



Memorandum

Date: March 13, 2017

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

From: Darren Wyss, Associate Planner

Subject: Sunset School Replacement – LUBA Remand
Public Comments – 3/9/2017 to 3/13/2017

The deadline to submit written comments for the LUBA Remand Public Hearing on the Sunset School Replacement (AP-16-01) was 5:00 p.m. on March 13, 2017. Attached are all written comments received after the May 9, 2017 Council Agenda Report and up until the comment deadline.

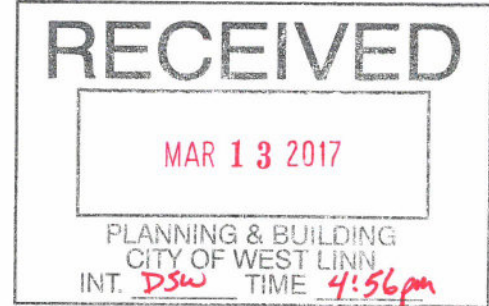
Please feel free to contact me at dwyss@westlinnoregon.gov or 503-722-5512 with any questions regarding the materials or process.

Wyss, Darren

From: Stein, Eileen
Sent: Monday, March 13, 2017 5:26 PM
To: Wyss, Darren; Boyd, John; Thornton, Megan
Subject: FW: Sunset School

Here's another....

From: Byron Jolma [mailto:bjolma@jolmadesign.com]
Sent: Monday, March 13, 2017 4:56 PM
To: Stein, Eileen <estein@westlinnoregon.gov>
Cc: tim.ramis@jordanramis.com; savvybusiness@live.com
Subject: Sunset School



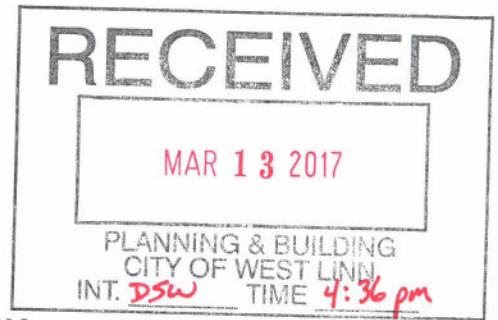
Ms. Stein,

On behalf of the citizens group concerned about potential impacts associated with the stormwater management pond currently under construction at Sunset Primary school, please submit to the record the following items of concern:

1. Confirm the surface area of the pond was included in the post-developed runoff-contributing area, and that it is modeled with a Curve Number of 100.
2. To function effectively, combination treatment/detention ponds rely on a concept known as "plug flow," wherein untreated stormwater enters one end of the facility and pushes out effluent at the other end. The residence time during which the water moves from one end to the other is crucial to the treatment process. This requires a configuration where the pond's length-to-width ratio is at least 3 to 1. As designed, the Sunset facility does not appear to meet this guideline--please confirm the pond will function as intended, especially with regard to water quality treatment.
3. The water quality depth (6 inches) is much shallower than normal combination ponds, which are normally comprised of two cells separated by a berm. To function properly, a wet pond must always contain water in the dead storage area. As proposed, I believe the pond will be susceptible to drying out.
4. Most ponds have at least 6 inches of sediment storage that is not included as part of the storage or treatment capacity. Please confirm sediment storage is included in the proposed design.
5. The current excavation appears much deeper than what is shown on the plans. Has there been a design change? Please clarify.

Additional supporting documentation will be provided prior to or at the time of the upcoming hearing. On behalf of the Save Our Sunset committee, I would appreciate the opportunity to provide oral testimony at the upcoming hearing. Please ensure this email is included in the LUBA remand hearing file, and forwarded to all members of the City Council. Please don't hesitate to contact me if you have further questions.

Respectfully,
Byron Jolma, PE
Jolma Design, LLC
360-703-1577



BEFORE THE CITY COUNCIL
FOR THE CITY OF WEST LINN, OREGON

In the Matter of WEST LINN-WILSONVILLE) FILE NO: AP-16-01
SCHOOL DISTRICT 3JT's Application for)
Conditional Use, Design Review, Director's) **DAVID DODDS' AND SAVE OUR**
Exception, and Class II Variance Approval to) **SUNSET PARK'S MEMORANDUM**
allow construction of a new primary school) **IN OPPOSITION TO PROCEDURE**
and related facilities in the R-10 zone.) **ON REMAND FROM THE LAND USE**
CUP-15-03, DR-15-17 and VAR-15-01/02/03) **BOARD OF APPEALS**

I. INTRODUCTION

David Dodds and Save Our Sunset Park (collectively referred to as "SOS Park") file this memorandum in opposition to the remand *process* because this matter should be sent back to the Planning Commission for consideration of the *new evidence*. Previously, the Planning Commission approved the West Linn-Wilsonville School District's ("District's") application for conditional use approval of a new primary school site plan. On appeal, the City Council modified the Planning Commission decision by adding conditions, including a requirement for *future* submittal of a *different* storm water management plan which was intended to show *current* satisfaction of the conditional use approval criteria. SOS Park appealed the City Council decision to the Land Use Board of Appeals ("LUBA"). LUBA agreed that deferred compliance with this approval criterion was not acceptable because the code requires the record before the decision maker to include a plan submitted by a registered engineer with particular findings which are supported by factual data.

The West Linn Community Development Code (“CDC”) provides that the Planning Commission is the decision making body to take evidence on conditional use applications. City Council review is *limited to the record* created before the Planning Commission (unless the situation falls within narrow exceptions for new evidence under CDC 99.280 (C)). On remand from LUBA, because the new storm water management plan constitutes *new evidence*, the case should be before the Planning Commission.

II. ARGUMENT

A. Planning Commission Review

The Planning Commission has not had an opportunity to review the new storm water management plan. The conditional use approval criteria mandate a determination on the sufficiency of the factual data to support findings regarding the off-site impacts of storm water runoff. Because this is a quasi-judicial proceeding and because the new storm water management plan constitutes new evidence, the Planning Commission must be the initial review body.

West Linn CDC 99.060 (B) explains the authority of the Planning Commission as it relates to quasi-judicial actions. According to 99.060 (B) (2) (b), with respect to conditional use applications such as the District’s application, the Planning Commission has authority to approve outright, deny, or approve the applications with conditions. Then, *after* the Planning Commission has conducted an evidentiary hearing, the City Council has the authority to consider appeal or review of a decision made by the Planning Commission *based on the record created before the Planning Commission*. See CDC 99.060 (C) (3) and CDC 99.280 (B).

In this case, LUBA remanded the case to the City based on failure to demonstrate compliance with conditional use approval criteria, including CDC 60.070 (A) (6)/CDC 55.130 (B) and CDC 60.070 (A) (2). LUBA also found that CDC 92.010 (E) was not met. These approval criteria include requirements for submittal of a storm water management plan and statement by a registered engineer, 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” for certain storm events. LUBA agreed that a condition requiring future submittal of a different storm water management plan is not sufficient to meet the applicable approval criteria. The plan must be in the record at the time the initial decision is made.

In his January 24, 2017 memorandum to the City Council, the West Linn City Attorney recognized the limitation on the City Council’s ability to accept new evidence:

Because of the City’s on the record appeal procedure, it was not possible for the School District or opponents to include expert evidence on the revised plan during the Council’s appeal proceeding.

The City Attorneys’ interpretation of the City Council’s review authority is consistent with the express language of the code, which provides that review shall be *limited to the “record* of the [Planning Commission] proceedings as well as the oral and written *arguments* presented which are limited to those issues clearly and distinctly set forth in the notice of appeal.” CDC 99.280 (B). [Emphasis added]. This provision clearly prohibits *new evidence* in support of the application to be considered by the City Council without prior review by the Planning

Commission. The City Council may consider “arguments,” but there is no provision allowing “new evidence,” unless the provisions of 99.280 (C) apply.¹

B. Limited Exception of CDC 99.080 (C)

There are limited situations in which the City Council may reopen the record to consider new evidence. There can be no dispute that the new storm water management plan constitutes new evidence in support of the conditional use application. CDC 99.280 (C) (1) allows the City Council to reopen the record if there has been a *procedural error* and reopening the record is the *only* way to correct the error. CDC 99.280 (C) (2) allows the record to be reopened if there was a *factual error before the Planning Commission*, through no fault of the requesting party, which is relevant to an approval criterion. Neither of those narrow exceptions applies in this case.

1. Procedural Error (CDC 99.280 (C) (1)).

The imposition of a condition requiring future submittal of a different storm water plan in a non-public forum is not a procedural error. This is a *substantive* error and requires remand to the Planning Commission for the initial determination of whether the *new plan* meets the conditional use approval criteria. LUBA agreed that CDC 60.070 (A) (6)/CDC 55.130 (B), CDC 60.070 (A) (2), and CDC 92.010 (E) are not merely submittal requirements which can be met by conditions of approval requiring future submittal. There must be *substantive review* to determine whether the new plan is supported by facts which clearly show that there will be no

¹ 99.280 (C) provides that “[t]he Council may reopen the record to consider new evidence on a limited basis; specifically, if the Council determines that:

1. A procedural error was committed that prejudiced a party’s substantial rights, and reopening the record before the Council is the only means of correcting the error; or
2. A factual error occurred before the lower decision-making body through no fault of the requesting party, that is relevant to an approval criterion and material to the decision.

adverse off-site impacts, or the impacts and mitigation measures must be identified. The Planning Commission must make the initial determination of compliance with these standards, based on the *evidence* before it (i.e. the new storm water management plan). These mandatory approval criteria require *substantive review* prior to approval.

Furthermore, even if the lack of substantive review could be deemed a “procedural error,” City Council review of the new storm water management plan is not the “*only* means of correcting the error.” The proper means of correcting this error would be to send the case back to the Planning Commission to review the substance of the new plan for compliance with the conditional use approval criteria. CDC 99.060. Accordingly, City Council review of the new engineering plan and statement (which have not been reviewed by the Planning Commission) does not qualify for the narrow exception allowing presentation of new evidence to the City Council, directly, under CDC 99.280 (C) (1).

2. Factual Error (CDC 99.280 (C) (2)).

The City code allows the City Council to reopen the record to accept new evidence if a “factual error occurred before the [Planning Commission] through no fault of the requesting party, that is relevant to an approval criterion and material to the decision.” CDC 99.280 (C) (2). LUBA remanded this case for substantive, public review of the new storm water management plan. This new evidence has never been before the Planning Commission. Therefore, no factual error regarding the new storm water management plan could have occurred *before the Planning Commission*. Accordingly, the factual error exception set under CDC 99.280 (C) (2) does not apply.

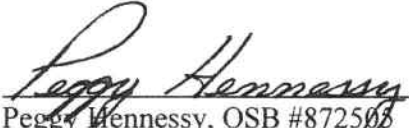
III. CONCLUSION

The new storm water management plan constitutes *new evidence* in support of the District's application. The Planning Commission is the decision making body authorized to consider *all evidence* regarding conditional use applications, in the first instance. 99.060 (B) (2) (b). Then, any party may appeal the Planning Commission decision to the City Council. CDC 99.280 (B) limits City Council review to the record established before the Planning Commission, unless one of the two narrow exceptions under 99.280 (C) apply. However, as explained above, neither exception applies in this case. Therefore, the matter must be sent back to the Planning Commission for initial review of the evidence contained in the new storm water management plan because the City Council review is limited to the record created before the Planning Commission.

DATED this 13th day of March, 2017.

Respectfully submitted,

REEVES, KAHN, HENNESSY & ELKINS



Peggy Hennessy, OSB #872503
Attorney for David Dodds and
Save Our Sunset Park

CERTIFICATE OF SERVICE

I hereby certify that I served the DAVID DODDS' AND SAVE OUR SUNSET PARK'S MEMORANDUM IN OPPOSITION TO PROCEDURE ON REMAND FROM THE LAND USE BOARD OF APPEALS, on March 13, 2017, by mailing a true copy, via first class mail, to the following individuals, contained in a sealed envelope with postage prepaid to the following addresses with a courtesy copy sent to each email address shown:

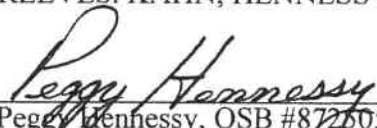
Megan K. Thornton
City of West Linn
22500 Salamo Road
West Linn, OR 97068
mthornton@westlinnoregon.gov

Timothy V. Ramis
Jordan Ramis PC
Two Centerpointe Dr, 6th Floor
Lake Oswego, OR 97035
tim.ramis@jordanramis.com

Peter R. Mersereau
Thomas W. McPherson
MERSEREAU SHANNON LLP
1 SW Columbia Street, Ste 1600
Portland OR 97258
pmersereau@mershanlaw.com
tmcpherson@mcrshanlaw.com

DATED this 13th day of March, 2017.

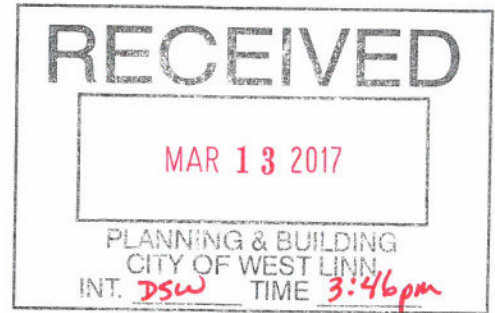
REEVES, KAHN, HENNESSY & ELKINS


Peggy Hennessy, OSB #872505
Attorney for David Dodds and
Save Our Sunset Park

MERSEREAU ■ SHANNON^{LLP}

Attorneys at Law | Founded in 1885

Thomas W. McPherson
503.226.6400 x 202
tmcpherson@mershanlaw.com



March 13, 2017

City Council of the City of West Linn, Oregon
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

Re: AP 16-01: Sunset Primary School replacement at 2351 Oxford Street
(On remand from the Land Use Board of Appeals)

Dear Mayor Axelrod and Councilors:

I am writing on behalf of our client, West Linn-Wilsonville School District, in connection with the above referenced appeal, which is now before the City Council on remand from LUBA. On June 2, 2016, the City Council denied this appeal, and the School District proceeded with construction of the replacement primary school at the site. Construction activities have progressed rapidly, and the new Sunset Primary School is approaching completion – on schedule for occupancy during the upcoming 2017-2018 school year.

As LUBA's decision made clear, the only reason for this remand is that the record before the City Council as of June 2, 2016 was incomplete. As of that date, the School District's engineers had not yet had an opportunity to prepare their final Stormwater Drainage Report. However, that Report was prepared and submitted to the City Engineer in July 2016.

For this reason, the public hearing on remand may properly be heard by the City Council. CDC 99.280(C). The City Council imposed conditions that required minor revisions to the original stormwater management plan. Now that the final Stormwater Drainage Report is available, it is appropriate for the City Council on remand from LUBA to reopen the record and receive that final Stormwater Drainage Report as supplemental evidence.

The applicable Development Code criteria require that the record must contain the following: "A plan and statement" prepared by "a registered civil engineer" that "clearly shows that there will be no adverse impacts from increased intensity of runoff off site." If the engineer's plan identifies any such adverse impacts, the plan must also identify measures to "mitigate those impacts." The City's Development Code sections 55.130(B) and 99.010(E) provide the foregoing requirements for a 10-year and a 100-year storm, respectively.

The final Stormwater Drainage Report was prepared by the same civil engineers who have worked with the School District from the inception of the Sunset Primary replacement project. They are KPFF Consulting Engineers, Portland, Oregon, and the final Report was prepared and signed by a highly experienced, registered civil engineer, Mr. Mark Wharry.

When the final Stormwater Drainage Report is reviewed and understood in full, there will be no doubt whatsoever that the requirements of the City's Development Code are not only met, but significantly exceeded. It will be seen that the stormwater management system at the new Sunset Primary School incorporates the latest technology and equipment, which will actually reduce – not increase – the “intensity of runoff off site.” This is true even for the heaviest rainfall events – that is, 2-year, 5-year, 10-year, 25-year, and 100-year storms.

It follows, of course, that when the “intensity of runoff off site” is reduced rather than increased, there simply cannot be any “adverse impacts.” Instead, all of the off-site consequences of the new stormwater management system will be beneficial, not adverse, reducing the risk of flooding, landslides, and loss of significant trees. At the upcoming public hearing on March 20, 2017, the civil engineer who prepared and signed the final Stormwater Drainage Report will be available to speak to the Council in person, and we are confident that his testimony will elucidate the Report more fully.

Therefore, the final Report and the principal engineer's testimony can be expected to provide exactly the evidence anticipated by LUBA as supplementary support for the conclusions originally reached by the City Council on June 2, 2016.

Then, with this additional evidence in the record, the City Council should once again – and finally – deny appeal AP-16-01, thus upholding and reaffirming its June 2, 2016 Final Decision and Order, by which the City Council approved the School District's replacement of Sunset Primary School.

Respectfully submitted,

MERSEREAU SHANNON LLP

/s/ Thomas W. McPherson

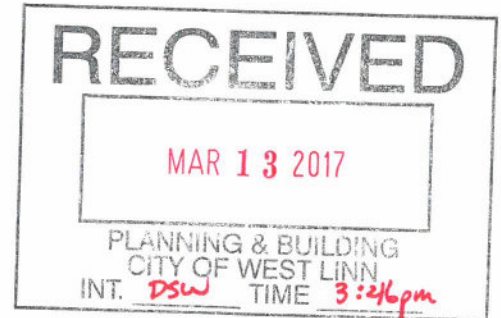
Thomas W. McPherson



West Linn – Wilsonville Schools

March 10, 2017

City Council of the City of West Linn, Oregon
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068



Re: AP 16-01: Sunset Primary School replacement at 2351 Oxford Street
(On remand from the Land Use Board of Appeals)

Dear Councilors and Mayor Axelrod:

The School District appreciates the opportunity to both complete the record and finalize the permit for the Sunset Primary School Replacement Project with inclusion of the updated July 2016 Stormwater Drainage Report as prepared and certified by the School District's civil engineer.

The stormwater report affirms compliance with West Linn Community Development Code and the Conditions of Approval for the Sunset permit. The report has been reviewed and approved by City Engineering; engineering design for stormwater has been completed; a permit has been issued; and construction of the stormwater system is well over halfway complete.

At the March 20th City Council Hearing on this matter, the school district will present the updated plan and answer any questions the Council may have.

Sincerely,

DEPARTMENT OF OPERATIONS

Tim K. Woodley, Director

kpff

RECEIVED

MAR 13 2017

PLANNING & BUILDING
CITY OF WEST LINN
INT. *DSW* TIME *3:46pm*

March 10, 2017

City Council of the City of West Linn, Oregon
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

Re: AP 16-01: Sunset Primary School replacement at 2351 Oxford Street
(On remand from the Land Use Board of Appeals)

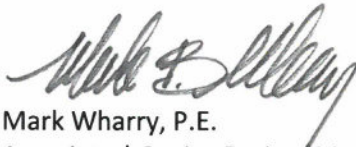
Dear Councilors and Mayor Axelrod:

Per the conditions of approval for the Sunset Primary School as developed in the June 2nd, 2016 West Linn City Council meeting, KPFF revised the proposed stormwater facility design and submitted the updated Sunset Stormwater Drainage Report dated July 2016. This revised design was worked out in discussion with City of West Linn Engineering staff and has been reviewed by them.

Specifically, this updated design and report incorporates an impermeable liner under the proposed facility to mitigate concerns about storm infiltration. In addition, additional effort was made to further minimize the facility footprint and adjust the positioning of the facility as far north as possible to maximize preservation of existing trees.

We look forward to the upcoming March 20th, 2017 scheduled City Council meeting to present the updated design and answer any questions.

Sincerely,
KPFF Consulting Engineers



Mark Wharry, P.E.
Associate | Senior Project Manager

Mr. Mayor and members of city council,

My neighbors, and the members of Save Our Sunset have worked very hard to achieve a reasonable stormwater solution for the Sunset School which would include ways for less water to seep into the ground and cause less water runoff downgrade of the school where residents have been experiencing problems with flooding. We have fought to get permeable pavers and raingardens established (like the ones that exist at our police station), not only to ease water issues but to educate our children in the proper management of our resources. To this end we have devoted countless hours and spent a very large sum of money.

At first City Council appeared to agree that more could be done and passed a modified plan for detaining water, but this was done without the support of factual data, a registered engineer, and outside of a public forum. Save Our Sunset brought this issue before LUBA and won this argument with LUBA stating that:

“The city has provided in its code that that determination be supported by a plan that is submitted by a registered engineer and supported by factual data. In that circumstance it is not sufficient for respondents to argue before LUBA that the future, as yet to be reviewed drainage and grading plan will meet the CDC requirements.”

From this statement it seems clear that our CDC requirements were not met and therefore the stormwater part of the school district’s application was not complete. Unless all conditions of approval are met a project is not supposed to go forward, and yet building on the school was allowed to continue. Since a new stormwater plan is proposed it should now go back to the planning commission for review and comment. If we are to honor our Community Development Codes, then we must bring the school district’s application back before the Planning Commission. We all want a school built, but not at the sacrifice of our Sunset park and neighbors downhill from the building.

Last fall, and before all our recent rainfall, residents on Simpson St and Tumwater St. noticed a new spring that seems to begin near the Sunset Fire Hall and continues down Simpson St. and becomes very noticeable at the south end of 2205 Charmin St. property. It is estimated that as much as 300 gallons a day are seeping through the pavement on Charmin St and running down Simpson St. and into an existing stormwater drain. This water was tested by the city and found to be spring water. If left unchecked it could cause damage to residential properties and undermine the road bed. Please note the photos below.

I have lived in West Linn for 30 years, and at my residence just below this spring for 16 of those years, and I have never seen anything like this. I suspect that the digging of the detention pond for the school, and stormwater pipes on Bitner St could very well have something to do with this. The city should hire a Hydrologist and Civil Engineer to study land further downgrade of this construction, and any new building site, and formulate a better

stormwater plan. Furthermore, the water runoff from Sunset School is going into Sunset Creek which is barely 3 ft. wide as it winds in back of Tumwater St. Has anyone checked to see if this creek can sustain that much more water?

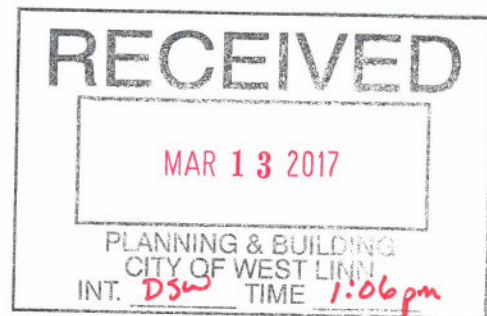
We need to enact a broader stormwater management plan that is sensitive to all residents downgrade of building sites and I sincerely hope that this city council will enact such a plan. Thank you,

Patrick Noe, Sunset Neighborhood Association President.

4412 Simpson St.



Spring Flowing down Simpson St and into the stormwater drain.



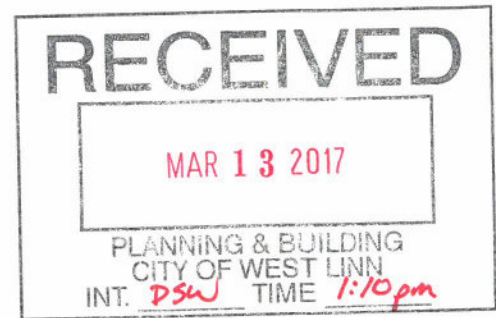
Sunset Creek barely 3 Ft wide can't take more water!

3/13/2017

To: City Council West Linn

Council members and Mayor Axlerod,

**Re: AP-16-01 Sunset School
LUBA remand**



It is my opinion that the LUBA remand on this issue is a procedural issue and should be addressed by the council as the current members were present for the original decision and have the most complete knowledge base to handle.

Referring to the planning commission will most likely result in another appeal and it will wind up back in front of the council anyway.

With regard to the two issues in the remand:

1. Public Hearing. With the 3/20 public hearing this error will be corrected.
2. The "Stormwater Drainage Report" submitted in July signed by a Geotechnical Engineer and a Senior Engineering Geologist satisfies the second remand issues and indicates no adverse affects from the current plan.

This has been an arduous public process and with all the council meetings, planning commission meetings, school district meetings, and volumes of information that have vetted the current plan it is now time to move forward and accept the current plan.

Regards,
Bill Dahl
OC Blvd
West Linn, OR 97068

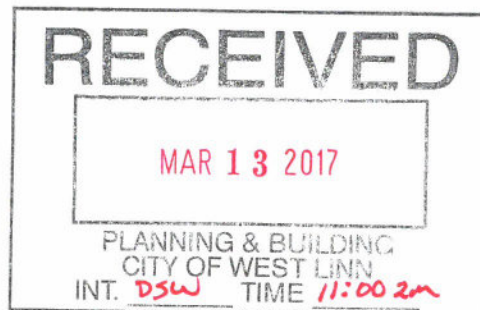
Wyss, Darren

From: Stein, Eileen
Sent: Sunday, March 12, 2017 10:34 AM
To: Wyss, Darren; Boyd, John; Thornton, Megan
Subject: Fwd: Sunset School Project

Here's another....

----- Forwarded message -----

From: Robin <Robin4realestate@comcast.net>
Date: Mar 11, 2017 12:31 PM
Subject: Sunset School Project
To: "Stein, Eileen" <estein@westlinnoregon.gov>
Cc:



Dear Mayor Axelrod and Members of City Council,

We own property below Sunset school area and have already experienced higher levels of runoff caused by previous uphill development. Because of the potential for increased flooding and landslides, we support the efforts of the citizens of Sunset to have the school district's new design and data thoroughly evaluated by the planning commission as is the policy of the city.

We further support their request to have the school's new storm water plan and supporting data reviewed by an independent Oregon licensed civil engineer and a certified hydrogeologist and making that evaluation and recommendations available to the planning commission and/or city council prior to any decision being made. Any added costs to the city will be potentially offset by avoiding costly lawsuits that may result from incomplete or inaccurate design and data.

Ron and Robin Grimm

4784 Walnut Street
West Linn, OR 97068
503-650-3922

Eileen Stein
City Manager
Administration
503-722-3422



RECEIVED

MAR 13 2017

PLANNING & BUILDING
CITY OF WEST LINN
INT. *PSW* TIME *11:00 am*

DATE: MARCH 11.2017

TO: MAYOR AXELROD AND MEMBERS OF CITY COUNCIL OF THE CITY OF WEST LINN

FROM: BOB AND PEGGY KIRKENDALL, 1825 Webb Street, West Linn

RE: LUBA REMAND AND HEARING ON THE SUNSET SCHOOL STORM WATER PLAN

DEAR MAYOR AND CITY COUNCIL MEMBERS,

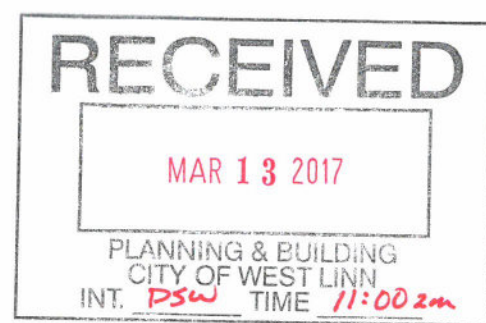
Upon reading the LUBA decision, it is clear that not only the PROCESS enlisted by the City Council to bypass the citizen review on the new design was faulty but, more importantly, the school district's engineers did not provide the data necessary for a complete evaluation of the original plan that was initially approved by the city engineer in charge of such approval. That same engineer was given responsibility for approving the second design as well which is a cause for even more concern.

Sunset petitioners are concerned that the city lacks the staff members that are capable in evaluating a complex design of this magnitude where many of their homes are sitting on an ancient landslide with soil that is susceptible to landslides and slippage in the first place. It is their view that in situations like this, independent outside experts such as civil engineers and hydro geologists should be contracted to review these plans and make their recommendations prior to any decision being made by the planning commission, or as in the event of an appeal to city council, to city council. Sunset petitioners want to have a say in how the outside consultants are selected and who is selected and have the opportunity to interview the consultants along with the city staff to insure their utmost qualifications and impartiality.

By members of city council and staff minimizing the seriousness of this remand and telling citizens it is only a technicality of a lack of a signature, it creates extreme concern of those citizens living downslope who have everything to lose and nothing to gain. Furthermore, by the city not stopping construction of the pond while it was being considered by LUBA and the pond being currently completed, there is no way to know the pond was even built to the school engineer's drawings which indicates the depth of water would be a maximum of three feet including vegetation when it appears the depth of the pond far exceeds that measurement.

As you well know, it is the job of city government to develop codes and processes that protect citizens throughout the area being developed or redeveloped. However, it the opinion of citizens in the Sunset area that this was not the standard in the approval of this school. This remand offers the city an opportunity to correct any mistakes and oversights that were made in the initial storm water design. Sunset citizens consider this to be a new design and therefore it needs to be rigorously reviewed by the planning commission as any other new design would be. They strongly recommend the city contract with an independent civil engineer and hydrogeologist to ensure that the design and the data for that design are correct and that this is the best possible solution to prevent additional downslope flooding and potential landslides. We further insist all building that would add increase runoff be stopped on the site until the plan has received approval. As a personal note, we recommend the city adopt the procedure of having all development over ½ acre built on a hillside or sloping site, be reviewed by an independent civil engineer and hydrogeologist since we have experienced issues with additional storm water from developments above our home which is located in a different area but with similar conditions.

Bob and Peggy Kirkendall



March 10, 2017

To the City Council of West Linn:

I have been studying the findings of the Land Use Board of Appeals in its consideration of the storm water pond built for the new Sunset School. Looking at the process of review, the property of citizens who live downhill from the site, and the quality of the data produced by the engineers, several items stand out:

ADMINISTRATION AND APPROVAL PROCESS - CDC 55.030 C1 states that "The...Planning Commission...shall approve, approve with conditions, or deny the application..." CDC 55.030 C2 states that "A decision by the Planning Director may be reviewed by the City Council."

These two points suggest to me that this matter of the pond must go before the Planning Commission *before* it goes to City Hall.

GRADING PLAN - CDC 55.130 B. "A registered 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 site, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts."

The community is by law supposed to be able to review the plan and the supporting data *before* construction begins. People who live off-site and downhill from the school were not given the opportunity to review the current plan for the pond. Instead, the school's engineer, kpff, met in private with the city's engineer. No off-site factual data are available for this new plan.

APPROVAL STANDARDS AND CONDITIONS - CDC 60.070 2 "The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features."

The hydro-geologist hired at the expense of members of Save Our Sunset raised serious questions about the soil type and steep topography of the location of the pond. Neighbors must be able to see the facts to be reassured that lining the pond is sufficient to prevent flooding downhill. First, they have seen new springs and seeps coming to the surface in the neighborhood, and the construction of impermeable surfaces is not yet complete. Second, they need facts to prove that Sunset Creek will not overflow its boundaries even more than it already does.

PUBLIC IMPROVEMENTS FOR ALL DEVELOPMENT - CDC 92.010 "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...Developers are encouraged to adapt storm water management approaches that make use of natural systems...including the use of swales, rain gardens..."

The software program used by the engineering firm, kpff, has been called into question, leaving it as an unreliable source for factual data. The City of Portland declared that they never use that software for storm water ponds, only for swales and rain gardens. It is a mystery to this citizen why the City applauds the use of rain gardens and swales at our new police station, and yet these methods have been rejected by the school district. It is a

further mystery why the City has installed pavers in heavily used areas like the parking lots at Willamette Park and Fields Bridge, and yet they have been rejected by the school district.

A hearing with the Planning Commission is the proper way for us to get these facts aired. The school district and the city have not operated in a transparent fashion. The engineers have used substandard methods for determining storm water management, especially for potential off-site locations. Public forums have been denied as a part of the permitting process. All this and more leaves citizens downhill from the construction voiceless and vulnerable to water damage.

I went door to door to gather signatures in support of building the new school in its current location. I am happy to have the new school. However, I would like to see more reliable sources of data from the engineers presented to the Planning Commission. Even more, I would like to see the detention pond replaced with pavers, rain gardens, and swales.

Most sincerely yours,

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