

May 8, 2017

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Mayor Russell Axelrod
West Linn City Council
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

**Re: Upper Midhill Estates Subdivision
City File Nos. SUB-15-03/WAP-16-03/AP-16-02/AP-17-01
Applicant's Request to Exclude New Evidence**

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, 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. With this letter, Applicant objects to, and requests that the City Council exclude from the record, testimony submitted by Ann Beltman on May 4, 2017, which includes an email at 2:24pm and an attachment entitled "Robinwood Neighborhood Plan and Proposed Robinwood Overlay Zone," on the grounds that this testimony is both improper new evidence and outside the scope of the appeal.

First, Ms. Beltman's testimony constitutes improper new evidence. Because this matter is a quasi-judicial appeal from the Planning Commission, the City Council is only permitted to accept new evidence under two limited circumstances, and neither of these circumstances apply to the RN Overlay Zone testimony. The two circumstances when the City Council may accept new evidence on appeal are the following: (1) a procedural error was committed that prejudiced the party's substantial rights, and reopening the record is the only means of correcting the error; or (2) a factual error occurred before the Planning Commission that is both relevant to an approval criterion and material to the decision. West Linn Community Development Code ("CDC") 99.280.C.

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Ms. Beltman's email and attachment constitute new evidence because they include and discuss a proposed overlay zone that would have applied to the subject property if the City had adopted it. Ms. Beltman does not contend that the Planning Commission committed a procedural or factual error below, and it did not. Ms. Beltman and others in the community had several weeks when the record was open before the Planning Commission, and they could have submitted this evidence during that open record period. However, they failed to do so. Therefore, there is no basis for the City Council to accept or consider the evidence pertaining to the RN Overlay Zone at this point in the proceedings.

Second, Ms. Beltman's testimony is outside the scope of the appeal because it does not fall within the scope of the reconsideration, which is limited to compliance with CDC 85.200.A; it is not identified as an issue on the appellants' appeal statement, as required by CDC 99.280.D; and the issue raised in her testimony was not preserved below, also as required by CDC 99.280.D.

The public notice for this appeal hearing states that testimony outside the scope of the appeal hearing will not be accepted by the City. Therefore, the City Council should not consider Ms. Beltman's evidence and should formally exclude it from the record. Thank you for your attention to this request.

Very truly yours,



Seth J. King

cc: Peter Spir (via email)
Tim Ramis (via email)
Megan Thornton (via email)
Ryan Zygar (via email)
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