

# WEST LINN PLANNING COMMISSION

## FINAL DECISION AND ORDER

AP-16-02

### IN THE MATTER OF THE RECONSIDERATION OF THE PLANNING COMMISSION DECISION TO DENY THE CHENE BLANC 34-LOT SUBDIVISION AND WATER RESOURCE AREA PERMIT AT 18000 UPPER MIDHILL DRIVE

#### Overview

This application was deemed complete on February 11, 2016. The West Linn Planning Commission (“Commission”) held a public hearing on April 20, 2016. A motion to approve the application failed due to a tie (3:3) vote. On May 4, 2016, the Planning Commission affirmed that the tied vote and failure of the motion constituted denial of the application and adopted findings to that effect.

On May 19, 2016, the applicant filed an appeal on the grounds that the Planning Commission misapplied the approval criteria including CDC 85.200(A) relating to adequate public facilities; specifically Arbor Drive, Hillside Drive, the intersection at Arbor Drive and Willamette Drive and a section of Upper Midhill Drive between Arbor Drive and Marylhurst Drive.

The City Council hearing on the appeal was held on July 25, 2016. The City Council reconvened the hearing on August 15, 2016, Councilor Perry made a motion to deny the appeal; seconded by Councilor Martin. The motion passed 4 to 1, and the appeal was denied (Exhibit PC-2). On October 3, 2016, the Applicant filed a “Notice of Intent to Appeal” to the Land Use Board of Appeals.

The City filed an Amended Notice of Withdrawal of Decision with LUBA on January 17, 2017. On January 19, 2017, LUBA issued its order granting the request with a deadline of June 1, 2017 to complete the reconsideration process.

On February 6, 2017, the City Council returned the Chene Blanc application (AP-16-02) to the Planning Commission for reconsideration. The City Council adopted the motion “...to approve the reconsideration process set forth in the City Attorney’s January 24, (2017) Memorandum and focus the scope of the reconsideration to adequate public facilities including traffic impact and influences and pedestrian improvements and safety”. This motion relates to the approval criteria of Community Development Code (CDC) 85.200(A). The Planning Commission’s reconsideration of the application was limited to this approval criterion and issue; therefore, the Planning Commission did not consider any other criteria. All other criteria in this case, including the double frontage criterion, were found to be met in previous final decisions on this application.

At their meeting on March 22, 2017, the Commission) held a public hearing to reconsider the application on the specific criteria identified by the adopted City Council motion.

The hearing commenced with a staff report presented by Peter Spir, Associate Planner. Attorney Seth King of Perkins Coie, Planning Consultant Andrew Tull of 3J Consulting, and Traffic Engineer Matt Bell of Kittelson and Associates, presented for the applicant. The applicant also represented himself.

Public testimony from seven individuals in opposition to the application was heard and focused upon safety concerns on local streets including Arbor Drive, Upper Midhill Drive, Hillside Drive and the intersection of Willamette Drive and Arbor Drive. Testimony also spoke to the structural condition of streets. One individual spoke in favor of the application. There was no expert testimony provided in opposition to the application.

The hearing was closed and a motion was made by Commissioner Mathews and seconded by Commissioner Metlen to approve the application with 11 conditions of approval. The motion passed by a 4:3 vote.

### **I. The Record**

The record was finalized at the March 22, 2017, hearing. The record includes the entire file from AP-16-02. Although there was a request by the applicant to reject certain testimony as outside the scope of the reconsideration, the Planning Commission did not choose to reject any testimony.

### **II. Findings of Fact**

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

### **III. Findings**

The previous Final Decisions and Orders listed below, found that all criteria for this application, except for CDC 85.200(A), have been met. The Commission recognizes and incorporates those final decisions and orders and the most recent staff report as findings demonstrating that the approval criteria for this application are met:

1. Planning Commission Final Decision and Order of May 5, 2016, which incorporated the April 20, 2016, Staff Report for SUB 15-03, WAP 16-03, with attachments, including specifically the Addendum dated March 25, 2016, and the Applicant's Submittals, including without limitation the narratives, for all criteria except CDC 85.200(A) and 85.200(B)(5) regarding double frontage;
2. Additional findings for 85.200(B)(5) in the City Council Final Decision and Order of September 13, 2016, and
3. Staff Report and Addendum for March 22, 2017, with attachments, as its findings for CDC 85.200(A), which are incorporated by this reference, in conjunction with the additional finding below, for CDC 85.200(A).

## 85.200 APPROVAL CRITERIA

No tentative subdivision or partition plan shall be approved unless adequate public facilities will be available to provide service to the partition or subdivision area prior to final plat approval and the Planning Commission or Planning Director, as applicable, finds that the following standards have been satisfied, or can be satisfied by condition of approval.

### A. Streets.

1. General. The location, width and grade of streets shall be considered in their relation to existing and planned streets, to the generalized or reasonable layout of streets on adjacent undeveloped lots or parcels, to topographical conditions, to public convenience and safety, to accommodate various types of transportation (automobile, bus, pedestrian, bicycle), and to the proposed use of land to be served by the streets. The functional class of a street aids in defining the primary function and associated design standards for the facility. The hierarchy of the facilities within the network in regard to the type of traffic served (through or local trips), balance of function (providing access and/or capacity), and the level of use (generally measured in vehicles per day) are generally dictated by the functional class. The street system shall assure an adequate traffic or circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried. Streets should provide for the continuation, or the appropriate projection, of existing principal streets in surrounding areas and should not impede or adversely affect development of adjoining lands or access thereto.

(...)

The Commission found that ODOT's February 3, 2017, support of the applicant's proposed mitigation concept for the Willamette Drive and Arbor Drive intersection plus the applicant's proportionate payment towards the Highway 43 Multimodal Transportation Project demonstrated that comprehensive effort is being made to improve the intersection both in the interim and in the long term.

Additionally, the Commission found that ODOT, Kittelson and Associates, DKS Engineering and City Engineering staff provided expert testimony that was not contested by any other traffic consultant or expert that demonstrated that the applicant's proposal meets the standards of CDC 85.200(A) "Streets" and is compliance with accepted engineering standards. The Commission finds that there is substantial evidence in the record to demonstrate that this criteria is met.

The Commission concludes that all of the required approval criteria are met subject to the following conditions of approval:

1. Site Plan. With the exception of modifications required by these conditions, the project shall conform to all submitted Plan Sheets dated 1/11/2016 (C000, C100, C105, C110, C 111, C112, C113, C114, C130, C200 (Preliminary Plat), C201, C210, C220, C230, C280, C300) and sheet LI (landscaping) dated 10/14/15.
2. Engineering Standards. All public improvements and associated facilities including street improvements (per sheets C201, C210, C220), utilities (per sheet C300), grading

(per sheet C230), onsite storm water design (per sheet C230 and C300), street lighting (per sheet C280), easements (per sheet C200), and easement locations are subject to the City Engineer's review, modification, and approval. These improvements must be designed, constructed, and completed prior to final plat approval or secured by instruments acceptable to the City Engineer.

3. Off-Site Traffic Mitigation. To mitigate the traffic impacts from the proposed subdivision until the Highway 43 Multimodal Transportation Project is constructed, and prior to the issuance of a grading permit for the development site, the applicant shall construct their proposed interim solution as depicted in Figure 9 of Kittelson Associates' March 1, 2017, memorandum ("KAI Memorandum") (Exhibit PC-5B) that includes restriping the highway with a northbound left turn pocket on the south leg of the intersection and a left turn refuge/storage area on the north leg of the intersection. The applicant shall also pay a proportionate fee in the amount of \$11,600 as Applicant's proportionate share contribution toward the long-term Highway 43 Multimodal Transportation Project.

4. Storm water Tract C. Prior to approval of the final plat, the applicant shall dedicate Storm water Tract C to the City of West Linn.

5. Mutual Maintenance and Easements. Prior to approval of the final plat, the applicant shall provide the City of West Linn, along with the final plat, a Mutual Maintenance and Reciprocal Access and Public Utility Easement for platted Lots 13-15 to ensure continued access and necessary maintenance of the shared drive in perpetuity. Lot 12 shall be excluded from using this easement.

6. No Parking Signs. The applicant shall install signs reading "No Parking- Fire Lane" on one side of Hillside Drive. The signs shall be designed and installed in accordance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).

7. Fire Flow. Prior to approval of the final plat, the applicant shall perform a fire flow test and submit a letter from Tualatin Valley Fire and Rescue showing adequate fire flow is present.

8. Significant Tree Mitigation. Prior to approval of the final plat, the applicant will mitigate for the removal of 434 inches of DBH by planting street trees and landscape trees on the project site. The remaining trees which are not able to be planted on site will be mitigated for either in off-site plantings in a location chosen by the City's arborist or the applicant will pay a fee in lieu to the City for trees which cannot be planted on site.


9. Access during Construction. Approved fire apparatus access roadways shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. Temporary address signage shall also be provided during construction.

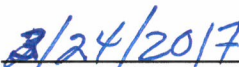
10. Hillside Drive Off-Site Sidewalk Improvements. The applicant shall construct Hillside Drive road widening and tapering plus approximately 90 feet of sidewalk on the north side of the street in front of 17849 Hillside Drive and 150 feet of sidewalk on the west side of the street commencing at the south edge of the proposed subdivision boundary to fill in gaps in the pedestrian facilities (as shown in Exhibit PC-5, pages 5 and 6).

11. Prior to issuance of a grading permit, the applicant shall submit a Construction Management Plan that includes a traffic management plan prohibiting project truck traffic on Upper Midhill Drive between Marylhurst Drive and Arbor Drive for approval by the Public Works Director.

#### IV. Order

The Commission concludes that AP-16-02 is approved based on the Record, Findings of Fact and Findings above.

  
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GARY WALVATNE, CHAIR  
WEST LINN PLANNING COMMISSION

  
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DATE

This decision may be appealed to the City Council pursuant to the provisions of Chapter 99 of the Community Development Code and any other applicable rules and statutes. This decision will become effective 14 days from the date of mailing of this final decision as identified below.

Mailed this 24<sup>th</sup> day of March, 2017.

Therefore, this decision becomes effective at 5 p.m., April 7, 2017.