



## CITY OF West Linn

### Memorandum

Date: August 12, 2016

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

From: Peter Spir, Associate Planner

Subject: AP-16-02; "Chene Blanc" Subdivision Appeal response to May 4, 2016 letter

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At the July 25, 2016, public hearing, in order to allow responses to the May 4, 2016, letter from the appellant's consultant Andrew Tull, the City Council established a deadline for the submittal of written responses from Peggy Hennessy, attorney for Marylhurst Place Homeowner's Association, as well as from members of the public with standing. The deadline was by close of business on Wednesday, August 10, 2016.

City Council also established a deadline of close of business on Friday, August 12, 2016, for the submittal of a written rebuttal from David Noren, attorney, on behalf of the Appellant.

Attached are all written responses and memorandums received within the prescribed deadlines from members of the public with standing and attorneys Peggy Hennessy and David Noren.

At the July 25, 2016, public hearing, the City Council directed that comments should be specific to the issues in the May 4, 2016, letter.

Preliminarily, staff found that all submittals correctly address the May 4, 2016, letter and do not introduce additional information with the exception of two tables: "*Crime Reports*" and the ODOT "*Crash Summaries by Year by Collision Type*" attached to Doug and Dorianne Palmer's August 9, 2016, emails.

Staff will defer to City Council to determine whether these submittals are wholly or partially admissible.

**Attorney Peggy Hennessy's**

***"Supplemental Memorandum of Marylhurst Place Homeowners  
Association in Support of Planning Commission Denial"***

**submitted on Wednesday August 10, 2016 at 12:29pm**

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

|  |                                  |
|--|----------------------------------|
| In the Matter of UPPER MIDHILL ESTATES, )      | FILE NOS: SUB-15-03, WAP-16-03   |
| LLC's Appeal of the West Linn Planning )       |                                  |
| Commission Denial of its Application for )     | <b>SUPPLEMENTAL MEMORANDUM</b>   |
| Approval of a 34-Lot Subdivision and Related ) | <b>OF MARYLHURST PLACE</b>       |
| Water Area Permit. )                           | <b>HOMEOWNERS ASSOCIATION IN</b> |
| )  | <b>SUPPORT OF PLANNING</b>       |
| )  | <b>COMMISSION DENIAL</b>         |

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**I. INTRODUCTION**

On July 25, 2016, the City Council held a hearing on the Applicant's appeal of the Planning Commission denial of its application. The City Council elected to reopen the record to consider new evidence which was submitted to the Planning Commission by the Applicant on May 4, 2016, after the close of the public record. The Applicant presented testimony related to the May 4, 2016 submittal at the July 25, 2016 hearing, including but not limited to information related to the 1999 vacation of Scenic/Hillside Drive and the development proposal for Hidden Grove Townhomes. The Applicant also presented new evidence regarding safety concerns at the intersection of Arbor Drive and Highway 43.

The City Council voted to leave the record open for the limited purpose of responding to the new evidence submitted on May 4, 2016 and presented by the Applicant at the July 25, 2016 hearing. This Supplemental Memorandum constitutes Marylhurst Place Homeowners Association's response to the Applicant's new information which was presented to the City Council.

**II. ARGUMENT**

- A. The Planning Commission properly found that the application failed to comply with CDC 85.200 (B) (5) because approval, as proposed, would create double frontage lots.**

**1. The 1995 Lake Oswego Approval of Woodhurst Place Lots Does Not Disqualify the Lots from the Protection of the West Linn City Code.**

The Applicant takes the position that the lots along Woodhurst Place are not part of the proposed development, and asserts that the City of Lake Oswego actually created the double frontage lots when it approved the Marylhurst Place development in 1995. However, there can be no double frontage until there are two streets providing access to a single lot (front and back).

The City Code clearly recognizes that double frontage lots are not desirable – hence it includes a mandate to avoid creating them. Accordingly, double frontage lots should not be forced upon neighboring jurisdictions. There is nothing in CDC 85.200 (B) (5) that limits the mandate to avoid double frontage lots to property located within the boundaries of West Linn.

There are limited exemptions from the double frontage lot prohibition, such as the site having “disadvantages of topography or orientation.” However, these exemptions should be narrowly construed due to the extremely adverse affects of double frontage on residential property. This Applicant has not shown that the topography or orientation of the property warrant an exemption from the requirement to avoid creation of double frontage lots.

**2. The 1999 Vacation of a Portion of Hillside Drive Does Not Support Required Development of the Remainder of Hillside Drive.**

Contrary to the Applicant’s allegations, the former City Council did not consider future creation of double fronted lots by limiting the 1999 vacation of Scenic Drive (now known as Hillside Drive, and hereinafter referred to a “Scenic/Hillside Drive”) to the section requested by a developer.<sup>1</sup> The City simply processed the developer’s requested vacation.

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<sup>1</sup> The Applicant states that the configuration of the “lots in question” and the configuration for Scenic Drive, “have been contemplated at length by the City and have been determined to be acceptable within their current configuration.” However, if the Applicant is referring to the Woodhurst Place lots as the “lots in question,” there is nothing in the record to suggest specific contemplation of double frontage lots prior to the filing of this application.



The Applicant implies that there was no objection to the 1999 street vacation and somehow that supports the position that double frontage lots are acceptable along the part of Scenic/Hillside Drive that was not vacated. However, there were substantial objections to the 1999 proceeding for vacation of Scenic/Hillside Drive. The vacation was initiated to accommodate J.T. Smith's Hidden Grove Townhome development project. Mr. Smith was unable to secure the requisite consent to vacation under the *citizen-initiated* vacation process under ORS 271.080. Therefore, he convinced the former City Council to initiate the process under ORS 271.130 and agreed that he would pay all costs related to the vacation. There were extensive objections from nearby property owners; however, the former City Council disregarded many of the objections, based upon its narrow interpretation of the "affected area" and upon its inappropriate invalidation of nearby landowner objections.<sup>2</sup>

In any event, the 1999 ordinance approving the Scenic/Hillside Drive street vacation acknowledges that there is a memorandum in the 1995 Marylhurst Place Subdivision approval anticipating vacation of Scenic/Hillside Drive, noting, that it:

states at page 5 that **Scenic [Hillside] Drive should be vacated and new roads designed to serve this area.**" Vacation Ordinance at page 9.

Accordingly, Lake Oswego assumed that the Woodhurst Place lots would be protected from double frontage by vacation of Scenic/Hillside Drive.

In approving the 1999 street vacation, the West Linn City Council relied on this 1995 Lake Oswego memorandum (anticipating the Scenic/Hillside Drive vacation) when it found that the

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<sup>2</sup> The former City Council reduced certain boundaries of the "affected area" from 400 feet to 200 feet. In addition, the City Council refused to recognize the written objections of many of the nearby property owners because the objections were not notarized and did not include evidence of ownership, such as tax statements or copies of the county tax assessment roll. However, the statute does not require independent proof of ownership in order to remonstrate against a street vacation. Nonetheless, many of the objections were completely disregarded by the City.

vacation would not have a substantial affect on the market value of the Marylhurst Place lots. The West Linn City Council actually found that “the opportunity for extension of these streets [Scenic/Hillside Drive and Upper Midhill Drive] to the north, west and east has been foreclosed, by development approved by the City of Lake Oswego, and **the streets are no longer needed for a public street purpose**, at least in their current configuration.” [Emphasis added]. Vacation Ordinance at 9. Therefore, the remaining section of Scenic/Hillside Drive need not be constructed because the street is no longer needed for public street purposes.

**3. The Subject Property Does Not Qualify for an Exemption from the Double Frontage Lot Prohibition Based Upon Topography or Orientation.**

There is no evidence in this record to support the Applicant’s statement that Mr. Smith’s purpose in retaining a portion of Scenic/Hillside Drive was to “overcome disadvantages of topography and orientation.” Nor is there any evidence that the 1999 Scenic/Hillside Drive vacation left a portion of the right-of-way in place “in anticipation of development of the subject property after the Marylhurst Place lots were created,” as alleged in the Applicant’s May 4, 2016 Submittal at page 2. Rather, based upon the language in the 1999 Vacation Ordinance, it appears that the West Linn City Council concluded that neither Scenic/Hillside Drive nor Upper Midhill Drive was needed for public street purposes. Vacation Ordinance at page 9. The streets were platted in 1923, they do not serve any current public interest in connectivity, and a new configuration of roadways can be designed to serve the subject property.

While topography and orientation may provide challenges to development, the fact that some of the subject property is sloped does not provide unqualified support for an exemption from the prohibition against creating double frontage lots. Here, the Applicant could configure the lots and create new streets for the development in a manner which does not result in the extremely

adverse affects of creating double frontage lots for the neighboring properties. Therefore, the City should deny this application, as proposed.

**B. The Planning Commission properly found that the proposed application does not satisfy CDC 85.200 because there are not adequate public facilities to serve a 34-lot subdivision at this location.**

The Applicant concedes that the intersection of Arbor Drive at Willamette Drive (Highway 43) is already failing. At the July 25, 2016 hearing, the Applicant presented information about the number of accidents at the failing intersection, relying on data which is over a year old. An Opponent of the project presented more current information showing that the accident rate is actually increasing. It is our understanding that the ODOT Office of Crash Analysis relies on voluntary reporting of crashes by drivers. Therefore, it is highly probable that the figures in the official reports are understated. Furthermore, the ODOT statistics are limited to accidents. Last spring, between March 30, 2016 and April 19, 2016, there were at least five traffic events reported to West Linn Police Department, two of which were traffic accidents. A copy of the "Crime Reports" print-out is attached as Exhibit 1.

As mitigation for adding a substantial number of vehicle trips per (likely to range from 35-60 during the morning peak hour), the Applicant has offered to participate in a very small percentage of the cost of future improvements to the failing intersection. However, there is no condition requiring completion of improvements prior to occupancy.

CDC 02.030 requires a current finding that "the development avoids further degradation of the affected transportation facility." The proposed 34-Lot Subdivision would add between 35-60 vehicle trips during morning peak hours.<sup>3</sup> In addition to the "no further degradation standard," the

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<sup>3</sup> The applicant contends that the new development is likely to generate one trip per dwelling unit; however, as indicated at the July 25, 2016 hearing, two trips per household is more likely for this type of residential development.

City Code provides that “[m]itigation must be provided to bring the facility performance standard to existing conditions **at the time of occupancy.**” CDC 02.030 [Emphasis added.] There is no scenario under which the failing state of the intersection would be rectified by the time of occupancy if the project is approved, as proposed, and the Applicant proceeds with development.

LUBA has recognized that if the expenses of upgrading a road make it impractical, for constitutional or other reasons, to require the upgrade as a condition of approval, the local government may deny the application. *DLCD vs. Tillamook County*, 30 OR LUBA 221, n4 (1995). Here, the entire cost of upgrading the failing intersection cannot be passed along to the Applicant because the cost would not be roughly proportional to the impact of the development. In other words, it would be an unconstitutional exaction. However, because the intersection of Arbor Drive and Highway 43 is currently failing, and because the accident rate is increasing, the City cannot find that the addition of 35-60 vehicle trips per day, during the failing morning commute hours, will avoid further degradation of this dangerous intersection. Therefore, the City should deny the application.

It is interesting to note that the same intersection (Arbor Drive and Highway 43) presented serious safety concerns at the time of Mr. Smith’s 1999 land use application for Hidden Grove Townhomes. The same traffic consulting firm, Kittelson and Associates, found that it often operated at the failing Level of Service “F.” Now, over 17 years later, the intersection is still extremely dangerous, particularly for people attempting to turn left onto Highway 43. If the Oregon Department of Transportation has not given it priority over the last 17 years, it is difficult to determine when, or if, the state will make safety improvements to this intersection. Again, it is not appropriate (or constitutional) to pass the entire cost on to the Applicant, but it is appropriate to deny development that will exacerbate the unsafe condition at this failing intersection.

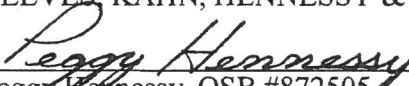
CDC 85.200 (A) (22) does allow “contribute [of] a proportionate share of the costs, for all necessary off-site improvements identified by the transportation analysis commissioned to address CDC 85.170(B)(2) that are required to mitigate impacts from the proposed subdivision.” However, those improvements cannot be so far into the future that the unsafe conditions may continue, and increase, for an undetermined length of time. Again, the Arbor Drive and Highway 43 intersection was identified as “failing” 17 years ago and it just keeps getting worse.


As was discussed at the July 25, 2016 hearing, realistically, this residential development can be estimated to generate up to sixty (60) additional vehicle trips per day during peak morning hours. This figure assumes at least one working parent and children who must get to school or daycare. Given the “failing” status and increasing accident counts at the intersection of Arbor Drive and Highway 43, the promise of a future minimal contribution to the cost of unscheduled improvements is not sufficient to support a finding that there are “adequate public facilities” to support a 34-lot subdivision at this location.

### III. CONCLUSION

Based on the foregoing, the Marylhurst Place Homeowners Association and its members renew their request that the West Linn City Council uphold the Planning Commission’s denial of this application based upon its failure to satisfy CDC 85.200 (5) (B) regarding double frontage lot avoidance and CDC 85.200 regarding the adequacy of public transportation facilities available to serve the proposed 34-lot subdivision.

DATED this 10<sup>th</sup> day of August, 2016.

Respectfully submitted,  
REEVES, KAHN, HENNESSY & ELKINS  
  
Peggy Hennessy, OSB #872505  
Attorney for the Marylhurst Place  
Homeowners Association

 Motorola Solutions, Inc.



 **CrimeReports**

Crime List: 2016-03-21 00:00:00 - 2016-04-20 23:59:59

 **PRINT** (For best results, select landscape orientation.)

| Crime Type | Date/Time           | Address                  | Identifier | Description                       | Agency                      |
|------------|---------------------|--------------------------|------------|-----------------------------------|-----------------------------|
| Traffic    | 04/19/2016 18:23:07 | ARBOR DR & HWY 43        | #WP1607232 | TRF (TRAFFIC COMPLAINT)           | West Linn Police Department |
| Traffic    | 04/18/2016 17:09:39 | ARBOR DR & WILLAMETTE DR | #WP1607151 | TAI (TRAFFIC ACCIDENT,INJ)        | West Linn Police Department |
| Traffic    | 04/13/2016 16:53:20 | ARBOR DR & HWY 43        | #WP1606762 | TAU (TRAFFIC ACCIDENT,UNK INJURY) | West Linn Police Department |
| Traffic    | 03/30/2016 17:08:04 | ARBOR DR & WILLAMETTE DR | #WP1605664 | TRF (TRAFFIC COMPLAINT)           | West Linn Police Department |
| Traffic    | 03/30/2016 17:05:37 | ARBOR DR & WILLAMETTE DR | #WP1605663 | TRF (TRAFFIC COMPLAINT)           | West Linn Police Department |

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing SUPPLEMENTAL MEMORANDUM OF MARYLHURST PLACE HOMEOWNERS ASSOCIATION IN SUPPORT OF PLANNING COMMISSION DENIAL on the following individuals on the date below, by mailing true a copy thereof, contained in a sealed envelope, with postage paid, addressed to the last known address as set forth below, and deposited in the post office at Portland, Oregon:


Megan K. Thornton, OSB # 075413  
City of West Linn  
22500 Salamo Road  
West Linn OR 97068  
Attorney for City of West Linn

David C. Noren OSB# 852959  
Attorney at Law  
PO Box 586  
Hillsboro OR 97123  
Attorney for Upper Midhill Estates LLC

Timothy V. Ramis, OSB #753110  
Jordan Ramis PC  
2 Centerpointe Drive, 6<sup>th</sup> Floor  
Lake Oswego OR 97035  
Attorney for City of West Linn

DATED this 10th day of August, 2016.

REEVES, KAHN, HENNESSY & ELKINS

  
Peggy Hennessy, OSB #872505  
Of Attorneys for Marylhurst Place  
Homeowners Association

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## Spir, Peter

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**From:** Arnold, Jennifer  
**Sent:** Wednesday, August 10, 2016 12:29 PM  
**To:** Spir, Peter  
**Subject:** FW: david@norenlaw.com  
**Attachments:** Supplemental Memorandum of Marylhurst Place etc.pdf

fyi

Jennifer Arnold, Associate Planner  
Planning, #1542



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**From:** Beverly Bunker [mailto:beverly@rke-law.com]  
**Sent:** Wednesday, August 10, 2016 12:15 PM  
**To:** Arnold, Jennifer <jarnold@westlinnoregon.gov>  
**Cc:** Peggy Hennessy <phennessy@rke-law.com>; Thornton, Megan <MThornton@westlinnoregon.gov>; tim.ramis@jordanramis.com  
**Subject:** david@norenlaw.com

Dear Ms. Arnold:

Attached please find the Supplemental Memorandum of Marylhurst Place Homeowners Association in Support of Planning Commission Denial.

Today, August 10, 2016, is the deadline for filing this Memorandum. Please confirm your receipt of this filing. Thank you.

--

### **Beverly L. Bunker**

Legal Assistant

**REEVES, KAHN, HENNESSY & ELKINS**

ATTORNEYS AT LAW

4035 SE 52nd AVENUE

P.O. BOX 86100

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TEL: (503) 777-5473 | FAX (503) 777-8566

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## **Public Comments received by end of business day Wednesday, August 10, 2016 regarding AP-16-02**

- Email from Scarlett and Chris Harris sent August 10, 2016 at 12:27pm
- Email from Jenna Mahanay sent August 10, 2016 at 4:56pm
- Email from Doug and Dorianne Palmer sent August 9, 2016 at 10:59am with attached ODOT "Crash Summaries by Year and Collision Type" data
- Email from Doug and Dorianne Palmer sent August 9, 2016 at 11:02am with attached "Crime Report" data
- Email from Paul Halloran sent July 28, 2016 at 4:45pm
- Email from Paul Halloran sent August 1, 2016 at 6:16pm with attached letter dated August 2, 2016
- Email from Doug and Dorianne Palmer sent August 9, 2016 at 10:16am with attached letter, Resolution of the Robinwood Neighborhood Association and three photographs (school buses and USPS mail truck)
- Letter from Peter Lang dated August 10, 2016

## Spir, Peter

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**From:** Axelrod, Russell  
**Sent:** Wednesday, August 10, 2016 1:12 PM  
**To:** Stein, Eileen; Spir, Peter  
**Subject:** FW: Please deny the application for Chene Blanc subdivision on Upper Midhill Dr

Forwarding potential exparte correspondence/email related to proposed Midhill development project.  
Russ

**Russell Axelrod**  
*Mayor*  
22500 Salamo Rd  
West Linn, OR 97068  
[raxelrod@westlinnoregon.gov](mailto:raxelrod@westlinnoregon.gov)  
[westlinnoregon.gov](http://westlinnoregon.gov)  
Phone(503 568-2804



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**From:** Scarlett [scarlettisred@gmail.com]  
**Sent:** Wednesday, August 10, 2016 12:27 PM  
**To:** City Council  
**Subject:** Please deny the application for Chene Blanc subdivision on Upper Midhill Dr

Dear City Council,

As local homeowners, parents, and tax payers, our family urges you to please uphold the planning commission's recommendation to deny this application.

Our neighborhood, the surrounding neighborhoods, and the city services therein, were not designed to support heavy traffic and a high home density. Our neighborhood and the surrounding neighborhoods cannot sustain this burden.

The impact from this development will not only affect the residents of Upper Midhill Dr, and those that live on the directly connecting roads, but also the residents in adjacent neighborhoods. The West Linn neighborhood of Marylhurst Heights (heading west on Marylhurst up the hill to Rosemont) has already seen a significant and dangerous increase in their traffic. Similar to our neighborhood, this neighborhood is also without sidewalks, their roads are also very narrow, with steep hills, and blind, sharp turns. There is no way for these residents to walk their own roads safely anymore because of the traffic increase.

At the July 25th meeting, when traffic impact issues were being discussed, Matt Bell, with Kittleson and Associates, argued "there is alternative access" for the residents to take into and out of our neighborhood. This statement is proof that these developers have not considered, experienced, or necessarily care about the existing traffic problems we are already facing here. The ignorance of current facts, current accident numbers, and lack

of consideration for residents shown by those involved with the Chenin Blanc subdivision is alarming. To Mr. Bells point, traffic already IS finding alternate routes because of the inadequate and unsafe exits onto 43 from Arbor, Robinwood, and Marylhurst, not to mention the dramatic increase in traffic density up McVey. In order to get out of our neighborhood, avoid the dangerous intersection at Arbor and 43, and avoid heavy traffic on McVey, we ARE taking alternate routes that send us up through Marlyhurst Heights. Because of this we are now impacting even more West Linn residents with our traffic.

Council members, please consider the far reaching and long lasting impacts that this development will have on ALL West Linn residents. The more of a traffic burden we place on neighborhoods directly connected to 43, the more we send that traffic through other, smaller, neighborhoods that also have inadequate facilities.

Thank you,  
Scarlett & Chris Harris  
Upper Midhill Dr.

## Spir, Peter

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**From:** Boyd, John  
**Sent:** Wednesday, August 10, 2016 5:29 PM  
**To:** Spir, Peter  
**Subject:** FW: Land Proposal 18000 Upper Midhill Drive

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:** Stein, Eileen  
**Sent:** Wednesday, August 10, 2016 5:27 PM  
**To:** Boyd, John <jboyd@westlinnoregon.gov>  
**Subject:** Fwd: Land Proposal 18000 Upper Midhill Drive

For the record....

Sent from my iPad

Eileen Stein, City Manager  
Administration, #1422



Please consider the impact on the environment before printing a paper copy of this email.  
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Begin forwarded message:

**From:** Jenna Mahanay <jennamahanay@gmail.com>  
**Date:** August 10, 2016 at 4:56:41 PM PDT  
**To:** <ima\_citycouncil@westlinnoregon.gov>  
**Subject:** Land Proposal 18000 Upper Midhill Drive

August 10, 2016

West Linn City Commissioners

RE: Neighborhood Public Safety Concerns of Proposed Development at 18000 Upper Midhill Drive, West Linn, OR, 97068

Dear Commissioners,

First let me apologize for any typos. It is 4:08 on Wednesday August 10th, 2016, and I have approximately 58 minutes to type, proof-read and email this letter before the deadline closes.

My husband and I purchased our residence 18145 Upper Midhill, on the north end near the proposed development site, in 2013. We moved to West Linn for all the reasons new parents do, a sense of community, low crime, great schools and parks. We felt this was a quiet neighborhood, where kids can romp and play outside, with plenty of space for traffic to come and go.

We understand that the development of new homes in areas like our beautiful city is inevitable and necessary. And we are not blind to the fact that the builders proposal is a reasonable use of this land. Believe me, I'd much rather see fewer higher end homes spring up rather than a gazillion cookie-cutter-style townhomes with miniscule yards, or worse yet a large apartment complex or any number of other scenarios! With that said, any new development is going to significantly increase traffic down the length of Upper Midhill Drive. I'd like to take this opportunity to share my concerns for public safety.

**Arbor to Marylhurst:** Along the length of Upper Midhill Drive, from Arbor to Marylhurst Drive, the road significantly narrows, except on either end of Midhill Park, where the street was widened to accommodate parking. As many others have mentioned, pedestrians must move as far to the side of the road as possible to let cars go by. Ordinarily, I'd be thinking, "Ya, so what?" The "so what" is that now I have an almost 4 year old daughter, who can often require quite a bit of wrangling just to get her to stay next to me, let alone move to the side of the road and stand still so the traffic can go by.

**Intersection of College Hill Pl., & Upper Midhill Drive:** Thanks to the actions of concerned parents, this intersection has recently been changed to an ALL WAY stop. Prior to this change, vehicles would race down the hill and take the right turn onto Upper Midhill without stopping. Although a few vehicles still make the turn without a full stop, generally speaking drivers are slowing down. While the new All Way stop has helped reduce the speed of drivers down the hill of College Pl., it could be made even safer with the addition of repainted crosswalks on all sides.

**Intersection of Arbor & Upper Midhill:** This corner is so incredibly unsafe for pedestrians. I can't tell you the number of times drivers do not stop at the stop sign when making a right turn from Arbor onto Upper Midhill. This is the intersection where Upper Midhill narrows significantly. Pedestrian safety could be greatly increased by widening the length of Upper Midhill and adding sidewalks, as well as adding sidewalks from Arbor to Highway 43.

I'd like to thank the City Commissioners for hearing our concerns and we hope you will make the best decision for not only the city, but for those community members whom already live in this fantastic place!

Sincerely,

The Mahanay Family  
18145 Upper Midhill Drive  
West Linn, Oregon  
97068



**Jenna**  
**Mahanay,**  
**BSN RN**  
**CMRN**

Certified  
Mobile  
Research  
Nurse  
PCM Trials  
(503)-481-  
3338



## Spir, Peter

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**From:** Axelrod, Russell  
**Sent:** Tuesday, August 09, 2016 6:19 PM  
**To:** Stein, Eileen; Spir, Peter  
**Subject:** Fwd: Data Requests Arbor drive and Hwy 43  
**Attachments:** sv.Halloran-hwy 003 and arbor in west linn.yr09-15inc\_CDS150.pdf; ATT00001.htm

Forwarding exparte email correspondence regarding Midhill proposed development,  
Russ

Sent from my iPad

**Russell Axelrod**  
*Mayor*  
22500 Salamo Rd  
West Linn, OR 97068  
[raxelrod@westlinnoregon.gov](mailto:raxelrod@westlinnoregon.gov)  
[westlinnoregon.gov](http://westlinnoregon.gov)  
Phone(503 568-2804



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Begin forwarded message:

**From:** Doug and Dorianne Palmer <[cooperdel2@msn.com](mailto:cooperdel2@msn.com)>  
**Date:** August 9, 2016 at 10:59:15 AM PDT  
**To:** "[ima\\_citycouncil@westlinnoregon.gov](mailto:ima_citycouncil@westlinnoregon.gov)" <[ima\\_citycouncil@westlinnoregon.gov](mailto:ima_citycouncil@westlinnoregon.gov)>  
**Subject:** **Data Requests Arbor drive and Hwy 43**

City Council members,

Please review the attached information.  
Accidents have only increased, and these are only the accidents that have been reported. I have spoken with several people who have had accidents at this intersection, and I know two were not reported.

Best,  
Dorianne Palmer

Hello Mr. Halloran:

Attached is our standard summary report (CDS150) for you which lists the number of crashes that have occurred at the intersection of Oswego Highway #003 MP 8.07 (Willamette Drive) and Arbor Drive in West Linn for the years of 2009 through 2015. Please note: Data for 2015 reflects fatal and injury crashes only; it is preliminary and subject to change.

Thank you Mr. Halloran for your request and hope you have a great day.

Sincerely,

Sylvia

Sylvia M. Vogel  
Crash Reporting Technician  
Crash Analysis And Reporting Unit  
Oregon Dept. of Transportation  
Transportation Data Section  
555 13th Street NE, Suite 2  
Salem, OR 97301-4178  
(503) 986-4240  
Fax: (503) 986-4249  
[sylvia.m.vogel@odot.state.or.us](mailto:sylvia.m.vogel@odot.state.or.us)

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From: NESS Robin A  
Sent: Tuesday, August 02, 2016 1:51 PM  
To: WARD Kimberlee S  
Cc: '[pablito1949@yahoo.com](mailto:pablito1949@yahoo.com)'; VOGEL Sylvia M  
Subject: Data Requests

I have a citizen's data request.

Crash History: 5 years + preliminary 2015

Format: PDF Summary report

Location: Oswego Highway 003 @ Arbor Drive milepoint 8.07

Email: [pablito1949@yahoo.com](mailto:pablito1949@yahoo.com)<<mailto:pablito1949@yahoo.com>>

Phone: 1-503-636-8115 (number called originated from)

Thank you, Robin

Robin Ness

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Manager - Crash Analysis and Reporting (CAR) & Automation Units  
ODOT - Transportation Data Section



Voice: (503) 986-4236

Fax: (503) 986-4249

<mailto:robin.a.ness@odot.state.or.us>

- Visit Transportation Data Section, Data Portal -

[http://www.oregon.gov/ODOT/TD/Pages/Data\\_Portal.aspx](http://www.oregon.gov/ODOT/TD/Pages/Data_Portal.aspx)

OREGON DEPARTMENT OF TRANSPORTATION - TRANSPORTATION DEVELOPMENT DIVISION  
 TRANSPORTATION DATA SECTION - CRASH ANALYSIS AND REPORTING UNIT  
 CRASH SUMMARIES BY YEAR BY COLLISION TYPE

Oswego Highway #003 @ Arbor Drive in City of west Linn; 2009 through 2015\*\*\*\*  
 Note: Data for 2015 reflects fatal and injury crashes only. It is preliminary and subject to change.

| COLLISION TYPE    | FATAL<br>CRASHES | NON-<br>FATAL<br>CRASHES | PROPERTY<br>DAMAGE<br>ONLY | TOTAL<br>CRASHES | PEOPLE<br>KILLED | PEOPLE<br>INJURED | TRUCKS | DRY<br>SURF | WET<br>SURF | DAY | DARK | INTER-<br>SECTION | INTER-<br>SECTION<br>RELATED | OFF-<br>ROAD |
|-------------------|------------------|--------------------------|----------------------------|------------------|------------------|-------------------|--------|-------------|-------------|-----|------|-------------------|------------------------------|--------------|
| YEAR: 2015        |                  |                          |                            |                  |                  |                   |        |             |             |     |      |                   |                              |              |
| REAR-END          | 0                | 1                        | 0                          | 1                | 0                | 2                 | 0      | 1           | 0           | 1   | 0    | 1                 | 0                            | 0            |
| 2015 TOTAL        | 0                | 1                        | 0                          | 1                | 0                | 2                 | 0      | 1           | 0           | 1   | 0    | 1                 | 0                            | 0            |
| YEAR: 2014        |                  |                          |                            |                  |                  |                   |        |             |             |     |      |                   |                              |              |
| REAR-END          | 0                | 2                        | 0                          | 2                | 0                | 2                 | 0      | 1           | 1           | 2   | 0    | 2                 | 0                            | 0            |
| 2014 TOTAL        | 0                | 2                        | 0                          | 2                | 0                | 2                 | 0      | 1           | 1           | 2   | 0    | 2                 | 0                            | 0            |
| YEAR: 2013        |                  |                          |                            |                  |                  |                   |        |             |             |     |      |                   |                              |              |
| TURNING MOVEMENTS | 0                | 0                        | 1                          | 1                | 0                | 0                 | 0      | 1           | 0           | 1   | 0    | 1                 | 0                            | 0            |
| 2013 TOTAL        | 0                | 0                        | 1                          | 1                | 0                | 0                 | 0      | 1           | 0           | 1   | 0    | 1                 | 0                            | 0            |
| YEAR: 2012        |                  |                          |                            |                  |                  |                   |        |             |             |     |      |                   |                              |              |
| REAR-END          | 0                | 0                        | 1                          | 1                | 0                | 0                 | 0      | 1           | 0           | 1   | 0    | 1                 | 0                            | 0            |
| 2012 TOTAL        | 0                | 0                        | 1                          | 1                | 0                | 0                 | 0      | 1           | 0           | 1   | 0    | 1                 | 0                            | 0            |
| YEAR: 2011        |                  |                          |                            |                  |                  |                   |        |             |             |     |      |                   |                              |              |
| REAR-END          | 0                | 1                        | 0                          | 1                | 0                | 3                 | 0      | 1           | 0           | 1   | 0    | 1                 | 0                            | 0            |
| TURNING MOVEMENTS | 0                | 2                        | 0                          | 2                | 0                | 2                 | 0      | 0           | 2           | 2   | 0    | 2                 | 0                            | 0            |
| 2011 TOTAL        | 0                | 3                        | 0                          | 3                | 0                | 5                 | 0      | 1           | 2           | 3   | 0    | 3                 | 0                            | 0            |
| YEAR: 2010        |                  |                          |                            |                  |                  |                   |        |             |             |     |      |                   |                              |              |
| REAR-END          | 0                | 2                        | 0                          | 2                | 0                | 2                 | 0      | 2           | 0           | 2   | 0    | 2                 | 0                            | 0            |
| 2010 TOTAL        | 0                | 2                        | 0                          | 2                | 0                | 2                 | 0      | 2           | 0           | 2   | 0    | 2                 | 0                            | 0            |
| YEAR: 2009        |                  |                          |                            |                  |                  |                   |        |             |             |     |      |                   |                              |              |
| REAR-END          | 0                | 0                        | 1                          | 1                | 0                | 0                 | 0      | 1           | 0           | 1   | 0    | 1                 | 0                            | 0            |
| TURNING MOVEMENTS | 0                | 0                        | 1                          | 1                | 0                | 0                 | 0      | 1           | 0           | 1   | 0    | 1                 | 0                            | 0            |
| 2009 TOTAL        | 0                | 0                        | 2                          | 2                | 0                | 0                 | 0      | 2           | 0           | 2   | 0    | 2                 | 0                            | 0            |
| FINAL TOTAL       | 0                | 8                        | 4                          | 12               | 0                | 11                | 0      | 9           | 3           | 12  | 0    | 12                | 0                            | 0            |

Disclaimer: A higher number of crashes may be reported as of 2011 compared to prior years. This does not reflect an increase in annual crashes. The higher numbers result from a change to an internal departmental process that allows the Crash Analysis and Reporting Unit to add previously unavailable, non-fatal crash reports to the annual data file. Please be aware of this change when comparing pre-2011 crash statistics.

## Spir, Peter

---

**From:** Axelrod, Russell  
**Sent:** Tuesday, August 09, 2016 6:20 PM  
**To:** Stein, Eileen; Spir, Peter  
**Subject:** Fwd: Traffic -18000 Upper Midhill  
**Attachments:** IMG\_6402.PNG

Forwarding exparte email correspondence regarding Midhill proposed development,  
Russ

Sent from my iPad

**Russell Axelrod**  
*Mayor*  
22500 Salamo Rd  
West Linn, OR 97068  
[raxelrod@westlinnoregon.gov](mailto:raxelrod@westlinnoregon.gov)  
[westlinnoregon.gov](http://westlinnoregon.gov)  
Phone(503 568-2804



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Begin forwarded message:

**From:** Doug and Dorianne Palmer <[cooperdel2@msn.com](mailto:cooperdel2@msn.com)>  
**Date:** August 9, 2016 at 11:02:30 AM PDT  
**To:** "[ima\\_citycouncil@westlinnoregon.gov](mailto:ima_citycouncil@westlinnoregon.gov)" <[ima\\_citycouncil@westlinnoregon.gov](mailto:ima_citycouncil@westlinnoregon.gov)>  
**Subject:** Traffic -18000 Upper Midhill

City Council members,

Attached is an accident report showing the incidents at Hwy 43 and Arbor  
for the three weeks leading up to the Planning Commission meeting.

There are two accidents and three complaints in those three weeks alone  
this year. These are only incidents that were reported. The townhomes  
and planned expansion at Mary's Woods will increase this traffic  
dramatically.

Thank you for your consideration.

Best,  
Dorianne Palmer





Crime List: 2016-03-21 00:00:00 - 2016-04-20 23:59:59

PRINT (For best results, select landscape orientation.)

| Crime Type | Date/Time           | Address                  | Identifier | Description                       | Agency                      |
|------------|---------------------|--------------------------|------------|-----------------------------------|-----------------------------|
| Traffic    | 04/19/2016 18:23:07 | ARBOR DR & HWY 43        | #WP1607232 | TRF (TRAFFIC COMPLAINT)           | West Linn Police Department |
| Traffic    | 04/18/2016 17:09:39 | ARBOR DR & WILLAMETTE DR | #WP1607151 | TAI (TRAFFIC ACCIDENT,INJ)        | West Linn Police Department |
| Traffic    | 04/13/2016 16:53:20 | ARBOR DR & HWY 43        | #WP1606762 | TAU (TRAFFIC ACCIDENT,UNK INJURY) | West Linn Police Department |
| Traffic    | 03/30/2016 17:08:04 | ARBOR DR & WILLAMETTE DR | #WP1605664 | TRF (TRAFFIC COMPLAINT)           | West Linn Police Department |
| Traffic    | 03/30/2016 17:05:37 | ARBOR DR & WILLAMETTE DR | #WP1605663 | TRF (TRAFFIC COMPLAINT)           | West Linn Police Department |

## Arnold, Jennifer

---

**From:** Arnold, Jennifer  
**Sent:** Thursday, July 28, 2016 5:22 PM  
**To:** 'Paul'  
**Subject:** RE: Question on traffic accident stats

Hello,

Thank you for your inquiry and for taking the time to attend the public hearing last Monday. You can find the original file on our website at <http://westlinnoregon.gov/planning/18000-upper-midhill-drive-34-lot-subdivision>. You can review the transportation element of their submittal.

Jennifer Arnold

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

**From:** Paul [mailto:pablito1949@yahoo.com]  
**Sent:** Thursday, July 28, 2016 4:53 PM  
**To:** Arnold, Jennifer <jarnold@westlinnoregon.gov>  
**Subject:** Question on traffic accident stats

Jennifer,

I attended the appeal hearing of the Upper Midhill subdivision application on Monday. I have a question I hope you can answer or direct me to a source who might help. There were references in the testimony about the number of accidents at the intersection of Arbor and Hwy 43. The number appeared low to me. Do you know where the data that backs up the statistics comes from. I understand the data is years old but I ask because my wife was rear ended at the intersection and since it was a non-injury event, no police were involved. How would such event get reported in that data? Thank you for your help.

Paul Halloran  
Arbor Dr Resident

Paul Halloran

**Arnold, Jennifer**

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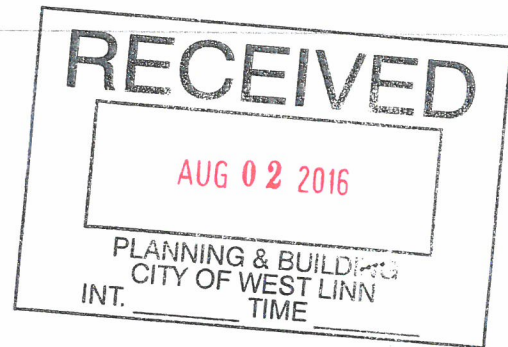
**From:** Paul Halloran <pablito1949@yahoo.com>  
**Sent:** Monday, August 01, 2016 6:16 PM  
**To:** Arnold, Jennifer  
**Subject:** Response to the May 4th Letter from 3J Consulting Inc.  
**Attachments:** City Council Letter .odt

Dear Ms Arnold,

I am attaching a letter of response to the City Council regarding the letter of May 4, 2016, submitted by Andrew Tull.

Thank you,

Paul Halloran



August 2, 2016

Jennifer Arnold, Associate Planner  
City of West Linn  
West Linn, OR

Dear Ms. Arnold:

I would like to comment on the May 4, 2016, letter from Andrew Tull of 3J Consulting, Inc. to Mr. Michael Babbitt, Chair of the West Linn Planning Commission.

While the letter addressed two main issues, double frontage lots and adequacy of public facilities, I would like to address the latter. The applicant stated that they would accept a condition of approval requiring the construction of a sidewalk along the northern side of Arbor Drive. I live on that portion of Arbor Drive discussed in the applicant's letter and believe this offer by the applicant distracts the Council's discussion of the larger issue of inadequate public facilities in the neighborhood.

Your discussion must address the impact of adding thirty-four residential structures in an area with inadequate streets to handle the increased volume and frequency of traffic. This issue will not be remedied with a curb, sidewalk or bus stop. The increased volume and frequency of traffic from this development will feed into a failing intersection at Hwy 43 and Arbor Drive.

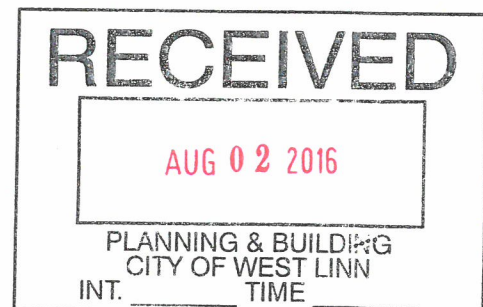
My wife's car was "totaled" in a rear-end accident at that same intersection, so I took the liberty to contact the ODOT's Office for Crash Analysis Reporting and discovered that the data they report in the applicant's file is generated voluntarily by individuals who are involved in an accident. If they do not know of this requirement to report an accident to the DMV or intentionally fail to do so, the crash information is not recorded by the DMV and will not be reported to ODOT. This raises the great possibility that the crash data in the application under reports the actual number of accidents at that intersection.

In addition, the applicant has supplied crash data from ODOT for the period January 1, 2009 to December 31, 2013. ODOT shared with me that they have more current crash data which readily available and would be helpful to consider in the question of the adequacy of public facilities. Thank you for your work and deliberation of this matter.

Sincerely,

Paul Halloran

Paul Halloran  
2387 Arbor Dr  
West Linn, OR 97068





## Spir, Peter

---

**From:** Boyd, John  
**Sent:** Wednesday, August 10, 2016 12:31 PM  
**To:** Spir, Peter  
**Subject:** FW: Upper Midhill Appeal 2  
**Attachments:** Resolution of the Robinwood Neighborhood Associatio1.pdf; IMG\_2294.jpg; IMG\_2303.jpg; IMG\_2306.jpg

John Boyd, Planning Manager  
Planning, #1524



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**From:** Perry, Brenda  
**Sent:** Wednesday, August 10, 2016 11:51 AM  
**To:** Boyd, John <jboyd@westlinnoregon.gov>; Thornton, Megan <MThornton@westlinnoregon.gov>  
**Cc:** Stein, Eileen <estein@westlinnoregon.gov>  
**Subject:** FW: Upper Midhill Appeal 2

FYI

**Brenda Perry**  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, OR 97068  
[bperry@westlinnoregon.gov](mailto:bperry@westlinnoregon.gov)  
[westlinnoregon.gov](http://westlinnoregon.gov)  
Phone(503) 657-0331



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

**From:** Doug and Dorianne Palmer [<mailto:cooperdel2@msn.com>]  
**Sent:** Tuesday, August 9, 2016 10:16 AM  
**To:** City Council  
**Subject:** Upper Midhill Appeal 2

City Council Members,

In addition our earlier letter below, and attached photos, we would like to add the following comments:

The traffic accidents at Arbor and Hwy 43 are increasing. They have been for years, and the traffic study done in 1999 identified the intersection as failing. The developer only offered to contribute a miniscule amount towards improvements to that intersection, again with no guarantee anything will be done. He offered (oddly) to put in sidewalks up Arbor Drive, but not to fund improvements that would make the intersection of that very same street safer?

CDC 02.030 requires that "the development avoids further degradation of the affected transportation facility." This development will add almost 400 additional car trips per day. Also, take in to account the traffic study, where they had traffic counts collected during the five days Marylhurst University was out of session, and schools were closed. It also did not take into account the townhomes going in just a few blocks away.

It would be unreasonable to add hundreds of car trips to that problem, and also the alternate route down Upper Midhill, which is as narrow as 16 feet in areas. At least once a week, I have to turn around and drive back the way I came because I cannot pass a truck in the road. There is a park on that street, and children everywhere.

Again, in 1999 the Arbor intersection was declared "failing," and it has gotten worse every single year. I would be dangerous to allow this development to cause the amount of damage to this quiet neighborhood that it will. Please uphold the Planning Commission's denial of this application.

Thank you so much for your consideration.  
Doug, Dorianne, Mia and Jude Palmer

City Council Members,

We live on College View Drive. We oppose the development, SUB-15-03 at Upper Midhill Drive as proposed.

The applicant is proposing a 34 home development. That will add an estimated 389 car trips per day to streets that are already taxed due to the amount of traffic. Arbor drive at Highway 43 is already a heavily impacted and failing intersection. There currently is no plan to address this dramatic increase. The Highway 43 Upgrade Plan addresses improvements to many intersections in West Linn, but Arbor Drive is excluded. This intersection is often the scene of accidents and traffic complaints. One of my neighbors was rear ended just a few weeks ago, with her small children in the car.

The applicant assured our neighborhood association he would make a financial contribution to fund improvements at Hwy 43 at Arbor, but refuses to divulge the amount. There is no guarantee improvements would take place, or that his contribution would be enough to fund them, even though construction of 34 homes over many years would have considerable negative impact on that intersection.

Congestion at Arbor would cause traffic to travel down Upper Midhill Drive to Marylhurst to the light at Hwy 43.

Upper Midhill is an extremely narrow street, with sections as narrow as 16 feet, and a neighborhood park. We frequently exit by Upper Midhill, and if another car is coming from the opposite direction, one car has to pull

over and stop. (Please see the three attached photos of Upper Midhill.) Additionally, there are 12 bus trips down this street every school day. This is the alternate route for well almost 400 car trips per day.

The traffic study took traffic counts on June 17, 2015. Marylhurst University's spring session ended on June 14th 2015, and summer session started on June 22nd. All local schools were also out of session for the summer. The observations took place in July 2015, also when schools are out for the summer. The new adjacent apartment buildings were not taken into account, nor was the planned expansion at Mary's Woods in Lake Oswego. Given that Arbor is already a failing intersection, shouldn't the traffic study take place at the busiest times?

Due to these points, we are respectfully asking the City Council to uphold the Planning Commission's denial of this application based on CDC 85.200 regarding adequacy of public facilities.

I have also attached the Resolution of the Robinwood Neighborhood Association opposing the proposed development.

(Items 1 and 2 refer specifically to arguments in the appeal.) The resolution passed unanimously.

Thank you for your time.

Dorianne and Doug Palmer  
2391 College View Drive

# Resolution of the Robinwood Neighborhood Association

To the West Linn Planning Commission regarding project SUB-15-03

On Tuesday, April 12th 2016, the Robinwood Neighborhood Association (RNA) resolved to oppose the the currently proposed development, project SUB-15-03, at 18000 Upper Midhill Drive for the following reasons:

1. The development as proposed would cause a dramatic increase in traffic with an estimated 389 car trips per day through the most impacted intersection on Highway 43 at Arbor Drive. Congestion will cause backed up traffic to travel the length of Upper Midhill to Marylhurst Drive to exit the neighborhood. Upper Midhill provides access to the neighborhood park and has sections of extremely narrow 16 foot pavement.

The submitted traffic study fails to comply with the intent of 85.170 B.2. since vehicle counts were collected on June 17, 2015, when schools were on summer break, including Marylhurst University, which began summer term on June 22nd. During summer term, traffic is lighter, and school bus traffic, and school drop-off traffic were not counted. Observations were performed in July 2015, still during summer term. In addition, data was collected before the new duplexes on Highway 43 began construction, and failed to account for the planned expansion of Mary's Woods in Lake Oswego. A more accurate count reflecting actual conditions is warranted.

2. There is no concrete plan to address the dramatic increase in traffic at Arbor Drive and Highway 43. The mitigation project should be constructed before construction traffic begins. We have no guarantee if or when this proposal will ever happen.

The applicant assured the RNA that they will make a financial contribution to fund improvements at the intersection at Arbor Drive and Highway 43, but refused to divulge the amount and no details are included in this application. There is no certainty that the amount will be sufficient to fund necessary mitigations to comply with CDC 85.170 B.2.e(C)(1). Improvements should be completed prior to construction traffic impact, not after the subdivision is built out, as allowed by staff in other projects.

3. Lots are to be sold to multiple builders, with no certainty regarding length of the construction phase. The current owner's best estimate is 2 ½ years. Construction could drag on for many years impacting livability of the existing neighborhood.

4. Proposed lot sizes under R 4.5 zoning do not match the density of any of the surrounding neighborhoods. R-10 would be much more appropriate.

5. Further subdivision of the proposed lots, creating new flag lots and increasing permitted density after the fact, needs to be prohibited as a condition of approval.

Motion by Dorianne Palmer, seconded by, Passed with ayes, nays, abstentions









SCHOOL BUS  
EMERGENCY DOOR

UNLAWFUL TO PASS  
WHEN  
RED LIGHTS FLASH

07422

130356

44





SCHOOL BUS  
EMERGENCY DOOR

STOP

UNLAWFUL TO PASS  
WHEN  
RED LIGHTS FLASH

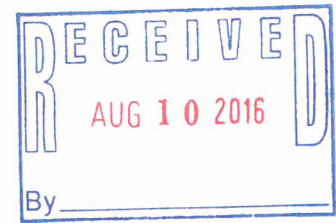
07422

130356

44



**Peter D. Lang**  
2312 College View Dr.  
West Linn, OR – 97068-1229



Eve: (503) 636-4006  
Cel: (503) 780-9201  
e-mail: [langpe@comcast.net](mailto:langpe@comcast.net)

10 August 2016

Mayor and City Council  
City of West Linn  
22500 Salamo Rd.  
West Linn OR 97068

Re: In the matter of SUB-15-03, WAP-16-03  
A 34 lot subdivision at 18000 Upper Midhill Dr.  
More recently known as the Chene Blanc Project

Dear Mr. Mayor and Councilors:

When all is said and done, as is the case at this juncture, your decision, while perhaps troubling in a political context, should really not be all that difficult. All parties in this matter have had sufficient time to prepare and present their respective cases.

Public officials seem to have a particularly difficult time setting priorities. I suppose it is the political pressures that muddy up the deliberating process. If you, who make these decisions could be steadfast in adhering to the fundamentals perhaps the decisions you render would at least be a bit more understandable.

We often hear, “safety must be our first concern”, or “let’s not get ahead of ourselves” yet the decisions that follow are all too often not at all consistent with these sound fundamentals.

This neighborhood and the City of West Linn is quite simply in no position to allow this project to go forward... at this time. The infrastructure in the surrounds simply cannot support it. If safety is a primary concern, as is so often stated, then the safety of the present and future residents in this part of the city and those using Highway 43 to pass through this part of the city must be given a very high priority. It is important to note that there is currently a good deal of additional building and development being planned for the near vicinity that will severely impact the intersection in question, Arbor Drive and



Highway 43. It may not be in West Linn, but it will, never the less, significantly impact this intersection.

To fail to address the obvious safety issues at the primary access point, the intersection of Arbor Drive and highway 43, would clearly constitute negligence and I would think subject both the City of West Linn and ODOT to unacceptable issues of liability in the future when serious, even fatal accidents occur at the intersection. And, occur they will! It is not hard to imagine how jurors might respond to a wrongful death or injury claim for an accident occurring at this intersection. Particularly with the knowledge that both the City and ODOT acquiesced and failed to address the issue when they had the opportunity. To fail to acknowledge this intersection as a serious safety issue would be irresponsible.

The issue of safety is quite clearly addressed in West Linn CDC 85.010 and is sufficient to uphold the Planning Commission's decision to deny the project.

Contrary to the opinion of the developer's consultant 3J Consulting, I believe the tie vote of the Planing Commission does constitute a decision to deny.

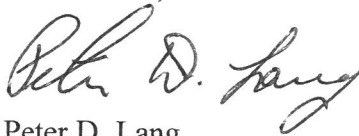
The developer's agent, Kittelson, in their analysis clearly made serious errors and assumptions in calculating peak traffic volumes through that intersection. The error is only compounded when City staff failed to identify Kettelson's errors. This omission further reinforces the magnitude of the dangers arising at this intersection. Further, the proposed improvements to Highway 43 that are currently being contemplated will increase both the frequency and the severity of accidents that occur in the future at this intersection.

I urge the Councilors and the Mayor to make the sensible choice and deny the application. Let's address this problem before proceeding. Let's not make it worse before we make it better.

Perhaps we can then find a way to make a development like this possible.

One sensible option would be to find a way to gain access from this parcel to one of the two traffic signals at Brookhurst Dr. and Marylbrook Dr. and Highway 43.

Thank You,

A handwritten signature in cursive script that reads "Peter D. Lang". The signature is written in black ink and is positioned above the printed name.

Peter D. Lang

**DAVID C. NOREN**  
**Attorney at Law**  
P.O. Box 586, Hillsboro, Oregon 97123-0586  
330 NE Lincoln Street, Suite 200, Hillsboro, Oregon 97124  
Telephone: (503) 640-2661 Fax: (503) 648-0760  
e-mail: david@norenlaw.com

August 12, 2016

Delivered Electronically c/o Planning Director and City Recorder

West Linn City Council  
City of West Linn  
22500 Salamo Road  
West Linn, OR 97068

Re: Appeal - Upper Midhill Drive SUB-15-03/WPA 16-03

Dear Mayor Axelrod and Councilors:

I represent the applicant and appellant/petitioner in the above matter. We are appealing the planning commission's decision, which found that the application met all applicable criteria except two, concerning double frontage lots and concerning adequate public facilities. We have appealed only those two issues, and the scope of the appeal is limited to those two issues.

At your July 25, 2016 hearing on this appeal you reopened the record at our request to admit the May 4, 2016 letter to the planning commission from our consultant Andrew Tull. Several individuals spoke in opposition, many of whom addressed the appeal issue of adequate public facilities, which was addressed in the May 4 letter in the applicant's offer to accept additional conditions of approval for area improvements. You left the record open until August 10 for additional written responses to the May 4 letter, and allowed us until August 12 to respond to new material that had come in.

We are providing additional written evidence, in the form of letters from our consultant Andrew Tull of 3J Consulting and Matt Bell of Kittelson and Associates, and this written argument, in response to the comments that were made at the July 25 hearing and that have been received through August 10, 2016, including the August 10 Supplemental Memorandum from attorney Peggy Hennessy for the Marylhurst Place Homeowners Association.

**Double Frontage Lots were Created by Lake Oswego**

Both the supplemental memorandum and public comments argue that the subdivision does not comply with CDC 85.200(B)(5) because it does not “avoid double frontage lots.” This argument is premised on the contention that the existing dedicated street, Hillside Drive, is somehow not a street because it has not been improved for its entire dedicated length. However, as set forth below, the definition of “street” does not include any requirement that a street be improved. The city’s planning documents regard this unimproved portion of Hillside as a “street,” including the Transportation System Plan (TSP) that was adopted in March 2016 as Ordinance 1646. The Roadway Functional Classification Map, Figure 17 on page 98 of the TSP, shows both Hillside Drive (including the dedicated but unimproved portion) and the portion of Upper Middle Drive within the subject property, as “local streets” that under your plan are intended to serve as access to local land use. Indeed, your TSP defines “local street” as follows:

*“Local (Street): A street designated in the functional class system that’s primary purpose is to provide access to land use as opposed to enhancing mobility. These streets typically have low volumes and are very short in relation to collectors and arterials.”*

Moreover, the “2013 Residential Units and Buildable Lands Inventory” map, Figure 1 of Technical Memorandum 4 incorporated in the TSP, shows the subject property as buildable land planned for 42 units, and also shows both the unimproved portion of Hillside Drive and the unimproved portion of Upper Midhill as streets within the city’s system. Clearly, the City’s TSP contemplates that this property will be developed and that the unimproved streets will be used, as appropriate, for local streets to provide access to the land use shown on your plan. Copies of the two figures are attached, but the entire Transportation System Plan Ordinance may be viewed at <http://www.codepublishing.com/OR/WestLinn/index.html> by clicking on the Ordinance Table then clicking on Ordinance 1646.

The supplemental memorandum responds to the 1999 ordinance vacating a portion of Hillside Drive (then Scenic Drive) by asserting that, because the city council found that the streets in their 1999 configuration were not needed for a public street purpose after the city of Lake Oswego foreclosed extension of those streets into that city by approving Marylhurst Place, “the remaining section of Scenic/Hillside Drive need not be constructed because the street is no longer needed for public street purposes.” Supplemental Memorandum p. 4. This argument puts the horse behind the cart. The approval of the Marylhurst Place subdivision, by eliminating future extension of Scenic/Hillside Drive into Lake Oswego, did foreclose the need for the northernmost portion of that street. That was a calculated choice, made at the request of the developer of Marylhurst Place, who asserted, through the Lake Oswego land use process, that streets in West Linn should be vacated. However, the Lake Oswego subdivision forced the need to reconfigure the circulation of local streets in West Linn to serve the subject property. Now the neighbors in Lake Oswego assert in the West Linn land use process that the configuration and orientation of streets created by their city should preclude the improvement of the streets that were not vacated in 1999. They argue that West Linn’s

code should extend to properties outside West Linn, after Lake Oswego foreclosed the orientation and construction of dedicated streets in West Linn by approving Marylhurst Place.

Of greater importance than the history of the adjoining development and vacation of a portion of Hillside Drive is the text of your definition of "Street" in CDC 2.030

*"Street. A public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, and the placement of utilities and including the terms "road," "highway," "lane," "avenue," "alley," "place," "court," "way," "circle," "drive," or similar designations."*

This definition makes no reference to whether a street created by dedication of a plat has been "improved." Adding that qualifier to the definition is contrary to the plain text of your code. And as noted above, your TSP identifies this dedicated but unimproved street as a "local street" in its functional plan. Double frontage lots are defined in CDC 85.200(B)(5) as lots that "have frontage on a street at the front and rear property lines." Improvement of this street does not create double frontage lots on Hillside Drive, as three members of the planning commission contended; the city of Lake Oswego's approval of the Marylhurst Place subdivision created the double frontage lots, and created them within the City of Lake Oswego. They cannot now be "avoided." Moreover, the development of Marylhurst Place has made the orientation of streets connecting to the north impossible, so using Hillside Drive to provide a connection to Upper Midhill is necessary to avoid the specific disadvantage of orientation created in part by slope and in part by the constraints imposed by the Marylhurst Place configuration. Worth noting is that a very similar road configuration for this site was approved in 2000 as part of the previous subdivision which was submitted on this property, implying that a very similar design was considered and found to be approvable as part of the City's previous land use reviews.

### **Arbor/Highway 43 Intersection**

The supplemental memo and other comments argue that under the definition of "adequate public facilities" in CDC 02.030, the applicant must show that there will be "no further degradation of the affected transportation facility" and that "mitigation must be provided to bring the facility performance standard to existing at the time of occupancy." Supplemental memorandum at page 5-6, quoting the CDC. However, because the subject intersection of Arbor at Highway 43 is identified in the TSP and in the city's adopted Capital Improvements Plan, it is a "programmed" facility and therefore is not subject to the requirement cited in the supplemental memorandum.

CDC 2.030's definition of adequate public facilities is as follows:

*“Adequate public facilities. Public facilities that must be adequate for an application for new construction, remodeling, or replacement of an existing structure to be approved are transportation, water, sewer, and storm sewer facilities. To be adequate, on-site and adjacent facilities must meet City standards, and off-site facilities must have sufficient capacity to (1) meet all existing demands, (2) satisfy the projected demands from projects with existing land use approvals, plus the additional demand created by the application, and (3) remain compliant with all applicable standards.*

*For purposes of evaluating discretionary permits in situations where the level-of-service or volume-to-capacity performance standard for an affected City or State roadway is currently failing or projected to fail to meet the standard, **and an improvement project is not programmed**, the approval criteria shall be that the development avoids further degradation of the affected transportation facility. Mitigation must be provided to bring the facility performance standard to existing conditions at the time of occupancy.”*

There is no question that onsite and adjoining facilities will meet standards. The focus has instead been on the off-site intersection at Arbor and Highway 43. As discussed in greater detail in the accompanying letter of August 12 from Andrew Tull, the intersection of Arbor and Highway 43 has already been recognized as needing attention and it has now been placed on the Capital Improvements Plan list for action in 2020. The city’s CIP is available here: <http://westlinnoregon.gov/finance/capital-improvement-plan-cip>. The facility is therefore “programmed” and the requirement to show “no further degradation of the transportation facility” does not apply. Indeed, to require that large transportation improvement projects such as the planning for Highway 43 must proceed in small increments, with each project in the city that might contribute traffic to Highway 43 required to show that there would be no further degradation, would mean either that most development in the city would be prohibited (since most will contribute in some degree to degrading traffic on Highway 43) or that there must be a myriad of small improvements. As we have noted before, the process of improving a State facility like Highway 43 is complex and should be addressed through careful planning. The Conceptual Plan for Highway 43 is available here: <http://westlinnoregon.gov/planning/highway-43-conceptual-design-plan>. Your code reflects this, and does not apply the “avoid further degradation” standard if improvement to the facility is programmed, as it is here. And as we have noted elsewhere, we are committed to paying our fair share of the cost of that programmed improvement.

### **Capacity and Safety on Local Streets (Upper Midhill)**

There was considerable testimony and written comment concerning the condition of Upper Midhill south of Arbor. As we have noted before, Upper Midhill adjoining the subject site and extending south as far as Arbor meets or exceeds standards for local streets. The concern expressed by some neighbors has been that traffic seeking to go north on Highway 43 will avoid the Arbor/43 intersection and instead use Upper Midhill to the south of Arbor to reach Marylhurst, which has a signal allowing easier access to

northbound Highway 43. Concern was expressed that the existing portion of Upper Midhill south of Arbor is not safe or adequate.

As detailed in the attached August 12 letter from Matt Bell of Kittleson and Associates, the portion of Upper Midhill south of Arbor Drive is constructed with two travel lanes that meet the width standard for a local street (10-12 foot lanes, as shown in your TSP Table 26. While not ideal, the existing constructed width does meet this standard, with the exception of a narrower pavement area along the city park near the south end of this segment of Upper Midhill. For whatever reasons, when the city acquired and improved this park it did not improve the adjoining street to city standards, so the constructed width in this segment is closer to 16 feet of pavement (two 8-foot lanes). However there is gravel shoulder this area, so from a capacity standpoint the facility is not failing and will function appropriately to serve local land use. From a safety standpoint the narrowest area of pavement adjoining the park is accompanied by a parallel footpath within the city park that allows pedestrian use to be separated from vehicles on the narrowest pavement area. Thus, while not ideal, transportation facilities for the neighborhood do meet city standards for capacity. Future improvement of the park should result in a safer street adjoining it.

#### **Drainage from “Tract D” onto Property of Mr. Jordan**

Mr. Jordan appeared at the July 25 hearing and presented testimony concerning drainage from the hand-dug ditch on “Tract D” of the Marylhurst Place subdivision onto his property, which lies within that subdivision. He argued that, because the appeal concerns adequacy of public facilities and the May 4 letter addressed public facilities, he should be allowed to speak to the issue of drainage, even though drainage was not specifically identified in the planning commission decision as a basis for denial.

As set forth in Mr. Tull’s testimony before the planning commission, the storm water system for the Chene Blanc project is designed and was approved by your city engineer to drain to the southeast corner of the development and from there to connect to an existing facility in the City of Lake Oswego. The existing facility is sufficient to handle all the storm water runoff generated by the new impervious areas created within the Chene Blanc subdivision, as reviewed by your city engineer, and will not direct additional storm water runoff into the “Tract D” ditch or onto Mr. Jordan’s property.

#### **CONCLUSION**

The additional evidence in the August 4 letter, the responses to that evidence, and this final response demonstrate that the planning commission erred in denying the application for two reasons: the subdivision does not create double frontage lots, and adequate public facilities will be available to provide service to the subdivision area. The planning commission should be reversed and the application approved with the conditions in the

West Linn City Council  
August 12, 2016  
Page 6

staff report, or such further conditions outlined in the May 4 letter as council may decide to impose.

Thank you for your careful consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David C. Noren', with a long horizontal flourish extending to the right.

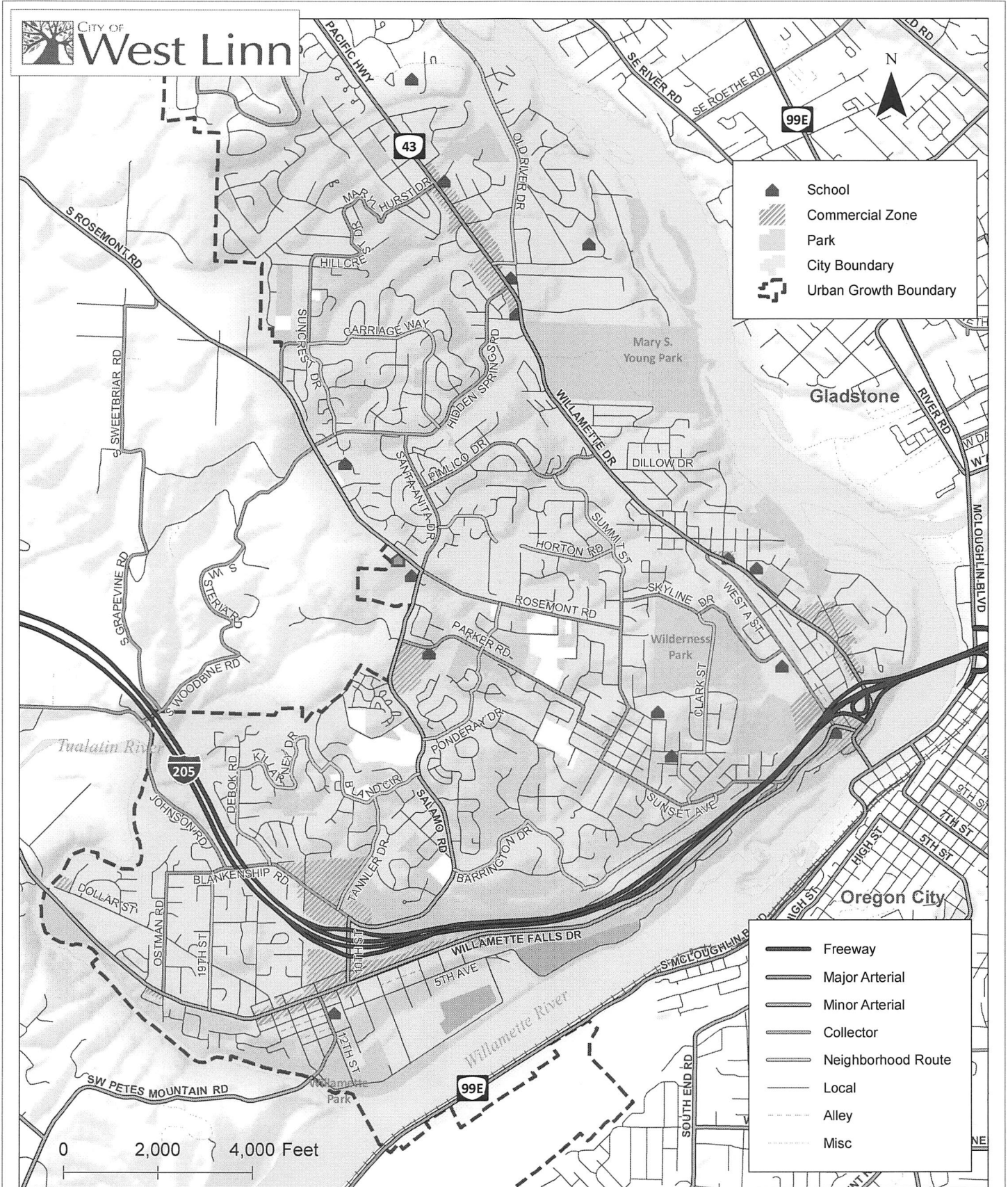
David C. Noren

Attachments:

TSP Functional Classification Map  
2013 Residential Units and Buildable Lands Inventories  
August 12, 2016 Letter from Andrew Tull  
August 12, 2016 Letter from Matt Bell

cc City Attorney  
Peggy Hennessy





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.

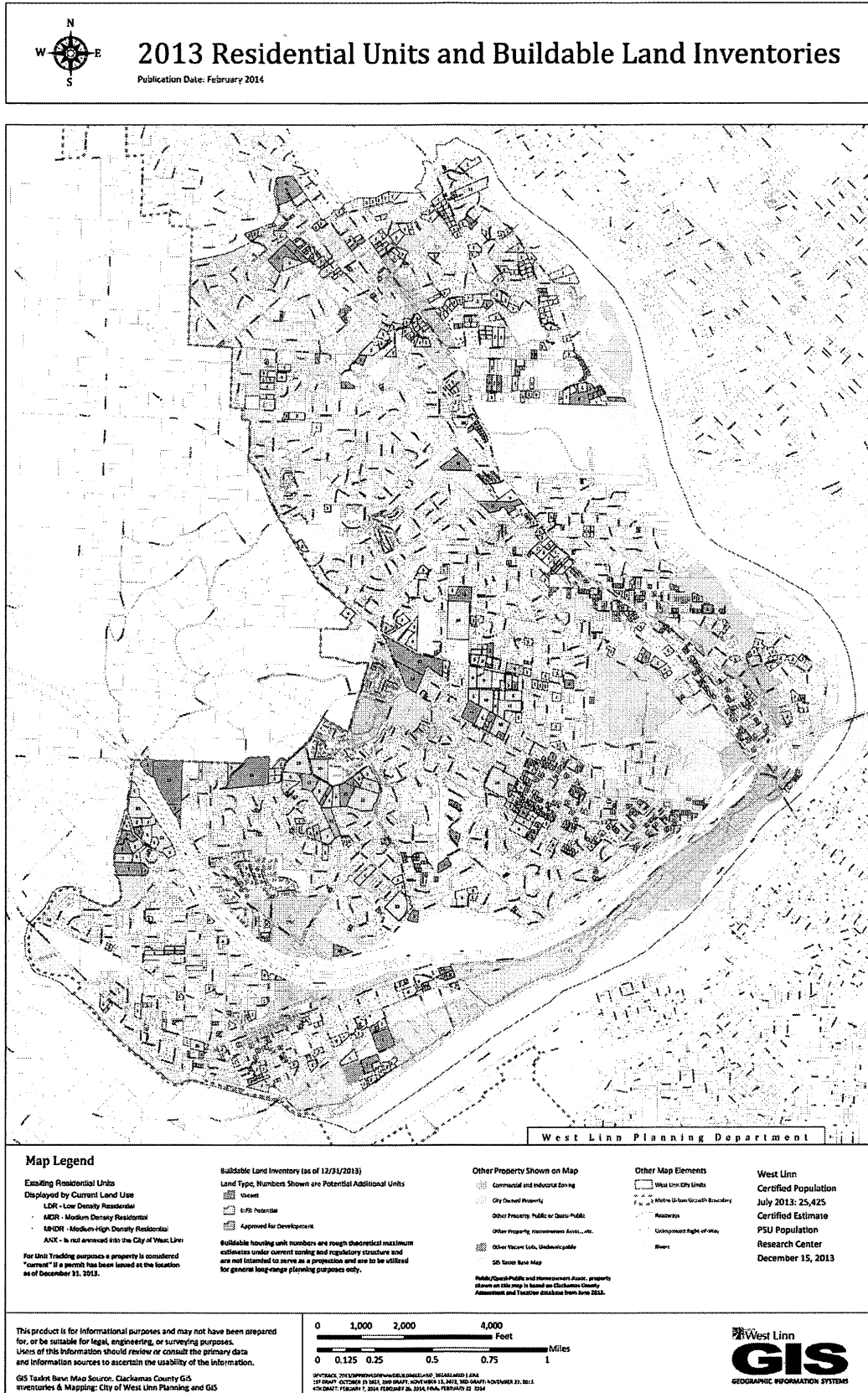
**Roadway Functional Classification  
West Linn, Oregon**

**Figure  
17**

H:\projfiles\17817 - West Linn Transportation System Plan\figs\TSP\Portrait\Letter Version\17 Functional Classifications.mxd - mbell - 11:53 AM 3/17/2016



Figure 1 2013 Residential Units and Buildable Lands Inventory





August 12, 2016

Mayor Russ Axelrod &  
Council Members  
West Linn City Council  
22500 Salamo Road  
West Linn, OR 97068

**Chene Blanc Subdivision**  
**SUB-15-03/WAP-16-03**  
**West Linn, Oregon**

Dear Mayor Axelrod and Members of the Council,

This letter has been prepared in order to specifically respond to an argument submitted by Ms. Peggy Hennessy in an August 10<sup>th</sup>, 2016 Supplemental Memorandum addressed to the City Council.

On pages 5 and 6 of the supplemental memorandum, within Section B, Ms. Hennessy argues that a current finding is required in response to the City's Community Development Code (CDC) section 02.030 that, "the development avoids further degradation of the affected transportation facility", or that improvements shall be required prior to occupancy. This statement is made in reference to the definition provided within CDC 02.030 for Adequate Public Facilities.

The initial assertion that a finding must be made which addresses a definition within the City's code is incorrect. An Applicant for a subdivision is required to address the applicable approval criteria when making an application for subdivision, not the definition section of the City's code.

The suggestion that the Applicant should be required to complete improvements to the intersection of Highway 43 and Arbor is also incorrect.

Staff and the applicant have comprehensively addressed the issue of adequate public facilities related to improvements at Highway 43 and Arbor Drive within the Applicant's initial Transportation Impact Analysis and within Staff's April 20, 2016 Staff Report. As discussed in response to the criteria listed in CDC Section 85.200.A.22, applicants are required to either construct or contribute a proportionate share of the costs for off-site improvements identified by the transportation analysis that are required to mitigate impacts from the proposed subdivision.

The definition for Adequate Public Facilities listed in Section CDC 02.030, as referenced within the August 10<sup>th</sup> letter, in its full text, reads as follows:

***Adequate public facilities.** Public facilities that must be adequate for an application for new construction, remodeling, or replacement of an existing structure to be approved are transportation, water, sewer, and storm sewer facilities. To be adequate, on-site and adjacent facilities must meet City standards, and off-site facilities must have sufficient capacity to (1) meet all existing demands, (2) satisfy the projected demands from*

*projects with existing land use approvals, plus the additional demand created by the application, and (3) remain compliant with all applicable standards.*

*For purposes of evaluating discretionary permits in situations where the level-of-service or volume-to-capacity performance standard for an affected City or State roadway is currently failing or projected to fail to meet the standard, **and an improvement project is not programmed.** the approval criteria shall be that the development avoids further degradation of the affected transportation facility. Mitigation must be provided to bring the facility performance standard to existing conditions at the time of occupancy.*

**The proposed improvements to Highway 43 at Arbor drive are a programmed improvement.**

The Arbor/Highway 43 intersection improvements are discussed within the City's 2016 Transportation System Plan (TSP). The TSP also includes references to a specific study completed in 2008 which analyzed the Highway 43 corridor (West Linn OR 43 Conceptual Design Plan) and made recommendations to improve several intersections along the corridor. Among the improvements planned for the Highway 43 Corridor is the addition of Northbound and Southbound Left Turn Pockets and the associated widening of Highway 43 along the approach to the intersection. Both the Concept Plan and the TSP identify that the improvements to Highway 43 will require ODOT's involvement however, the City asserts that a portion of these improvements will require funding by the City. The City is therefore currently planning for these improvements within the near term.

The City has initiated planning and programming for improvements within the Highway 43 Corridor by inclusion of the corridor's planned improvements on the City's Capital Improvement Project Plan. The City's 2016-2021 Capital Improvement Plan identifies that major street, sidewalk, and lane improvements to Highway 43 are anticipated to begin in 2020. The Applicant's contribution of fees-in-lieu of construction can be utilized by the City to assist in meeting the City's anticipated funding obligations and will allow the City to address Highway 43 in a comprehensive manner.

While the August 10th Letter from Ms. Hennessey correctly provides part of the definition for adequate public facilities, the incorporation of only a portion of the definition in the argument fails to convey the fact that the City allows contributions for programmed improvement projects instead of the construction of temporary improvements. The contribution of a fee-in-lieu of the construction of any interim improvements at the Highway 43/Arbor intersection has been reviewed by the City's staff, the Applicant's Traffic Engineer, and the City's Consulting Traffic Engineer and all parties are in agreement that the fee-in-lieu of construction is both permitted by the code and an appropriate use of the City and developer's funds while meeting all of the City's applicable approval criteria.

We would request that the argument submitted within the August 10<sup>th</sup> Supplementary Memorandum be disregarded.

Most Sincerely,



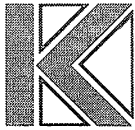
Andrew Tull

Principal Planner  
3J Consulting, Inc.

Attached:       Link to the City's 2016 TSP  
                      Link to the City's 2016-2021 Capital Improvements Plan  
                      Link to the 2008 Highway 43 Conceptual Design Plan

Copy:             Ms. Megan Thornton, Assistant City Attorney  
                      Mr. John Boyd, City of West Linn  
                      Mr. Peter Spir, City of West Linn  
                      Mr. Ryan Zygar, Tieton Homes, LLC  
                      Mr. David Noren, Attorney  
                      Mr. Aaron Murphy, PE, 3J Consulting, Inc.





# KITTELSON & ASSOCIATES, INC.

TRANSPORTATION ENGINEERING / PLANNING

610 SW Alder Street, Suite 700, Portland, OR 97205 P 503.228.5230 F 503.273.8169

August 12, 2016

Project #: 18758.0

Mayor Russ Axelrod & Council Members  
West Linn City Council  
22500 Salamo Road  
West Linn, Oregon

***RE: Chene Blanc Estates Development – SUB-15-03/WAP-16-03, West Linn, Oregon***

Dear Mayor Axelrod and Members of the Council,

This letter has been prepared in order to respond to arguments submitted by Ms. Peggy Hennessy in an August 10<sup>th</sup>, 2016 Supplemental Memorandum related to the adequacy of Upper Midhill Drive to accommodate the proposed development.

The segment of Upper Midhill Drive located between Arbor Drive and Marylhurst Drive has a paved width of approximately 16 to 20-feet with 1 to 4-foot gravel shoulders on both sides of the roadway. The segment adjacent to Midhill Park provides on-street parking in the northwest and southwest corners of the park and a pedestrian path that extends from the northwest to the southwest parking areas. The relatively narrow travel way requires vehicles to slow and in some cases stop along the shoulders to allow opposing vehicles to pass while the lack of sidewalks requires pedestrians and bicyclists to travel in the roadway (when there are no vehicles) or along the shoulders.

Despite the relatively narrow travel way and lack of sidewalks, the roadway has the physical and environmental capacity to accommodate existing and projected future travel demand with and without the proposed development. The physical capacity is evidenced by the fact that vehicles, pedestrians, and bicyclists use the roadway today to travel between Arbor Drive and Marylhurst Drive as well to access Midhill Park with little to no incident. A review of recent crash data provided by ODOT shows that no crashes have occurred along Upper Midhill Drive over the last five year period (January 1, 2011 through December 31, 2015). In addition, with the exception of the 16-foot wide segments primarily adjoining the park, the 20-foot segments provide two 10 foot travel lanes, which meets the minimum standard for local streets per the West Lin Transportation System Plan (TSP).

The environmental capacity is evidenced by the fact that approximately 30 vehicles use Upper Midhill Drive today during the evening peak period. With the proposed development, the total number of vehicles is expected to increase to less than 50. Local streets can typically accommodate up to 150 vehicles during peak time periods, or 1,500 Average Daily Traffic (ADT). With the proposed development, traffic along Upper Midhill Drive will be less than 1/3 of the threshold typically applied to local streets, and likely considerably less than hourly and daily volumes found to be acceptable on other local West Linn Street as well.

Finally, it should also be noted that the relatively narrow travel way and lack of sidewalks along Upper Midhill Drive results in low travel speeds and contributes to the rural character of the roadway that drew many of the adjacent residents to the neighborhood and that many of the adjacent residents would like to maintain. This may be evidenced by the fact that when Midhill Park was approved by the Planning Commission and City Council, the City was not required to improve their frontage along Upper Midhill Drive to City standards, nor were they required to improve the remainder of Upper Midhill Drive to provide "adequate public facilities". While the Applicant has proposed to improve public streets within the development and contribute to off-site improvements, improvements to Upper Midhill along the park's frontage, more than 1,300 feet south of the boundary of the proposed development should be undertaken when the properties adjacent to the park redevelop or when the park is next scheduled for upgrades.

Thank you for the opportunity to provide this additional information, facts, and observations to you. I will be happy to answer any additional questions you might have.

Sincerely,  
KITTELSON & ASSOCIATES, INC.



Matthew Bell  
Transportation Planner