

May 11, 2017

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VIA EMAIL (SENT BEFORE 5:00 PM)

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

**Re: City of West Linn File No. AP-17-01
Upper Midhill Reconsideration; Applicant's Final Written Argument**

Dear Mayor Axelrod and Members of the City Council:

This office represents Upper Midhill LLC (the "Applicant"). This letter is the Applicant's final written argument under ORS 197.763(6)(e) and is submitted by 5:00 p.m. on May 11, 2017. This letter does not contain new evidence.

I. Introduction.

The City Council opened the May 8, 2017 appeal hearing and, after hearing testimony from the Appellant, the Applicant and other parties, continued the public hearing to the date certain of May 18, 2017 at 5 p.m. The City Council provided that the staff would issue a report indicating which argument and evidence should be stricken from the record no later than May 10, 2017. The City Council allowed the Applicant to submit final written argument until May 11, 2017 at 5 p.m. Upon the commencement of the continued public hearing on May 18, 2017, the Applicant urges the City Council to make a determination as to which argument and evidence should be stricken from the record. The City Council indicated that it would ask questions of the staff, if it had any, provide the Appellant and the Applicant an opportunity to respond to the questions and answers, and then provide the Applicant with a ten (10) minute rebuttal period.

The issue before the City Council in this appeal is not whether an application will be approved for development on this property but what kind of application will be approved. The current application for a 34-lot single-family subdivision is the least dense project allowed under the R-10 zoning district. Moreover, this in-fill development site is recognized on the City's acknowledged comprehensive plan (City of West Linn "2013 Residential Units and Buildable Lands Inventories" map, dated December 31, 2013), which shows 42 dwelling units for this site (included in the Planning Commission record in Applicant's March 22, 2017 letter, page 6,

note 1). The site has long been zoned R-10 and had the City wanted to change the zoning, it could have done so.

The record shows that the Applicant has also submitted a 42-lot townhome subdivision proposal as an “Expedited Land Division” application. The Applicant’s preference, as Mr. Zygar testified to the City Council, is to construct the single-family home subdivision. However, if the City Council denies the application, the Applicant has no option but to proceed with an appeal of the denial, and process the Expedited Land Division application. Nevertheless, the Applicant’s preference is to build the single-family home subdivision.

The issue then becomes how to condition an approval of this application. As explained below, the six (6) conditions of approval address each of the issues raised by the City Council. While the Applicant does not need to propose the conditions of approval to address the approval criteria, the Applicant does so to address the issues raised by the City Council.

II. Summary of Argument.

A. The only issue properly before the City Council on appeal of the Planning Commission’s approval of the application on reconsideration is the issue of the width of bike lanes. West Linn Community Development Code (“CDC”) 99.250(3) is very specific that the issues on appeal are limited to those preserved before the lower body and listed in the appeals statement. As the Applicant has explained (**Exhibit 1**), of the four (4) issues raised in the appeal statement, only one is related to CDC 85.200(A), the sole criterion identified allowed by the City Council for reconsideration, preserved on appeal before the Planning Commission, and listed in the appeal statement.

B. The City Council appeal hearing is a “on the record” appeal hearing pursuant to CDC 99.280(B)(1) and (2). This letter explains that much of the written and oral testimony on behalf of the Appellant received by the City Council is outside of the record and must be stricken. The Applicant preserved its objections to this error by objecting to this argument and evidence at the May 8, 2017 public hearing, and renews its objections in this letter. Failure to strike the offending evidence prejudices the Applicant’s substantial rights to a full and fair hearing, and the opportunity to make its case. *Muller v. Polk County*, 16 Or LUBA 771 (1988). The Applicant’s substantial rights are prejudiced because the introduction of new evidence in an “on the record” hearing after the notice did not provide for new evidence leaves the Applicant with no opportunity to rebut the new evidence. Notwithstanding that much of the written and oral evidence and argument is outside of the record and the scope of the appeal, the Applicant proposes six (6) conditions of approval addressing each issue raised by the City Council.

CDC 99.250 and 99.270 allow the introduction of new evidence **only** in the event that the Appellant identified a factual or procedural error in the appeal statement and asked the City

Council in the appeal statement to allow new evidence. Further, the notice of appeal hearing must have included the statement that new evidence would be allowed. CDC 99.270.E. The Appellant's appeal statement does not meet the requirement of CDC 99.250.3.c because it did not request the introduction of new evidence and the notice of the City Council appeal hearing did not include the allowance of new evidence. In fact, the notice of the appeal hearing (**Exhibit 2**) states that the City Council appeal hearing is "on the record" and that testimony outside of the scope of the appeal hearing would not be accepted and the announcement made at the beginning of the public hearing stated that the appeal hearing was "on the record."

C. Issues having to do with the timing of construction are not properly before the City Council for two (2) reasons. First, the application before the City Council is for approval of a subdivision, including public improvements, not dwellings. Second, CDC 85.090 provides three (3) years in which the Applicant may construct the improvements. As explained below, however, the Applicant commits to proceeding with construction, pursuant to a proposed condition of approval requiring a construction management plan, as quickly as possible. The City Council has no authority to condition the timeline for construction of single-family dwellings nor is it relevant as to who will construct the dwellings.

D. Issues related to a geotechnical analysis are beyond the scope of CDC 85.200(A). In any event, such issues would only be relevant to the on-site local streets, not to off-site streets. The Applicant will propose a condition of approval addressing this issue.

E. Construction traffic, which is temporary in nature and unrelated to the "use of the property," (see Applicant's March 22, 2017 letter at page 5) is not relevant to CDC 85.200(A). Further, if construction traffic is considered in this application and based on the Mayor's statements that all of the streets in the area are inadequate, this raises the specter that the City Council will never approve development of the site, which invokes a taking of the Applicant's property. However, the only evidence in the record is contrary to the Mayor's statement. The Kittelson & Associates ("KIA") March 1, 2017 letter states that the streets surrounding the development site are adequate because they are designed to carry up to 1,500 vehicles per day and instead will carry about 500 vehicles per day after development of this site (**Exhibit 3**).

F. The Applicant proposes six (6) conditions of approval addressing each issue raised by the City Council as follows.

III. Objections to Argument and Evidence.

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 issue must be identified in the appeal statement, as required by West Linn Community Development Code (“CDC”) 99.280.B; and

The issue must have been raised below with sufficient specificity to allow the Planning Commission and the parties to respond. CDC 99.280.D.

The City Council lacks the authority to consider testimony about other issues in this appeal. The City’s notice states the City will not consider such extraneous testimony:

“Testimony determined to be outside the scope of this appeal hearing will not be accepted.”

Further, the City Council is only permitted to accept new evidence under the following two limited circumstances: (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. CDC 99.280.C. In this case, no one alleged that new evidence should be allowed due to a procedural or factual error committed by the Planning Commission. To the extent parties are presenting new facts at this time that were not placed before the Planning Commission, it does not demonstrate a factual error committed by the Planning Commission because the Planning Commission never had the opportunity to consider the facts in the first place.

Applicant objects to, and requests that the City Council exclude from the record, the testimony and evidence that City staff has identified as inadmissible in the two staff memoranda dated May 11, 2017. For the reasons explained by staff in those memoranda, these materials are not admissible and should be rejected.

Additionally, Applicant has identified two additional items of oral testimony that constitute new evidence: (1) testimony by Doug Palmer regarding the width of Willamette Drive; and (2) testimony by Friedrich Baumann regarding implications of logging the property. This evidence was not presented to the Planning Commission. As a result, it is not part of the record. Again, no party has alleged a procedural or factual error that would allow the City Council to accept this evidence at this time.

As further support for its position, Applicant offers the following:

A. Oral testimony by Rick Nys at the May 8, 2017 public hearing.

Mr. Nys is an expert witness and did not appear on behalf of the Appellant before the Planning Commission. LUBA has held that an expert witness's testimony is evidence and not argument. *Freedman v. City of Grants Pass*, 57 Or LUBA 385 (2008). Moreover, none of the issues raised by Mr. Nys were raised by any person before the Planning Commission. Thus, not only the evidence offered by Mr. Nys but his issues, including his critique of the KIA traffic study, are outside of the record and may not be considered by the City Council.

The City Council can also conclude that Mr. Nys evidence is outside of the record because following his testimony, Mr. Chris Harris testified that Mr. Harra had the KIA traffic impact analysis reviewed professionally. Because this was not done prior to the close of the Planning Commission record, it is clear that Mr. Nys' review of the traffic impact analysis was done following the close of the Planning Commission record and must therefore be excluded.

B. May 8, 2017 written testimony by the Appellant.

Mr. Harra's letter, including the bibliography, is outside of the record. The letter consists of facts and argument not presented to the Planning Commission and thus not part of the record. Additionally, the argument and evidence contained in the May 8, 2017 letter are beyond the scope of the appeal. The letter addresses issues unrelated to any of the four (4) issues raised in Mr. Harra's appeal statement and is unrelated to the single issue preserved for appeal, the width of the bike lines. To the extent Mr. Harra argues that he made measurements of streets after the Planning Commission hearing, such facts were not before the Planning Commission and are therefore not part of the record, and may not be considered by the City Council. Finally, Mr. Harra's argument regarding the two-stage turn and software methodology is outside of the record and the appeal and must be excluded. Finally, Mr. Harra's testimony regarding when the original traffic count was conducted and challenging the traffic impact analysis is both outside of the record and outside of the issues preserved for appeal.

C. Testimony by Jennifer Harra.

Unless Mrs. Harra's testimony regarding the number of children in the immediate neighborhood and the elementary school start time are in the Planning Commission record, those facts are new evidence and should be excluded. Further, Mrs. Harra's testimony regarding the October 2016 traffic counts is outside of the scope of the appeal.

D. Testimony of Doug Palmer.

Mr. Palmer's testimony regarding consultation with other groups is outside of the record. His testimony regarding the importance of a six-foot wide bike lane is outside of the record. His testimony regarding the Highway 43 bridge over Arbor Creek north of Arbor Drive is outside of the record.

E. Testimony of Chris Harris.

Mr. Harris' testimony regarding the Mary's Woods information, the bicycle lane not being compliant with Americans with Disabilities Act and road measurement are outside of the record and must be excluded.

F. Testimony of Friedrich Baumann.

Mr. Baumann's testimony regarding the number of trees to be cut is both outside of the record and outside of the scope of the appeal. His testimony regarding the logging truck to reach the site is outside of the record.

For these reasons, the City Council should formally exclude from the record the evidence and testimony identified in the staff memoranda and the evidence on the two points from Mr. Palmer and Mr. Baumann. Failure to do so will constitute a procedural error that will prejudice Applicant's substantial rights to a full and fair hearing and to present its case and will subject the City's decision to reversal or remand by the Land Use Board of Appeals. ORS 197.835(9)(a)(B).

IV. Argument.

A. Geotechnical issues are unrelated to CDC 85.200(A).

The City Council's order on reconsideration provides for it to consider only CDC 85.200(A). The notice of the appeal hearing expressly states that the City Council will only consider the issue of "adequate public facilities including traffic impact and influences and pedestrian improvements and safety that are related to CDC 5.200(A)". CDC 85.200(A) does not include a requirement that the City consider a geotechnical analysis for the construction or location of streets. Nevertheless, as already noted, the Applicant's geotechnical analysis supports a finding that it is feasible to construct public streets to acceptable City standards (May 4, 2015 letter from Geopacific concluding that potential for impacts is low and August 15, 2016 Geotechnical study by Geopacific. Moreover, even if one reaches the issue of geotechnical analysis for streets that does not allow a consideration of construction traffic. CDC 85.200(A) does not list construction traffic as an issue to be considered; it requires an analysis of streets to be considered in their relation to the "proposed use of land to be served by the streets".

Finally, the tenuous connection between geologic issues and CDC 85.200(A) in the absence of citing a CDC criterion for a "geotechnical analysis" shows that the standard is subjective and not applicable under ORS 197.307(4).

B. The bicycle lane widths satisfy CDC 85.200(A).

The Applicant agrees with the City staff analysis that of the four (4) grounds for the appeal cited in Mr. Harra's appeal statement, only the bicycle lane widths within the scope. However, as explained by staff, the City Council should reject this basis for the appeal because the Oregon Department of Transportation ("ODOT") which controls Oregon Highway 43 supports the proposed mitigation improvement including restriping the bicycle lanes on a temporary basis while acknowledging approval to do so as subject to design exception which the Applicant has demonstrated is feasible to obtain.

The City Council can find that the evidence demonstrates that bike lane widths between 5.5 feet and 6 feet will be adequate. The Applicant coordinated with ODOT and ODOT has the final approval and ODOT will approve the final design through its design exception process. Further, the evidence demonstrates that the proposed interim bicycle lane improvements are consistent with the City's long term improvements and the restriping addresses the operational impacts at the intersection of Oregon Highway 43 and Arbor Way.

C. Local streets are adequate for construction traffic.

The KIA March 1, 2017 letter at page 3 stated with respect to construction traffic: "While temporary construction traffic should be considered in the overall development process, it is typically handled as part of a construction management plan that can involve stakeholders."

The KIA March 1, 2017 (**Exhibit 3**) letter at page 4 stated with respect to the adequacy of local streets around the development site that "The streets that connect the proposed development to OR 43 are sufficient to accommodate existing vehicle traffic and traffic generated by the proposed development, particularly the segment of Upper Midhill Drive located north of Arbor Drive and a segment of Arbor Drive located east of Upper Midhill Drive. As local streets, these streets are designed to accommodate 1500 vehicles per day. With the proposed development, these streets are projected to accommodate less than 900 vehicles per day. Therefore, there is sufficient capacity along the existing street network to accommodate a significant increase in traffic beyond the proposed development. The segment of Upper Midhill Drive located south of Arbor Drive is narrow; however, as described in a previous response letter, it is sufficient to accommodate existing vehicle traffic and traffic generated by proposed development, which is expected to be less than 10 vehicles per day, including one vehicle during the morning and one vehicle during the evening peak hour. With the proposed development, this segment of Upper Midhill Drive is projected to accommodate less than 300 vehicles per day. The existing sidewalk network is also sufficient to accommodate existing pedestrian traffic and pedestrian traffic generated by the proposed development. There is a continuous network of sidewalks and paths that connect the proposed development to OR 43 at the OR 43/Marylbrook Drive intersection, . . ."

The KIA letter concludes “As indicated in this letter, the proposed development plan can be constructed while maintaining safe and adequate public facilities for motorists, pedestrians, and bicyclists, assuming implementation of the proposed mitigation majors.” No substantial evidence contravenes the KIA conclusions in its March 1, 2017 letter.

D. The March 1, 2017 KIA study is adequate.

No evidence contests the KIA March 1, 2017 letter which includes the Institute of Transportation Engineers’ table for single-family detached family housing showing an average trip rate of 0.75 for the morning peak hour. No substantial evidence submitted to the Planning Commission contravenes the ITE rate relied upon by ODOT and the City in finding that the KIA traffic impact analysis was adequate.

E. CDC 85.200(A) is satisfied.

The City Council can find that substantial evidence in the whole record satisfies CDC 85.200(A) (**Exhibit 4**). First, with respect to the appeal issue, the street system shall ensure an adequate traffic and circulation system appropriate for the traffic to be carried. The proposed improvements at the intersection of Oregon Highway 43 and Arbor Drive are sufficient to mitigate the issue of rear-end crashes by providing left-turn lanes. Second, the mitigation improvements provide for adequate bicycle lanes on a temporary basis until the Oregon Highway 43 project is completed. Third, the substantial evidence in the whole record shows that streets are adequate for local traffic after the 34-lot subdivision is developed. The Applicant’s substantial evidence demonstrates, and indeed the evidence submitted by the surrounding neighbors shows, that the low volume local streets are safe and adequate for pedestrians even after this subdivision is developed. Finally, the requirement in CDC 85.200(A) that streets should be oriented with the consideration of the sun so that over 50% of the front building lines of homes are oriented with 30 degrees of an east/west access is not a mandatory requirement because it uses the word “should” and this issue was not previously raised as a basis for denial in the application.

For all of these reasons, the City Council can find that the application satisfies CDC 85.200(A) and the sole appeal issue is not a basis for denial.

V. Six (6) Proposed Conditions of Approval.

The Applicant requests that the City Council approve the application with the following conditions of approval in addition to the ten (10) conditions of approval recommended by the Planning Commission. Conditions of approval are not new evidence.

A. Crosswalk on Highway 43. The Applicant shall propose to construct a crosswalk across Highway 43 at Arbor Street, consistent with ODOT standards.

B. Supplemental Geotechnical Analysis. The Applicant shall prepare a supplemental geotechnical analysis addressing the soils conditions in the areas of the local streets within the subdivision, including an estimate of the amount of soil to be removed in order to construct the streets. The Applicant shall submit the supplemental geotechnical analysis to the City for review and approval prior to approval of construction plans.

C. Tri-Met Bus Stops. The Applicant shall coordinate with Tri-Met to assure that bus stops meeting Tri-Met standards are available on Highway 43 if the restriping affects the bus stops and if within the right-of-way. The bus stops shall comply with the Americans with Disabilities Act, if required to do so.

D. Construction Management Plan. The Applicant shall prepare a Construction Management Plan. The City shall review and approve the Construction Management Plan prior to approval of construction plans. The Construction Management Plan shall include:

- A truck wash shall be installed prior to beginning of on-site construction work
- Construction traffic shall be prohibited from using Upper Midhill Drive between Arbor and Marylhurst Drive
- The Developer shall distribute a “flyer” door to door to the neighbors’ houses adjacent to the Chene Blanc Subdivision Site, and to those neighbor’s houses which will be impacted by the construction and development activities. The “flyer” shall contain information pertaining to start and potential ending dates of the project, days and hours of operation, a brief description of activities planned for the site, a description of the boundaries of the site, the name and telephone number of a resource/question line, and any other information the Developer feels relevant to homeowners residing in the impacted area;
- Dust control/dust abatement procedures and/or plans;
- A plan to minimize, to the extent practical, the constant idling of engines and subsequent spread of exhaust fumes into the neighborhood;
- No construction equipment, including “porta potties”, shall be located outside the exterior boundaries of the construction site;

- Off-site employee street parking shall not block driveways, mailboxes, and/or collection-day trash receptacles; and,
- No employee parking at the bottom of College View Drive in the turn-around area.

E. Implementation of Highway 43 and Arbor Way Intersection Mitigation. The Applicant shall complete the intersection mitigation improvements prior to beginning subdivision improvements.

F. Pedestrian Way Finding Signs. The Applicant shall coordinate with the City and the Neighborhood Association to establish a series of “way finding” signs to guide pedestrians to the intersection of Oregon Highway 43 and Marylbrook Drive to reach the Tri-Met bus stop located at that intersection.

VI. Conclusion.

The City Council granted reconsideration of its denial of the 34 lot subdivision in order to give the Applicant an opportunity to address CDC 85.200(A). The City Council returned the decision to the Planning Commission so that any party could submit new evidence because the City Council appeal hearing would be on the record. The Applicant submitted substantial evidence that satisfied the Planning Commission that CDC 85.200(A) was met because the Planning Commission approved the application.

The Appellant and other parties had at least 20 days before the Planning Commission hearing to submit evidence into the record. No person asked that the Planning Commission hearing be continued, or that the written record be held open so that a person could submit new evidence. The time for a person to submit new evidence into the record closed at the conclusion of the Planning Commission record.

The City Council must make its decision based on the Planning Commission record and the single appeal issue before it--the adequacy of bicycle lane widths. The City Council can find as to that single appeal issue that substantial evidence in the whole record demonstrates that the temporary 5.5 feet to 6 feet bicycle lane widths are adequate to serve their intended purpose and that ODOT did not object to such mitigation. The bicycle lane widths occur as a result of restriping intersection of Oregon Highway 43 and Arbor Way to provide for safe left-turn movements.

As to the other issues raised by the City Council, regardless of whether they are on the record or not, the City Council can find that substantial evidence in the whole record including the Applicant’s oral testimony at the May 8, 2017 public hearing, demonstrates that these issues can

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be resolved. Additionally, and without conceding that the issues have not been resolved by substantial evidence in the whole record, the Applicant has proposed six (6) conditions of approval to address the issues identified City Council.

The decision on this matter is based on the City Council finding that substantial evidence satisfies the sole criterion and rejecting the sole appeal issue. The City Council can do so. The property that is proposed to be subdivided has long been available for in-fill development and the Applicant is proposing far more than most applicants would propose to mitigate issues identified by the public and the City Council. There is no basis to deny the application and the Applicant respectfully requests that the City Council approve the application with the recommended conditions of approval.

Very truly yours,



Michael C. Robinson

MCR:rsr
Enclosures

cc: Mr. Peter Spir (via email) (w/ encls.)
Mr. John Boyd (via email) (w/ encls.)
Mr. Ryan Zygar (via email) (w/ encls.)
Mr. Andrew Tull (via email) (w/ encls.)
Mr. Aaron Murphy (via email) (w/ encls.)
Mr. Matt Bell (via email) (w/ encls.)
Mr. Seth King (via email) (w/ encls.)
Mr. Jason Harra (via email) (w/ encls.)

APPEAL ISSUE	WITHIN SCOPE OF RECONSIDERATION	IDENTIFIED AS APPEAL ISSUE	PRESERVED BELOW
1 – Failure to Address Timeframe for Development	No	Yes	Yes
2 – Need for Geological Studies	No	Yes	No
3 – Inadequate Consideration of the Impact of the Proposed Off-Site Mitigation on Willamette Drive Bicycle Lanes	Yes	Yes	Yes
4 – Long-Term Responsibility to Address Congestion, Drainage, Lighting, and Related Issues that May Arise After Development is Complete	No	Yes	No

2. Response to Appeal Issues.

Response to Issue 1 (Development Timeline): Residents preserved the issue of the development timeline by raising it below, and petitioners have identified this issue in the appeal statement; however, as Applicant testified in its March 22, 2017 letter to the Planning Commission, this issue is outside the scope of the reconsideration. Therefore, the City Council may not consider this issue on appeal and should instead reject it without reaching the merits.

**CITY OF WEST LINN CITY COUNCIL
PUBLIC HEARING NOTICE
FILE NO. AP-17-01
APPEAL OF RECONSIDERATION OF AP-16-02**

The West Linn City Council is scheduled to hold a public hearing on **Monday, May 8, 2017, starting at 6:30 p.m.** in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to hear the appeal filed by Jason and Jessica Harra of the Planning Commission's decision on reconsideration to approve AP-16-02, a 34-Lot Subdivision and Water Resource Area permit at 18000 Upper Midhill Drive.

The criteria applicable to this application are the following criteria and these criteria only: Community Development Code (CDC) Chapters 14, 32, 48, 85, and 99. The appeal of the Planning Commission's decision on reconsideration is a limited public hearing. The City Council is not accepting testimony and argument at the appeal hearing that relates specifically to the scope of reconsideration, which was limited to the topic of "adequate public facilities including traffic impacts and influences and pedestrian improvements and safety that are related to CDC 85.200(A)." In addition, CDC 99.280 limits appeals of Planning Commission decisions to: "1) Those issues set forth in the request to appeal; 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 grounds for appeal are summarized as follows: 1) failure to address the long term framework for development; 2) the need for geological studies; 3) inadequate consideration of the impact of the proposed on-site mitigation on existing bike lanes on Willamette Drive; and 4) long term responsibility for access congestion, drainage, lighting, and related issues that may arise after the development is complete. The complete language of these appeal grounds is available at: <http://westlinnoregon.gov/planning/18000-upper-midhill-drive-appeal-planning-commission-approval>. Testimony determined to be outside the scope of this appeal hearing will not be accepted.

The complete application for file number AP-17-01 is available for inspection at no cost at City Hall or via the web site listed above. Limited copies can be obtained at City Hall for a minimal charge per page.

As of April 27, 2017, a copy of the staff report is available for inspection at no cost or copies can be obtained for a minimal charge per page. For further information, please contact Peter Spir, Associate Planner, at City Hall, 22500 Salamo Road, West Linn, OR 97068, pspir@westlinnoregon.gov, or 503-723-2539.

The hearing will be conducted in accordance with state law. At the appeal hearing, the City Council will receive a staff presentation, and invite both oral and written testimony limited to the grounds identified in this notice. Individuals may present written testimony on this proposed action prior to, or at the public hearing. All written testimony or other documents presented to the City Council for consideration must be submitted to the Planning Manager's office by 4:00 p.m. on May 4, 2017, or "in person at the hearing." Oral testimony may be presented at the public hearing. The City Council may continue the public hearing to another meeting to obtain additional information or close the public hearing and take action on the application as provided by state law. Failure to raise an issue in person or by letter at some point prior to the close of the hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals based on that issue.

Publish: West Linn Tidings, Thursday, April 27, 2017

Issue 5: The infrastructure between the development and the arterial connections is substandard, particularly along Upper Midhill Drive

Response: The streets that connect the proposed development to OR 43 are sufficient to accommodate existing vehicle traffic and traffic generated by the proposed development, particularly the segment of Upper Midhill Drive located north of Arbor Drive and the segment of Arbor Drive located east of Upper Midhill Drive. As local streets, these streets are designed to accommodate up to 1,500 vehicles per day. With the proposed development, these streets are projected to accommodate less than 900 vehicles per day. Therefore, there is sufficient capacity along the existing street network to accommodate a significant increase in traffic beyond the proposed development. The segment of Upper Midhill Drive located south of Arbor Drive is narrow; however, as described in a previous response letter, it is sufficient to accommodate existing vehicle traffic and traffic generated by the proposed development, which is expected to be less than 10 vehicles per day, including one vehicle during the morning and one vehicle during the evening peak hour. With the proposed development, this segment of Upper Midhill Drive is projected to accommodate less than 300 vehicles per day.

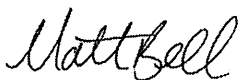
The existing sidewalk network is also sufficient to accommodate existing pedestrian traffic and pedestrian traffic generated by the proposed development. There is a continuous network of sidewalks and paths that connect the proposed development to OR 43 at the OR 43/Marylbrook Drive intersection, which is served by local transit service and is also the main entrance to Marylhurst University. While there are gaps in the sidewalk network that connect the proposed development to the OR 43/Arbor Drive intersection, as well as other destinations along OR 43 and Upper Midhill Drive, the existing network of sidewalks and shoulders is sufficient to accommodate pedestrians.

Summary

As indicated in this letter, the proposed development plan can be constructed while maintaining safe and adequate public facilities for motorists, pedestrians, and cyclists, assuming implementation of the proposed mitigation measures. In addition, while the mitigation measures will significantly improve traffic operations at the OR 43/Arbor Drive intersection in the interim, the developers proportionate share contribution to the overall improvements along OR 43, and system development charges in general, will contribute to improvements throughout the City's transportation system for all users.

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

Sincerely,
KITTELSON & ASSOCIATES, INC.



Matthew Bell
Senior Planner

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.

To accomplish this, the emphasis should be upon a connected continuous pattern of local, collector, and arterial streets rather than discontinuous curvilinear streets and cul-de-sacs. Deviation from this pattern of connected streets should only be permitted in cases of extreme topographical challenges including excessive slopes (35 percent-plus), hazard areas, steep drainageways, wetlands, etc. In such cases, deviations may be allowed but the connected continuous pattern must be reestablished once the topographic challenge is passed. Streets should be oriented with consideration of the sun, as site conditions allow, so that over 50 percent of the front building lines of homes are oriented within 30 degrees of an east-west axis.

Internal streets are the responsibility of the developer. All streets bordering the development site are to be developed by the developer with, typically, half-street improvements or to City standards prescribed by the City Engineer. Additional travel lanes may be required to be consistent with adjacent road widths or to be consistent with the adopted Transportation System Plan (TSP) and any adopted updated plans.

An applicant may submit a written request for a waiver of abutting street improvements if the TSP prohibits the street improvement for which the waiver is requested. Those areas with numerous (particularly contiguous) under-developed or undeveloped tracts will be required to install street improvements. When an applicant requests a waiver of street improvements and the waiver is granted, the applicant shall pay an in-lieu fee equal to the estimated cost, accepted by the City Engineer, of the otherwise required street improvements. As a basis for this determination, the City Engineer shall consider the cost of similar improvements in recent development projects and may require up to three estimates from the applicant. The amount of the fee shall be established prior to the Planning Commission's decision on the associated application. The in-lieu fee shall be used for in kind or related improvements.

Streets shall also be laid out to avoid and protect tree clusters and significant trees, but not to the extent that it would compromise connectivity requirements per this subsection (A)(1), or bring the density below 70 percent of the maximum density for the developable net area. The developable net area is calculated by taking the total site acreage and deducting Type I and II lands; then up to 20 percent of the remaining land may be excluded as necessary for the purpose of protecting significant tree clusters or stands as defined in CDC 55.100(B)(2).
