

May 8, 2017

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Mayor Russell Axelrod
West Linn City Council
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**Re: Upper Midhill Estates Subdivision
City File Nos. SUB-15-03/WAP-16-03/AP-16-02/AP-17-01
Applicant's Letter in Support of the Applications**

Dear Mayor Axelrod and Members of the City Council:

This office represents Upper Midhill Estates, LLC ("Applicant"), the applicant requesting approval of a 34-lot subdivision and water resources permit for property located at 18000 Upper Midhill Drive ("Property"), City File Nos. SUB-15-03, WAP-16-03, AP-16-02, and AP-17-01 ("Applications"), which the Planning Commission approved on reconsideration, subject to conditions. Applicant requests that the City Council deny the appeal and affirm the Planning Commission's decision for the reasons stated below.

1. Procedural Arguments.

- **The City Council should limit the appeal to appellants' Issue 3 (Willamette Drive bicycle lanes) because it is the single issue that is properly within the scope of the appeal.** The City Council has already determined that this appeal is not an opportunity to raise any and all issues about the proposed development. Instead, the scope of the appeal is limited in three important ways:
 - The testimony and argument must fall within the scope of the reconsideration, which the City Council previously limited to the topic of "adequate public facilities, including traffic impact and influences and pedestrian improvements and safety that are related to CDC 85.200.A."
 - The appeal issue must be identified in the appeal statement, as required by West Linn Community Development Code ("CDC") 99.280.D; and

- The appeal issue must have been raised below with sufficient specificity to allow the Planning Commission and the parties to respond. *Id.*
- The issue of the adequacy of bicycle lanes on Willamette Drive falls within the scope of the reconsideration, residents raised the issue with sufficient specificity to allow the Planning Commission and the parties to respond, and the appellants identified the issue in their appeal statement. Therefore, this issue is properly before the City Council at the appeal hearing.
- **The City Council should reject other issues raised in the appeal statement or at the appeal hearing without reaching their merits because they are outside the scope of the appeal** and, as explained above, not allowed pursuant to CDC 99.280.D or the public notice provided by the City in advance of this hearing (“Testimony determined to be outside the scope of this appeal hearing will not be accepted.”).
- **The City Council should limit the appeal hearing to evidence already in the record because the Planning Commission did not commit any procedural or factual errors that would allow the City Council to consider new evidence.** See CDC 99.280.C (limiting new evidence in a City Council appeal hearing to instances when the Planning Commission committed an error). As examples, but without limitation, the City Council should expressly reject measurements of Willamette Drive that were completed after the Planning Commission hearing and the copy of the draft RN Overlay Zone that the City once considered but never adopted.

2. Policy Arguments.

- Applicant is proposing to develop the Property with a permitted use (single-family residential), which is the same use developed throughout the surrounding neighborhood.
- Applicant is not requesting an upzoning and, in fact, the Applications propose to develop the Property at the lowest density possible under existing zoning and thus will have the fewest operational and safety impacts to area streets.

- The proposed development is not unusual in the scope or extent of its impacts, and those impacts will be mitigated.
- Applicant is not required to address existing deficiencies in the area street network.

3. Substantive Arguments.

- Applicant concurs with the Planning Commission decision and the City staff report recommendation to approve the Applications, subject to conditions.
- **Applicant is proposing more mitigation measures than with the original Applications, including:**
 - Restriping Willamette Drive with a northbound left-turn pocket on the south leg of the Willamette Drive/Arbor Drive intersection and a left-turn refuge storage area on the north leg of the intersection;
 - Payment of a fee in the amount of \$11,600 as Applicant's proportionate share contribution toward the long-term Highway 43 Multimodal Transportation Project; and
 - Hillside Drive road widening and tapering and 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.
- **The Oregon Department of Transportation ("ODOT"), KAI, DKS Engineering, and City Engineering provided expert testimony, which was not rebutted or undermined by any other traffic consultant or testimony, that there will be adequate public transportation facilities to serve the development:**
 - KAI analyzed the safety and performance of the area street system and concluded that, subject to Applicant's completion of the mitigation

measures identified above, the development would be served by adequate and safe transportation facilities. See KAI Memorandum dated March 1, 2017 (“KAI Memorandum”). KAI reached its conclusions based upon an analysis of the background and projected traffic conditions (including trips generated by the development) at affected intersections in the vicinity of the development. See Appendices to KAI Memorandum. KAI concluded that, subject to implementation of these mitigation measures, all affected intersections would operate consistent with applicable performance standards (Level of Service or Volume-to-Capacity). KAI Memorandum at 1. In fact, Applicant’s proposed interim improvements will actually improve performance during the PM peak hour at the Willamette Drive/Arbor Drive intersection. *Id.* Based upon its analysis, KAI concluded that “the proposed development plan can be constructed while maintaining safe and adequate public facilities for motorists, pedestrians, and cyclists.” KAI Memorandum at 4.

- Notably, on reconsideration, Applicant has committed to completing more transportation mitigation measures than Applicant proposed, or City staff recommended, in the original proceedings. See KAI’s original Transportation Impact Analysis for the Development dated January 2016 (“TIA”), which had recommended only the payment of a fee in lieu toward completion of off-site traffic mitigation measures on Willamette Drive between Arbor Drive and Shady Hollow Way. The additional mitigation measures proposed by Applicant on reconsideration reflect Applicant’s good faith commitment to addressing the transportation impacts of the Development.
- However, the additional mitigation measures are not even necessary to ensure the adequacy of area facilities. The transportation engineers at both DKS Associates (the City’s transportation engineer) and ODOT reviewed KAI’s original TIA and concurred with its recommendation that requiring payment of a fee in lieu was “appropriate.” See Staff Report for April 20, 2016 Planning Commission meeting at 14. To the extent the fee in lieu alone ensured that there were adequate public transportation facilities to serve the development—as these professional engineers

found—Applicant’s provision of the additional mitigation measures identified above before occupancy of the development certainly ensures this standard is met.

- Further, ODOT has reviewed KAI’s separate Transportation Impact Analysis for a more intensive, 42-unit residential development proposal for the Property and has concluded that Applicant could mitigate the impacts of this more intensive development by completing the Arbor Drive/Willamette Drive interim improvements and paying a fee in lieu toward the long-term improvements at this intersection. *See* ODOT memorandum dated February 3, 2017. To the extent these measures were sufficient to mitigate the impacts of that more intensive development, Applicant’s provision of the same mitigation measures (plus the Hillside Drive improvements) before occupancy of the 34-lot development certainly ensures this standard is met.
- **Applicant has adequately addressed appellant’s concerns regarding the adequacy of bicycle lanes on Willamette Drive.** The Planning Commission approved the Applications, subject to Condition 3, which requires Applicant to complete off-site traffic mitigation, including interim improvements to Willamette Drive and a fair-share contribution to long-term improvements for this facility:

“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.”

Applicant's transportation engineer has stated that it is feasible to incorporate bicycle lanes into the design of the interim improvements. See KAI Memorandum, page 3.

Alternatively, ODOT has jurisdiction over this segment of Willamette Drive and has stated that, as needed, it will consider deviations from design standards for Applicant's interim improvements that are consistent with design deviations granted for the Highway 43 Multimodal Transportation Project as a whole. See ODOT memorandum dated February 3, 2017, page 2. To the extent ODOT approves a design exception that affects bicycle lanes for the interim improvements, it will be the final decision of the agency with jurisdiction over this highway segment on the need for/sufficiency of bicycle lanes associated with the interim improvements. Accordingly, based upon the testimony from Applicant's transportation engineer and ODOT, the City Council can condition approval of the Applications upon providing bicycle lanes or, as needed, obtaining a design exception from ODOT from any bicycle lane requirement.

Further, the interim improvements will be temporary in nature. Applicant's transportation engineer testified to the Planning Commission that the long-term improvements for Willamette Drive are anticipated in 2020. ODOT testified that these long-term improvements will incorporate bicycle lanes. See ODOT memorandum dated February 3, 2017, page 1. Planning Commission Condition 3 requires Applicant to make its fair-share contribution to these long-term improvements, which will necessarily constitute Applicant's fair-share contribution to bicycle lanes associated with these long-term improvements.

- In its narrative for the reconsideration (dated March 1, 2017), Applicant has responded to each of the City Council's original grounds for denial:
 - Applicant may rely upon facilities that are programmed but not built to demonstrate that there are "adequate public facilities," provided Applicant pays a proportionate share fee in lieu for the programmed facility. In this case, Applicant does not actually rely upon facilities that

are programmed but not built because the interim improvements alone will satisfy the “adequate public facilities” standard.

- The City should rely upon the traffic analysis completed by KAI because the assumptions and methodology underlying this analysis are credible.
 - Applicant’s proposed mitigation measures will improve safety and decrease delay at the intersection of Arbor Drive and Willamette Drive before occupancy.
 - The local streets and sidewalks connecting the proposed development and Willamette Drive are adequate to accommodate existing and projected traffic.
- **Applicant is not required to address construction-related traffic in order to satisfy CDC 85.200.A.** Nevertheless, Applicant has voluntarily agreed to submit for approval by the Public Works Director a Construction Management Plan for the development that includes a traffic management plan prohibiting truck traffic on Upper Midhill Drive between Marylhurst Drive and Arbor Drive. See Planning Commission Condition 11.
 - **The Applications propose detached single-family dwellings, which are “needed housing” under both state and local law.** See ORS 197.303(1)(a) and City Comprehensive Plan at H-1, H-2, and Figure 10-1. As a result, the City may only apply “clear and objective standards, conditions, and procedures” to the Applications. ORS 197.307(4). To the extent CDC 85.200.A requires the City to exercise discretion, it is not a “clear and objective standard.”

4. Conclusion.

For the reasons explained above, and based upon evidence in the record, the City Council should deny the appeal and affirm the Planning Commission’s approval of the Applications, subject to conditions.

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Applicant has requested that City staff include a copy of this letter in the official record for this matter and place a copy before you prior to the appeal hearing in this matter. Applicant and its representatives will attend the City Council appeal hearing and are happy to answer any questions at that time.

Thank you for your careful consideration of this testimony and the Applications.

Very truly yours,



Seth J. King

cc: Peter Spir (via email)
Tim Ramis (via email)
Megan Thornton (via email)
Ryan Zygar (via email)
Andrew Tull (via email)
Matt Bell (via email)
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