously lightly discounting any concerns about having small children directly adjacent to a construction zone. The distinct impression is given that one would be a great burden while the other is almost trifling if not perhaps even frivolous. Unfortunately I believe that the true situation is almost exactly the opposite. If only the applicant would give up its inflexibility on this subject all of the issues of this application could be resolved.

When reviewing this application, particularly as it relates to variances and the CUP, I urge the Planning Commission to consider the whole site. For the purposes of both the applicant wants to act as if the western third of the property doesn't exist. CDC 75.020B(1)a states in clear and unequivocal language that "***The variance is the minimum variance necessary to make reasonable use of the property***". Clearly the applicant can move the building to the west and either avoid requesting a variance altogether or greatly reduce the scope of variance for parking. There is no topographical difficulty with doing this. Nothing about the lot shape precludes it. It is merely the applicant's preference to avoid the bother and inconvenience of temporary relocation of the students. On that basis alone the level of variance isn't warranted, much less when weighed with all the other issues raised by the opponents.

I urge the Planning Commission to deny the requested variances and as a consequence deny this application. When doing so the Commissioners could also take the opportunity to urge the applicant to strongly reconsider the issue of temporary relocation.

Sincerely,

---

David Dodds

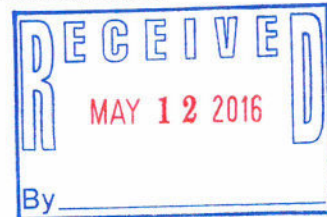
## EXHIBIT CC-3 PUBLIC COMMENTS

**Wyss, Darren**

---

**From:** Marilet <marilet.zablan@gmail.com>  
**Sent:** Thursday, May 12, 2016 2:04 PM  
**To:** Wyss, Darren  
**Subject:** PLEASE DENY: Appeal of Conditional Use Permit (CUP15-03) for Sunset School

To: Darren Wyss [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov),  
Attn: City Council



[PLEASE DELIVER this email to all members of West Linn City Council -- thank you.]


Dear West Linn City Council members:

It has come to my attention that individuals are seeking to appeal West Linn's Conditional Use Permit (CUP15-03) for Sunset School.

Based on the criteria for approval and the evidence provided by the district, the decision by the Planning Commission to approve the Conditional use Permit (CUP15-03) for Sunset School was the correct decision and the appeal should be denied. Any undoing of the sound decision made earlier by our Planning Commission would cause undue and unnecessary social, traffic, and other upheaval in our community.

Sunset School does need to be updated; we can all agree on that. An earlier analysis of options was conducted, all alternatives were soundly considered, and a very reasonable solution was reached in a transparent and open manner.

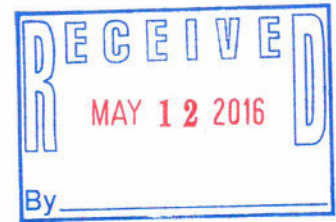
Please do not derail this process for the special interests of a few. I expect more out of my City Council, and I expect you will deny this appeal.

~Marilet   
~~marilet.zablan@gmail.com~~

**Wyss, Darren**

---

**From:** Lia Fowler <lia.fowler@hotmail.com>  
**Sent:** Thursday, May 12, 2016 11:30 AM  
**To:** Wyss, Darren  
**Subject:** Support for CUP15-03



To the West Linn City Council:

It has come to my family's attention that the Planning Commission's approval of the Conditional Use Permit for Sunset School has been appealed, and my husband Greg and I would like to go on record as supporting the Commission's decision and we respectfully request that the appeal be denied. Our children attend Cedar Oak Primary. If the appeal were to be granted, the burden on Cedar Oak in terms of overcrowding and larger class sizes would significantly impact the students' learning. The main reason we chose to live in this community was the quality of the schools. Cedar Oak provides a wonderful community atmosphere, where students, teachers and parents can work closely together to ensure the best experience for each child. I am particularly cognizant of this, since both my children, one in 2nd grade and one entering Kindergarten, are currently on IEPs. The attention that the staff has provided to my children -- the older in school and the younger as he prepares to enter -- has made it possible for them to be successful. The added burden on the school of so many new students and parents would have a very negative impact to the level of cooperation and community we currently enjoy. Please deny the appeal.

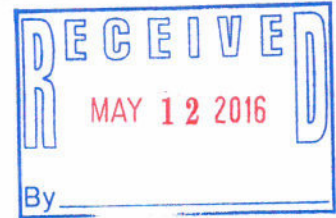
Thanks you for your time.

Lia and Greg Fowler  
19785 Wildwood Dr.  
West Linn, OR  
312-315-9778

**Wyss, Darren**

---

**From:** Bret Goldstein <bretgoldstein@yahoo.com>  
**Sent:** Thursday, May 12, 2016 12:04 PM  
**To:** Wyss, Darren  
**Subject:** Sunset



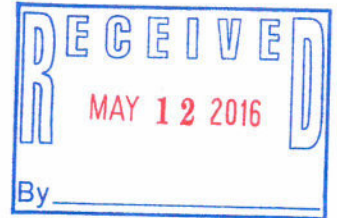
Based on the criteria for approval and the evidence provided by the district, the decision by the Planning Commission to approve the Conditional use Permit (CUP15-03) for Sunset School was the correct decision and the appeal should be denied.

Bret

**Wyss, Darren**

---

**From:** Jon And Jenny Williams <[redacted]@gmail.com>  
**Sent:** Thursday, May 12, 2016 12:15 PM  
**To:** Wyss, Darren  
**Subject:** Attn: City Council



In regards to the Sunset School issue;

I am a Cedaroak Parent. I wanted to express my support for the families of the Sunset Area that are wanting a change to what's happening to their school, park, and neighborhood.

It feels like the intent of the measure we supported for the new school is not being met, in that, the Sunset Neighborhood has not been fully involved in the planning process. Meetings have been held, decisions and moves have been made intentionally leaving them out of the process.

Should the district or city have to foot the bill for modular units, and extra transport for the kids while all this gets sorted out, it is an opportunity to learn a lesson in following through with the commitments made to the Sunset Neighborhood.

Please do what is right for the people living in the areas affected by this. Currently Cedaroak Parents are being asked to contact you in opposition to the Sunset appeal. I feel this is unfair to the city and the people. These neighborhoods should not be pitted against each other, and it is time for the city council to represent the people, and unite them.

I am willing to offer my time and skills in any way that you seem appropriate and useful.

Thank you,

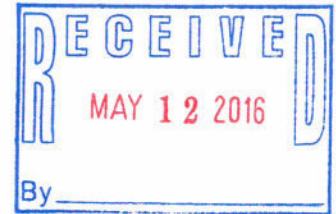
Jonathan Williams



## Wyss, Darren

---

**From:** Jenny Cook <cook.noelle@gmail.com>  
**Sent:** Thursday, May 12, 2016 10:50 AM  
**To:** Wyss, Darren  
**Cc:** Dale Cook  
**Subject:** Attn: City Council re: planned appeal of CUP 15-03  
**Attachments:** SC452-DO16051012380.pdf



Dear Mr. Wyss,

My name is Jenny Cook, and I am a long time resident of West Linn. I grew up about 13 houses away from the house my husband and I bought a few years ago. After a brief stint away from West Linn in college, and our early pre-kid years together, we decided to move back to West Linn. Why? First and foremost, because of the school district. After doing extensive research on the districts in the area, we determined that West Linn is still a cut above the rest (as it was when I completed K-12). We love our schools, and we love our community. One of the gems of West Linn, and why so many of us move, here is this amazing district (as you probably already know). I always like to say the West Linn is the biggest little small town you'll find. I can't tell you how many of my former classmates now also have children at our neighborhood primary school, Cedaroak. We have a long history in West Linn, starting when my grandparents made a similar decision to move into West Linn in 1957. It was around that time that my grandma began teaching at Sunset (and later at Cedaroak).

60 years ago when my grandma began teaching there, well, Sunset was pretty old then. Now it is in desperate need of a renovation/rebuild.

I am very active in our school district, and try to stay informed of all issues. I attended all the bond meetings discussing 'our hopes and dreams' for the school district, and participated in the long range planning process-- something unique, engaging, and critical that helps keep our district outstanding. One of the proposals that was discussed at a number of these sessions was the plan to redesign Sunset Primary, a school that desperately needs an overhaul. The district had done extensive planning around this, received input from parents, staff, students, and the community. I know folks who back the Sunset property and have kids at that school, and are excited to see this new building come to fruition.

However I understand that after all of this careful consideration, planning, and city planning commission approval, an appeal to overturn this well thought out plan, and needed renovation has been entered. While I certainly understand the challenges that any construction project can cause on a neighborhood (did I mention I live in the Robinwood neighborhood, and have been dealing with LOT for the past 5 years??), I also know that sometimes short term burden of a project like this will far outweigh the benefit. In this case the neighborhood will directly benefit from the renovation of Sunset. **As I mentioned above, lots and lots of people move here simply for the schools. Keeping our competitive edge means more families coming to our district who love and value education, which keeps our community thriving.** New families mean more economic growth and stability in West Linn as we continue to attract those who want the best education possible for the children. It's a big deal, a very big deal.

**This project adds value to our city**, it gives a neighborhood in desperate need of a face lift, some new vitality, it creates learning and outdoor play space for children; and while this appeal group is trying to make you think they're losing their park, they aren't. Is some space going to be utilized for school grounds? Absolutely, but is this park gone? No. Simply looking at the plans which clearly show that there is still a lush and vibrant park

space, plus let's face it, there will also be parking, so that more of us have the opportunity to use that space and it becomes a more accessible resource for all of us (have you ever tried to park near sunset???)

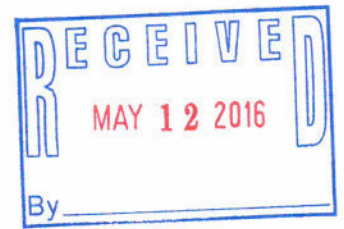
Finally let's talk about the cost burden implied in this appeal. I have attached a document that the district prepared discussing this, and want to again highlight a few points. 1. **Our elementary schools are over capacity**, even when you factor in the open space at Cedaroak (which is recent due to the boundary changes--when my son started at Cedaroak we were over capacity), on a whole there are still more kids at our schools than there are spaces to comfortably place them. We need this to change, we need this new space! 2. **Cost in \$**. Our families worked hard to raise awareness for our school bond, and get people on board to vote yes. As you know it's not easy getting folks to willingly agree to higher taxes, but we do it because we love our district and our kids. We all worked together and with the experts in our district to come up with a plan that makes sense, a plan that is cost effective, community friendly, and in line with our district values. **Changing that plan now means losing a hard fought vision**. One that we all worked together to create. **The appeal would add millions of dollars to this project. Where will that money come from?** Will it mean we can't rebuild Sunset at all? Maybe. Will it mean cutting security upgrades from our schools that are critical to keeping incidents like Columbine, and Sandy Hook from happening here in West Linn? I am thankful everyday that is not my new reality, and I want to keep it that way. Will it mean scrapping the countless improvements or planned innovations? Not building an additional middle school? I hope not!!!

**I urge you to deny the appeal of CUP 15-03. The district has already supplied ample evidence to support the current plan**, and they have also outlined how (attached) this would add significant, unneeded burden to a well thought out, much needed renovation. **Please support our children, our schools, our district, and our families. This project benefits West Linn in so many ways; don't let the voice of a few, overshadow the voices of so many who have come together to make this vision a reality.**

Respectfully,

Jenny Cook

503-329-3267



### C.2 Building New Facility at Existing Facility Location:

When discussing the possibility of constructing the new school where the existing facility now sits, the question of where students would receive instruction during the course of construction must be considered. Sunset Primary School is the home of 304 students according to student counts completed in December 2015. Table 1 below details the enrollment and capacity of each other primary school in West Linn as of December 2015.

**Table 1 – Enrollment vs Capacity of West Linn Primary Schools**

School	Student Enrollment December 2015	Enrollment Capacity	Remaining Capacity
Bolton	378	341	-37
Cedaroak Park	281	385	104
Stafford	483	479	-4
Trillium Creek	588	454	-134
Willamette	565	479	-86
<b>Total</b>	<b>2295</b>	<b>2138</b>	<b>-157</b>

Of the five other primary schools only one, Cedaroak Park Primary School, is under capacity with space for an additional 104 students. The other four West Linn primary schools are currently over capacity. These numbers clearly show that there is a lack of capacity to house an additional three hundred students in the other primary schools. If the decision was made to relocate the Sunset students regardless, then the first school to receive them would be Cedaroak Park. The remaining students would need to add to the capacity constraints already experienced at Bolton and Stafford Primary Schools. That being the case no Sunset students would be within their walking boundary, necessitating several additional busses, and increased travel time for students.

Improvements in the economy have allowed the district to hire many additional teachers across the district to return class sizes to preferred levels. With few available classroom spaces in the district, the result of adding Sunset students to the other schools would be increased class sizes for the impacted schools. This would also require the district to put a large portion of the Sunset staff on paid leave or to terminate their positions pending the completion of the new Sunset Primary School facility.

Alternatively, the district could would have to attempt to place portable classroom buildings at the three primary schools. In addition to the significant financial cost of leasing these buildings (approximately \$100,000.00 per building, for seven buildings), the District would be required to seek Conditional Use Permits for them, which could not be obtained in time to order and install the portable classroom buildings for use in the fall of 2016. The logistics of designing and constructing the water, sewer, power, communications, and stormwater management systems for these facilities is a significant obstacle, and the proposal could experience opposition from the surrounding neighborhoods. The cost of this option is significant, with no lasting benefit at the target school sites.



All of these options are objectionable when only considering their financial impact. The disruption experienced by the students of not only Sunset Primary School but the students in the other schools only serves to compound the situation. The District has never broken up an existing school community and divided it among several others. The importance of neighborhood schools and the close knit school community cannot be understated.

The placement of all the portables at a single location, such as Cedaroak Park Primary, has also been mentioned. Assuming that the hurdles of locating seven portables and associated permits and utilities could be overcome, the core facilities of the host school such as the parking lots, gymnasium, library, kitchen and playground weren't designed to handle the increased volume of students. This option would create significant disruption and overcrowding at the targeted school site.

It has also been suggested by certain testimony that a group of portable classroom buildings could be used on the eastern portion of the Sunset Primary School site while the deconstruction of the existing facility and construction of the new facility is completed. This approach would, at a minimum, require 14 portable classroom buildings at an approximate cost of \$1,400,000.00. This cost excludes the additional demolition required to allow the new playfield, parking lots and stormwater management systems to be constructed. This solution would also deprive Sunset Primary School students from the use of core facilities such as a gymnasium, library and kitchen. The first two would compromise the educational opportunities of the students, and the latter would require the students' lunches to be cooked at another facility and delivered to the school. Due to state regulations the food would have to be sack lunches such as cold sandwiches rather than the full array of nutritious food choices available in the primary school menu. This plan would also fracture the school community due to the isolated nature of the portable classroom buildings and a complete lack of common areas and gathering spaces.

Due to the known constraints and logistical challenges mentioned above the school district has always affirmed that the new Sunset Primary School would be built on the eastern portion of the site with students attending the existing building during construction. (Note: All conceptual drawings for this project from 2007 forward confirm this strategy (Exhibits C.1-C.10).)

**Wyss, Darren**

---

**From:** Eric Johnston <[REDACTED]>  
**Sent:** Wednesday, May 11, 2016 2:36 PM  
**To:** Wyss, Darren; City Council  
**Subject:** Attn: City Council-Sunset School Replacement



Dear City Council,

I am writing to request you vote to move forward with the new school replacement for Sunset Primary and deny the appeal set forth by the SOSPark Group.

This appeal is baseless and has no merit:

1. The assertion that the project violates Measure 3-358 is not true. Numerous meetings were held with the Sunset Neighborhood Association. The project is preserving over 70% of the existing trees. And regarding maximizing recreational opportunities, my 2 kids and I are down at the park several times a week and most of the time it is empty. This is because the play equipment is dated and in disrepair and there are numerous other parks nearby with better recreational options including Douglas Park, Tanner Creek, and Fields Bridge Park. This project will allow the remaining property at Sunset Park to be better utilized and updated and this will likely result in increased usage.
2. The parking was changed based on feedback from the very people now complaining as well as with the safety of the kids in mind as it would not be safe to have grade school kids crossing a parking lot to access the play area.
3. The storm water runoff claim has no basis in fact and to my knowledge was not based on any real tests. If anything, the new school and new building construction practices will make the area safer than it is now.

I am urging you to not cave in to this baseless and unsubstantiated appeal and to let the new school project go through as planned. We did not move to West Linn to have our daughter in a portable for 2-3 years. My wife and I volunteer in the school weekly, we attend and support every field trip and fundraising effort at the school and we donate to both the Sunset PTO and the West Linn School Foundation. This school is critical to our family's well-being, and most importantly the morale and sense of belonging of our 8 year old daughter and the hundreds of other students who can't imagine being at a different school or potentially separated from their friends and siblings.

Our children, our teachers and this community deserve a building that is as safe and secure physically as the current building is academically and spiritually. Don't force families like mine to consider moving. Don't break up friendships and families at this school, and don't let these folks who don't even use the park they are complaining about stop this exciting project from rejuvenating this great community we live in.

Sincerely,

Eric Johnston  
Parent of a Sunset Primary 2<sup>nd</sup> Grader  
2709 Ridge Ln. West Linn, OR

**Wyss, Darren**

---

**From:** Kari <[REDACTED]>  
**Sent:** Wednesday, May 11, 2016 2:48 PM  
**To:** City Council; Wyss, Darren  
**Subject:** Attn: City Council Sunset School Replacement



Dear City Council,

Our family moved to West Linn for the wonderful schools and amazing community support for education here. I want to express my strongest support for Sunset Primary's replacement project to proceed as planned. Based on the criteria for approval, and the evidence provided by the district, the decision made by the Planning Commission is correct for West Linn as a community, and for our children. The appeal filed appears to grasp at straws in any direction possible in an attempt to stall or avoid this truly needed facility for the community and our children. I urge you to deny the appeal filed, and to proceed with this much needed project. Acceptance of the appeal will have a dramatic and extremely negative impact on every child and family at Sunset Primary, for possibly years to come, not to mention the financial impact to the district, and stress on the community and students of Cedaroak (or other primaries utilized). Please deny the appeal and proceed with this extremely overdue and truly needed upgrade. Our children's future, health, and success depend on it.

Sincerely,

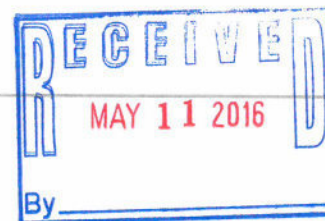
Kari Johnston  
2709 Ridge Lane

**Wyss, Darren**

---

**Subject:** FW: Sunset Primary appeal

**From:** Doris Wehler [daweehler@gmail.com]  
**Sent:** Wednesday, May 11, 2016 10:26 AM  
**To:** City Council  
**Subject:** Re: Sunset Primary appeal



This letter is in support of the Planning Commission's decision allowing a conditional use permit for Sunset Primary School.

The school district provided district patrons an extensive opportunities for input while still in the planning stages. The outcry was definitely "don't move our neighborhood school, just rebuild it." It would have been easier to build elsewhere, but our school district listens when the public, and particularly parents, talk.

It is unfortunate a small group of people have decided to appeal since, as you know, delays are costly and this is the public's money.

I have been an active Wilsonville and school district resident for more than forty years, and have always believed in putting the children first. I know the Wilsonville City Council expedites all approvals when it comes to schools. I am requesting that you deny the appeal and expeditiously move forward to help Sunset Primary get built as soon as possible.

Thank you for your attention and consideration in this matter.

Doris Wehler  
6855 SW Boeckman Rd  
Wilsonville, Or 97070  
503-682-0426  
[daweehler@gmail.com](mailto:daweehler@gmail.com)

**Wyss, Darren**

---

**Subject:** FW: In support of the new Sunset School

From: [wiancko11@comcast.net](mailto:wiancko11@comcast.net) [wiancko11@comcast.net]  
Sent: Tuesday, May 10, 2016 4:20 PM  
To: City Council  
Subject: In support of the new Sunset School



Hello West Linn City Council,

I have three children who have gone or currently go to Sunset Primary (my two sons, Garrett and Darren, attended Sunset, and my daughter, Shannon, is a 2nd grader there), and I am so grateful for the education my children have received there. It's truly a special community we have at Sunset! Plans to build a new school on the property (and a piece of the adjacent park) have been in the works for years, and now that we're finally set to break ground this summer, it's devastating to hear that a small group is threatening to delay or even halt it.

I saw their blurb on the news a few weeks ago with David Dodd. Based on one of his statements, I can't help but feel like this has nothing to do with the "landslide risk" and more with the fact that the neighbors don't want the school there (minute 2:39 of the clip). He states, "What the bottom line is now is that the application just needs to be denied and hopefully the school district will take that as a sign that they will get back together with the neighbors..."

Please don't let this happen...our kids need a safe building with more space to accommodate what seem to be growing classroom sizes each year (can't blame families; West Linn is such a wonderful place to live!). The citizens have voted, plans have been approved, and so many hours have been spent to help this school get built for our kids and future generations. I ask you to please go ahead with the plans to build the new Sunset Primary!

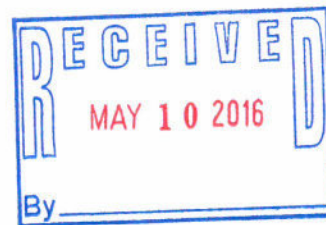
Sincerely,  
Christie Wiancko



**Wyss, Darren**

---

**From:** Chris Morgan <[REDACTED]>  
**Sent:** Tuesday, May 10, 2016 5:10 PM  
**To:** Wyss, Darren  
**Subject:** Sunset Primary School



Hello,

My daughters attended sunset, and the younger daughter will graduate the 5<sup>th</sup> grade this June. Next year, my son will begin Kindergarten at Sunset Primary School. The children need a new school. I respectfully request you deny the appeal based on the criteria for approval and the evidence provided by the district. The decision by the Planning Commission was correct, and the appeal should be denied.

Thank you very much for your consideration.

*Chris Morgan*

**Owner**

*Blissful Night Mattress*

*1678 Beaver Creek Rd*

*Oregon City Or, 97045*

O: [REDACTED] | C: [REDACTED]

Email: [REDACTED]

**Wyss, Darren**

---

**From:** Morgan, Susan <[REDACTED]>  
**Sent:** Tuesday, May 10, 2016 5:05 PM  
**To:** Wyss, Darren  
**Subject:** Sunset School - Please deny Appeal



Hello,

My two daughters attended sunset, with the younger daughter graduating the 5<sup>th</sup> grade this June. Next year, my son will enter Kindergarten at Sunset Primary School. Please, the children need a new school. I respectfully request you deny the appeal based on the criteria for approval and the evidence provided by the district. The decision by the Planning Commission was correct, and the appeal should be denied.

Thank you very much for your consideration.  
Susan

Susan Morgan  
*Strategic Account Executive*  
**LanguageLine Solutions**  
Phone: [REDACTED]  
Mobile: [REDACTED]  
E-mail: [REDACTED]

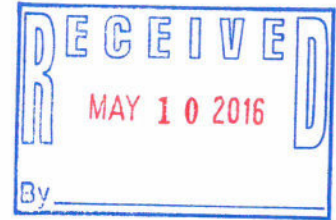


NOTE: This e-mail is confidential and is intended only for the recipient(s) listed. Unauthorized use or disclosure of this e-mail or any of the information in it is strictly prohibited. If you are not a listed recipient or someone authorized to receive e-mail on behalf of a listed recipient, please reply to the sender that the e-mail was misdirected and delete the e-mail. Thank you.

**Wyss, Darren**

---

**From:** Clark, June <[REDACTED]@LanePowell.com>  
**Sent:** Tuesday, May 10, 2016 1:32 PM  
**To:** Wyss, Darren  
**Subject:** Sunset Grade School Construction



City Council  
Attn: Darren Wyss, Associate Planner

Dear Mr. Wyss,

I am a resident of West Linn, and have lived on Exeter Street for over 25 years.

I am satisfied with the City's plans to build a new Sunset Grade School, and believe the appeal filed by the Save Our Sunset Park group, should be denied.

**June Clark**  
**4380 Exeter Street**  
**West Linn, OR 97068**

[REDACTED]

---

This message is private or privileged. If you are not the person for whom this message is intended, please delete it and notify me immediately, and please do not copy or send this message to anyone else.

## Wyss, Darren

---

**From:** Cody Peak <[REDACTED]>  
**Sent:** Monday, May 09, 2016 8:06 PM  
**To:** City Council; Wyss, Darren  
**Subject:** Sunset School Construction Appeal



Members of West Linn City Council and To Whom it May concern:

I am writing to request the West Linn City Council reject the current appeal being put forth to modify existing plans to Sunset Primary. I understand there is an outspoken small group of neighbors making a last ditch attempt to derail current plans -- to derail the wishes overwhelming approved by taxpayers several years ago. Our lovely city of West Linn, who has always been one to support schools both financially and with donated time, voted in a very convincing manner to replace an aging and frankly outdated building. Discussions to build a new or materially change Sunset Primary started in 2007. We have waited long enough. Our kids have waited long enough. The current appeal is a distraction and wasteful of our city government's valuable time.

From my research related to the number of trees to be cut down, to location of parking lots, to threats of shrinking the park all point to one thing. They point to the fact that the city of West Linn and WL/WV school district have worked to uphold the original spirit and intent of the voter-approved measure. The vocal minority group issuing this appeal feels threatened by change. I understand. Change can be scary. However to distort facts, prey on people's fears that construction will invoke landslides is ridiculous and desperate. For every hydrologist this vocal group has hired, our city and school district have invested to hire more professionals who have confirmed the building of this school poses no imminent threat so long as we follow the existing plan in place.

Alternatives posed by this group run the risk of placing enrollment pressure on neighboring schools from a capacity standpoint and compromise educators abilities to do their jobs well. We have incurred enough cost already and so I would ask that the wishes of thousands of taxpayers who decided to open their pocketbooks, invest in our community and schools years ago, be allowed to see their requests followed through upon. For every one person who deems themselves to be in support of this appeal, I can assure you, there are 30 more who want to see this school built on time, on budget, and as it was originally intended.

Thank you for your time and commitment to our community and children. Please feel free to contact me at [cpeak@huronconsultinggroup.com](mailto:cpeak@huronconsultinggroup.com) or 503-703-6949 if you would like to discuss further.

Sincerely,  
Cody Peak

Cody Peak  
Managing Director  
Mobile: [REDACTED]  
[www.huronconsultinggroup.com](http://www.huronconsultinggroup.com)

**Huron**Healthcare

### DISCLAIMER:

The information transmitted in this e-mail message and attachments, if any, may be attorney-client information, including privileged and confidential matter, and is intended only for the use of the individual or entity named above. Distribution to, or review by, unauthorized persons is strictly prohibited. All personal messages express

## Wyss, Darren

---

**From:** Otterman, Don  
**Sent:** Tuesday, May 10, 2016 8:43 AM  
**To:** Wyss, Darren  
**Subject:** Fwd: Support for the New Sunset Primary School



Sent from my Verizon Wireless 4G LTE smartphone

Don Otterman, City Manager  
Administration, #1422



Please consider the impact on the environment before printing a paper copy of this email.  
This e-mail is subject to the State Retention Schedule and may be made available to the public.

----- Original message -----

**From:** Mai Sorenson <maisorenson@comcast.net>  
**Date:** 05/10/2016 6:59 AM (GMT-08:00)  
**To:** City Council <ima\_citycouncil@westlinnoregon.gov>  
**Subject:** Support for the New Sunset Primary School

Dear City Council,

As a citizen of the city of West Linn and a parent of two children at Sunset Primary, I am writing to you today to express my strong support for moving forward with the construction of our new school per the current plan, scheduled to break ground on construction this summer.

It has come to my attention, that a special interest group is trying to lobby to delay/stop the construction of the new school with the current approved plans. The citizens of West Linn passed a bond to build a new Sunset Primary School back in 2014. The current plans were not drafted without a lot of involvement from the community, parents, teachers, engineers, architects and other experts to ensure that the location and land best meet the needs of our children and the Sunset community. The Project teams have been intimately involved with the planning, as well as incorporating and leveraging lessons learned from the other new schools in the community, such as Trillium. We lost a large majority of students to Trillium after the construction. When I first moved here, we had many parents tell us to not send our children to Sunset, as the school is old and not a safe place for our children.

Our school is in desperate need of an update, it is old and is not up to date on wiring, plumbing and has tested positive for asbestos. Every time we have heavy rains, the lunch room floods. The building is not earthquake proof. These are all real dangers we as parents face, sending our children to school everyday. We currently have no sidewalks for the children to safely walk on around the school property and there is no parking for parents during dropoff/pickup or other

school events. The current plan would allow our children to stay in the current school for just one year while the new school is being built.

My number one priority is the safety of my children during construction as well as maintaining minimal impact to their learning environment. I am NOT in support of demolishing the current building and displacing our children to portables at other schools. This would be a major impact to our children's learning environment and would require additional money from tax payers and the school district. The children would have no gym or cafeteria being in portables and additional money spent busing kids to other schools. There would be no sense of community for our children and teachers.

As a member of the Sunset Action team for the West Linn Wilsonville Education foundation, I know how difficult it can be to raise money towards new teachers in the district, and yet we work hard at it every year in the best interest of our children's education and future. We have a wonderful community, and we need the support from our City Council to ensure that our children are provided a safe environment to learn and to be their best. Nobody is more vested in our children's future, than the parents at Sunset Primary.

I am excited to see construction begin this summer for our new school and hope that there will be no unnecessary delays.

Respectfully,  
Angeline Mai Sorenson  
(Sunset Primary School Parent)

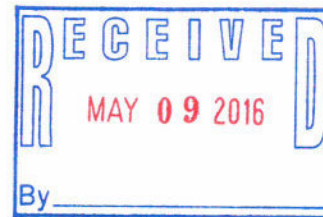


Virus-free. [www.avast.com](http://www.avast.com)

## Wyss, Darren

---

**From:** Otterman, Don  
**Sent:** Monday, May 09, 2016 4:24 PM  
**To:** Wyss, Darren  
**Subject:** FW: Sunset School



Don Otterman, City Manager  
Administration, #1422  
<http://westlinnoregon.gov>

Please consider the impact on the environment before printing a paper copy of this email.  
This e-mail is subject to the State Retention Schedule and may be made available to the public.

-----Original Message-----

From: William Hugh Tucker [mailto:[whugh.tucker@gmail.com](mailto:whugh.tucker@gmail.com)]  
Sent: Monday, May 09, 2016 4:23 PM  
To: City Council <[ima\\_citycouncil@westlinnoregon.gov](mailto:ima_citycouncil@westlinnoregon.gov)>  
Subject: Sunset School

Dear City Council,

I understand that the petition I signed may be used to delay or change the construction plan for Sunset School. I was assured that the only use of that petition was to ask for a study of the hydrological impact of the removal of trees (and the holding pond) in the area that is now Sunset Park. I made it quite clear, when I signed the petition, that I supported the current plan of construction for the school. I have grandchildren in Sunset School and I do not want them moved to another school or put into temporary classrooms during construction.

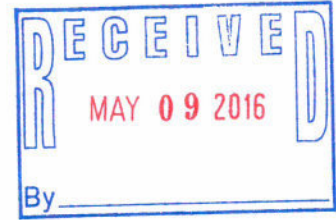
I live two houses away from the school.

W. Hugh Tucker, Ph.D.  
4835 Bonnet Dr.

**Wyss, Darren**

---

**From:** Ben Pyle <pyle.ben@gmail.com>  
**Sent:** Monday, May 09, 2016 3:30 PM  
**To:** Wyss, Darren  
**Cc:** Barb Pyle  
**Subject:** Sunset School Construction



Mr. Wyss:

The investment into our educational infrastructure pays in two critical ways. Obviously it benefits our children, but it also supports strong property values by maintaining a "best in state" school system. I write you this note as an unaffected party as my children will be out of Sunset before this project completes and I do not live in the adjacent neighborhood. I write to you as a West Linn resident which is concerned by the sustainable growth of our community.

My family has relocated multiple times over the last few years and our recent move located us in the Portland area. We landed in West Linn almost exclusively because of the impartial reputation of the school system relative to the surrounding market area. Any investment in our educational infrastructure should be taken not only to give our children the best possible start in life, but also to bolster the very tax base that allows it to exist in the first place.

I understand the concern of a few neighbors, but it appears that the Planning Commission followed the proper procedures and that based on the criteria for approval and the evidence provided by the district the decision by the Planning Commission was correct and the appeal should be denied.

It appears that the dissenters should have voiced their concerns earlier in the process and that the window of time for appeal has passed. This appears to be a last ditch effort to delay what should be a positive investment in our community's future and an appropriate use of public land.

Thank you for your consideration.

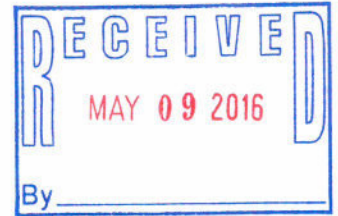
Ben Pyle  
3107 Sabo Ln.  
West Linn, OR 97068



**Wyss, Darren**

---

**From:** Emily Gilbo <emily@comcast.net>  
**Sent:** Monday, May 09, 2016 1:57 PM  
**To:** Wyss, Darren  
**Subject:** Sunset Primary new school



City Council,

I am a resident of West Linn and have 2 children who currently attend Sunset Primary. I am writing to voice my support for the current plans for the new school, based on the criteria for approval and the evidence provided by the district. I urge you to deny the appeal placed by the SOS park group. We moved to West Linn for the great schools for our children. Currently our kids go to a school that has not up to date wiring, earthquake requirements, plumbing, and has asbestos. Not to mention that anytime there is heavy rainfall the cafeteria floods! We are super excited to get a new Sunset School. The current plan has been well thought out and many have been involved in the plans. This plan allows our kids to stay in the current school instead of displacing them off to portables. Which are costly and makes learning hard. We didn't move to an area with high property taxes to send our kids off to portables for school! Please support our children and let us move forward with the current plans for Sunset Primary.

Thanks,  
Emily Gilbo

Sent from my iPhone

## Wyss, Darren

---

**From:** Otterman, Don  
**Sent:** Monday, May 09, 2016 12:53 PM  
**To:** Wyss, Darren  
**Subject:** FW: Sunset Primary School



Don Otterman, City Manager  
Administration, #1422  
<http://westlinnoregon.gov>

Please consider the impact on the environment before printing a paper copy of this email.  
This e-mail is subject to the State Retention Schedule and may be made available to the public.

-----Original Message-----

From: joannatuckerdavis@gmail.com [mailto:joannatuckerdavis@gmail.com]  
Sent: Monday, May 09, 2016 12:49 PM  
To: City Council <ima\_citycouncil@westlinnoregon.gov>  
Subject: Sunset Primary School

Dear City Council,

I am a Sunset neighborhood resident and the mother of two children currently attending Sunset Primary. I support the current plan.

I would hate to see any plan put into place that would send my children temporarily to another school or placed in portable classrooms. Please don't let that happen.

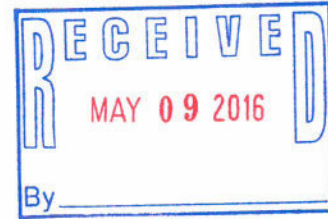
Thank you,  
Joanna Tucker Davis

Sent from my iPhone

## Wyss, Darren

---

**From:** Boyd, John  
**Sent:** Monday, May 09, 2016 12:02 PM  
**To:** Wyss, Darren  
**Subject:** FW: Build a new Sunset



John Boyd, Planning Manager  
Planning, #1524



Please consider the impact on the environment before printing a paper copy of this email.  
This e-mail is subject to the State Retention Schedule and may be made available to the public.

---

**From:** Otterman, Don  
**Sent:** Monday, May 09, 2016 12:02 PM  
**To:** Boyd, John <jboyd@westlinnoregon.gov>  
**Subject:** FW: Build a new Sunset

FYI

**From:** Chris Allen [mailto:chrisallen2233@gmail.com]  
**Sent:** Monday, May 09, 2016 11:52 AM  
**To:** City Council <ima\_citycouncil@westlinnoregon.gov>  
**Subject:** Build a new Sunset

Good Afternoon Councilmen and Councilwomen,  
I urge you to move forward with construction of the new Sunset Primary School. As a father of two daughters at Sunset we could not be prouder of the school and it's vision moving forward. We moved out of the school's neighborhood before the current school year but opted to keep our girls at Sunset because of the amazing principle and teachers we have come to know and love. Our second grader began Kindergarten at Sunset and it is her beloved school.

We were envious of Trillium when it was built but soon realized the blessing we had at Sunset when Trillium students were bursting at the doors. We are so thankful that the community stepped forward to approve the building of a new Sunset that the next generation can call home.

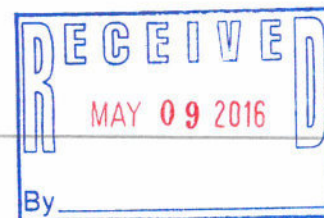
I participated in the Ed Spec meetings last year and could not be happier about the architect's plan and vision. Engineers, teachers, and parents worked for hours making sure the new Sunset will meet the needs of students and the community. Every effort was taken to please everyone involved. The new school will improve so many aspects while keeping the important traditions alive. We worked hard to make the new school feel immediately at home in the quiet and traditional Sunset neighborhood. Please keep all efforts focused on building the school according to plan.

Thank you,  
-Chris Allen

**Wyss, Darren**

---

**Subject:** FW: New sunset school



---

**From:** Serrena Choun [mailto:hounserrena@yahoo.com]

**Sent:** Monday, May 09, 2016 11:39 AM

**To:** City Council

**Subject:** New sunset school

I support the new building for the sunset School the children and the teachers greatly mean this new school will benefit the children teachers and parents so again I am all for the building of the new Sunset Primary Elementary School

Sent from Yahoo Mail on Android

**EXHIBIT CC-4 PLANNING COMMISSION DRAFT MEETING NOTES**



PLANNING COMMISSION

Meeting Notes of March 16, 2016

Members present: Michael Babbitt, Jim Farrell, Jesse Knight, Charles Mathews, Chris Myers and Gary Walvatne  
Members absent: None  
Staff present: John Boyd, Planning Manager; Darren Wyss, Associate Planner; Megan Thornton, Assistant City Attorney; Khoi Le, Public Improvement Program Manager

**PREHEARING MEETING**

Chair Babbitt called the work session to order in the Rosemont Room at City Hall. Mr. Wyss provided the latest testimony for the hearing. There was a short discussion regarding the process for the hearing.

(00:04:07)

**REGULAR MEETING - CALL TO ORDER**

Michael Babbitt called meeting to order in the Council Chambers at City Hall.

(00:04:15)

**PUBLIC COMMENT RELATED TO LAND USE ITEMS NOT ON THE AGENDA**

Randall Fastabend and Kevin Bryck spoke.

(00:10:11)

**PUBLIC HEARING – CONDITIONAL USE PERMIT, CLASS II DESIGN REVIEW AND THREE VARIANCES TO REPLACE SUNSET PRIMARY SCHOOL, CUP-15-03/DR-15-17/VAR-15-01/VAR-15-02/VAR-15-03**

Chair Babbitt explained this is a quasi-judicial hearing and provided an outline of how the meeting will proceed. After the preliminary legal matters, staff will make a presentation, followed by the applicant, then public testimony. There will be time for rebuttal by the applicant and questions by the commission.

The hearing commenced with a staff presentation by Mr. Wyss.

Tim Woodley of the West Linn-Wilsonville School District read a letter from the School Board into the record. Mr. Woodley then introduced Karina Ruiz who provided the applicant presentation.

Patrick Taylor, David Dodds, Noelle Bledy, Rob Bledy, Cheryl Varvel, Peggy Hennessy, Richard Varvel, Carrie Hansen, Barbara Dobroth, Catherine Cowan, and Julius Bledy spoke.

Mr. McPherson, attorney for the school district and Mr. Woodley provided the rebuttal.

Chair Babbitt stated there had been a request for a continuance.

Chair Michael Babbitt **moved** to continue the public hearing to replace Sunset Primary School, CUP-15-03/DR-15-17/VAR-15-01/VAR-15-02/VAR-15-03 to the date certain of April 6. The hearing will convene at 6:30 p.m. At that time, oral testimony will be received by those who have not testified at tonight's hearing. Anyone however is able to submit written testimony. After all testimony is received, the applicant will have the opportunity for rebuttal.

Commissioner Charles Mathews **seconded** the motion.

**Ayes: Commissioner Charles Mathews, Commissioner Jim Farrell, Vice Chair Jesse Knight, Commissioner Gary Walvatne, Commissioner Chris Myers and Chair Michael Babbitt**

**Nays: None**

**Abstentions: None**

**The motion carried 6-0-0**

(02:13:45)

#### **ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

Chair Babbitt asked if the Friends of Robinwood Station had submitted an application yet. Mr. Boyd stated that the Friends had received funding from the city to pay the application fee and anticipated an application but one had not been submitted as of then. Commissioner Walvatne asked why the group would have to pay application fees. Mr. Boyd clarified that although the property is owned by the City, the Friends are a private organization wanting to operate the building.

Ms. Thornton clarified that when the application is submitted, the commissioners should refrain from discussing the project with the applicants.

(02:24:08)

#### **ITEMS OF INTEREST FROM STAFF**

No comments.

(02:24:10)

#### **ADJOURNMENT**

There being no further business, Chair Babbitt adjourned the meeting.



PLANNING COMMISSION  
Meeting Notes of April 6, 2016

Members present: Michael Babbitt, Jim Farrell, Jesse Knight, Charles Mathews, Chris Myers and Gary Walvatne  
Members absent: None  
Staff present: John Boyd, Planning Manager; Darren Wyss, Associate Planner; Megan Thornton, Assistant City Attorney; Khoi Le, Public Improvement Program Manager

**PREHEARING MEETING**

Chair Babbitt called the work session to order in the Rosemont Room at City Hall. Mr. Wyss provided the latest testimony for the hearing. Ms. Thornton walked the commission through the details and options for this continued hearing.

(00:00:00)

**REGULAR MEETING - CALL TO ORDER**

Michael Babbitt called meeting to order in the Council Chambers at City Hall.

(00:00:01)

**PUBLIC COMMENT RELATED TO LAND USE ITEMS NOT ON THE AGENDA**

None.

(00:00:35)

**PUBLIC HEARING – CONTINUED FROM MARCH 16, 2016: CONDITIONAL USE PERMIT, CLASS II DESIGN REVIEW AND THREE VARIANCES TO REPLACE SUNSET PRIMARY SCHOOL, CUP-15-03/DR-15-17/VAR-15-01/VAR-15-02/VAR-15-03**

Chair Babbitt explained this is a quasi-judicial hearing and provided an outline of how the meeting will proceed. After the preliminary legal matters, staff will make an updated presentation, followed by additional testimony, then the applicant will have the opportunity for final rebuttal. At that time, the public testimony portion of the hearing will be closed.

The hearing commenced with an updated staff presentation by Mr. Wyss.

Victoria Meier, Noelle Bledy, David Dodds, Peggy Kirkendall, Caryn Aman, Peggy Hennessy, Carrie Hansen and Malia Kupillas spoke.

Tim Woodley opened the rebuttal. Mark Wharry, KPFF Consulting Engineers provided a large portion of the rebuttal directed at the testimony surrounding the stormwater facility.

The Planning Commissioners asked questions of the applicant.

Chair Babbitt stated there was a request for a continuance. The Planning Commission denied the request. Ms. Hennessy challenged the denial. Upon further discussion, the Planning Commission decided to grant the continuance.



Chair Babbitt brought up the issue of three variances. The applicant has offered to withdraw the sign variance if needed.

Vice Chair Jesse Knight **moved** to accept the applicant's voluntary withdrawal of VAR-15-03 related to the signage.

Commissioner Charles Mathews **seconded** the motion.

**Ayes: Commissioner Charles Mathews, Commissioner Jim Farrell, Vice Chair Jesse Knight, Commissioner Gary Walvatne, Commissioner Chris Myers and Chair Michael Babbitt**

**Nays: None**

**Abstentions: None**

**The motion carried 6-0-0**

Chair Michael Babbitt **moved** to close the public hearing and leave the written record open until April 13, at 12:00 noon. The Planning Commission will reconvene on April 13 at 6:30 p.m.

Commissioner Jim Farrell **seconded** the motion.

**Ayes: Commissioner Charles Mathews, Commissioner Jim Farrell, Vice Chair Jesse Knight, Commissioner Gary Walvatne, Commissioner Chris Myers and Chair Michael Babbitt**

**Nays: None**

**Abstentions: None**

**The motion carried 6-0-0**

(02:39:55)

**ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

None

(02:40:03)

**ITEMS OF INTEREST FROM STAFF**

None

(02:40:08)

**ADJOURNMENT**

There being no further business, Chair Babbitt adjourned the meeting.



PLANNING COMMISSION

Meeting Notes of April 13, 2016

Members present: Michael Babbitt, Jim Farrell, Jesse Knight, Charles Mathews, Chris Myers and Gary Walvatne  
Members absent: None  
Staff present: John Boyd, Planning Manager; Darren Wyss, Associate Planner; Megan Thornton, Assistant City Attorney; Khoi Le, Public Improvement Program Manager

**PREHEARING MEETING**

Chair Babbitt called the work session to order in the Rosemont Room at City Hall. There was a discussion about variances and the members decided a work session would be beneficial in the future. Ms. Thornton addressed questions about the continuance granted at the previous meeting.

(00:00:00)

**REGULAR MEETING - CALL TO ORDER**

Michael Babbitt called meeting to order in the Council Chambers at City Hall.

(00:00:01)

**PUBLIC COMMENT RELATED TO LAND USE ITEMS NOT ON THE AGENDA**

None.

(00:00:22)

**PUBLIC HEARING – CONTINUED FROM APRIL 6, 2016: CONDITIONAL USE PERMIT, CLASS II DESIGN REVIEW AND THREE VARIANCES TO REPLACE SUNSET PRIMARY SCHOOL, CUP-15-03/DR-15-17/VAR-15-01/VAR-15-02/VAR-15-03**

Ms. Thornton provided the preliminary legal matters. Chair Babbitt moved the hearing into deliberations. The commissioners took the opportunity to ask questions and review the project before coming to a decision.

Commissioner Jim Farrell **moved** to deny the Conditional Use Permit, Class II Design Review to replace the Sunset Primary School CUP-15-03/DR-15-17/VAR-15-01/VAR-15-02.

Commissioner Gary Walvatne **seconded** the motion.

**Ayes: Commissioner Jim Farrell and Commissioner Gary Walvatne**

**Nays: Commissioner Charles Mathews, Vice Chair Jesse Knight, Commissioner Chris Myers and Chair Michael Babbitt**

**Abstentions: None**

**The motion fails 2-4-0**

Vice Chair Jesse Knight **moved** to approve CUP-15-03/DR-15-17/VAR-15-01/VAR-15-02 to replace the Sunset Primary School.

Commissioner Chris Myers **seconded** the motion.

During discussion Vice Chair Knight amended his motion “to include the Conditions of Approval in the staff report”.

**Ayes: Commissioner Charles Mathews, Vice Chair Jesse Knight, Commissioner Chris Myers and Chair Michael Babbitt**

**Nays: Commissioner Jim Farrell and Commissioner Gary Walvatne**

**Abstentions: None**

**The motion to approve the amendment carried 4-2-0**

Chair Babbitt restated the original motion with the approved amendment made by Vice Chair Jesse Knight and seconded by Commissioner Chris Myers. “To approve CUP-15-03/DR-15-17/VAR-15-01/VAR-15-02 to replace the Sunset Primary School as amended to include the Conditions of Approval in the staff report”.

**Ayes: Commissioner Charles Mathews, Vice Chair Jesse Knight, Commissioner Chris Myers and Chair Michael Babbitt**

**Nays: Commissioner Jim Farrell and Commissioner Gary Walvatne**

**Abstentions: None**

**The motion carried 4-2-0**

(01:18:05)

#### **ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

Commissioner Walvatne reiterated the need for changes to the code. Mr. Boyd provided a brief updated on the code changes.

(01:20:18)

#### **ITEMS OF INTEREST FROM STAFF**

The next meeting is April 20 and will be a subdivision application. It looks like May will be busy for the commission. The new associate planner is expected to be on staff by May and a new Planning Commissioner has been appointed.

(01:22:20)

#### **ADJOURNMENT**

There being no further business, Chair Babbitt adjourned the meeting.

**EXHIBIT CC-5 AFFIDAVIT AND NOTICE PACKET**

# AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

## GENERAL

File No. AP-16-01 Applicant's Name Carrie Hansen / Save our Sunset Park  
Development Name \_\_\_\_\_  
Scheduled Meeting/Decision Date May 23-24, 2016

**NOTICE:** Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

## TYPE A

A. The applicant (date) 5-3-16 (signed) G. Skryer  
B. Affected property owners (date) 5-3-16 (signed) G. Skryer  
C. School District/Board (date) 5-3-16 (signed) G. Skryer  
D. Other affected gov't. agencies (date) 5-3-16 (signed) G. Skryer  
E. Affected neighborhood assns. (date) 5-3-16 (All) (signed) G. Skryer  
F. All parties to an appeal or review (date) 5-3-16 (signed) G. Skryer

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:

Tidings (published date) 5-12-16 (signed) G. Skryer  
City's website (posted date) 5-3-16 (signed) G. Skryer

## SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) 5-12-2016 (signed) Dan S Wja

**NOTICE:** Notices were sent at least 14 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

## TYPE B

A. The applicant (date) \_\_\_\_\_ (signed) \_\_\_\_\_  
B. Affected property owners (date) \_\_\_\_\_ (signed) \_\_\_\_\_  
C. School District/Board (date) \_\_\_\_\_ (signed) \_\_\_\_\_  
D. Other affected gov't. agencies (date) \_\_\_\_\_ (signed) \_\_\_\_\_  
E. Affected neighborhood assns. (date) \_\_\_\_\_ (signed) \_\_\_\_\_

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.  
Date: \_\_\_\_\_ (signed) \_\_\_\_\_

**STAFF REPORT** mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.

(date) 5-12-2016 (signed) Dan S Wja

**FINAL DECISION** notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

(date) \_\_\_\_\_ (signed) \_\_\_\_\_

**WEST LINN CITY COUNCIL  
PUBLIC HEARING NOTICE  
FILE NO. AP-16-01**

The West Linn City Council is scheduled to hold a public hearing on **Monday and Tuesday, May 23 and 24, 2016**, starting at **6:00 p.m.** in the Council Chambers of City Hall at 22500 Salamo Road, West Linn, to consider an appeal by Carrie Hansen on behalf of Save Our Sunset Park of the Planning Commission's approval of the Conditional Use Permit (CUP-15-03), Class II Design Review (DR-15-17), and two Class II Variances (VAR-15-01 & VAR-15-02) for the Sunset Primary School Replacement at 2351 Oxford Street.

You have been notified of this proposal because County records indicate that you own property within 500 feet of the affected site on Clackamas County Assessor's Map 2S-1E-25 DC, Tax Lots 3700, 5800, 6100, 6200, and 6300 or City records indicate that you had standing on case CUP-15-03/DR-15-17/VAR-15-01/VAR-15-02 or because notice is required by Chapter 99 of the West Linn Community Development Code.

The hearing is limited to the issues clearly and distinctly set forth in the notice of appeal. Carrie Hansen and Save Our Sunset Park asserts that the applicable approval criteria in **Community Development Code (CDC) 60.070.A(2), 60.070.A(3), 60.070.A(6), 55.130.B, 75.020.B, and 92.010.E** were misapplied. Therefore, the appellants disagree with the findings adopted by the Planning Commission for the Conditional Use Permit, Class II Design Review, and Class II Variances, and the appellants assert the criteria have not been met.

The City Council will make a decision to approve the application and uphold the Planning Commission's decision or overturn the Planning Commission's decision and deny the application based upon the applicable criteria and the evidence in the record. At the hearing, all written or oral comments must relate specifically to the applicable criteria and refer only to evidence and facts already in the record.

The notice of appeal and the complete application for AP-16-01 is available for inspection, at no cost, at City Hall or via the City of West Linn's website at <http://westlinnoregon.gov/planning/2351-oxford-street-appeal-planning-commission-approval>. Printed copies of these documents may be obtained for a minimal charge per page. At least 10 days prior to the hearing, a copy of the staff report will be available for inspection at no cost or copies can be obtained for a minimal charge per page. For further information, please contact Darren Wyss, Associate Planner, at City Hall, 22500 Salamo Road, West Linn, OR, (503) 722-5512, or [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov).

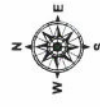
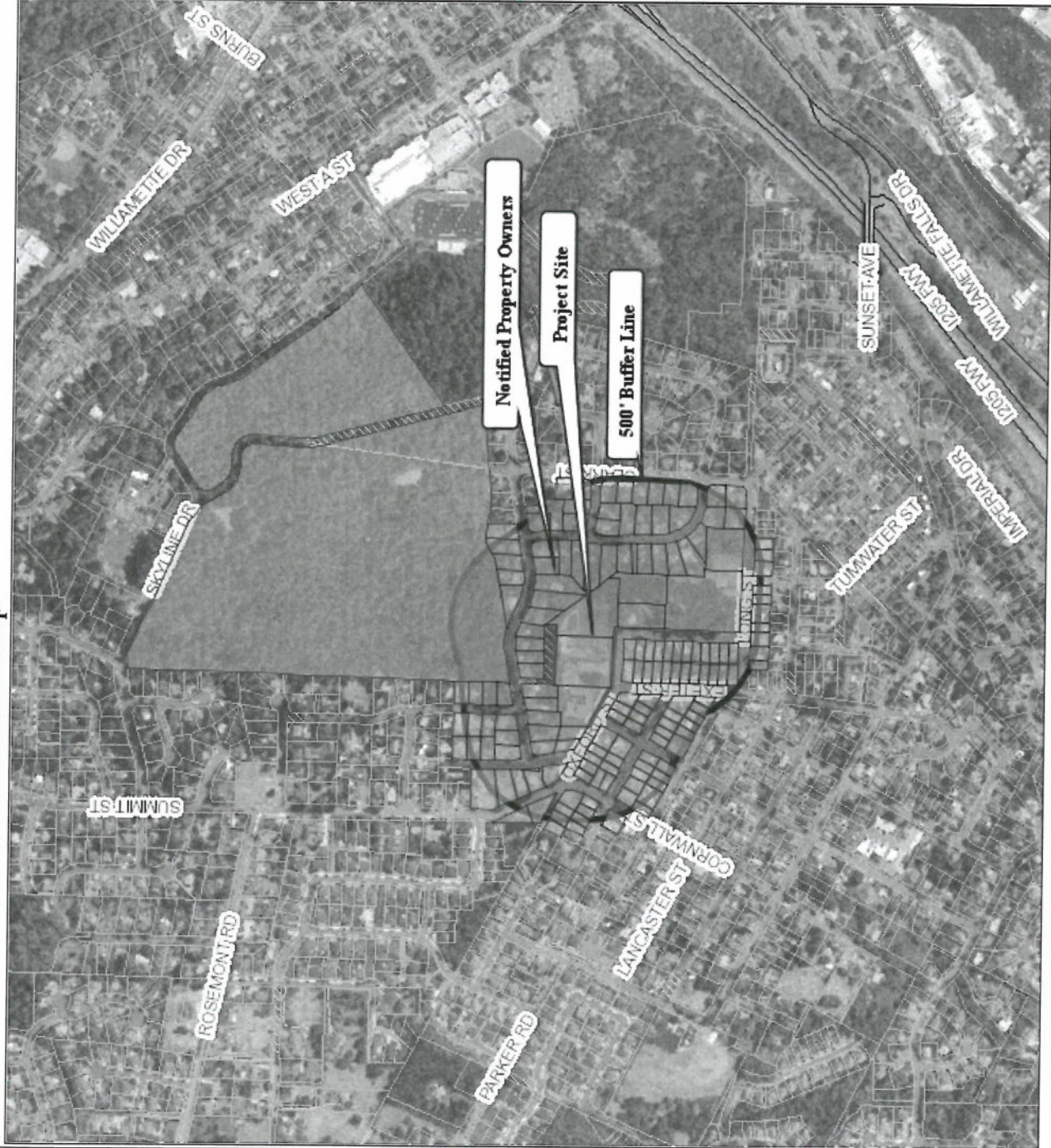
The appeal hearing is on the record, and it will be conducted in accordance with Community Development Code (CDC) 99.280(B), Council rules for on the record hearings and those rules in CDC Section 99.170 that are applicable to on the record hearings. **No new facts or evidence may be submitted in an on the record hearing.** Anyone wishing to present written argument on the issues being appealed may do so in writing by pointing out evidence in the record that is relied upon for the argument. Submitted arguments outside of the issues on appeal, or arguments that include new facts or evidence, will be redacted or will not be submitted into the record. The deadline for submitting argument is **Monday, May 16, at 5:00 p.m. Written testimony will not be accepted after this deadline; there will be no written argument accepted at the hearing on May 23rd.** If you wish to read material at the meeting, you may do so, but the Council will not be accepting those as written materials. Members of the public may speak for a maximum of three (3) minutes each at the public hearing, but no

new evidence or facts are allowed and those speaking should refer to the record for all facts relied upon. At the appeal hearing the Appellant will be allowed to present the basis for its appeal and the Applicant will be allowed to present the evidence relied upon for approval.

The Council may continue the appeal hearing to another meeting if it chooses to open the record on a limited basis pursuant to CDC 99.080(C) to obtain additional evidence or testimony, or close the appeal hearing and take action on the appeal as provided by CDC 99.290.

Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

# 2351 Oxford Street Notification Map



Scale 1:9,600 - 1 in = 800 ft  
Scale is based on 8-1/2 x 11 paper size



Map created by: SSHROYER  
Date Created: 01-Dec-15 09:41 AM

**WEST LINN GIS**

DISCLAIMER: This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. Source: West Linn GIS (Geographic Information System) MapOpix.





# CITY OF West Linn

## **CITY COUNCIL PUBLIC HEARING**

**PROJECT # AP-16-01  
MAIL: 5/3/16 TIDINGS: 5/12/16**

### **CITIZEN CONTACT INFORMATION**

To lessen the bulk of agenda packets, land use application notice, and to address the worries of some City residents about testimony contact information and online application packets containing their names and addresses as a reflection of the mailing notice area, this sheet substitutes for the photocopy of the testimony forms and/or mailing labels. A copy is available upon request.

**WEST LINN CITY COUNCIL  
PUBLIC HEARING NOTICE  
FILE NO. AP-16-01**

The West Linn City Council is scheduled to hold a public hearing on **Monday and Tuesday, May 23 and 24, 2016**, starting at **6:00 p.m.** in the Council Chambers of City Hall at 22500 Salamo Road, West Linn, to consider an appeal by Carrie Hansen on behalf of Save Our Sunset Park of the Planning Commission's approval of the Conditional Use Permit (CUP-15-03), Class II Design Review (DR-15-17), and two Class II Variances (VAR-15-01 & VAR-15-02) for the Sunset Primary School Replacement at 2351 Oxford Street.

The hearing is limited to the issues clearly and distinctly set forth in the notice of appeal. Carrie Hansen and Save Our Sunset Park asserts that the applicable approval criteria in **Community Development Code (CDC) 60.070.A(2), 60.070.A(3), 60.070.A(6), 55.130.B, 75.020.B, and 92.010.E** were misapplied. Therefore, the appellants disagree with the findings adopted by the Planning Commission for the Conditional Use Permit, Class II Design Review, and Class II Variances, and the appellants assert the criteria have not been met.

The City Council will make a decision to approve the application and uphold the Planning Commission's decision or overturn the Planning Commission's decision and deny the application based upon the applicable criteria and the evidence in the record. At the hearing, all written or oral comments must relate specifically to the applicable criteria and refer only to evidence and facts already in the record.

The notice of appeal and the complete application for AP-16-01 is available for inspection, at no cost, at City Hall or via the City of West Linn's website at <http://westlinnoregon.gov/planning/2351-oxford-street-appeal-planning-commission-approval>. Printed copies of these documents may be obtained for a minimal charge per page. At least 10 days prior to the hearing, a copy of the staff report will be available for inspection at no cost or copies can be obtained for a minimal charge per page. For further information, please contact Darren Wyss, Associate Planner, at City Hall, 22500 Salamo Road, West Linn, OR, (503) 722-5512, or [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov).

The appeal hearing is on the record, and it will be conducted in accordance with Community Development Code (CDC) 99.280(B), Council rules for on the record hearings and those rules in CDC Section 99.170 that are applicable to on the record hearings. **No new facts or evidence may be submitted in an on the record hearing.** Anyone wishing to present written argument on the issues being appealed may do so in writing by pointing out evidence in the record that is relied upon for the argument. Submitted arguments outside of the issues on appeal, or arguments that include new facts or evidence, will be redacted or will not be submitted into the record. The deadline for submitting argument is **Monday, May 16, at 5:00 p.m. Written testimony will not be accepted after this deadline; there will be no written argument accepted at the hearing on May 23rd.** If you wish to read material at the meeting, you may do so, but the Council will not be accepting those as written materials. Members of the public may speak for a maximum of three (3) minutes each at the public hearing, but no new evidence or facts are allowed and those speaking should refer to the record for all facts relied upon. At the appeal hearing the Appellant will be allowed to present the basis for its appeal and the Applicant will be allowed to present the evidence relied upon for approval.

The Council may continue the appeal hearing to another meeting if it chooses to open the record on a limited basis pursuant to CDC 99.080(C) to obtain additional evidence or testimony, or close the appeal hearing and take action on the appeal as provided by CDC 99.290.

Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

Publish: West Linn Tidings, May 12, 2016