

## WEST LINN CITY COUNCIL

### FINAL DECISION AND ORDER ON AN APPEAL REQUEST (FILE AP-19-02) TO CONSIDER A MODIFICATION OF CONDITION OF APPROVAL NO. 2 IN THE PLANNING COMMISSION DECISION FOR MARYLHURST SCHOOL

FILE No. AP-19-02

#### IN THE MATTER OF THE APPEAL OF THE PLANNING COMMISSION'S DECISION FOR MARYLHURST SCHOOL (FILE # CUP-18-01/DR-18-04/VAR-18-02/VAR-18-03)

#### Overview

The request for Conditional Use Permit, Class II Design Review, and two Class II Variances (File CUP-18-01/DR-18-04/VAR-18-02/VAR-18-03) was submitted on September 11, 2018 and deemed complete on December 5, 2018. A public hearing on the matter was held before the Planning Commission on February 6, 2019. The Final Decision and Order was signed on February 11, 2019. An excerpt of the Final Decision and Order of Planning Commission follows:

**2. Engineering Standards.** *All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite stormwater, street lighting, easements, easement locations, and connections for future extension of utilities are subject to conformance with the City Municipal Code and Community Development Code. These must be designed, constructed, and completed prior to the issuance of occupancy permits for each phase of the project*

At the February 19, 2019 City Council Work Session, Mayor Axelrod initiated the call-up of one condition of approval for the Marylhurst School (CUP-18-01/DR-18-04/VAR-18-02, 03), recently approved by the Planning Commission. Mayor Axelrod cited a limited window of time for the call-up identifying this as the only meeting within the timeframe. Mayor Axelrod moved to call-up CUP-18-01/DR-18-04/VAR-18-02, 03 to review Condition of Approval #2. Councilor Cummings seconded the motion. The motion was approved unanimously.

The City provided notice of the April 8, 2019 Council hearing in compliance with the CDC as follows:

*"Notice was mailed to all affected government agencies, affected neighborhood associations, all persons with standing, and all property owners within 500 feet of the subject property on March 19, 2019. Notice was published in the West Linn Tidings on March 28, 2019. The property was posted with a notice sign on March 28, 2019. The notice and application were posted on the City's website March 19, 2019. Therefore, public notice requirements of CDC Chapter 99 have been met."* April 8, 2019 staff report at Page 2.

At the meeting on April 8, 2019, the council held a public hearing on the review/appeal. All members of Council were present. Mayor Axelrod introduced the item and explained the order of proceedings. City Attorney Tim Ramis then discussed the substantive and procedural parameters of the hearing. When prompted, members of Council identified their issue:

Mayor Axelrod noted he knows the applicant representing the School and noted he had no conversation with the applicant and felt he had no bias. The Mayor also noted he was familiar with the site location and has walked and biked in the area.

Councilor Cummings noted she has driven and walked by the site often. She noted that nothing from those visits differed from information contained in the record.

Council Walters noted she is familiar with the site and have friends that live in the area. Those friends had questions and she chose not to discuss the issue. She noted that her information obtained from site visits or conversations did not differ from information contained in the record.

No other councilors had any statements to declare any disqualifying conflicts of interest or bias. No objections or challenges were raised from the audience.

City Attorney Ramis summarized the background for the review. On February 19, 2019 City Council Work Session considered a review of a Planning Commission decision for Marylhurst School (CUP-18-01/DR-18-04/VAR-18-02, 03). This review was limited to Condition of Approval No. #2 and is held as a DeNovo hearing. He read the applicable criteria for the denovo hearing: Chapters 11, 41, 42, 44, 46, 48, 54, 55, 60, 75, 92, 96, and 9.

The hearing commenced with a staff report presented by John Boyd, Planning Manager. The report included a reference to the prior Planning Commission decision, Council's review of this decision and the criteria applicable to the review of Condition of Approval No. 2. In addition to the Criteria listed for the denovo hearing on this issue, the criteria related to Condition of Approval No. 2 include Chapter 92 Required Improvements, 96 Street Improvement Construction and 99 Procedures for Decision Making: Quasi-Judicial.

The report considered the request by the Robinwood Neighborhood Association (NA) before the Planning Commission for alternate sidewalk location and design and referred to the Robinwood NA Plan. He reviewed the applicable Goal and Policies within the Robinwood NA plan. He then found the Goal and Policies were not directly applicable for this review as they were not implemented in the CDC and by the text in the Robinwood NA Plan. He then pointed out that the action measures were only non-binding recommendations.

The report then reviewed the proposed recommendations containing modifications to Condition of Approval No. 2. These options considered differing modifications to the design of the sidewalk, location of the sidewalk and the timing of half street improvements. He concluded the staff recommendation included all options addressing alternate designs and location for the sidewalk, and modifications for the timeline for the improvements. He then walked through a supplemental recommendation and noted that Public Works Director Calvert provided supplemental information addressing options for meeting ADA compliance, connections with proposed improvements for Hwy 43 and noting that alternative sidewalk standards and not contained in the municipal code.

Council asked questions of staff that considered if the code was specific for school (street requirements.) Staff reviewed Ch. 55.100.I.1 related to sidewalks. Section 60.070 has

special standards that Council could consider regarding needed improvements. Chapter 85.200.A.3 & 16 have two clarifications. The first is the table with standards to consider for differing street types and sub-section 16 has specific guidance for sidewalks (85.200.A.16). Finally Section 92.010.A & H both have requirements for road improvements for all development. He repeated that these were CDC standards there are no specific standards for schools – those are standards for all development.

Director Calvert then was asked to speak on ADA standards related to the half street improvements. He responded that the ADA standards apply to all land use types; these federal regulations that must be addressed. He responded to questions and explained the difference between a bond versus a letter of credit. Councilor Walters had questions on the drop off area for children and if it was entirely on site. Staff Boyd referred to the first phase diagram and reflected where the looped driveway allows for cars to pull in and drop off children in the morning. Director Calvert noted the traffic analysis and on-site queuing study was provided to Council. He then spoke to the demand model proposed by the School and explained the concerns by the city regarding compliance with the arrival times proposed by the study. Councilor Walters noted her concern the parents do not always let children out in the assigned area. She also asked about the provision of bus service. Staff Boyd explained the proposal did not include bus services in the original review before the Planning Commission.

The Mayor noted items to consider where options for the timing of completion of the improvements, options for financial assurances such as a bond or letter of credit. He then noted the timing options could be tied to a building permit or a specific date. Staff Boyd discussed the trigger proposed in the conditions are used to define key dates, not restrictions to the Building Permit review process. Director Calvert expressed concerns about the restrictions in the building codes and how to stop work if the applicant is not meeting conditions of approval.

Council discussions with Attorney Ramis considered the impacts of delaying improvements and what the best tools available for implementing required improvements. Mayor Axelrod suggested that the half street improvements would be required at the first part of Phase II. Staff Boyd clarified that requiring half street improvements at initiation of Phase II or not allowing building permits unless the half street improvements were completed addressed the same time period. The Mayor expressed concerns about the viability of designs that meet ADA compatibility. There was a discussion by the Public Works Director on the differing impacts to asphalt from issues such as tree roots and water runoff that impact the asphalt surface for walkways or ramps (thus impacting the required surface for ADA compatibility).

Council considered City standards and considered neighborhoods in transition and looked for flexibility in the design of these streets. Specifically, they considered options that have streetscapes that go beyond the traditional curb and gutter design. Director Calvert discussed options used in the Transportation System Plan (TSP) for the use of “Low-impact development” allowing the use of alternate standards; such as removal of the curb. Director Calvert concluded by noting his preference for a school would be a concrete curb and sidewalk.

The applicant was offered an opportunity to speak to the questions under review and those raised by Council. They introduced themselves as Sheila Walker, Head of the Marylhurst School and Debbie Pearson, a consultant with DECA Architecture who has been working with the School for several years. They began by answering questions raised by Council during the staff report. They noted the practice of staggered drop off has been a practice that has worked well over time. There was no bus service for the School and their service area included all adjacent communities. The number of students walking they noted was negligible. Regarding the half street improvements they are challenged by not knowing the design, that preferred by the City or those preferred by the NA. The core concern by the applicant was to move the improvements to the second phase. They explained the PGE will have a delay in responding so they want to have those improvements in the second phase to assure the design has adequate time for review by PGE when addressing the undergrounding of utilities.

The Council discussed the design issue for the half street and if asphalt was considered as a design alternative. They considered the existing road configuration to the south as it approached the apartments on the corner of Cedar Oak and the improvements planned for Hwy 43. The Council sought clarification from staff on how the street frontage improvements for Marylhurst School would link up to improvements further south on Old River Road and continuing along Cedar Oak Drive to Hwy. 43 (Willamette Drive). The Mayor also clarified the approved application from the Planning Commission was that standard street cross section that is not in character with the neighborhoods to the north (of the Marylhurst School site).

The Council then accepted public testimony in support of the appeal, from neutral party, and in favor of the application. Dennis Pollmann testified on behalf of Robinwood Neighborhood Association (NA). He noted he was the President and would be speaking in that role. He has reviewed the request to modify Condition No. 2 and thanked the council for considering their request and referred to photos he provided. He discussed his participation with the Safe Routes to Schools (SRTS) initiative and noted there needs to be a balance when considering safety and the needs of the neighborhood.

Councilor Walters asked to clarify the request of the NA. She also asked about the area to the north and what would be fitting for the character for the neighborhood. Mr. Pollmann clarified that the NA request is to have a continuous sidewalk that was asphalt surface; consistent with neighborhood design. He noted that even with the commencement of repairs to Hwy 43 he has not notice any changes to the traffic level in the neighborhood.

Councilor Cummings asked about the asphalt versus concrete sidewalk surface to address the need for ADA. Mr. Pollmann noted this is an onsite service issue versus an offsite improvement that should consider the needs of the area. He supported the alternative pathways where possible to keep the appeal of the neighborhood.

Christine Steele, noted she was the Vice Chair of the Robinwood NA and said she would speak as a West Linn resident. She also thanked the Council for listening to the concerns of the NA. She appreciated that the alternative design was being considered along with the moving of those improvements to Phase II of the project. She noted the school was also trying to be responsive in the process and made revisions to their plan to meet the city's requirements. She

referred to the discussion at the Council workshop on February 19<sup>th</sup> and provide sidewalk alternatives available in other communities. Her example considered Lake Oswego's design which met ADA requirements and provided for alternate design standards which included separated asphalt sidewalks. She repeated her request to consider the request from the NA's to have alternate design standards available, to consider the characters of neighborhoods and include flexibility in the design.

Councilor Cummings sought what the NA was asking of council. Christine Steele noted she supported the preliminary staff recommendation. In addition, she reminded Council to set a priority and to initiate action at the Planning Commission level to help NA's update and institute citywide alternate standards where they are appropriate. She noted those solutions are out there if the city is open and willing to listen.

The applicant was offered an opportunity to provide rebuttal or provide additional comments. There was no rebuttal or closing comments from the applicant.

The Council considered closing comments from council or staff. Staff Boyd clarified a question of the applicant on the schedule of phased improvements. Under the staff recommendation, a revised set of plans must be provided in Phase I and construction of those improvements in Phase II.

Councilor Relyea asked about the SRTS guide regarding sidewalks and best practices. Director Calvert spoke on that issue, he started by noting it is the City's practice to use concrete curb and sidewalk for commercial areas like schools. Mayor Axelrod asked about alternative standards using asphalt surface and asked about options for sidewalks separated from the street by drainage swales. He also asked about delaying the design until Phase II to allow the City to evaluate alternate standards. Director Calvert noted the existing school (Cedar Oak) has curb and gutter frontage. There are plans for concrete curb and sidewalk along the SRTS section toward the south moving toward Hwy. 43. He clarified the City of West Linn has not adopted the Lake Oswego standard and feels the change will alter the direction for the area and those decisions related to SRTS.

Staff Boyd clarified Phase II is dependent upon the progress made by the School but has a check in required in two years. He also clarified that no offsite improvements are required (except for the property frontage. The Mayor closed with a discussion that the alternate design could be considered to provide options to make connections both to the north and to the south and potentially considering those differences potentially implementing alternate designs.

Councilors Walters and Councilor Cummings noted their individual concerns that the southern area would be a higher traffic use, the school and area has a higher pedestrian use and that supported having a standards half street curb and sidewalk.

The Mayor closed the public hearing. After deliberations, the Council approved a motion (by a 4-1 vote) on a tentative decision on the review in File AP-19-02 and uphold the Planning decision for CUP-18-01/DR-18-04/VAR-18-02/VAR-18-03 including a modification to Condition

of Approval No. 2 to require those improvements prior to the initiation of Phase II and with the Council directing staff to prepare findings for Case No. AP-19-02.

### **I. Scope of the Appeal**

- 1) The Council identified issues on review in the Planning Commission decision on February 19, 2019:
  - i. Written Testimony received on February 14, 2019, from Jim O'Toole and read into the record by Councilor Sakelik. Mr. O'Toole requested Condition of Approval #2 be modified to require completion of onsite improvements during Phase I and all off-site improvements be design and constructed prior to the issuance of occupancy permits for Phase II. He also supported an expedited remedy for this issue.
  - ii. Oral testimony by Dennis Pollmann representing Robinwood NA in support of the modified condition.
  - iii. Oral testimony by Christine Steele, a Vice Chair of Robinwood also speaking in support of a modified Condition of Approval No. Two. She also referred to her testimony before the Planning Commission to consider alternate street design and modified sidewalk type and locations.
- 2) A notice of the public hearing held on April 8, 2019 was mailed to affected government agencies, affected neighborhood organizations, all persons with standing on March 19, 2019.
  - i. A sign with a notice was posted on the applicant/appellant's site on March 28, 2019.
  - ii. The notice was published in the West Linn Tidings on March 28, 2019.

### **II. The Record**

The Council settled the record at the April 8, 2019, hearing. The record includes the entire file from File No. CUP-18-01/DR-18-04/VAR-18-02/VAR-18-0 (the original application) and the Council Review contained in the appeal file No. AP-19-02.

### **III. Applicable Approval Criteria**

- 1) The Council finds that the following CDC criteria fall within the scope of this reconsideration.
- 2) CDC 55.100 Approval Standards - I. Public Facilities – 1 Streets
- 3) CDC 60.070 Approval Standards and Conditions
- 4) CDC 85.200 Approval Criteria – A. Streets 3. Street Widths & 16. Sidewalks
- 5) CDC 92.010 Public Improvement for All Development
- 6) CDC 99 Procedures for Decision Making: Quasi-Judicial
- 7) The Staff Report for AP-19-02 addressing Condition of Approval No. 2.
- 8) The record of File No. CUP-18-01/DR-18-04/VAR-18-02/VAR-18-0 address the Planning Commission review of these criteria and issues.
- 9) The Supplemental Agenda Bill with attachments that addressed road standards, traffic cueing and ADA standards.

#### IV. Incorporated Findings

The Council accepts, adopts, and incorporates within these findings, by reference, in their entirety, the following materials as findings demonstrating that the approval criteria for these applications are met:

- 1) Planning Commission Final Decision and Order of February 11, 2019, which incorporated the February 6, 2019 Staff Report for File No. CUP-18-01/DR-18-04/VAR-18-02/VAR-18-0, with attachments, including without limitation, the Applicant's submittals, and including without limitation the narratives, for all criteria, and including submitted testimony by all parties along with any submitted material for the record;
- 2) The meeting notes from the Council Workshop on February 19, 2019 where the Council met to and discussed the review of the Planning Commission decision pursuant to CDC 99.240.
- 3) Staff Report to the Council for April 8, 2019;
- 4) All submitted testimony by all parties along with all submitted material for the record; and
- 5) By delaying the completion of infrastructure improvements and with the City securing an approved a letter of credit to complete those improvements, the street frontage improvement will be either constructed or financial assurance has been established for the construction of the half street improvement.
  - i. This assures the infrastructure will be constructed pursuant to the criteria contained in the Community Development Code and as specifically addressed in the Planning Commission decision.
- 6) The Final Finding and Order of Council on the appeal AP-19-02.
- 7) In the event of a conflict between these incorporated documents and these findings, these findings shall control.

On April 8, 2019, the Council approved a motion (by a 4-1 vote) on a tentative decision to uphold in part, the decision of the Planning Commission that require a standard half street improvements be modified to delay those required half street improvements until prior to the Phase II of the project with a letter of credit and the Council directing staff to prepare findings for Case No. AP-19-02.

#### **Modified Condition of Approval No. 2 (based upon the motion by Council)**

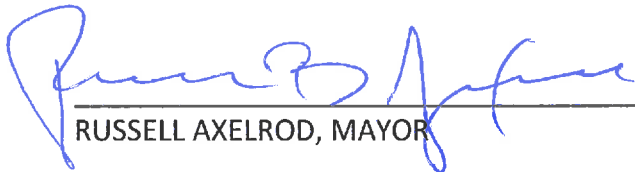
**2. Engineering Standards.** All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite stormwater, street lighting, easements, easement locations, and connections for future extension of utilities are subject to conformance with the City Municipal Code and Community Development Code. **Unless modified by this condition, these improvements** must be designed, constructed, and completed prior to the issuance of occupancy permits for each phase of the project.

**a. Prior to approval of any building permit, a letter of credit that covers the completion of the half street improvements shall be provided to the City.**

**b. The construction of half street improvements must be completed before the initiation of a building permit application for Phase II for the Project.**

**VI. Order**

Based upon these findings of fact and the above-referenced evidence, the Council review in AP-19-02 reviewed and upheld the decision of the Planning Commission (File No. CUP-18-01/DR-18-04/VAR-18-02/VAR-18-03), with a modification to delay the required half street improvements until prior to Phase II of the project with a letter of credit.

  
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RUSSELL AXELROD, MAYOR

May 13, 2019  
DATE

This decision may be appealed to the Land Use Board of Appeals in accordance with the applicable rules and statutes.

Mailed this 14 day of May, 2019.

Therefore, this decision becomes effective 21 days from the date of approval at 5 p.m.,  
JUNE 3, 2019.