



Memorandum

Date: May 15, 2017

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

From: Peter Spir, Associate Planner

Subject: AP-17-01 Review of Submitted Comments for Admissibility

Summary

This memorandum addresses two topics: 1) whether the Council should consider certain documents which have been objected to; and 2) whether some of the grounds for appeal are beyond the scope of this proceeding.

As described in more detail below, the following documents cannot be considered because they contain evidence not presented to the Planning Commission:

Anne Beltman, May 4, 2017
Jason Harra, May 8, 2017, 3:58pm
Jason Harra and Rick Nys, May 8, 2017, 5:25pm

Staff recommends that the following documents also be excluded from consideration as beyond the permissible scope of the proceeding, however, final determination on these documents is dependent on the Council's conclusion regarding the proper breadth of the appeal:

Gregory Ball, April 29, 2017
Keith Hamilton, May 7, 2017

With respect to the proper scope of the appeal, the memorandum takes the narrow view that Ground of Appeal 3 (safety of bike lanes) controls the scope of the hearing, but staff acknowledges that this is a matter of judgment for the City Council and that it is possible to find that Grounds of Appeal 1 (impact of construction) and 2 (lack of geologic information) are within the scope of reviewing the adequacy of the transportation infrastructure to support the project. Ground of Appeal 4 (abandonment of the project) appears to staff to be outside the scope of the reconsideration.

I. Documentary Objections

At the May 8, 2017, City Council public hearing, staff was directed to review the written emails and letters received by May 4, 2017 from Jason Harra (appellant), Scot Chandler, Doug and Dorianne Palmer, Gregory Ball, Anne Beltman, and written comments received on May 8, 2017, from Keith Hamilton, Jason Harra and two from Seth King of Perkins Coie. Subsequent to the hearing, staff received another email from Jason Harra and Rick Nys P.E., Greenlight Engineering. The review examines the admissibility of the written material for the City Council reconsideration appeal hearing. The conclusions reached apply to oral testimony offered at City Council hearings which repeats the context of these documents.

Staff recommends that the Council exclude from consideration the following items because they contain evidence which is not a part of the Planning Commission's record:

Anne Beltman, May 4, 2017
Jason Harra, May 8, 2017, 3:58pm
Jason Harra and Rick Nys, May 8, 2017, 5:25pm

Staff recommends that the Council exclude from consideration the following additional items that staff concludes are beyond the scope of the reconsideration proceeding or beyond the scope of Ground of Appeal No. 3 which relates to the safety of bike lanes. (This conclusion is based on staff's recommendation that only Ground for Appeal 3 fell within the scope of the reconsideration proceeding. Staff recognizes that this conclusion is subject to debate by the parties and that it is within the purview of the City Council to determine whether other Grounds of Appeal also fall within the scope of the reconsideration).

Gregory Ball, April 29, 2017
Keith Hamilton, May 7, 2017

Attached to this memo is an attachment which identifies the three standards that must be met for admissibility. Each letter and email was read with these three standards in mind. The table below presents staff findings of each letter and email. If a letter or email receives one "NO", then the letter is deemed inadmissible. (For example, Jason Harra's May 8, 2017 email met the first two standards for admissibility; however, the introduction of new traffic data and analysis, previously not available to the Planning Commission, represented "New Evidence" and is therefore inadmissible. Similar findings apply to a subsequent email and letter from Jason Harra and Rick Nys P.E., Greenlight Engineering.)

Conversely, if the letter or email receives all "YES", then the letter is recommended to be admissible.

Staff appreciates the fact that the City Council will be the final arbiter of admissibility during these reconsideration hearings. For example, the Council may determine that the Gregory Ball

and Keith Hamilton communications will be considered because the Council considers more than Ground of Appeal 3 to be within the scope of the reconsideration.

II. Scope of Proceeding

The case arises from the decision of the City Council to return the subdivision application, as modified, to the Planning Commission to reconsider the basis upon which the subdivision was originally denied by the City Council, specifically, to reconsider the adequacy of public facilities including traffic impact and influences as well as pedestrian improvements and safety.

After reconsideration and approval by the Planning Commission, an appeal identifying four grounds was filed. The Applicant has objected, arguing that only a single ground, Ground of Appeal 3 (relating to bike lanes) is within the scope of the reconsideration. The issue for the City Council is whether Grounds 1, 2 and 4 should be considered.

Ground of Appeal 1 (time limitation on construction) does not specifically reference adequacy of transportation infrastructure, instead focusing on the inconvenience of construction to surrounding homeowners, especially those seeking to sell their homes. In analyzing documents, staff has taken the view that it is outside the scope of the reconsideration because it does not expressly raise infrastructure adequacy. It is a matter of judgement for the City Council to determine the interpretation to be given to this ground. Appellant urges that the statements in the appeal document should be read broadly, apparently contending that a source of inconvenience to homeowners is the inadequacy of the transportation network to safely accommodate large trucks associated with subdivision and dwelling unit construction. Under this view, the ground would be included for consideration by the Council. If it is included for consideration, then the Ball and Hamilton documents could be considered because they refer to the adequacy of the transportation systems and appear to make arguments based on evidence submitted to the Planning Commission.

Ground of Appeal 2 (relating to lack of geologic information) also fails to reference transportation infrastructure, but does refer to drainage system inadequacy. Read broadly the argument could encompass two propositions: 1) that there is inadequate information on drainage, and 2) that the impact of construction on public streets is not adequately analyzed by the application because the amount of grading is unknown. Read more narrowly, the express language of the ground does not expressly relate to 85.200(A) and the transportation issues which the Council sought reconsiderations of from the Planning Commission. Resolving how to interpret this ground is within the authority of the City Council. Staff has adopted the more conservative view. Resolution of this issue does not appear to affect the consideration of any particular document, although there is testimony in the Planning Commission record that is relevant if the broader interpretation is adopted.

The Fourth Ground of Appeal (relating to abandonment of the project) does address the criteria of 85.200(A). Staff does not view this ground of appeal as within the scope of the reconsideration.

Conclusion

The Council must determine if Grounds of Appeal 1 and 2 are to be considered in resolving the appeal. If Ground of Appeal 1 is included in your deliberations, then the Hamilton and Ball documents can be considered. The Beltman, Harra and Harra/Ny's documents may not be considered because they contain information presented for the first time at the City Council. If Ground of Appeal 2 (relating to lack of geological evidence) is determined to be within the scope of the reconsideration, then testimony on this topic presented at the Planning Commission can be considered.

Table indicating admissibility of submitted letters and emails for AP-17-01

Sender	Date mailed	Within the City Council’s scope of reconsideration: <i>“adequate public facilities including traffic impact and influences and pedestrian improvements and safety”</i>	Addresses admissible grounds for review (#3 re: <i>Inadequate consideration of the impact of the proposed interim design on Willamette Drive on existing bike lanes</i>) per 99.020(B)	Meets standard for not including new evidence
Jason Harra	April 25, 2017	Procedural challenge	–	–
Scot Chandler	May 4, 2017	YES	YES	YES
Doug and Dorianne Palmer	May 4, 2017	YES	YES	YES
Gregory Ball	April 29, 2017	YES	NO	YES
Anne Beltman	May 4, 2017	NO	NO	NO(1)
Keith Hamilton	May 7, 2017	YES	NO	YES
Seth King (#1)	May 8, 2017	New evidence challenge	–	–
Seth King (#2)	May 8, 2017	YES	YES	YES
Jason Harra	May 8, 2017 3:58 PM	YES	YES	NO(2)
Jason Harra & Rick Nys P.E. Greenlight Engineering	May 8, 2017 5:25 PM	YES	YES	NO(3)

Footnote identifying new evidence: (1) Introduced Robinwood Overlay Zone. (2) Introduced previously unused sources and citations (e.g. see references). (3) Report and findings from Greenlight Engineering.

ATTACHMENT:

To be admissible, the following three standards were applied:

1. Does the letter or email address the City Council's motion to "focus the scope of the reconsideration to adequate public facilities including traffic impact and influences and pedestrian improvements and safety."?
2. Does the letter or email address "the issues set forth in the request to appeal" per 99.280(B) (1) TYPE OF APPEAL HEARING AND SCOPE OF REVIEW"?

B. Except as provided for in subsection C of this section, an appeal of a decision made by the Planning Commission shall be confined to:

1. *Those issues set forth in the request to appeal; and*
2. *The record of the proceedings as well as the oral and written arguments presented which are limited to those issues clearly and distinctly set forth in the notice of appeal;*

The appellant's issues set forth in the request to appeal may be summarized as follows:

- 1) Need to provide a timeline for completion of the subdivision including the construction of all houses within the subdivision;
- 2) Need for geological studies;
- 3) Inadequate consideration of the impact of the proposed interim design on Willamette Drive on existing bike lanes; and
- 4) Who has long term responsibility to address congestion, drainage, lighting, and related issues that may arise after the development is complete?

(Staff found that only Ground for Appeal 3 correctly addressed the City Council's scope of reconsideration. Grounds for Appeal 1, 2 and 4 did not.)

3. Does the letter or email introduce new evidence that was not part of the Planning Commission record?