

February 15, 2018

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Mr. Joe Turner
City of West Linn Expedited Land Division Referee
C/O Shauna Shroyer, Administrative Assistant
22500 Salamo Road
West Linn, Oregon 97068

RE: City of West Linn File No. AP-108-01/SUB-17-04(4096 Cornwall Street Subdivision); Applicant submittal prior to the end of the first open record on February 15, 2018 at 5:00 p.m.

Dear Mr. Turner:

This office represents Icon Construction and Development (“Icon”), the Applicant. This letter is the Applicant’s timely submittal prior to the close of the first open record on Thursday, February 15, 2018 at 5:00 p.m.

1. **Introduction.**

The City of West Linn (the “City”) mailed the Planning Commission’s Final Decision and Order on West Linn Expedited Land Division Application SUB-17-04 on January 22, 2018. The Applicant filed a timely appeal of the Final Decision and Order on February 5, 2018 pursuant to ORS 197.375(1).

The City provided the notice of the appeal of the Expedited Land Use Final Decision and Order on February 8, 2018. Pursuant to the notice, the Referee determined not to hold a hearing on the appeal and to decide the appeal based on the City record and written comments submitted in response to the appeal. The Referee established the following open record period schedule:

- Until February 15, 2018 for anyone to submit written comments in response to the appeal;
- Until February 22, 2018 for anyone to submit written comments in response to the issues received during the first open record period and providing that no new issues may be raised during the second open record period;

- The Applicant may submit final written argument without new evidence until March 1, 2018.

2. Summary of Issue Raised in the Appeal.

A. The City properly deemed the Application complete pursuant to ORS 197.365(1)(b).

B. The Application correctly described the density calculation required by ORS 197.360(1)(a)(E) based on substantial evidence in the whole record.

C. The Planning Commission improperly noted a “particular concern” about land outside of the proposed lots or parcels without relating the concern to a relevant approval criteria found in the applicable land use regulations, the West Linn Community Development Code (“CDC”).

D. The Planning Commission improperly found that the Application failed to comply with CDC 85.200 requiring that “adequate public facilities be available.” The Referee may reply upon ORS 197.303(1) and 197.307(4) (version in effect on date Application was submitted) to find that subjective terms may not be applied to the Application because it is a “Needed Housing” Application.

E. The Planning Commission failed to relate its “concern” to the impact on Landis Street and Cornwall Street to a relevant land use regulation.

F. The Planning Commission ignored substantial evidence in the whole record demonstrating that the Tualatin Valley Fire and Rescue District (“TVFRD”) commented that it “endorsed” the subdivision proposal. Further, the Oregon Fire Code (“OFC”) is not a relevant approval criterion because it is not part of the City’s acknowledged land use regulations.

G. Notwithstanding the Planning Commission’s failure to approve a gate for the alley, the Referee has the authority, pursuant to ORS 197.365(4)(b), to approve the Application with conditions designed to ensure that the Application satisfies relevant approval criteria.

H. The Planning Commission incorrectly found that CDC 85.170(F), “Storm,” was not satisfied because it did not consider substantial evidence in the whole record consisting of the drainage analysis prepared by Bruce D. Goldson, P.E., dated September 29, 2017. Further, the Planning Commission erred by applying CDC 85.200.J.1 to the Application without explaining how this standard is applicable to the Application and why it was not satisfied.

3. Applicable Law.

The Referee shall apply substantive requirements of the City's acknowledged land use regulations and ORS 197.360. ORS 197.365(4)(a). The Referee must identify means by which the Application can satisfy the applicable requirements. *Id.* The Referee may not reduce the density of the proposed six lot subdivision. ORS 197.365(4)(b). The Referee may approve the Application, or approve the Application with conditions of approval, designed to ensure that the Application satisfies applicable land use regulations. *Id.*

4. Application of Relevant Law to Issues Identified in Appeal.

A. The Referee must reject the Planning Commission's comments on page 1 of the Final Decision and Order regarding completeness because they do not relate to a relevant land use regulation.

B. The Referee must reject the Planning Commission's decision on density calculations because substantial evidence in the whole record demonstrates that the Applicant and the staff correctly calculated that the proposed subdivision met the necessary density standard and did not violate either ORS 197.360, or the applicable land use regulation.

C. The Referee must reject the Planning Commission's findings about a "particular concern" about the portion of the site not dedicated to the creation of lots or parcels because the decision does not relate to an applicable land use regulation.

D. The Referee must reject the Planning Commission's findings on transportation system adequacy for several reasons. First, substantial evidence in the whole record supports a finding that there are adequate streets associated with the six lot subdivision. Additionally, no relevant land use regulation requires that the Application demonstrate that additional vehicle trips on Cornwall Street make the street unsafe. The Planning Commission did not rely on evidence demonstrating that Cornwall Street is inadequate to accept a few additional trips from this site. Further, CDC 85.200 clearly applies to the "subdivision area" and not areas beyond the subdivision area. Additionally, no relevant land use regulation prohibits cut-through traffic.

Also related to this issue is the ability of TVFRD to reach the site. Substantial evidence in the whole record demonstrates that TVFRD is satisfied with the subdivision proposal.

Finally, the Planning Commission denied the Applicant's Proposal to gate the proposed alley pursuant to CDC 85.200(A)(20) and CDC 48.030(1). As explained above, the Referee cannot reduce the density of the proposed subdivision and may

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approve the Application with conditions of approval designed to ensure that the Application meets the relevant land use regulations. Page 5 of the Applicant's February 5, 2018 appeal statement proposes a temporary gate at the alley connection with Cornwall Street and conditions of approval under which the gate will be removed, including the creation and termination of a reserve strip owned by the City as allowed by CDC 85.200(A)(6) to prohibit traffic to Cornwall Street. The proposed condition will address the issue of cut-through traffic and the condition and safety of Cornwall Street, while still allowing adequate access for TVFRD, which reviewed the Application with the proposed gate.

F. The Referee can find that the Planning Commission erred by not relying on substantial evidence in the whole record to demonstrate that CDC 85.170(F), "storm," is not satisfied. The Referee has authority to impose a condition of approval as proposed on page 6 of the Applicant's February 5, 2018 appeal statement.

G. The Referee can find that the Planning Commission's decision prejudiced the Applicant's substantial right to respond to evidence related only to the particular Application. The Planning Commission record contains evidence unrelated to this Application and related to a prior Application. ORS 197.365(1)(c)D provides that the appeal decision may not violate the Applicant's substantial rights.

5. Request.

Based on the Applicant's February 5, 2018 appeal statement and this letter, the Applicant respectfully requests that the Referee approve the Application with conditions of approval recommended to the Planning Commission and those recommended by the Applicant or, alternatively, to remand the decision to the West Linn Planning Commission for a decision consistent with the Referee's order.

Very truly yours,



Michael C. Robinson

MCR:jmh

cc Ms. Shauna Shroyer (via email)
Mr. Mark Handris (via email)
Mr. Darren Gusdorf (via email)
Mr. Rick Givens (via email)
Mr. Bruce Goldson (via email)