

**WEST LINN PLANNING COMMISSION
FINAL DECISION AND ORDER
FOR AN EXPEDITED LAND DIVISION SUB-17-04

IN THE MATTER OF A SIX-LOT SUBDIVISION AT
4096 CORNWALL STREET**

I. Overview

Icon Construction & Development LLC (Applicant) filed its application on November 8, 2017, and it was deemed complete on November 27, 2017. The approval criteria for the application are found in Community Development Code (CDC) Chapters 11, 28, 48, 54, 55, 85, and 92. The Expedited Land Division process criteria are addressed in CDC 99.060.E and, by reference, as listed in ORS 197.360 to 197.380. The Expedited Land Division review was conducted pursuant to the provisions of CDC Chapter 99 and as referenced in ORS 197.360 to ORS 197.380. Notice of the receipt by the City of a completed application was sent to owners of property within 100 feet of the site and to neighborhood organizations, as required by ORS 197.365(2). The notice also identified a 14-day period to submit written material, the criteria for the decision, a specific deadline to provide written testimony, and instructions that no hearing would be held on the application in accordance with ORS 197.365(4)(b).

The Planning Commission (Commission) held a meeting on December 20, 2017 to deliberate to a decision on approval or denial of the application. Prior to opening the meeting, the Commission made ex parte communication and bias disclosures. The meeting opened and the Commission entered into deliberations. Pursuant to the statutory process, there was no staff presentation, Applicant presentation or any written or oral public testimony.

After deliberations, a motion was made by Commissioner Walvatne for a tentative decision to deny the application. Commissioner Farrell seconded the motion. After discussion, the motion was put to a vote with Commissioners Pellett, Farrell, King, Relyea and Walvatne voting in favor of denial and Commissioner Mathews voting against the motion of denial. The motion, as a tentative decision to deny the application, passed (5 to 1). This Final Decision and Order was considered and edited by the Commission on January 10, 2018. The Commission noted that although the City issued a letter dated November 27, 2017, stating that the application was complete as required by Oregon law and CDC 99.030(C)(2), the findings should reflect that the information in the record was not technically sufficient to meet the applicant's burden of proof to demonstrate compliance with ORS 197.360(1)(a)(D), ORS 197.360(1)(a)(E), ORS 197.360(4), and CDC 85.200 regarding the adequacy of transportation and stormwater facilities.

At the Commission's January 17, 2018, meeting Commissioner Mathews was absent. At the meeting, Commissioner Ferrell made a motion to deny the application and adopt the Final Decision and Order. Commissioner Relyea seconded the motion, and the motion passed 6 to 0 to deny the application and adopt the Final Decision and Order.

II. The Record

The record was finalized at the December 20, 2017, meeting. The record includes the entire file from SUB-17-04.

III. Findings

The Commission makes this decision based on these findings, the submitted written comments received during the comment period, and the evidence in the whole record. The Commission concludes that the record fails to satisfy the Applicant's burden to prove compliance with all applicable criteria.

1. DENSITY CALCULATION

The applicable state statute requires a finding of compliance with a mandated minimum residential density requirement. ORS 197.360(4) states that an "expedited land division submitted to a local government *shall describe the manner in which the proposed division complies with each of the provisions of subsection (1) of this section.*" (*emphasis added*). The Commission finds that there is not sufficient evidence to determine that the density requirement of ORS 197.360(1)(a)(E) is met. Also, ORS 197.360(3) requires that the expedited land division statutes apply to all elements of a local government comprehensive plan and land use regulations applicable to a land division, including physical characteristics of permitted uses, the proposed lot dimensions, and transportation right-of-way and facility standards. The Commission finds that the proposed transportation facilities do not meet the requirements of CDC 85.200 under Section 2 of this Final Decision and Order. Of particular concern is the portion of the site not dedicated to the creation of lots or parcels.

ORS 197.360(1)(a)(E):

" (E) Will result in development that either:

(i) Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site; or

(ii) Will be sold or rented to households with incomes below 120 percent of the median family income for the county in which the project is built.

(b) "Expedited land division" includes land divisions that create three or fewer parcels under ORS 92.010 to 92.192 and meet the criteria set forth in paragraph (a) of this subsection.

(2) An expedited land division as described in this section is not a land use decision or a limited land use decision under ORS 197.015 or a permit under ORS 215.402 or 227.160.

(3) The provisions of ORS 197.360 to 197.380 apply to all elements of a local government comprehensive plan and land use regulations applicable to a land division, including any planned unit development standards and any procedures designed to regulate:

- (a) *The physical characteristics of permitted uses;*
- (b) *The dimensions of the lots or parcels to be created; or*
- (c) *Transportation, sewer, water, drainage and other facilities or services necessary for the proposed development, including but not limited to right-of-way standards, facility dimensions and on-site and off-site improvements.*
- (4) *An application for an expedited land division submitted to a local government shall describe the manner in which the proposed division complies with each of the provisions of subsection (1) of this section. [1995 c.595 §7; 2015 c.260 §1]"*

Upon review of the record, the Commission finds no clear description regarding density calculation compliance in the Staff Report or on Page 4 of the Applicant's submittal. The calculations provided by the Applicant do not adequately explain how provision of six homes meets the 80% density requirement. The Commission was therefore unable to find that this criterion is satisfied. In land use matters, the Applicant carries the burden to demonstrate that each criterion is met. The Commission concludes that the Applicant did not carry its burden, resulting in denial of the application based on this criterion.

2. TRANSPORTATION SYSTEM ADEQUACY

As stated above, ORS 197.360(4) states that an "expedited land division submitted to a local government *shall describe the manner in which the proposed division complies with each of the provisions of subsection (1) of this section.*" (*emphasis added*). The Commission finds that there is not sufficient evidence to determine that the minimum street or other right-of-way connectivity requirements of ORS 197.360(1)(a)(D) are met. Also, ORS 197.360(3) requires that the expedited land division statutes apply to all elements of a local government comprehensive plan and land use regulations applicable to a land division, including transportation facilities, but not limited to right-of-way standards and facility dimensions. Accordingly, the Commission also finds that proposed transportation facilities do not meet the requirements of CDC 85.200.

ORS 197.360(1)(a)(D):

(D) Satisfies minimum street or other right-of-way connectivity standards established by acknowledged land use regulations or, if such standards are not contained in the applicable regulations, as required by statewide planning goals or rules.

ORS 197.360(3):

The provisions of ORS 197.360 to 197.380 apply to all elements of a local government comprehensive plan and land use regulations applicable to a land division, including any planned unit development standards and any procedures designed to regulate:

- (a) *The physical characteristics of permitted uses;*
- (b) *The dimensions of the lots or parcels to be created; or*

(c) Transportation, sewer, water, drainage and other facilities or services necessary for the proposed development, including but not limited to right-of-way standards, facility dimensions and on-site and off-site improvements.

Under CDC 85.200, the Applicant must demonstrate “. . . adequate public facilities will be available” To address this requirement with respect to streets, the Applicant submitted a street design and findings related to traffic impacts. The Commission finds that the evidence submitted does not satisfy the burden of demonstrating compliance with the standard because of errors. Also, important transportation issues are left unanswered by the design in the record, including cut-through traffic, fire access, and impermissibility of a gated public street.

The Commission is concerned about the adequacy of the alleyway for fire access since the width of the paved surface is 12 feet. The gated alleyway for fire access does not meet the fire code cited in the TVF&R letter dated November 17, 2017, which requires a minimum unobstructed driving surface width of 20 feet, pursuant to OFC 503.2.1. Further, the alleyway does not satisfy the public alley street design in CDC 85.200(A)(15)(f), which requires a minimum alleyway width of 14 feet. The Commission also questions why Landis is not adequate as the fire access. These issues are left unanswered by the current record and the required process prevents submission of additional evidence to resolve these questions. The Commission therefore cannot find that the transportation infrastructure is adequate with respect to access for fire services.

The Commission finds that the alleyway is a public way, and if used to access any homes, the gate is not allowed by CDC 85.200(A)(20). The situation is exacerbated by the zero rating of Cornwall, which is not adequate to serve additional traffic. There is concern that an open alley would promote cut-through traffic to Cornwall. There is also concern that a locked gate, even if permissible, would delay emergency access. The record reveals a problem with cut-through traffic, but gated access is not a permissible solution. The Commission cannot find that the transportation infrastructure is adequate without additional information, or an alternative solution. The Commission concludes that the record is insufficient to permit a finding of compliance.

The Commission concludes that the proposed design and proposed conditions do not demonstrate how the identified traffic safety issues will be resolved.

3. STORM WATER

The applicable requirements are the general provisions of CDC 85.200, requiring proof of adequate infrastructure, and other specific requirements for storm water management.

CDC 85.170 Supplemental Submittal Requirements for Tentative Subdivision or Partition Plan

F. Storm. A proposal shall be submitted for storm drainage and flood control including profiles of proposed drainageways with reference to the most recently adopted Storm Drainage Master Plan.

CDC 85.200.J Supplemental provisions.

1. *Wetland and natural drainageways. Wetlands and natural drainageways shall be protected as required by Chapter 32 CDC, Water Resource Area Protection. Utilities may be routed through the protected corridor as a last resort, but impact mitigation is required.*

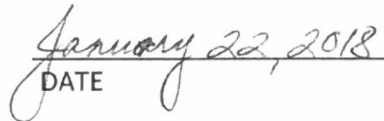
The Commission addressed storm water issues and off-site impacts, finding that there was not enough information on how building the rain gardens on clay soil would affect the discharge to Cornwall Creek. The information provided was not sufficient to conduct an adequate review. While Staff Finding 75 addressing the storm drainage analysis suggests that, with some modification, the design could resolve pending issues, no specific solution is presented and documented as adequate to meet the standard. The Commission concludes that the mere possibility of a solution is not adequate to serve as a basis for finding the criteria to be met.

IV. **Order**

The application is denied based on the Record, Findings of Fact and Findings above.



GARY WALVATNE, CHAIR
WEST LINN PLANNING COMMISSION



DATE

This decision may be appealed to the Referee through the City of West Linn Planning Department, 22500 Salamo Road, West Linn, Oregon 97068, pursuant to the provisions of Chapter 99.060.E (and by reference ORS 197.375) 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 22nd day of January, 2018.

Therefore, this decision becomes effective at 5 p.m., February 5, 2018.