



CITY OF West Linn

Memorandum

Date: July 14, 2020

To: West Linn Planning Commission

From: Jennifer Arnold, Associate Planner

Subject: MISC-20-04 - Two Year Extension to Previously Approved 34-Lot Subdivision (SUB-15-03/AP17/01)

The following testimony was submitted after 5pm July 14, 2020 and not included in the previous testimony memo.

On July 14, 2020 Staff received written testimony from Dorianne and Doug Palmer expressing concerns regarding the additional traffic in the neighborhood, safety of the Arbor Drive and HWY 43 intersection, traffic onto HWY 43, and would like to see the property designated as a City Park.

On July 14, 2020 Staff received written testimony from Jason Harra expressing concerns regarding unsatisfied CDC provisions, additional traffic on the existing streets, street alignment and drainage. Mr. Harra included 3 attachments to his email, including a letter to Council, a transportation impact study dated May 8, 2017, and additional written testimony directed to Council.

On July 14, 2020 Staff received written testimony from Bob and Terry Jordan expressing concerns regarding the uncertainty of this development and the impacts that has had on their efforts to sell their home.

On July 14, 2020 Staff received written testimony from Xuejun Wang and Jian Shen expressing concerns regarding increased traffic congestion on HWY 43, construction noise impacting their work as they work from home, changes to the natural drainage way, and habitat loss.

On July 15, 2020 Staff received written testimony from John and Cheryl Robins expressing concerns that this application should be processed as an appeal and the appeal process was not followed. Mr. Robins also expressed concerns regarding stormwater discharge, treatment and detention.



CITY OF West Linn

On July 15, 2020 Staff received written testimony from the Applicant's representative summarizing that all criteria had been satisfied and requests approval of their 2 year extension request. This testimony included three attachments, the first speaks to satisfying applicable code criteria for the applicant's request, the second addresses the curb differences from the 2017 approval to the current plan to address on-street parking, and the third addresses traffic.

On July 15, 2020 Staff received written testimony from Anne Beltman expressing concern regarding pedestrian, bicycle and vehicle safety. Ms. Beltman also expressed concern about stormwater drainage, and encourages designating the subject property as a protected greenway, watershed, and wooded natural resource area. Additional images were also submitted to support the submitted testimony.

From: [Jude Palmer](#)
To: [Arnold, Jennifer](#)
Subject: 18000 Upper Midhill Drive
Date: Tuesday, July 14, 2020 6:06:33 PM

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Hello,

We are writing to request Planning Commission deny the two year extension of the development at 18000 Upper Midhill Drive.

There is simply no way this neighborhood can handle the new traffic this will cause. On Upper Midhill Drive between Marylhurst and Arbor Drive, two cars cannot pass each other. The street cannot be widened, and there are no sidewalks. There is a park in this area, so much of the foot traffic is small children.

If you are not familiar with the area, I strongly recommend a visit to see just how narrow the street is.

Arbor Drive at Highway 43 has been given an F rating by ODOT, with no current plans to improve it. In fact, the re-striping by the developer will make that intersection much more dangerous for cyclists and pedestrians, and violates ADA. Also, there are frequent accidents at Arbor at 43.

The initial traffic study from the developer was highly flawed, with counts taking place when schools and Marylhurst University were out of session. An independent traffic study was done that refuted the findings of both of the developer's studies. We are now going to have the traffic from the Mary's Woods expansion, the new townhouses on Hwy 43, along with additional traffic on 43 trying to avoid the future tolling on the freeway.

Planning Commission and City Council first rejected the developer's application. The developer then threatened higher density housing, so they then felt their hands were tied.

At the meeting where City Council approved the application, they did not take in to account the independent traffic study. They had already made up their minds beforehand, with one saying looking through the new information would be "interminable."

Still, it doesn't change the fact that they initially rejected the application, and this neighborhood

cannot sustain the amount of damage this development will do to our area.

In 2017, I and some Lake Oswego residents who also live in homes that border the property, met with the Lake Oswego Parks and Rec members to ask if they would consider purchasing the land. Several of the members walked the property, and they seemed genuinely concerned about the impact the development would have. They ultimately decided they could not purchase the property, but what if West Linn and Lake Oswego could come up with a way for a joint purchase?

Thank you for your consideration.

Dorianne and Doug Palmer

From: [Jason Harra](#)
To: [Arnold, Jennifer](#); [Planning Commission \(Public\)](#)
Subject: re: two-year extension of City of West Linn File No. AP-17-0
Date: Tuesday, July 14, 2020 6:43:55 PM
Attachments: [Written Testimony Harra.pdf](#)
[Letter To Council Harra.pdf](#)
[GreenLight Engineering Harra.pdf](#)

City of West Linn Planning Department,

Due to the relative importance of the West Linn Municipal & Community Development Code (CDC) to this matter I feel it's necessary to highlight its stated purpose.

"As a means of promoting the general health, safety and welfare of the public, this code is designed to set forth the standards and procedures governing the development and use of land in West Linn and to implement the West Linn Comprehensive Plan."

It may also be important to consider the stated purpose of the Planning Commission.

"Planning Commissioners have four-year terms, and meet twice a month. They are responsible for land use planning and ensuring that development within the city is in compliance with the comprehensive plan, zoning ordinance and development code. Conduct public hearings on land use applications."

There have been many differing arguments and ample evidence presented on the matter of this application by both sides, but when a decision must be made I believe it to be the duty of this Planning Commission to err on the side of public safety over private profit. Further, I believe this is your chance to fully leverage the benefit of hindsight and close the loopholes used during the last approval process. Why would this commission allow an extension for an application that contains so many exceptions, conditions, and proven omissions to the CDC which exists "As a means of promoting the general health, safety and welfare of the public"? If this application extension is approved, does this decision include an appeal period?

I am submitting the following documents as written testimony on the matter and request City staff include these documents on the official record.

[Written_Testimony_Harra.pdf](#)
[Letter_To_Council_Harra.pdf](#)
[Greenlight_Engineering_Harra.pdf](#)

- The applicant has not demonstrated that the application is in conformance with applicable CDC provisions and relevant approval criteria enacted since the application was initially approved as there are no adequate public facilities.
- There are demonstrated material misrepresentations, errors, omissions, or changes in the facts that directly impact the project, including but not limited to existing conditions, traffic, street alignment and drainage.
- As a point of clarification I would like to know if the Commission has any concern

regarding the applicants lack of evidence demonstrating progress, the attempts to begin construction activities without approval, and the lack of explanation behind this statement

" The Applicant cannot compete the required improvements and record the final plat within three years of the effective date as required by CDC 85.090. Therefore, the Applicant requests the two-year extension of the Decision in order to have an additional two years in which to record the final plat."

In conclusion the Planning Commision cannot find the applicable standards for an extension have been satisfied.

I am asking the City Council to once again deny the application for Upper Midhill, LLC (the Applicant) to develop a 34-lot subdivision because there are not adequate public facilities. Specifically, the Applicant does not provide sufficient mitigation to meet all existing demands nor will it satisfy projected demands from projects with existing land use approvals, plus the additional demand created by the application. Further, off-site facilities will remain in compliance with some applicable standards.

Background: Inadequate Public Facilities and Applicant's Proposed Mitigation

The Applicant has proposed to build a 34-lot subdivision and off-site vehicle only traffic mitigation at the intersection of Hwy 43 and Arbor Dr. But the result of this development is increased automobile, bicycle and pedestrian traffic without the adequate public facilities to meet its demand. To approve the application, the Applicant is required, by CDC 85.200, to provide a burden of proof that adequate public facilities exist.¹

Upper Midhill, LLC, in its application, has proposed that it will mitigate the primary issue arising from the development by restriping Highway 43 to provide a two-way left-hand turn lane.

However, the Applicant's proposed mitigations are insufficient for several reasons. First, the Applicant's traffic analysis on which the proposed mitigation is based is critically flawed and biased in favor of the Applicant. The result is that the Applicant is not providing an accurate picture of the demand on these critical public facilities. Second, even if the Applicant was providing an accurate picture of the increased traffic, its proposed mitigation of restriping Highway 43 to provide a two-way left-turn lane is insufficient to address existing and projected demands. Third, the Applicant's proposed mitigation of restriping Highway 43 will further reduce already narrow pedestrian travel lanes the result of which is pedestrian facilities that are inconsistent with ADA and other applicable standards. Finally, the Applicant's proposed mitigation of reducing traffic at Highway 43 and Arbor by utilizing side street connectivity creates dangerous conditions for pedestrians and cyclists on those side streets.

(1) Flawed Methodology used in Developer Traffic Analysis

Under CDC 85.200, Midhill has an obligation to "(2) satisfy the projected demands from projects with existing land use approvals, plus the additional demand created by the application." In order to do this, the Applicant has done a traffic analysis which claims to be accounting for the estimated trips generated from projects with existing land use approvals at Mary's Woods and

¹ CDC 85.200 provides: "**Adequate public facilities.** Public facilities that must be adequate for an application for new construction, remodeling, or replacement of an existing structure to be approved are transportation, water, sewer, and storm sewer facilities. To be adequate, on-site and adjacent facilities must meet City standards, and off-site facilities must have sufficient capacity to (1) meet all existing demands, (2) satisfy the projected demands from projects with existing land use approvals, plus the additional demand created by the application, and (3) remain compliant with all applicable standards.

For purposes of evaluating discretionary permits in situations where the level-of-service or volume-to-capacity performance standard for an affected City or State roadway is currently failing or projected to fail to meet the standard, and an improvement project is not programmed, the approval criteria shall be that the development avoids further degradation of the affected transportation facility. Mitigation must be provided to bring the facility performance standard to existing conditions at the time of occupancy."

the new duplexes on Willamette Dr.² but may not have provided sufficient proof of doing so. If the Applicant has not provided, for public review, the estimated trips generated from other projects in the region and their impact on the TIA this is unacceptable. The Applicant should deliver the trips generated in their original format so that its claims can be validated.

In addition, the Applicant has suggested that it has done the appropriate supplemental traffic counts³ but has not provided the supplemental traffic counts for City Council or public review, so it is again asking the City Council and the public to trust that they are properly applied to the analysis. This is unacceptable, the supplemental traffic counts should be provided in the same format as the original traffic counts done by Quality Counts in June 2015 “Appendix A Traffic Counts, Pages 84-95”. Further, the public should have all mathematical formulas used to balance and seasonally adjust. Without this data, there is no way to verify that this analysis was done in accordance with approved methodologies without just “taking the word” of the Applicant.

“KAI testified that this adjustment was sufficient to account for trips in-process developments such as the new duplexes on Willamette Drive and the expansion of Mary’s Woods. Id. Stated another way, if KAI had separately added in trips from in-process developments and assumed a two percent growth in area traffic, it would have resulted in double-counting of these background trips.” (RECONSIDERATION, page 18)

Without access to the data used to account for trips in-process developments we should consider the KAI testimony invalid as the City Council cannot verify that they are accurate or unbiased in favor of the Applicant. Given current regional traffic growth in West Linn and other areas served by Highway 43, we can assume a one percent per year growth to be insufficient. With our safety at stake, the public deserves to know how different growth assumptions would impact the analysis. Without the raw data used in these assumptions, we cannot verify them as accurate.

Not only is the information provided by the Applicant incomplete, but it appears to be based on faulty assumptions as well. For example, the Applicant seems to suggest that it can account for only typical heavy weekday traffic and ignore new and atypical construction traffic generated by the development.⁴

² “This increase accounts for the new duplexes on Willamette Drive, which were under construction when the traffic counts were conducted, and the expansion of Mary’s Woods, which is not expected to occur until after full build out of the proposed development.” (RECONSIDERATION, page 18)

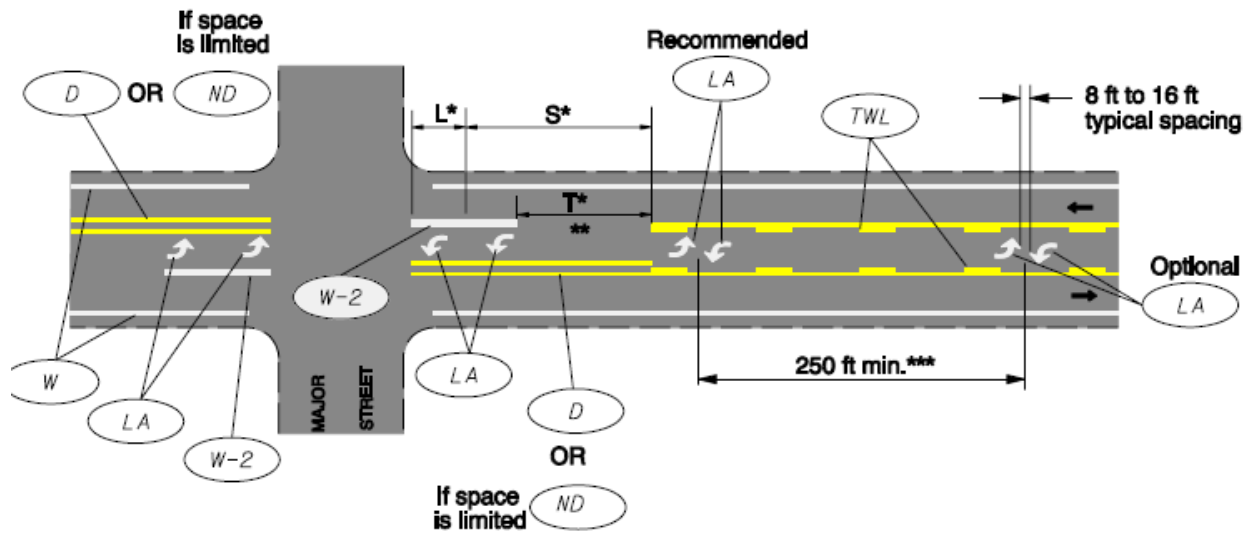
³ “Supplemental traffic counts were conducted at the study intersections in October 2016, while school was in session. The traffic counts were balanced and seasonally adjusted in accordance with the methodologies identified in the ODOT Analysis Procedures Manual (APM) to reflect peak traffic conditions within the study area.” (RECONSIDERATION, page 18)

⁴ “The traffic analysis was prepared in accordance with City and ODOT standards and focused on total build-out conditions (i.e. residential homes fully built and occupied). As such, the traffic analysis included typical weekday heavy vehicle traffic captured in the traffic counts. 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.” (RECONSIDERATION, page 18)

KIA's assertion that it can account for typical weekday heavy vehicle traffic and ignore the impact of new and atypical construction traffic generated by the development is unconvincing and further illustrates the biased nature of the analysis. The reality is that logging trucks leaving the development site will need to navigate a failing intersection. When was the last time there was this many logging trucks and other heavy machinery coming down Arbor Drive? I contend that a reasonable and neutral person would describe a situation where logging trucks, dump trucks, and other heavy machinery navigating the intersection of Highway 43/Arbor as 'Atypical', 'Irregular', or 'Unusual' traffic. Further, I assert that construction traffic should be considered because, in the real world, this added traffic impacts off-site facilities with each generated trip, in fact, much more than regular traffic.

(2) Restriping Highway 43 to provide a two-way left-turn lane (TWLTL) is insufficient to address increased traffic at an already failing intersection.

The Applicant proposes that, to mitigate the impacts of heavily increased traffic, it will restripe Highway 43 to provide for a two-way left-turn lane. Example below.



- * Refer to Figure 21 for L, S, and T dimensions.
- ** A reversing curve shall be used for crest vertical curves, horizontal curves, and multiple left turn lanes.
- *** Double arrows to be placed at even intervals, proportioned within block. Approx. distance (ft) between each set = 10 x posted speed in mph.

Figure 22b Typical Two-Way Left Turn Lane Layout at Major Intersections

A TWLTL does not come without limitations, especially when applied to a narrow and very busy intersection like Hwy43/Arbor.

“There are some limitations to TWLTLs the designer must keep in mind. **Extra street width may be required, resulting in an increased need for right of way.** In addition, **TWLTLs add another lane pedestrians and bicyclists to cross and do not provide a refuge area for them.** Another limitation is that **TWLTLs may not alleviate safety problems at closely spaced entrances and intersections, where queuing traffic can block left turning movements.**” (Iowa Department of Transportation, page 2)

The proposed mitigation plan does not meet the Oregon Highway Design Manual standards because it does not provide a continuous two-way left-turn lane and “will likely require Design Exceptions” (ODOT 1, page 4; ODOT 2, page 69). The methodology used to design the mitigation assumes that **100%** of motorists will instinctively know how to do a two-stage turn when there is an “acceptable gap” in traffic. “It cannot be overstated that gap acceptance behavior is highly dependent on the driver characteristics and preferences. Therefore, homogeneous behavior from all drivers at all times is not realistic.” (Nabae, Moore, Hurwitz, page 1). Further, there is insufficient data to show that there will be enough “acceptable gaps” for the proposed mitigation to succeed in its purpose during the peak hours of operation. A simple drive through the intersection during peak hours will illustrate that gaps are extremely limited.

“In fact, drivers on minor approaches have shown a tendency to accept a gap when “the benefit from entry is greater than the associated risk” (Pollatschek et al. 2002). **When the waiting time exceeds the drivers' expectation and tolerance limit, they will accept higher levels of risk associated with smaller gaps.** It is somewhat unclear in the literature if drivers accurately perceive the increased risks associated with the acceptance of these smaller gaps. After a certain wait time threshold, drivers might even accept gaps shorter than gaps that had previously been rejected.” (Xiaoming et al. 2007)

How does the proposed mitigation work when there are vehicles waiting in the turn lane and vehicles waiting to enter Highway 43 from Arbor? What happens when there are vehicles waiting on both sides of Arbor and both Highway turning lanes? These types of situations will happen relatively frequently during peak hours and, while they should result in fewer rear-end collisions, they may result in more turning type accidents due to the unusually high volume of traffic at this intersection. The answer from the accepted methodology is that, due to forecasted optimal use of the two-stage turn, these situations won't impact the level of service and capacity.

“When a driver arrives at the stop line on the minor approach to a TWSC intersection, they need to decide when to execute a maneuver based on right of way hierarchy as well as the availability and distributions of the major road gaps (HCM 2000). **Due to the important role that personal driver behavior plays in confronting the conflicting traffic, the capacity and level of service analysis for TWSC intersections are more complex than that of intersections with higher levels of control.**” (Kittleson and Vandehey, 1991)

What happens to the level of service (LOS) and capacity (v/c) of this intersection if fewer than 100% of motorists instinctively know how to use the TWLTL? What happens during peak traffic hours when traffic is backed up for hundreds of feet north of the intersection and there are no acceptable gaps for long periods of time? I assert that a significant number of motorists will prefer to wait for an adequate gap on both sides of travel instead of attempting a two-stage turn.

I assert that a significant number motorists do not want to make other drivers think “is this person turning in front of me, or will they actually wait?” when attempting a two-stage turn.

In addition, the proposed mitigation plans are also unclear as to which ODOT Traffic Line Manual striping standards (ODOT Traffic Line Manual, pages 36-38) will be used. It is logical to assume that different striping plans will impact utilization of the TWLTL. The methodology applied does not allow you to vary the utilization of the TWLTL and is logically flawed or open to different interpretations.

The problem with accepting the proposed mitigation and its underlying assumptions regarding use of two-stage turns is that we cannot test them as variable inputs and check the results. Instead, we must hope that all motorists perform robotic like homogeneous two-stage turns to get real world results to match their model. What is more troubling is that even when you apply these unrealistic assumptions, the intersection barely meets standards and will easily fail if any of the following occur: (1) two-stage turns are not optimally done, (2) KIA incorrectly gathered or incorrectly applied resampled traffic counts (like their first attempt), or (3) regional traffic growth adds more volume than capacity. The latter has already been projected to happen in the West Linn Conceptual Design Plan, which includes even better and safer mitigation but it still failed.

As previously mentioned, the City Council, working in conjunction with Kittleson & Associates (KAI), has provided projections which illustrate the forecasted impact of both the currently proposed traffic mitigation and the future reconfiguration in the West Linn Conceptual Design Plan (WL, pages 45-47). Refer to Table 2 below.

Table 2: 2040 Future Base Weekday Peak Hour Intersection Level of Service with Proposed Conceptual Design Plan

Intersection	AM Peak Hour		PM Peak Hour			
	LOS	Average Delay (Sec)	Volume/ Capacity (v/c)	Los	Average Delay (Sec)	Volume/ Capacity (v/c)
	<i>Signalized Intersections</i>					
Hwy 43/Marylhurst Dr. – Lazy River Way	D	41.9	>1	D	44.7	>1
Hwy 43/Hidden Springs Rd.	D	39	0.96	D	38.6	0.94
Hwy 43/Pimlico Dr.	C	23.8	0.88	C	31.5	0.99
Hwy 43/West A St.	C	23.8	0.88	C	25.4	0.95
Hwy 43/Hood St.-McKillican St.	D	36	0.93	D	51	0.99
<i>Unsignalized Intersections</i>						
Hwy 43/Arbor Dr.	A/F	> 50	0.00/0.98	B/F	> 50	0.05/>1
Hwy 43/Cedar Oak Dr.	D/F	> 50	0.03/0.25	B/C	16	0.01/0.04
Hwy 43/Holmes St. z	B/F	> 50	n/a/>1	B/F	> 50	n/a/>1
Hwy 43/Lewis St. z	B/F	> 50	0.07/0.27	B/F	> 50	0.07/0.45

Notes: LOS = Level of Service

Delay ■ For signalized intersections, average vehicle delay in the peak hour for entire intersection in seconds. For unsignalized intersections, average vehicle delay for the critical movement.

Unsignalized Intersections Operations:

A/A = Major street turn LOS/Minor street turn LOS

#/# = Major street turn v/c /Minor street turn v/c

“The recommended 2016 Plan would improve the corridor over existing conditions but still does not meet some of the ODOT operating standards during the AM and PM

peak hours. In addition, all locations without traffic signals will continue to have significant delays for side street approaching traffic during peak hours. This is consistent with the current findings under existing volumes. Improved side street connectivity to existing signalized intersections would help mitigate this condition.” (WL, page 47)

A reasonable person would agree that we should not make our current and future problems even worse by adding more Eastbound traffic down Arbor Drive onto Northbound Hwy 43, which leaves the future motorists only once choice, a local street called Upper Midhill Drive.

Proposed Mitigation Impact on Side Streets Facilities

“Improved side street connectivity to existing signalized intersections would help mitigate this condition” (WL, page 47)

Upper Midhill Dr. is the only side street which provides connectivity to the existing signalized intersection at Highway 43/Marylhurst Dr and public park facilities (Upper Midhill Park) and **is classified as a local street**. The section of Upper Midhill between Arbor Dr. and Marylhurst Dr. measures 16 feet wide in many sections, subjecting users to inadequate **8 feet travel lanes and no sidewalks**. The proposed development is projected to generate additional traffic on Upper Midhill Dr. How can a reasonable person construe these existing public facilities as adequate? How can you justify sending more (future demand) trips down this street? Well KIA would have you believe that it is easily justified by ignoring the width of travel lanes and lack of sidewalks and instead focusing on the vehicle trips per day associated with a “local street”.

“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.” (RECONSIDERATION, page 18)

West Linn Community Development Code 85.200 Approval Criteria defines roadway standards as follows:

“3. Street widths. Street widths shall depend upon which classification of street is proposed. The classifications and required cross sections are established in the adopted TSP.

The following table identifies appropriate street width (curb to curb) in feet for various street classifications. The desirable width shall be required unless the applicant or his or

her engineer can demonstrate that site conditions, topography, or site design require the reduced minimum width. For local streets, a 12-foot travel lane may only be used as a shared local street when the available right-of-way is too narrow to accommodate bike lanes and sidewalks.”

City of West Linn Roadway Cross-Section Standards

Street Element	Characteristic	Width/Options
Vehicle Lane Widths (Typical widths)	Minor Arterial	11 - 12 feet
	Collector	10 - 12 feet
	Neighborhood Route	10 - 12 feet
	Local	10 - 12 feet

In addition, there are no sidewalks on Upper Midhill Dr. to provide residents with safe travel to and from the existing park facilities. As a matter of fact, children must walk in the street if they wish to walk from the proposed new development to Upper Midhill Park. Is this adequate?

Sidewalk standards are defined below:

Sidewalks (Typical widths)	Minor Arterial	6 feet, 10 - 12 feet in commercial zones
	Collector	6 feet, 8 feet in commercial zones
	Along Cycle Track	6 feet, 10 - 12 feet in commercial zones
	Neighborhood Route / Local	6 feet (4 - 5 feet in Willamette Historical District), 8 feet in commercial zones

West Linn Community Development Code 85.200 Approval Criteria is very clear in stating that if the purposed development will require access to the signalized location at Highway 43/Marylhurst Dr then adequate public facilities must be available, which is not the case as Upper Midhill Dr. is not “compliant with all applicable standards”.

“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.”

It is obvious that public facilities are inadequate to provide for existing or future transportation demand on Upper Midhill Dr. Future trips generated by the proposed development will compound this problem further, maybe not in terms of total volume as opined by KIA and classified by City Code but certainly in terms of pedestrians, cyclists and motorists being forced into sharing a dangerously narrow pathway. Because public facilities are not “compliant with all applicable standards available” and neither the city nor the Applicant have plans to satisfactorily address West Linn Community Code 85.200, the application should be denied.

Proposed Mitigation Impact for Cyclists and Pedestrians

The proposed mitigation will result in further narrowing already narrow bike and pedestrian lanes on Highway 43 to 5 ½' (Application Reconsideration, page 32). The northern leg of the intersection is not wide enough to accept even these widths and will likely need to be narrowed **below 5 feet**, which will require even more **exceptions to safety standards**.

The proposed mitigation is not consistent with the Oregon Highway Design Manual, the West Linn Comprehensive Plan, or the latest national standards including the NACTO Urban Bikeway Design Guide regarding best practices to ensure bike and pedestrian safety. The proposed mitigation may increase the risk of serious injury to a pedestrian or cyclist until the long-term facility improvements are in place, and it does not align its purpose with that of the Multimodal Transportation Project as stated below.

“The purpose of this project **is to improve bike and pedestrian facilities** as well as the overall safety of the roadway. When fully completed, this corridor could provide a safe and critical link between users in Oregon City, the historic Willamette Falls/Locks area, Lake Oswego, Portland, and beyond.” (MTP, page 1)

The City of West Linn has further publicly supported the need for bicycle safety with the following statements.

“The 2016 OR 43 Conceptual Design Plan (2016 Plan) is needed to provide clarity on the ultimate cross section envisioned for OR 43 in West Linn, **incorporate bicycle facilities that will serve and attract users of all ages and abilities**, ensure consistent access for emergency vehicles and maintenance functions, and secure agreement between the Oregon Department of Transportation (ODOT) and the City of West Linn with regards to the geometric and traffic control design elements throughout the corridor.” (WLCP 1, page 4)

“Create a corridor that will **encourage the use of alternative transportation modes and reduce reliance on the automobile.**” (WLCP, page 4)

“Improve vehicular access to properties abutting OR 43 **while promoting bicycle and pedestrian safety.**” (WLCP, page 4)

“Ensure consistency with adopted plans, policies and standards, including the Oregon Highway Plan, the Oregon Highway Design Manual, the Regional Transportation Plan, the West Linn System Transportation Plan, the West Linn Comprehensive Plan, and the latest national standards including the NACTO Urban Bikeway Design Guide.” (WLCP, page 4)

I fully support the efforts taken on behalf of the City of West Linn working in conjunction with ODOT for their 2016 Conceptual Design Plan to drastically improve the public facilities available to cyclists and pedestrians. However, the Applicant plan does not provide for adequate transportation facilities to accommodate existing and future cyclist and pedestrian demand.

Summary

There has been a pattern of mistakes that err on the side of the Applicant and I personally question the neutrality of the professionals working on behalf of the Applicant. The Applicant is claiming that we can rely on his expert testimony, but there is reasonable doubt about the neutrality of his experts, if not a clear conflict of interest for certain parties involved and how they interpret “adequate public facilities.” If we cannot trust the data used to generate the TIA, we cannot trust the proposed mitigation. When considering the mitigation, we must consider its impact on ALL modes of transportation. The City’s own forecast shows this intersection will continue to fail into the future and if we truly want to solve the problem we need to also focus on other methods of transportation, which this proposed mitigation does not do. Doing so will require widening the road to “include extension of existing storm drainage pipes/culverts and installation of retaining walls/ handrails would likely be needed.” (WLCP, page 17). The city should not accept a short-sighted solution from the Applicant if it means compromising on safer facilities for cyclists and pedestrians. There is certainly more room to argue each side, but I believe it is the duty of the council to err on the side of public safety rather than a developer’s personal financial gain. I feel confident with more focus, more resources, and further evidence being presented, the threat of a higher density and overall more dangerous plan can be mitigated. We may be in for a long battle that could reach as high as the Oregon Supreme Court. That is ok. I would forever regret not addressing these issues if somebody is tragically injured. I purpose the City deny the application and work with the community and the Applicant on a safer plan that meets both existing and future public facility demand. Here are a few options.

- The Applicant waits for the Multimodal Transportation Project which includes adequate bike and pedestrian facility to be completed.
- Due to the rather high cost for all parties to bring existing facilities up to adequate capacity, it may be in the best interest of all parties to discuss a transfer of ownership of the property from Midhill to the city. I am sure this is not budgeted, but neither is bringing our existing facilities on Upper Midhill Dr. and Arbor Dr. compliant with all applicable standards.
- The city and Midhill enter into conversations to reduce the number of trips generated by the proposed development while bringing facilities up to safety standards.

Thank you,

Jason Harra

17701 Hillside Dr.
West Linn, OR

REFERENCES

RECONSIDERATION (3/1/17)

https://westlinnoregon.gov/sites/default/files/fileattachments/planning/project/10331/2017_03.01_applicants_reconsideration_submittal.pdf

Sahar Nabaee, Derek Moore, & David Hurwitz Oregon State University

“REVISITING DRIVER BEHAVIOR AT UNSIGNALIZED INTERSECTIONS: TIME OF DAY IMPLICATIONS FOR TWO-WAY LEFT TURN LANES (TWLTL)”

http://drivingassessment.uiowa.edu/sites/default/files/DA2011/Papers/063_NabaeeMoore.pdf

Kittleson, W.K., & Vandehey, M.A., (1991).

Delay Effects on Driver Gap Acceptance Characteristics at Two-Way Stop-Controlled Intersections. Transportation Research Record, 1320, 154–159.

Pollatschek, M.A., Polus, A., & Livneh, M. (2002).

A decision model for gap acceptance and capacity at intersections. Transportation Research Part B, 36(7), 649-663.

Transportation Research Board of The National Academies. (2000).

Highway Capacity Manual. Washington, D.C.: Transportation Research Board of the National Academies.

Zhong Xiaoming, Zhu Xinzhen, Zhang Yong, & LIU Xiaoming. (2007).

Left-turn Gap Acceptance Behavior of Tee Type of Unsignalized Intersection. Paper presented at the International Conference on Transportation Engineering (ICTE) 2007 Chengdu, China.

IDOT – Continuous Two-Way Left Turn Lanes (TWLTLs)

<https://www.iowadot.gov/design/dmanual/06c-06.pdf>

ODOT 1

ODOT Response 4/6/16

https://westlinnoregon.gov/sites/default/files/fileattachments/planning/project/10331/letter_from_odot_and_additional_testimony.pdf

“The mitigation concept as proposed **does not meet ODOT’s Highway Design Manual**; the three lane section will have to extend from the proposed northbound Arbor Drive to the existing southbound left-turn lane at Shady Hollow Way, creating a

continues two-way left turn-lane that includes bike and sidewalk along this section of the highway.”

ODOT 2

ODOT Response 2/3/17

https://westlinnoregon.gov/sites/default/files/fileattachments/planning/project/10331/2017_03.01_applicants_reconsideration_submittal.pdf

“ODOT supports the proposed mitigation concept to improve mobility standards and address safety issues at this intersection. **However, in order to construct this turn lane to ODOT standards**, Midhill would need to extend the three lane section from Arbor Drive to Shady Hollow Way, creating a continuous two-way left turn-lane that includes bike lanes along this section of the highway.”

ODOT Traffic Line Manual 6/11

http://www.oregon.gov/ODOT/HIGHWAY/TRAFFIC-ROADWAY/docs/pdf/tlm_web.pdf

MTP 1

<http://www.odotr1stip.org/explore-by-program/enhance/highway-43-multimodal-transportation-project/>

WLCP – West Linn OR 43 2016 Conceptual Design Plan. City of West Linn, Oregon.

http://westlinnoregon.gov/sites/default/files/fileattachments/planning/page/5828/west_linn_Highway_43_concept_plan_-_adopted_2016.pdf

CDC – West Linn Community Development Code, Chapter 85.200

<http://www.codepublishing.com/OR/WestLinn/CDC/WestLinnCDC85.html#85.200>



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May 16, 2017

BY EMAIL

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

Re: Harra Response to Staff May 12, 2017 Memorandums related to Review of Submitted Comments for Admissibility and Review of Oral Testimony for Admissibility - City of West Linn File No. AP-17-01

Dear Mayor Axelrod and Council Members:

This office represents the appellants, Jason and Jessica Harra (“appellants” or “Harras”) in the above file. Appellants retained counsel after the May 8, 2017 hearing on their appeal when procedural matters became confused and the public hearing was continued to May 18, 2017. The City Council decides whether to accept or reject testimony offered at a public hearing in quasi-judicial matters. These comments are offered to support the acceptance of all the testimony offered by appellants in this matter, as well as testimony from other members of the public related to the appeal.

At the May 8, 2017 public hearing, the record was left open with the understanding that it would be closed at some point on May 18, 2017. Therefore, these comments are timely submitted and we request that the information be included in the record.

The decision whether to accept or reject testimony is informed by the City’s Community Development Code, but ultimately is a decision where the City Council can exercise its discretion. Once the City Council determines the scope of the appeal, the City Council can then decide whether to accept or reject new evidence. It is reasonable for the City Council to give the appellants the benefit of the doubt in regard to the scope of the appeal and the requests made in the appeal statement because until now, they were unrepresented by counsel.¹ In order to do so,

¹ In fact, Jason Harra, followed the City’s instructions to use his own words in the appeal and not use legal jargon as advised,

“Use your own words. Most people are more comfortable and effective when using clear, direct language. Do not feel you need to use legal jargon when preparing your comments.”

the City Council must make specific findings regarding the scope of the appeal, whether new evidence is being accepted, and what testimony to accept or reject. The following comments and suggested findings will assist the City Council in making a decision that is based on a plausible interpretation of the Code and entitled to deference under the Oregon Supreme Court decision in *Siporen v. City of Medford*, 349 Or 247, 261 (2010). Once the scope of appeal is identified, the admissibility of testimony can be analyzed.

Further, these comments are made because City staff, by adopting the applicant's proposed analysis of the written and oral testimony, oversimplified a difficult analysis. While tables can assist in review of overarching concepts, determining whether to accept testimony requires the City Council to look specifically at the testimony to parse out whether any portion should be rejected. For the following reasons, all of the testimony submitted by the Harras and other participants should be accepted in the record.

I. Scope of the Appeal.

The applicant takes an improperly narrow view of the scope of the appeal. While the applicant focuses on the effect of traffic on the existing bike lanes, the appeal was drafted broadly to incorporate traffic concerns. First, the appellants stated, "The Planning Commission approval incorporates an Off-Site Traffic Mitigation with the addition of a north-bound left turn lane onto Arbor." This is a stand alone statement and concern. The adequacy of the Off-Site Traffic Mitigation is related to adequacy of the off-site transportation facilities, and requires a correct and valid traffic report. The adequacy of the Off-Site Traffic Mitigation also relates to impacts on the existing bicycle lanes and this impact was expressly preserved by the appeal. In order to fully understand the impacts on existing bicycle lanes, the applicant also needs to have a correct and valid traffic report. Further, the appellants also explained that they do not believe there is a sufficient plan in place to determine post-development congestion. While a represented party may have been more direct, the appellants raised enough information to alert the applicant and the City to their position that the City Council does not have enough information to approve this application.

These matters fall within the scope of the reconsideration that specifically states the scope of the hearing is to consider the adequacy of public facilities. Again, while the applicants would have that reconsideration limited to CDC 85.200(A), even that reference refers to the precatory language of the Code section before the Code describes specific requirements relate to streets in subsection A. The precatory language states:

"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.” (emphasis added).

The revised (and original) notice of the appeal hearing accurately reflects this precatory language as applicable in its statement that the reconsideration would consider the adequacy of public facilities:

“[t]he appeal hearing that relates specifically to the scope of the reconsideration, which was 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).” (emphasis added).

Further, the notice uses the word “including” when it references specifically CDC 85.200(A), but did not limit the reconsideration solely to streets in subsection A because it did not include the word “solely” or “only” in the notice. This makes sense because the precatory language in CDC 85.200 cannot be read out of the Code.

In order to analyze whether the criterion can be met, the City Council must consider the definition of adequate public facilities under CDC 2.030:

“Adequate public facilities. Public facilities that must be adequate for an application for new construction, remodeling, or replacement of an existing structure to be approved are transportation, water, sewer, and storm sewer facilities. To be adequate, on-site and adjacent facilities must meet City standards, and off-site facilities must have sufficient capacity to (1) meet all existing demands, (2) satisfy the projected demands from projects with existing land use approvals, plus the additional demand created by the application, and (3) remain compliant with all applicable standards.”

Based on the definition, the City Council is required to consider the adequacy of transportation and storm sewer facilities.

Therefore, as far as the geological studies affect the adequacy of storm sewer facilities, those issues are also raised sufficiently in the appeal. The decision should be based on information about whether landslides will prevent the design and function of adequate storm sewer facilities to support the subdivision.

Based on the foregoing the scope of the appeal findings should state:

Proposed Finding regard Reconsideration and Appeal Scope. The scope of the appeal is whether adequate public facilities are available to serve the proposed use under CDC 85.200. The Community Development Code (“CDC”) 2.030 defines “adequate public facilities” to include transportation, water, sewer, and storm sewer facilities, and that adequacy means that on-site and off-site facilities must have sufficient capacity to meet the demands in the application. The appeal raises issues related to the adequacy of the off-site transportation facilities, including, but not

limited to, the impacts to existing bicycle lanes within the project's impact area. The appeal stated, "The Planning Commission approval incorporates an Off-Site Traffic Mitigation with the addition of a north-bound left turn lane onto Arbor." The City Council views this statement as a stand alone concern related to the traffic impacts on Highway 43. Further, the appellants also explained that they do not believe there is a sufficient plan in place to determine post-development congestion. The adequacy of the Off-Site Traffic Mitigation also relates to impacts on the existing bicycle lanes and this impact was expressly preserved by the appeal. In order to fully understand the impacts on existing bicycle lanes, the applicant also must show an accurate traffic report to provide full information about adequate transportation facilities, including the bicycle lanes. This issue was preserved on appeal through the appellants' statement, "Nothing has been stated about how this will affect the existing bike lanes... There is very little room to retain bike lanes in both directions and carve out a left turn lane."

In addition, the appellants stated, "We do not believe that sufficient geological studies have been done on this parcel. There is a history of drainage issues and mudslides in the surrounding area that we believe have not been sufficiently addressed in the application." The City Council finds this statement raises enough specificity about drainage issues to place the applicant on notice that the appellants were raising issues related to the adequacy of the storm sewer facilities given the geology of the site.

II. The City Council has discretion to re-open the record to allow submission of additional written testimony.

Two code provisions provide the City Council with authority to allow new evidence. First, under CDC 99.250(A)(3)(c)(ii), the appellant may request the Council re-open the record. Second, under CDC 99.280(C), the Council has independent discretion to re-open the record on a limited basis to consider new evidence.

A. The appellants requested the Council to accept new evidence.

Once again, a broad reading of the appeal should be given when the appellants were unrepresented at the Planning Commission level and in filing the appeal. With respect to the adequacy of the transportation facilities (item 3 of the appeal), the appellants stated "We would like to see this addressed in a more substantial way." This statement was made about the adequacy of the Off-Site Traffic Mitigation, and about the impacts to the existing bicycle lanes. Further, in regards to item 4, the appellants formulated a question about the sufficiency of the traffic plan because they did not feel the record contained enough evidence to show that congestion was addressed. Under CDC 99.250(A)(3)(c)(ii), this statement and question were enough to alert the City Council that appellants were requesting the Council to re-open the record.

Further, Jason Harra clarified his intent to present new evidence in his April 25, 2017 e-mail to the Mayor and City Council members attached here for convenience as Exhibit 1. This request was made prior to the notice and revised notice being published on April 27, 2017. The applicant had ample notice that the appellants requested to re-open the record to information relevant to the approval criteria.

In fact, the record was re-opened and the Council accepted additional testimony and evidence and this was correct. This makes sense as an appeal under the City Code of a quasi-judicial decision includes a hearing and opportunity to appear. The City Council's rules reflect this permissive participation because the Code allows additional "written testimony and evidence" under CDC 99.250(A)(3)(c).

B. The City Council has the discretion to re-open the record on a limited basis to consider new evidence.

Under CDC 99.280(C), independent of the language in the appeal and CDC 99.250, the City Council can re-open the record and consider new evidence:

"The City Council has the authority to reopen the record to consider new evidence on a limited basis; specifically, if the Council determines that...

2. A factual error occurred before the lower decision-making body through no fault of the requesting party, that is relevant to an approval criterion and material to the decision."

The appellants clearly requested that new evidence be considered before and at the May 8, 2017 hearing and Jason Harra's testimony establishes that a factual error occurred through no fault of his.

After the public hearing closed before the Planning Commission, it became apparent to the appellants that the deliberations were based on the applicant's incomplete traffic report. However, the appellants could not notify the Planning Commission of the error because the hearing had already closed. The appellants were not at fault for the error because the applicant prepared and submitted the traffic study. Jessica Harra observed that several times, a Planning Commissioner could not find the same numbers referred to by applicant's representatives Seth King or Matt Bell when they were discussing traffic counts. Further, there was no mention of how the striping in the Off-Site Traffic Mitigation would work when part of the road is too narrow to accept the proposed mitigation.

Neither the Planning Commission, nor staff noticed that the applicant's traffic engineer did not stamp the traffic report. This is a violation of ORS 672.020(2) that requires every final document prepared by a traffic engineer to be stamped. Thus, the Planning Commission did not base its decision on a final traffic report. The City Council should not approve the reconsideration when, through no fault of the appellants, the applicant's traffic study does not meet the requirements and does not include necessary information. The May 8, 2017

submissions by Jason Harra, including the letter from Rick Nys, specifically identify the problems with the traffic study.²

Further, the Planning Commission heard testimony about concerns related to the lack of space for the bus stop. Testimony on the appeal identified ADA accessibility concerns in connection with the limited space for the bus stop with the proposed mitigation. This testimony only crystallizes the concerns raised to the Planning Commission. The information related to ADA compliance is important and should be allowed in the record to establish that the transportation facilities are inadequate to meet the demands from this project.

The Harras urge the City Council to exercise its discretion to re-open the record to accept additional evidence related to the adequacy of the transportation facilities. This evidence directly responds to relevant approval criteria on reconsideration, and any decision relying on the traffic report should be based on accurate information, including correct background counts, detailed analysis of the Off-Site Traffic Mitigation, and data that supports the conclusions in the traffic report.³ With this new evidence accepted in the record, the City Council should deny the application because the traffic report does not contain necessary information to show that the City has adequate transportation facilities to meet the demands of the application, especially when combined with transportation facility impacts from other in-process developments in the surrounding area.

C. The applicant had adequate opportunity to respond and did respond to the new evidence.

The applicant complains that it did not have an adequate opportunity to respond to the new evidence. As Mr. Robinson, counsel for the applicant, stated at the end of the hearing, he knew that the City Council would not make a decision about what evidence would be allowed in until May 18, 2017. Yet, he agreed to summarize the applicant's final argument by May 11, 2017 and did so.

In the applicant's May 11, 2017 submission, the applicant claims that Jason Harra's letter (including Rick Nys' attached letter) should be omitted based on *Freedman v. City of Grants Pass*, 57 Or LUBA 385 (2008). However, that case is inapposite. In that case the intervenor included the traffic consultant's testimony after the record had closed as part of the intervenor's final written argument. *Id.* at 387. Here, the record remains open. The applicant is not prejudiced by the submittal and was given the opportunity to rebut the evidence. Moreover, the applicant does rebut the evidence in pages 6-11 of its May 11, 2017 letter. Therefore, even if it

² To the extent that the staff's May 12, 2017 memorandum regarding "Review of Submitted Comments for Admissibility" refers to emails from Jason Harra and Rick Nys P.E., Greenlight Engineering, submitted "subsequent to the hearing," these letters were sent prior to the beginning of the hearing and were presented by staff to the City Council directly during the hearing.

³ After appellants' opportunity to testify on May 8, 2017, the applicants' traffic engineer continued to present traffic numbers that are erroneous. Appellants' traffic engineer, Rick Nys P.E. will be in attendance at the meeting on May 18, 2017 to answer any questions related to these errors.

were improper to accept the evidence, the problem is solved because the applicant has been afforded the opportunity to respond under ORS 197.763. *Id.* at 393.

The applicant already requested a continuance of the hearing to learn what additional evidence the City Council would accept into the record. No further continuance should be afforded because the applicant had ample opportunity between May 8, 2017 and May 18, 2017 to submit additional evidence and argument during the open record period and took advantage of that opportunity.

Based on the foregoing, appellants propose the City Council adopt the following finding:

Proposed Finding: The appeal sufficiently raised the appellants' request that additional evidence be accepted at the hearing because the appellants' statements raised matters regarding the adequacy of the transportation facilities and that additional information would be required to show that the transportation facilities are adequate. First, the appellants stated under appeal item 3, "We would like to see this addressed in a more substantial way." This statement was made about the adequacy of the Off-Site Traffic Mitigation, and about the impacts to the existing bicycle lanes. Second, under appeal item 4, the appellants formulated a question about the sufficiency of the traffic report because they did not feel the record contained enough evidence to show that congestion was addressed. Under CDC 99.250(A)(3)(c)(ii), the City Council finds this statement and question were enough to alert the applicant and City Council that appellants were requesting the Council to re-open the record.

Alternatively, the City Council exercises its discretion under CDC 99.280(C)(2) to re-open the record to consider new evidence on a limited basis because the City Council determines that a factual error occurred before the lower decision-making body through no fault of the requesting party, that is relevant to an approval criterion and material to the decision. As established under the scope of the appeal findings, the adequacy of the transportation facilities is an issue on appeal. The appellants have raised enough information to show that the traffic report has incorrect and incomplete information about background traffic, and does not include the underlying data for the traffic report conclusions. Further, the traffic report has not been signed and cannot be considered a final document under ORS 672.020(2).

The new information that appellants request for inclusion in the record is limited only to the adequacy of the traffic report, and the appellants did not submit the incorrect traffic study. Therefore, the City Council finds that the appellants were not at fault for the incorrect factual errors that the Planning Commission relied on to conclude that the transportation facilities were adequate to serve the proposed development. All new evidence related to the adequacy of the transportation facilities is accepted by the City Council, including Jason Harra's letter of May 8, 2017 attaching Rick Nys' letter of the same date, as well as their verbal testimony on

May 8, 2017; Chris Harris' verbal testimony; Gregory Ball's April 29, 2017 written testimony; and Keith Hamilton's May 7, 2017 written testimony.

The applicant was provided open record response time to the new evidence between May 8, 2017 and May 11, 2017, and submitted its response on May 11, 2017. Further, the applicant discussed at length its concerns about the 120-day deadline for a decision, and consistent with that discussion did not request a further extension of the open record period beyond the May 18, 2017 hearing.

- III. In the alternative, even if the City Council decides it will not accept new evidence, much of the Harras' testimony is proper argument on appeal.

Jason Harra submitted an 11 page letter on May 8, 2017 accompanied by a six page letter from Rick Nys with attached exhibits. The applicant's proposal, adopted by staff, suggests that the City Council reject all this testimony. However, most of the submission is argument based on the material in the record before the Planning Commission and is properly included the record.

If the City Council decides not to accept new evidence, then the only information that should be rejected from Jason Harra's letter is shown in the redacted version of the letter in the attached Exhibit 2. The Harras request that Exhibit 1 be accepted in the record, only if the City Council decides not to reopen the record to accept new evidence. The argument contained in Exhibit 2 contains ample reasons to discredit the traffic report, even without the new evidence.

CONCLUSION

The applicant has not submitted an application that can meet the criteria for approval because there is not evidence to support that adequate public facilities are available, particularly transportation facilities, and the impacts of landslides to storm sewer facilities design remain an outstanding issue. While the applicant threatens to file another, more dense application (that still must have adequate public facilities), or complain that its property may be subject to a taking if denied, this is not true. The R-4.5 zone allows for an array of uses, and the applicant can apply for another allowed or conditional use that would have less impact to public facilities. The Harras request that you permit all the evidence and testimony submitted on appeal related to the preserved adequacy of public facilities and deny the application because the transportation facilities cannot handle the demand from this project.

Sincerely,

Jennifer M. Bragar

TOMASI SALYER MARTIN

May 16, 2017

Page 9

cc: Client
Mike Robinson
Tim Ramis
Peter Spir
Eileen Stein
Karen Mollusky



May 8, 2017

West Linn City Council
22500 Salamo Road
West Linn, OR 97068

RE: City of West Linn FILE NO. SUB-15-03, WAP-16-03

Greenlight Engineering has been asked by our client, Jason Harra, to evaluate the transportation related impacts of the proposed 34 lot subdivision proposed at 18000 Upper Midhill Drive in West Linn, Oregon. We have completed a review of the application materials and have visited the site. We offer the following comments.

Executive Summary

The application fails to provide the necessary evidence to support approval of the project for the following reasons:

- Highway 43/Arbor Drive interim mitigation is not an improvement for bicyclists, pedestrians, and transit and disabled users
- The traffic impact analysis (TIA) fails to account for the cumulative impacts of approved development in the area
- The TIA's assumed growth rate of 1% per year is not based on evidence
- The TIA fails to provide the raw traffic count data of October 2016 traffic counts

Highway 43/Arbor Drive Interim Mitigation is Not an Improvement for Bicyclists, Pedestrians, and Transit and Disabled Users

The proposed interim improvements at the Highway 43/Arbor Drive intersection are detailed on Figure 9 of Kittelson and Associate's March 1, 2017 letter. The improvements consist of restriping the existing pavement at and around the intersection to allow for the construction of a northbound and southbound two way left turn lane to better accommodate automobile mobility and safety.

Unfortunately, the improvements provide benefits only to automobile mobility and safety, but are a detriment to pedestrian, bicycle, transit and disabled user safety. There has been no discussion or analysis of impacts to these users by the applicant.

There are currently bike lanes on Highway 43 near Arbor Drive with no separate pedestrian facilities. These bicycle facilities are shared by pedestrians, cyclists and transit users. There are bus stops located on the northwest and southeast corners of the intersection. The interim improvement proposal suggests the restriping of bicycle

facilities to 5 ½ feet wide in some locations, significantly narrowing the existing width in several locations to a width below ODOT standard. According to the ODOT Highway Design Manual, the minimum bike lane width along Highway 43 is six feet wide.

On the southeast corner of the intersection, at the location of a Tri-Met bus stop, pedestrians, bikes and transit users will all share a space just 5 ½ feet if the proposed improvement is constructed.

The Department of Transportation ADA Standards for Transportation Facilities (2006) requires an eight foot by five foot area in location of bus boarding or alighting as shown below in Figure 810.2.2 from ADA¹. These dimensions currently exist at the location of the two bus stops, but would not exist near the location of the southeast corner bus stop if the interim improvements are constructed. ADA 810.2.2 states “Bus stop boarding and alighting areas shall provide a clear length of 96 inches (2440 mm) minimum, measured perpendicular to the curb or vehicle roadway edge, and a clear width of 60 inches (1525 mm) minimum, measured parallel to the vehicle roadway.”

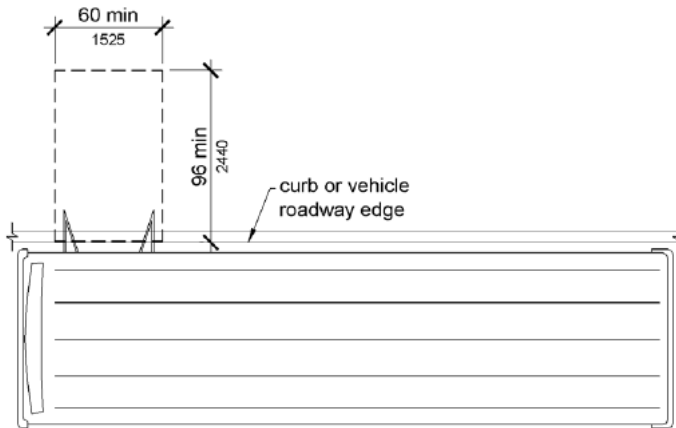


Figure 810.2.2 Dimensions of Bus Boarding and Alighting Areas

In addition to the lack of area to continue to meet ADA requirements, pedestrians, cyclists, transit users will all need to share a much more narrow space than currently exists and which does not meet standard in order to accommodate the impacts of this proposed development. As there is no identified funding for the ultimate Highway 43 improvement, this situation could exist for many years if the interim improvements are approved for construction.

In their March 1, 2017 letter, Kittelson argues that “[p]edestrians and bicyclists wanting to access OR 43 will be able to continue to use the College Hill Place-Marylcreek Drive connection to the OR 43/Marylbrook Drive intersection, which is served by local transit service”. While that connection does exist, it is wholly inconvenient for most of the existing neighborhood that utilizes the Highway 43/Arbor intersection for pedestrian,

¹ <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards/chapter-8-special-rooms,-spaces,-and-elements#810%20Transportation%20Facilities>

bicycle and transit access. This connection is unlikely to be utilized by those destined to the south on Highway 43 or by those that would need to travel out of direction to use this connection nor does it provide any benefit to bicyclists traveling south on Highway 43 as they would still need to travel via the narrowed bike lane on Highway 43.

Section 85.170(B)(2)(e)(1)(C) of the West Linn Community Development Code requires that “[w]hen a Traffic Impact Analysis is required, approval of the development proposal requires satisfaction of the following criteria:

The proposed site design and traffic and circulation design and facilities, for all transportation modes, including any mitigation measures, are designed to:

- (1) Have the least negative impact on all applicable transportation facilities; and
- (2) Accommodate and encourage non-motor vehicular modes of transportation to the extent practicable; and
- (3) Make the most efficient use of land and public facilities as practicable; and
- (4) Provide the most direct, safe and convenient routes practicable between on-site destinations, and between on-site and off-site destinations; and
- (5) Otherwise comply with applicable requirements of the City of West Linn Community Development Code”

The application fails to provide any evaluation of items 1-4 with regard to the impacts of the proposed mitigation at Highway 43/Arbor Drive.

The TIA Fails to Account for Background Traffic

The TIA fails to account for the impacts of several developments in the nearby area that have been approved but are not yet constructed. CDC 02.030 requires “[t]o be adequate, on-site and adjacent facilities must meet City standards, and off-site facilities must have sufficient capacity to (1) meet all existing demands, (2) **satisfy the projected demands from projects with existing land use approvals**, plus the additional demand created by the application, and (3) remain compliant with all applicable standards” (emphasis added).

Nearby projects that would have an impact on the study intersections include:

- Mary's Woods expansion located at Marylhurst roughly 1/3 a mile to the north of the Highway 43/Arbor intersection
- Shady Hollow Village located roughly 1/4 of a mile to the south of the Highway 43/Arbor intersection

According to the November 30, 2016 traffic report prepared by Kittelson and Associates for the Mary's Woods project, the ongoing Mary's Woods expansion consists of the

following and equates to approximately 165 weekday PM peak hour trips (see Appendix A):

- 48 units of assisted living or roughly 11 PM weekday peak hour trips
- 199 units of independent living or 50 PM peak hour trips
- 9,485 square foot medical office or roughly 25 PM peak hour trips
- 3,955 square foot pub, 9,485 square foot wellness center, 8,825 square foot office, 7,210 square foot retail, and 1,615 square foot deli or 79 weekday PM peak hour trips

According to the May 2008 traffic impact analysis prepared by Charbonneau Engineering for the Shady Hollow Village project, Shady Hollow Village could generate 27 weekday PM peak hour trips (see Appendix A).

The approved development in the area will vastly exceed 31 vehicles just from these two nearby developments, not to mention other developments (i.e. Wizer block in Lake Oswego) that have been approved or regional growth that has occurred since the October 2016 traffic counts or will occur along Highway 43.

Additionally, as the TIA assumes a 1% growth/year is applied equally over each of the study intersection movements, the TIA is unreliable as it does not specifically load the study intersections for approved developments appropriately. For instance, while the Highway 43/Marylhurst intersection will experience an increase in 165 weekday PM peak hour due to the Mary's Woods expansion, they are mostly turning movements into and out of the subject driveway. However, the TIA for this subdivision project generally analyzes these extra trips as through movements through the intersection rather than the turning movements that will actually occur.

The TIA's Assumed Growth Rate of 1% Per Year is Not Based on Evidence

On page 3 of their March 1, 2017 letter, Kittelson opines that the assumed 1% growth/year added to the existing counts at the study intersections accounts for all regional and local growth. The assumed 1% growth per year equates to “31 additional vehicles during the weekday PM peak hour.” The Kittelson reports fail to provide any information regarding where the assumed 1% growth is derived from.

Greenlight Engineering commissioned Key Data Network to conduct a traffic count on Highway 43 north of Arbor Drive (see Appendix B) to collect daily traffic volumes on Highway 43. Additionally, we researched ODOT historical traffic data available in their annual Transportation Volume Tables on Highway 43 north of Arbor Drive (see Appendix C).

Table 1 below illustrates the average annual daily traffic volumes on Highway 43 north of Arbor Drive over various years and associated year over year growth rates.

Table 1. Highway 43 North of Arbor Drive

Year of Count	AADT	Growth (%)/Yr	Notes
2013*	16900		
2014*	17100	1.2	
2015*	15900	-7.0	
2017**	20653	14.9	29.9% growth over two years

*Source: ODOT, Transportation Volume Tables

**Source: Key Data Network, May 2017 count

To adjust our May 2017 counts, the ODOT Analysis Procedures Manual was utilized (see Appendix D). The seasonal trend table method was utilized. When comparing the ODOT Transportation Volume Tables with our seasonally adjusted 2017 traffic count, it is clear that traffic volumes have greatly increased from 2015, the most recent data that ODOT has published. When comparing 2015 to 2017, the traffic volumes represent a percent growth of 14.9% per year. Even when comparing 2013 to 2017 data, the traffic volumes represent a yearly percent growth of over five percent per year, far more than Kittelson assumed.

Additionally, the applicant provides no evidence that their assumed build-out year of 2018 is able to be met.

The TIA Fails to Provide October 2016 Traffic Counts

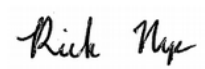
The March 1, 2017 Kittelson letter references traffic counts that were collected in October 2016. However, the letter fails to include evidence of the raw traffic counts nor the calculations that were utilized in seasonally adjusting the raw traffic counts as reported.

Conclusion

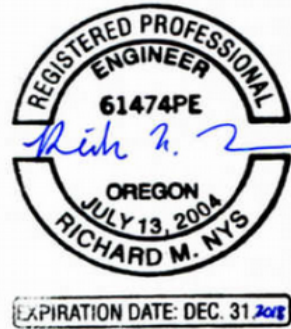
The land use application fails to provide substantial evidence, or in some cases any evidence at all, to support the conclusion that the applicant demonstrated compliance with the transportation related requirements necessary to approve this land use application.

Should you have any questions, feel free to contact me at 503-317-4559.

Sincerely,



Rick Nys, P.E.
Principal Traffic Engineer



Experience and Experience

I am a Professional Engineer (P.E.) registered in the State of Oregon. I hold a Bachelor of Science degree in Civil Engineering. I have over seventeen years of experience in traffic engineering and transportation planning.

Appendix A

***Mary's Woods & Shady Hollow Village
Trip Generation***

Table 2 shows the trip generation for the uses approved to date (Phases 1 and 2) and the total trip generation for the uses approved in the ODPS based on the October 26, 2015 Phase 2 trip generation comparison.

Table 2. Trip Generation for Previously Approved Uses—Weekday P.M. Peak Hour

Development Component (ITE Classification) ¹	Development Size			ODPS Build-out	Trip Generation ¹	
	Existing (Phase 1)	Ongoing (Phase 2)	Total ⁴ (Phases 1 & 2)		Phases 1 & 2	ODPS Build-out
Residential Uses						
Independent Living (252)	266 units	199 units	465 units	497 units	116	120
Health Care ² (217 & 254)	104 beds	--	104 beds	133 beds	20	35
Villas (210)	50 units	--	50 units	--	50	--
Cottages (NA)	--	--	--	50 units	--	10
<i>Subtotal</i>					186	165
<i>Internal Trips</i>					-18	0
<i>Net Residential Trips</i>					168	165
Institutional Uses						
Day Care Center (565)	--	--	--	75 children & 6,500 s.f. adult	--	130
<i>Subtotal</i>					0	130
<i>Internal Trips</i>					0	-50
<i>Pass-by Trips</i>					0	-10
<i>Net Institutional Trips</i>					0	70
Office Uses						
Medical Office (720)	--	9,485 s.f.	9,485 s.f.	38,000 s.f.	34	150
Multi-Tenant Office (710)	--	--	--	41,000 s.f.	--	95
Heritage Center(NA)	7 persons	--	7 persons	--	7	--
<i>Subtotal</i>					41	245
<i>Internal Trips</i>					-9	-15
<i>Net Office Trips</i>					32	230
Retail Uses						
Financial Services (911)	--	--	--	7,000 s.f.	--	120
Dining/Drinking (925)	--	3,955 s.f.	3,955 s.f.	7,000 s.f.	45	90
Wellness Center (492)	--	9,485 s.f.	9,485 s.f.	--	33	--
Other Retail ³ (826)	--	17,650 s.f.	17,650 s.f.	14,000 s.f.	64	70
<i>Subtotal</i>					142	280
<i>Internal Trips</i>					-49	-55
<i>Pass-by Trips</i>					-14	-40
<i>Net Retail Trips</i>					79	185
NET NEW TRIPS					279	650

- Notes: (1) Phase 1 & 2 trip generation from *Trip Generation Manual*, 9th Edition. ODPS trip generation from *Trip Generation*, 5th Edition and a trip generation study conducted at Willamette View Manor & Convalescent Center. NA indicates uses where unique ODPS rates were used for the Phase 1 & 2 trip generation estimates since an applicable ITE use is not available.
 (2) Includes assisted living, skilled nursing, and memory care.
 (3) May include office space.
 (4) Units based on Phase 2 evaluation submitted in October 26, 2015.

As shown in Table 2, the ODPS anticipated approximately 650 net new weekday p.m. peak hour trips would be generated by buildout of the development. Additionally, Phases 1 and 2 of the development are estimated to generate approximately 279 net new weekday p.m. peak hour trips approved as part of the ODPS. Table 3 shows the estimated trip comparison with the proposed assisted living building.

Table 3. Trip Generation Comparison with Proposed Assisted Living —Weekday P.M. Peak Hour

Development Component (ITE Classification) ¹	Development Size			ODPS Build-out	Trip Generation ¹	
	Approved (Phase 1&2)	Current Proposed	Total ⁴ (To Date)		Total (To Date)	ODPS Build-out
Residential Uses						
Independent Living (252)	465 units	--	465 units	497 units	116	120
Health Care ² (217 & 254)	104 beds	48 beds	152 beds	133 beds	31	35
Villas (210)	50 units	--	50 units	--	50	--
Cottages (NA)	--	--	--	50 units	--	10
<i>Subtotal</i>					197	165
<i>Internal Trips</i>					-18	0
<i>Net Residential Trips</i>					179	165
Institutional Uses						
Day Care Center (565)	--	--	--	75 children & 6,500 s.f. adult	--	130
<i>Subtotal</i>					0	130
<i>Internal Trips</i>					0	-50
<i>Pass-by Trips</i>					0	-10
<i>Net Institutional Trips</i>					0	70
Office Uses						
Medical Office (720)	9,485 s.f.	--	9,485 s.f.	38,000 s.f.	34	150
Multi-Tenant Office (710)	--	--	--	41,000 s.f.	--	95
Heritage Center(NA)	7 persons	--	7 persons	--	7	--
<i>Subtotal</i>					41	245
<i>Internal Trips</i>					-9	-15
<i>Net Office Trips</i>					32	230
Retail Uses						
Financial Services (911)	--	--	--	7,000 s.f.	--	120
Dining/Drinking (925)	3,955 s.f.	--	3,955 s.f.	7,000 s.f.	45	90
Wellness Center (492)	9,485 s.f.	--	9,485 s.f.	--	33	--
Other Retail ³ (826)	17,650 s.f.	--	17,650 s.f.	14,000 s.f.	64	70
<i>Subtotal</i>					142	280
<i>Internal Trips</i>					-49	-55
<i>Pass-by Trips</i>					-14	-40
<i>Net Retail Trips</i>					79	185
NET NEW TRIPS					290	650

- Notes: (1) Phase 1 & 2 trip generation from *Trip Generation Manual*, 9th Edition. ODPS trip generation from *Trip Generation*, 5th Edition and a trip generation study conducted at Willamette View Manor & Convalescent Center. NA indicates uses where unique ODPS rates were used for the Phase 1 & 2 trip generation estimates since an applicable ITE use is not available.
 (2) Includes assisted living, skilled nursing, and memory care.
 (3) May include office space.
 (4) Units based on Phase 2 evaluation submitted in September 18, 2015 and October 26, 2015.

Appendix B

***Highway 43 North of Arbor Drive
Traffic Count, May 4, 2017***

KEY DATA NETWORK

K-D-N.com
 Tualatin, OR 97062
 503-804-3294

Hwy 43 north of Arbor Dr

Date Start: 5/3/2017

Latitude: 45' 23.7488 North
 Longitude: 122' 39.0669 West

Start Time	5/4/2017 Thu	NB		Hour Totals		SB		Hour Totals		Combined Totals	
		Morning	Afternoon	Morning	Afternoon	Morning	Afternoon	Morning	Afternoon	Morning	Afternoon
12:00		15	153			6	124				
12:15		4	151			6	125				
12:30		4	150			4	164				
12:45		2	164	25	618	7	125	23	538	48	1156
01:00		10	147			2	130				
01:15		6	156			2	130				
01:30		7	160			4	120				
01:45		3	170	26	633	2	122	10	502	36	1135
02:00		3	185			1	124				
02:15		4	156			2	120				
02:30		3	174			2	142				
02:45		2	182	12	697	1	135	6	521	18	1218
03:00		1	292			2	147				
03:15		6	274			0	221				
03:30		2	261			4	282				
03:45		0	251	9	1078	5	211	11	861	20	1939
04:00		2	273			6	134				
04:15		1	262			8	122				
04:30		7	293			18	205				
04:45		12	273	22	1101	22	186	54	647	76	1748
05:00		8	265			37	136				
05:15		8	282			47	238				
05:30		20	246			78	216				
05:45		12	254	48	1047	93	184	255	774	303	1821
06:00		34	265			111	122				
06:15		33	218			170	123				
06:30		55	166			258	112				
06:45		59	139	181	788	273	102	812	459	993	1247
07:00		95	128			272	86				
07:15		107	130			284	64				
07:30		94	94			258	50				
07:45		110	83	406	435	246	66	1060	266	1466	701
08:00		124	94			219	66				
08:15		107	112			214	59				
08:30		132	97			242	58				
08:45		102	104	465	407	246	56	921	239	1386	646
09:00		114	62			183	56				
09:15		109	70			198	52				
09:30		116	74			157	38				
09:45		144	66	483	272	168	26	706	172	1189	444
10:00		109	64			133	18				
10:15		116	26			141	24				
10:30		124	23			156	18				
10:45		138	20	487	133	136	14	566	74	1053	207
11:00		120	25			114	10				
11:15		143	17			125	12				
11:30		134	18			158	8				
11:45		148	13	545	73	148	11	545	41	1090	114
Total		2709	7282			4969	5094			7678	12376
Percent		27.1%	72.9%			49.4%	50.6%			38.3%	61.7%

KEY DATA NETWORK

K-D-N.com
 Tualatin, OR 97062
 503-804-3294

Hwy 43 north of Arbor Dr

Date Start: 5/3/2017

Latitude: 45' 23.7488 North
 Longitude: 122' 39.0669 West

Start Time	5/3/2017		NB		SB		Combined		5/4/2017	NB		SB		Combined	
	Wed		A.M.	P.M.	A.M.	P.M.	A.M.	P.M.		Thu	A.M.	P.M.	A.M.	P.M.	A.M.
12:00	*	*	*	*	*	*	*	*	15	153	6	124	21	277	
12:15	*	*	*	*	*	*	*	*	4	151	6	125	10	276	
12:30	*	*	*	*	*	*	*	*	4	150	4	164	8	314	
12:45	*	*	*	*	*	*	*	*	2	164	7	125	9	289	
01:00	*	*	*	*	*	*	*	*	10	147	2	130	12	277	
01:15	*	*	*	*	*	*	*	*	6	156	2	130	8	286	
01:30	*	*	*	*	*	*	*	*	7	160	4	120	11	280	
01:45	*	*	*	*	*	*	*	*	3	170	2	122	5	292	
02:00	*	*	*	*	*	*	*	*	3	185	1	124	4	309	
02:15	*	*	*	*	*	*	*	*	4	156	2	120	6	276	
02:30	*	*	*	*	*	*	*	*	3	174	2	142	5	316	
02:45	*	*	*	*	*	*	*	*	2	182	1	135	3	317	
03:00	*	*	*	*	*	*	*	*	1	292	2	147	3	439	
03:15	*	*	*	*	*	*	*	*	6	274	0	221	6	495	
03:30	*	*	*	*	*	*	*	*	2	261	4	282	6	543	
03:45	*	*	*	*	*	*	*	*	0	251	5	211	5	462	
04:00	*	*	*	*	*	*	*	*	2	273	6	134	8	407	
04:15	*	*	*	*	*	*	*	*	1	262	8	122	9	384	
04:30	*	*	*	*	*	*	*	*	7	293	18	205	25	498	
04:45	*	*	*	*	*	*	*	*	12	273	22	186	34	459	
05:00	*	*	*	*	*	*	*	*	8	265	37	136	45	401	
05:15	*	*	*	*	*	*	*	*	8	282	47	238	55	520	
05:30	*	*	*	*	*	*	*	*	20	246	78	216	98	462	
05:45	*	*	*	*	*	*	*	*	12	254	93	184	105	438	
06:00	*	252	*	118	*	370	34	265	111	122	145	387			
06:15	*	251	*	120	*	371	33	218	170	123	203	341			
06:30	*	239	*	112	*	351	55	166	258	112	313	278			
06:45	*	190	*	88	*	278	59	139	273	102	332	241			
07:00	*	132	*	81	*	213	95	128	272	86	367	214			
07:15	*	100	*	96	*	196	107	130	284	64	391	194			
07:30	*	96	*	98	*	194	94	94	258	50	352	144			
07:45	*	104	*	80	*	184	110	83	246	66	356	149			
08:00	*	134	*	46	*	180	124	94	219	66	343	160			
08:15	*	100	*	62	*	162	107	112	214	59	321	171			
08:30	*	96	*	58	*	154	132	97	242	58	374	155			
08:45	*	92	*	54	*	146	102	104	246	56	348	160			
09:00	*	99	*	46	*	145	114	62	183	56	297	118			
09:15	*	88	*	43	*	131	109	70	198	52	307	122			
09:30	*	82	*	45	*	127	116	74	157	38	273	112			
09:45	*	52	*	31	*	83	144	66	168	26	312	92			
10:00	*	48	*	26	*	74	109	64	133	18	242	82			
10:15	*	30	*	26	*	56	116	26	141	24	257	50			
10:30	*	28	*	14	*	42	124	23	156	18	280	41			
10:45	*	22	*	9	*	31	138	20	136	14	274	34			
11:00	*	19	*	6	*	25	120	25	114	10	234	35			
11:15	*	11	*	10	*	21	143	17	125	12	268	29			
11:30	*	14	*	6	*	20	134	18	158	8	292	26			
11:45	*	18	*	7	*	25	148	13	148	11	296	24			
Total	0	2297	0	1282	0	3579	2709	7282	4969	5094	7678	12376			
Day Total		2297		1282		3579		9991		10063		20054			
% Total	0.0%	64.2%	0.0%	35.8%			13.5%	36.3%	24.8%	25.4%					
Peak	-	- 06:00	-	06:00	-	06:00	-	11:00	04:30	06:30	03:00	07:00	03:00		
Vol.	-	- 932	-	438	-	1370	-	545	1113	1087	861	1466	1939		
P.H.F.		0.925		0.913		0.923		0.921	0.950	0.957	0.763	0.937	0.893		

KEY DATA NETWORK

K-D-N.com
 Tualatin, OR 97062
 503-804-3294

Hwy 43 north of Arbor Dr

Date Start: 5/3/2017

Latitude: 45' 23.7488 North
 Longitude: 122' 39.0669 West

Start Time	5/5/2017		NB		SB		Combined		5/6/2017 Sat	NB		SB		Combined	
	Fri		A.M.	P.M.	A.M.	P.M.	A.M.	P.M.		A.M.	P.M.	A.M.	P.M.	A.M.	P.M.
12:00	12	152	12	134	24	286	*	*	*	*	*	*	*	*	
12:15	7	172	4	134	11	306	*	*	*	*	*	*	*	*	
12:30	8	148	4	141	12	289	*	*	*	*	*	*	*	*	
12:45	1	192	5	119	6	311	*	*	*	*	*	*	*	*	
01:00	9	144	4	149	13	293	*	*	*	*	*	*	*	*	
01:15	8	137	2	124	10	261	*	*	*	*	*	*	*	*	
01:30	4	1	4	0	8	1	*	*	*	*	*	*	*	*	
01:45	4	1	4	1	8	2	*	*	*	*	*	*	*	*	
02:00	5	*	1	*	6	*	*	*	*	*	*	*	*	*	
02:15	4	*	1	*	5	*	*	*	*	*	*	*	*	*	
02:30	4	*	2	*	6	*	*	*	*	*	*	*	*	*	
02:45	2	*	4	*	6	*	*	*	*	*	*	*	*	*	
03:00	2	*	6	*	8	*	*	*	*	*	*	*	*	*	
03:15	2	*	1	*	3	*	*	*	*	*	*	*	*	*	
03:30	2	*	9	*	11	*	*	*	*	*	*	*	*	*	
03:45	6	*	5	*	11	*	*	*	*	*	*	*	*	*	
04:00	4	*	3	*	7	*	*	*	*	*	*	*	*	*	
04:15	4	*	10	*	14	*	*	*	*	*	*	*	*	*	
04:30	5	*	16	*	21	*	*	*	*	*	*	*	*	*	
04:45	6	*	15	*	21	*	*	*	*	*	*	*	*	*	
05:00	10	*	21	*	31	*	*	*	*	*	*	*	*	*	
05:15	14	*	49	*	63	*	*	*	*	*	*	*	*	*	
05:30	20	*	62	*	82	*	*	*	*	*	*	*	*	*	
05:45	16	*	70	*	86	*	*	*	*	*	*	*	*	*	
06:00	28	*	104	*	132	*	*	*	*	*	*	*	*	*	
06:15	26	*	155	*	181	*	*	*	*	*	*	*	*	*	
06:30	38	*	210	*	248	*	*	*	*	*	*	*	*	*	
06:45	54	*	205	*	259	*	*	*	*	*	*	*	*	*	
07:00	72	*	260	*	332	*	*	*	*	*	*	*	*	*	
07:15	104	*	265	*	369	*	*	*	*	*	*	*	*	*	
07:30	104	*	239	*	343	*	*	*	*	*	*	*	*	*	
07:45	96	*	214	*	310	*	*	*	*	*	*	*	*	*	
08:00	110	*	213	*	323	*	*	*	*	*	*	*	*	*	
08:15	114	*	194	*	308	*	*	*	*	*	*	*	*	*	
08:30	111	*	232	*	343	*	*	*	*	*	*	*	*	*	
08:45	97	*	247	*	344	*	*	*	*	*	*	*	*	*	
09:00	111	*	174	*	285	*	*	*	*	*	*	*	*	*	
09:15	93	*	216	*	309	*	*	*	*	*	*	*	*	*	
09:30	136	*	182	*	318	*	*	*	*	*	*	*	*	*	
09:45	123	*	166	*	289	*	*	*	*	*	*	*	*	*	
10:00	104	*	146	*	250	*	*	*	*	*	*	*	*	*	
10:15	102	*	128	*	230	*	*	*	*	*	*	*	*	*	
10:30	113	*	111	*	224	*	*	*	*	*	*	*	*	*	
10:45	123	*	152	*	275	*	*	*	*	*	*	*	*	*	
11:00	116	*	147	*	263	*	*	*	*	*	*	*	*	*	
11:15	122	*	137	*	259	*	*	*	*	*	*	*	*	*	
11:30	146	*	145	*	291	*	*	*	*	*	*	*	*	*	
11:45	144	*	154	*	298	*	*	*	*	*	*	*	*	*	
Total	2546	947	4710	802	7256	1749	0	0	0	0	0	0	0	0	
Day Total	3493		5512		9005		0								
% Total	28.3%	10.5%	52.3%	8.9%			0.0%								
Peak	-	11:00	12:00	07:00	00:15	07:00	00:15	-	-	-	-	-	-	-	
Vol.	-	528	664	978	543	1354	1199	-	-	-	-	-	-	-	
P.H.F.	-	0.904	0.865	0.923	0.911	0.917	0.964	-	-	-	-	-	-	-	
ADT	ADT 19,518		AADT 19,518												

Appendix C

**Highway 43
ODOT Transportation Volume Tables
2013, 2014, 2015**

2013 TRAFFIC VOLUMES ON STATE HIGHWAYS

Milepoint	2013 AADT All Vehicles	ATR AVC	Location Description
			OSWEGO HIGHWAY NO. 3 (Continued)
			RESUME TWO-WAY TRAFFIC
1.00	26200		0.02 mile north of S.W. Julia Street
2.15	26200		0.05 mile north of S.W. Taylors Ferry Road
2.54	34800		0.05 mile north of Sellwood Ferry Road
3.64	20200		South city limits of Portland
4.02	19700		0.02 mile north of S.W. Riverwood Road
5.69	19200		0.02 mile north of Terwilliger Boulevard
5.80	24400		0.06 mile south of Terwilliger Boulevard
6.11	22100		0.02 mile north of S. "A" Avenue
6.17	32200		0.04 mile south of S. "A" Avenue
6.40	30600		0.02 mile south of North Shore Road
6.65	29600		0.05 mile north of S. McVey Avenue
6.77	18700		On Oswego Creek Bridge
7.54	18200		0.04 mile south of S. Glenmorrie Road
8.04	16900		South city limits of Lake Oswego, north city limits of West Linn, 0.03 mile north of S. Arbor Drive
9.52	18000		0.02 mile north of Jolie Pointe Road
10.27	18700		0.02 mile south of W. "A" Street
11.07	21500		0.10 mile north of East Portland Freeway (I-205)
			Willamette River Bridge closed for entire 2011 year
11.34	10900		0.01 mile north of S. Willamette Falls Drive
11.43	10100		On Willamette River Bridge, south city limits of West Linn and north city limits of Oregon City
			THE DALLES-CALIFORNIA HIGHWAY NO. 4
			Milepoint indicates distance from Washington-Oregon State Line
0.00	6200		Washington-Oregon State Line, The Dalles Bridge
0.79	5300		0.15 mile south of Columbia River Highway Interchange (I-84)
1.01	5400		0.10 mile south of Mosier-The Dalles Highway (US30)
1.24	3000		0.02 mile south of N.E. Fremont Street
10.30	2400	*	Dufur Automatic Traffic Recorder, Sta. 33-005, 0.84 mile south of Boyd Market Road (North Jct)
13.27	1300		0.05 mile south of Boyd Loop Road
16.08	1300		On Mays Canyon Creek Bridge
			Equation: MP 23.00 BK = MP 27.88 AH
22.87	1400		0.02 mile south of Dufur Gap Road
33.84	1400		0.05 mile north of Sherars Bridge Highway (OR216)
33.94	970		0.05 mile south of Sherars Bridge Highway (OR216)
			Equation: MP 37.77 BK = MP 39.33 AH
42.36	990		0.07 mile north of Wapinitia Highway (OR216)
42.48	980		0.05 mile south of Wapinitia Highway (OR216)
43.96	1100		West city limits of Maupin, 0.30 mile south of Deschutes Avenue
45.84	1100		On Deschutes River Bridge
45.98	740		0.02 mile south of Bakeoven Road
46.40	470		South city limits of Maupin, 0.32 mile south of Deschutes River Road
67.00	390		0.17 mile north of Sherman Highway (US97)
67.22	2000		0.05 mile south of Sherman Highway (US97)
81.00	3400		0.02 mile south of Old Highway 97
87.78	3700		0.50 mile south of N.E. Elm Lane

2014 TRAFFIC VOLUMES ON STATE HIGHWAYS

Milepoint	2014 AADT All Vehicles	ATR AVC	Location Description
OSWEGO HIGHWAY NO. 3 (Continued)			
6.77	18900		On Oswego Creek Bridge
7.54	18400		0.04 mile south of S. Glenmorrie Road
8.04	17100		South city limits of Lake Oswego, north city limits of West Linn, 0.03 mile north of S. Arbor Drive
9.52	18200		0.02 mile north of Jolie Pointe Road
10.27	18900		0.02 mile south of W. "A" Street
11.07	21800		0.10 mile north of East Portland Freeway (I-205)
11.34	11000		0.01 mile north of S. Willamette Falls Drive
11.43	12400		On Willamette River Bridge, south city limits of West Linn and north city limits of Oregon City
THE DALLES-CALIFORNIA HIGHWAY NO. 4			
Milepoint indicates distance from Washington-Oregon State Line			
0.00	6600		Washington-Oregon State Line, The Dalles Bridge
0.79	6000		0.15 mile south of Columbia River Highway Interchange (I-84)
1.01	3200		0.10 mile south of Mosier-The Dalles Highway (US30)
1.24	3700		0.02 mile south of N.E. Fremont Street
10.30	2400	*	Dufur Automatic Traffic Recorder, Sta. 33-005, 0.84 mile south of Boyd Market Road (North Jct)
13.27	1000		0.05 mile south of Boyd Loop Road
16.08	1100		On Mays Canyon Creek Bridge
22.87	1200		0.02 mile south of Dufur Gap Road
Equation: MP 23.00 BK = MP 27.88 AH			
33.84	1200		0.05 mile north of Sherars Bridge Highway (OR216)
33.94	1000		0.05 mile south of Sherars Bridge Highway (OR216)
Equation: MP 37.77 BK = MP 39.33 AH			
42.36	1000		0.07 mile north of Wapinitia Highway (OR216)
42.48	1000		0.05 mile south of Wapinitia Highway (OR216)
43.96	1000		West city limits of Maupin, 0.30 mile south of Deschutes Avenue
45.84	1100		On Deschutes River Bridge
45.98	670		0.02 mile south of Bakeoven Road
46.40	440		South city limits of Maupin, 0.32 mile south of Deschutes River Road
67.00	370		0.17 mile north of Sherman Highway (US97)
67.22	2100		0.05 mile south of Sherman Highway (US97)
81.00	3400		0.02 mile south of Old Highway 97
87.78	3400		0.50 mile south of N.E. Elm Lane
89.60	3800		0.05 mile north of N.E. Cherry Lane
91.17	4700		0.05 mile north of N.E. Meadowlark Lane
91.43	5500		0.03 mile south of N.E. Loucks Road
91.98	8100		0.10 mile north of Warm Springs Highway (US26)
SOUTHBOUND - ONE-WAY TRAFFIC			
<i>On 4th Street</i>			
92.13	9000		0.02 mile north of Pine Street
92.44	10200		0.02 mile north of Culver Highway
92.76	9600		0.02 mile north of "G" Street
93.06	8700		0.02 mile south of "J" Street

2015 TRAFFIC VOLUMES ON STATE HIGHWAYS

Milepoint	2015 AADT All Vehicles	ATR AVC	Location Description
			OSWEGO HIGHWAY NO. 3 (Continued)
			RESUME TWO-WAY TRAFFIC
1.00	22300		0.02 mile north of S.W. Julia Street
2.15	22400		0.05 mile north of S.W. Taylors Ferry Road
2.54	30000		0.05 mile north of Sellwood Ferry Road
3.64	17300		South city limits of Portland
4.02	17000		0.02 mile north of S.W. Riverwood Road
5.69	16500		0.02 mile north of Terwilliger Boulevard
5.80	21400		0.06 mile south of Terwilliger Boulevard
6.11	20200		0.02 mile north of S. "A" Avenue
6.17	34100		0.04 mile south of S. "A" Avenue
6.40	28500		0.02 mile south of North Shore Road
6.65	27600		0.05 mile north of S. McVey Avenue
6.77	17900		On Oswego Creek Bridge
7.54	16800		0.04 mile south of S. Glenmorrie Road
8.04	15900		South city limits of Lake Oswego, north city limits of West Linn, 0.03 mile north of S. Arbor Drive
9.52	17800		0.02 mile north of Jolie Pointe Road
10.27	18500		0.02 mile south of W. "A" Street
11.07	20900		0.10 mile north of East Portland Freeway (I-205)
11.34	13600		0.01 mile north of S. Willamette Falls Drive
11.43	13100		On Willamette River Bridge, south city limits of West Linn and north city limits of Oregon City
			THE DALLES-CALIFORNIA HIGHWAY NO. 4
			<i>Milepoint indicates distance from Washington-Oregon State Line</i>
0.00	7100		Washington-Oregon State Line, The Dalles Bridge
0.79	6300		0.15 mile south of Columbia River Highway Interchange (I-84)
1.01	3300		0.10 mile south of Mosier-The Dalles Highway (US30)
1.24	3900		0.02 mile south of N.E. Fremont Street
10.30	2600	*	Dufur Automatic Traffic Recorder, Sta. 33-005, 0.84 mile south of Boyd Market Road (North Jct)
13.27	1100		0.05 mile south of Boyd Loop Road
16.08	1100		On Mays Canyon Creek Bridge
			Equation: MP 23.00 BK = MP 27.88 AH
22.87	1300		0.02 mile south of Dufur Gap Road
33.84	1300		0.05 mile north of Sherars Bridge Highway (OR216)
33.94	1100		0.05 mile south of Sherars Bridge Highway (OR216)
			Equation: MP 37.77 BK = MP 39.33 AH
42.36	1000		0.07 mile north of Wapinitia Highway (OR216)
42.48	1100		0.05 mile south of Wapinitia Highway (OR216)
43.96	1100		West city limits of Maupin, 0.30 mile south of Deschutes Avenue
45.84	1100		On Deschutes River Bridge
45.98	710		0.02 mile south of Bakeoven Road
46.40	460		South city limits of Maupin, 0.32 mile south of Deschutes River Road
67.00	390		0.17 mile north of Sherman Highway (US97)
67.22	2200		0.05 mile south of Sherman Highway (US97)
81.00	3400		0.02 mile south of Old Highway 97
87.78	3600		0.50 mile south of N.E. Elm Lane
89.60	4000		0.05 mile north of N.E. Cherry Lane

Appendix D

**May 4, 2017
Traffic Count
Seasonal Adjustment**

SEASONAL TREND TABLE (Updated: 9/30/16)																									Seasonal Trend Peak Period Factor
TREND	1-Jan	15-Jan	1-Feb	15-Feb	1-Mar	15-Mar	1-Apr	15-Apr	1-May	15-May	1-Jun	15-Jun	1-Jul	15-Jul	1-Aug	15-Aug	1-Sep	15-Sep	1-Oct	15-Oct	1-Nov	15-Nov	1-Dec	15-Dec	
INTERSTATE URBANIZED	1.0328	1.0423	1.0157	0.9891	0.9780	0.9670	0.9582	0.9493	0.9530	0.9567	0.9385	0.9202	0.9228	0.9275	0.9229	0.9182	0.9363	0.9544	0.9568	0.9592	0.9776	0.9959	1.0131	1.0303	0.9182
INTERSTATE NONURBANIZED	1.2437	1.3089	1.2543	1.1997	1.1341	1.0685	1.0594	1.0503	1.0243	0.9984	0.9494	0.9005	0.8748	0.8449	0.8450	0.8452	0.8928	0.9405	0.9815	1.0224	1.0445	1.0666	1.1193	1.1721	0.8449
COMMUTER	1.0475	1.0553	1.0272	0.9991	0.9913	0.9836	0.9655	0.9474	0.9442	0.9411	0.9497	0.9583	0.9410	0.9243	0.9206	0.9168	0.9289	0.9409	0.9431	0.9452	0.9734	1.0017	1.0249	1.0481	0.9168
COASTAL DESTINATION	1.2011	1.2105	1.1669	1.1234	1.0959	1.0684	1.0679	1.0673	1.0450	1.0227	0.9832	0.9438	0.8923	0.8293	0.8289	0.8284	0.8792	0.9300	0.9866	1.0432	1.1000	1.1567	1.1795	1.2023	0.8284
COASTAL DESTINATION ROUTE	1.4581	1.4945	1.4132	1.3319	1.2689	1.2060	1.1989	1.1918	1.1318	1.0718	1.0090	0.9462	0.8627	0.7570	0.7580	0.7589	0.8357	0.9125	1.0223	1.1321	1.2122	1.2922	1.3556	1.4189	0.7570
AGRICULTURE	1.2501	1.2671	1.2126	1.1581	1.1239	1.0896	1.0515	1.0134	0.9750	0.9367	0.9081	0.8794	0.8633	0.8439	0.8440	0.8441	0.8457	0.8473	0.8799	0.9125	0.9820	1.0515	1.1491	1.2467	0.8439
RECREATIONAL SUMMER	1.7175	1.7853	1.7144	1.6434	1.5416	1.4398	1.3847	1.3297	1.1730	1.0163	0.9355	0.8546	0.7960	0.7248	0.7363	0.7478	0.8050	0.8623	0.9661	1.0699	1.2299	1.3898	1.5122	1.6346	0.7248
RECREATIONAL SUMMER WINTER	1.1876	1.2510	1.2671	1.2831	1.3092	1.3353	1.4523	1.5692	1.5280	1.4868	1.2809	1.0750	0.9651	0.8183	0.8556	0.8930	1.0372	1.1814	1.4146	1.6262	1.6922	1.7365	1.4069	1.0773	0.8183
RECREATIONAL WINTER	0.9829	0.9405	0.9610	0.9814	1.0088	1.0363	1.2717	1.5070	1.8899	2.2729	1.9598	1.6468	1.4478	1.1378	1.1680	1.1981	1.3341	1.4702	1.7772	2.0843	2.4169	2.7495	1.8778	1.0060	0.9405
SUMMER	1.2064	1.2361	1.1933	1.1505	1.1163	1.0821	1.0551	1.0280	0.9946	0.9611	0.9252	0.8893	0.8654	0.8356	0.8394	0.8431	0.8787	0.9142	0.9489	0.9836	1.0386	1.0936	1.1381	1.1826	0.8356
SUMMER < 2500	1.2956	1.3295	1.2823	1.2352	1.1775	1.1198	1.0711	1.0223	0.9728	0.9232	0.8909	0.8586	0.8394	0.8161	0.8251	0.8341	0.8478	0.8616	0.9004	0.9392	1.0145	1.0898	1.1787	1.2675	0.8161

*Seasonal Trend Table factors are based on previous year ATR data. The table is updated yearly.

*Grey shading indicates months were seasonal factor is greater than 30%

Highway 43 North of Arbor Drive

20054 Count collected on May 3, 2017
 1.029886562 Seasonal Factor based on Commuter route
20653 AADT

From: [Bob Jordan](#)
To: [Arnold, Jennifer](#)
Cc: [terry Jordan](#); [BOB JORDAN](#)
Subject: 1800 Upper Midhill Development
Date: Tuesday, July 14, 2020 7:55:17 PM

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My name is Bob Jordan. My wife Terry and I live at 2461 Marylhaven Place in Lake Oswego. Our property is also known as Lot 69 and abuts the proposed Upper Midhill Development. We have lived here for 17 years and have raised our family here.

We are writing to oppose the requested extension of time to develop the Upper Midhill property. Since the time that the development was being proposed, and then approved, the uncertainty of the nature and size of the development has cast a pall over the enjoyment of our property.

Last year we put our home up for sale after the development had been approved. We received a bid on our property, which we accepted with the condition that the prospective buyers were specifically aware of the Upper Midhill project, even though we had listed it as part of our routine disclosure. The prospective buyers were told by the City of West Linn that the development was “imminent”. Our buyers withdrew the offer, because of the uncertainty of the project, according to the real estate agent. Other prospective buyers and real estate agents have been told by the City of West Linn that the development was imminent, starting on September 3 (2019). That was in August of 2019.

If the extension is granted, another two year period will allow this uncertainty to persist. In short, our objection is simple, they had their chance, they didn't perform in the manner that they proposed to the City from the start. Enough is enough.

Bob Jordan
Terry Jordan

From: [XJ Wang](#)
To: [Arnold, Jennifer](#)
Subject: testimony for consideration for upcoming planning commission hearing File No. MISC-20-04
Date: Tuesday, July 14, 2020 8:45:39 PM

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Dear Ms. Arnold,

This is Xuejun Wang and Jian Shen live on 171610 Brookhurst Dr., Lake Oswego, OR 97034. We received notice of the upcoming planning commission hearing File No. Misc-20-04. As home owner within 500 feet of this property (Tax Lot 200 Clackamas County Assessor Map 21E 14CA), we would like to provide our perspective:

1. Any construction project on the above land will significantly increase the already stressed traffic on route 43;
2. Our property is right next to the lot on the Lake Oswego side, I work from home most of the time, any construction noise will significantly reduce my productivity and cause concern to my health.
3. Any construction project is likely to change how water flows down the hill/slope, I'm concerned that this may have a negative impact on my property.
4. There are a lot deers and other wild animals live in the area, any construction project to destroy that animal friendly ecosystem.

Thank you.

Xuejun Wang and Jian Shen
17610 Brookhurst Dr.,
Lake Oswego, OR 97034

From: jrobins@bigpond.net.au
To: Arnold, Jennifer
Subject: Fwd: Midhill
Date: Wednesday, July 15, 2020 9:15:00 AM

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Att: J. Arnold

I have enrolled to speak at this evenings meeting of the Planning Commission.
To assist you in scheduling the topics I wish to address, to identify those Chapters of the CDC relating to my comments and to enable my comments to be made available to other participants, please see the outline below.

.....
I am writing in my capacity as a joint owner of a property located at 17771 Marylcreek Drive, Lake Oswego and as a member of the Marylhurst Homeowners Association. I own this property jointly with my wife, Cheryl Robins who is also a Director of the MHOA. Due to Covid19 Travel restrictions I am presently stranded in Australia and unfortunately have experienced some difficulty in preparing for this response to the virtual public hearing to consider a request for a 2 year extension to the approval of 34 lot Subdivision located at 18000 Upper Midhill Drive in West Linn.

Prior to Setting out my submission I would like to suggest that it would have been preferable if you had followed your own regulations (as detailed in 99.270 C and D) in circulating the Notice of the Appeal, as I believe at Law that the hearing to consider the requested extension, can only be classified as an Appeal, given that without such an Appeal the prior approval would have lapsed.

I note that the circulated letter does not "state the Name of the appellant or petitioner" nor does it state the "grounds for appeal or review." The failure to include this information in the circulated notification may preclude any consideration of this matter, or enable a sustainable ruling on the outcome of the hearing, as the recipients of this notification have not been adequately apprised of the pertinent information necessary to be provided to ensure complete and full disclosure.

Further, having been made aware of the limitations indicted in the second paragraph of the circulated letter, I note that not only was the link detailed in the letter inoperable as outlined in correspondence sent to you by Cheryl Robins a few weeks ago, but it would appear that this statement is in conflict with the doctrine expressed throughout the Code that all matters subject to appeal are to be 'de novo'. Did you subsequently ensure all recipients were informed of the alternative link where they may consider your purported limitations as many of the members of the MHOA may have been dissuaded from preparing a submission due to uncertainty of the restrictions you imposed and an inability to risk their health by travelling to City Hall in West Linn. Could you also please advise the right at Law for the Planning Commission to limit its deliberations and only consider criteria found in Chapters 14, 85, 92 an 99 of the CDC.

Further on the matter of notification and in words stipulated in 99.038...."to identify potential issues or conflicts"... I would like to remind you that this development was first mooted some 5 years ago and following considerable objection approved 3 years ago. The reason for the current application requiring an extension of the approval is that there has been little if any work conducted on the site and many of new members of the MHOA have acquired their homes in Marylhurst during this period of inaction. Consequently there would be a substantial number of members who not only are unaware of the proposed Development but have never been made aware of the potential adverse impact of this development on the value of their most prized investment. They deserve to be fully informed and as 99.038 provides should have been afforded the opportunity to discuss the background to the approval or renewal of approval as provided under B, C and D of this section to meet with the Board of MHOA and hear what they believe about the granting of the extension and any matters relating to approval.

I now call upon you to produce to the meeting the stipulated requirements in 99.038(E) or adjourn this scheduled meeting until such time that the Board of MHOA can call a meeting of the members to discuss current attitudes to the approval of this development.

Now to our more specific concerns with this development.

92.010

Storm water disposal and potential damage to Marylhurst, Lake Oswego owners property and the Property owned by MHOA

As you would be aware there was considerable objection and information sought just over a year ago when we were informed how the Developer intended to dispose of the storm water generated from the hard surfaces of the 34 new dwellings and the new roads and footpaths constructed to support this development. The Marylhurst residents were still hurting from the substantial cost they had incurred as a consequence of storm water escaping from the ditch in Tract D and inundating several homes. And we were merely informed that the matter was still to be decided.

Now it appears from the tiny A4 sized plans we can print out online that the Developer is now planning on installing a pipe to take this substantial volume of water along a

yet to be constructed Easement and it would appear, subsequently dump it into an easement owned by the City of Lake Oswego. Yet there is a difficulty yet to be addressed if this is to be the proposed solution. In May 2018 I approached the Mayor and Councilors of the City of Lake Oswego and asked them to specifically refuse to allow the storm water from this development in West Linn to be added to the flow through Marylhurst. I was subsequently contacted by Erica Rooney, P.E. City Engineer ,Engineering Department, City of Lake Oswego who confirmed that under no circumstances would the City of Lake Oswego permit such use of its storm water pipes or storm water discharge facilities. So who is going to win this debate for the truth? Naturally, I have retained M/s Rooney's letter on file.

85.201 (H)

Storm Detention and Treatment

Although I note that there is a requirement that storm detention and treatment facilities comply with the requirements of West Linn Public Works I did not notice any indication that dumping water into a neighboring City's facilities was an approved method of disposal. Perhaps the City of West Linn could provide me with a copy of the agreement that I can share with my fellow Lake Oswego residents who will be paying for this facility.

Should the Developer elect to revert to the original idea of releasing the storm water from its development into the easement located within Tract D, please be aware that the easement is only available to the City of Lake Oswego and they would have no right whatsoever to add storm water from another city into this easement and it is likely that any such request made to the owners of Tract D (The MHOA) would be likely to be vigorously rejected by the members of the MHOA. Tract D does allow a "blanket Public Utility Easement" however the Clackamas County Surveyor has advised me that this does not permit West Linn to either share the easement with the City of Lake Oswego or install their own pipe I am also informed that this may also apply to other easements through private properties located within Lake Oswego where the easement was granted to the City of Lake Oswego and consequently there is no opportunity for usage or partial usage of that easement by another party.

85.180

Storm treatment Plan

As indicated above, due to the poor communication by the Developer in response to prior requests for clarification on the disposal of storm water and our inability to gain access to plans of a reasonable size that indicate the proposed treatment we can only request that these plans be made available and that we can be assured that they comply with the most recently adopted Master Plan and do NOT include a concept involving the piping of West Linn storm water through Marylhurst Lake Oswego.

85.160

What must be shown on the plan

Perhaps if we had access to a full sized set of plans we could see some of the required features. ... currently we cannot.

E(1).....E(7)....F(5) ????.

As indicated above I request that this meeting be adjourned for a period not exceeding 60 days so that these matters can be discussed and the Developer given the opportunity to supply the requested information and confirm our fears are unfounded. Should this not occur I reserve my right to have the matter referred to the Court.

July 15, 2020

Michael C. Robinson
Admitted in Oregon
T: 503-796-3756
C: 503-407-2578
mrobinson@schwabe.com

VIA E-MAIL

Mr. Gary Walvatne, Chair
West Linn Planning Commission
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

RE: City of West Linn File NO. MISC-20-04; Request for Two-Year Extension of Approval for a 34-Lot Subdivision

Dear Chair Walvatne and Members of the West Linn Planning Commission:

This office and Emerio Design Group represent the Applicant on this Application requesting a two-year extension of the 34-lot subdivision approval.

The Applicant has reviewed the Staff Report to the Planning Commission and agrees with its findings and recommendations for approval.

West Linn Community Development Code (“CDC”) 99.325.A.1-3 contain the approval criteria for a two-year extension. As the Staff Report explains, the Application meets the approval criteria. Because this Application is not a new tentative subdivision approval or a re-approval of the 2017 approval, CDC 99.325.A.1-3 contain the approval criteria for this Application.

CDC 99.325.A.1 requires that the Application demonstrate that the relevant approval criteria enacted since the 2017 decision are satisfied. **Exhibit 1** to the Application is a May 12, 2020 letter from Mr. Steve Miller of Emerio Design stating that he reviewed the current CDC approval criteria against those CDC approval criteria applied to the 2017 decision and that none of the CDC approval criteria have changed since the 2017 approval.

CDC 99.325.A.2 is also satisfied. The Planning Commission can find that there have been no material change in facts that directly impact the project. **Exhibit 2** is a letter from Mr. Evans and **Exhibit 3** is a letter from Mr. Matt Bell and Mr. Anthony Yi. Both letters demonstrate that CDC 99.325.A.2 is satisfied.

Finally, CDC 99.325.A.3 is satisfied. The only change to the approved plans has been the addition of five areas on Upper Midhill Drive where the Applicant increased the street width

Mr. Gary Walvatne, Chair
July 15, 2020
Page 2

within the existing right-of-way, as requested by the City Engineer. *See Exhibit 2.* The Applicant's June 10, 2020 letter explains this change. The subdivision has not been otherwise changed since its 2017 approval.

The Application is not an opportunity to reevaluate the original approval. Additionally, the requirements of ORS 92.040(2), 197.303(1), 197.307(4) and ORS 227.178(3) apply to this Application.

The Applicant respectfully requests that the Planning Commission approve this two-year extension.

Very truly yours,



Michael C. Robinson

MCR/jmhi
Enclosures

cc: Ms. Jennifer Arnold (*via email*) (*w/enclosures*)
Mr. Tim Ramis (*via email*) (*w/enclosures*)
Mr. Tim Ralston (*via email*) (*w/enclosures*)
Mr. Lucas Ralston (*via email*) (*w/enclosures*)
Mr. Steve Miller (*via email*) (*w/enclosures*)
Mr. Eric Evans P.E. (*via email*) (*w/enclosures*)
Mr. Pete DeWitz (*via email*) (*w/enclosures*)
Mr. Steve Miller (*via email*) (*w/enclosures*)
Mr. Tyler Korb (*via email*) (*w/enclosures*)
Mr. Matt Bell (*via email*) (*w/enclosures*)

PDX\28392603.1.docx

EMERIO *Design*

CIVIL ENGINEERS & PLANNERS

5/12/2020

Michael Robinson
Schwabe Williamson & Wyatt
PacWest Center
1211 SW Fifth Avenue Suite 1900
Portland, OR 97204

RE: Upper Midhill Land-Use Application Extension

Dear Mr. Robinson,

This letter is in response to our joint effort to address the City of West Linn's Community Development Code (CDC) Chapter; 99 Procedures for Decision Making: Quasi-Judicial, Section 99.325 Extensions of Approval, as it relates to City File Numbers: SUB-15-03/WAP-16-03/AP-17-01 (Chene Blanc 34-Lot Subdivision and Water Resource Area Permit at 18000 Upper Midhill Drive). Specifically, this letter address Section 99.325(A)(1):

Section 99.325(A)(1)

1. The applicant has demonstrated that the application is in conformance with applicable CDC provisions and relevant approval criteria enacted since the application was initially approved; and

The applicable Chapters identified in the Staff Report are Chapters: 14, 32, 48, 55, 85, and 92. I have reviewed all applicable criteria identified in the City's attached Staff Report against the City's on-line CDC and I have found no changes to the City's development code that would affect the City's decisions on the Chene Blanc 34-lot subdivision.

In addition to reviewing the City's development code against the applicable review criteria identified in the City's Staff Report, I also contacted City Planner, Jennifer Arnold, to confirm that there have been no code changes since the approval of the Chene Blanc 34-Lot subdivision that would impact the City's approval. Mrs. Arnold informed me that other than a couple rounds of some code clean up work, there have been no new relevant approval criteria enacted since the application was initially approved by the City.

Respectfully,



Steve Miller, Director of Planning Services
Emerio Design, LLC
6445 SW Fallbrook Place, Suite 100
Beaverton, OR 97008

EMERIO Design

Civil Engineering | Land Surveying | Construction Management | Land Use Planning | Structural Design | House Design

July 8, 2020

Mr. Gary Walvatne, Chair
22500 Salamo Road
West Linn, OR 97068

RE: Chene Blanc Subdivision

Dear Mr. Walyatne:

This letter is written to address CDC 99.325.A.2, and the differences between the layout of this subdivision from the drawing set prepared for the land-use process and the drawing set currently approved for construction.

Below is a list of revisions:


- The curb line was shifted to widen the road and allow for on street parking in front of lots 3 to 7. The ROW width did not change.
- The curb line was shifted to widen the road and allow for on street parking in front of lots 8 to 11. The ROW width did not change.
- The curb line was shifted to widen the road and allow for on street parking in front of lot 12. The ROW width did not change.

The balance of the design in the two drawing sets remains the same considering the addition of the usual and customary refinements between land use scale drawings and final engineering drawings.

Per CDC 99.325.A.2, there are no demonstrated material misrepresentations, errors, omissions, or changes in facts that directly impact the project. I am unaware of any changes in facts or site conditions that directly impact the project, including drainage or any other site concern.

If you have any questions, please do not hesitate to call my cell phone at 503-853-1910.

Sincerely,
Emerio Design, LLC

DocuSigned by:

936474C69EA2449...

Eric Evans, PE
Engineering Manager



July 13, 2020

Project #: 22848.0

Gary Walvatne
West Linn Planning Commission
22500 Salamo Road
West Linn, OR 97068

RE: Chene Blanc Estates Development

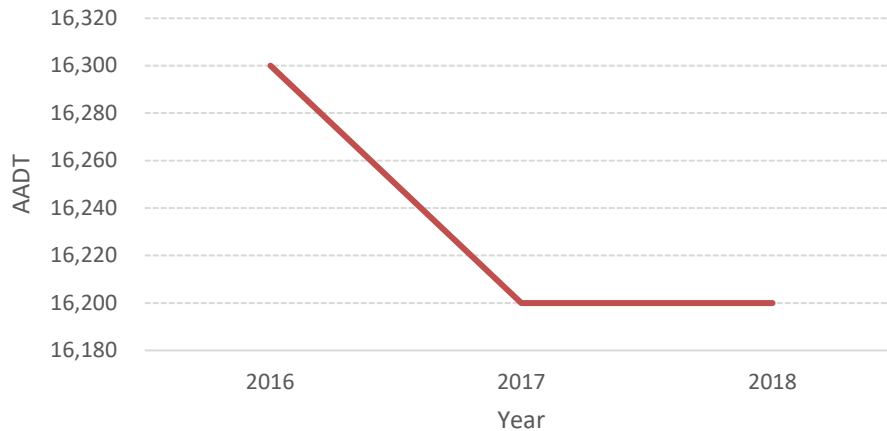
Dear Gary,

This letter provides information on potential changes in traffic conditions within the vicinity of the proposed Chene Blanc Estates development with a focus on Willamette Drive and the Willamette Drive/Arbor Drive intersection. As indicated below, there have been no material changes in traffic volumes, travel patterns, or crash history since approval of the development application in 2017 that would result in changes to the findings and recommendations presented in the January 2016 transportation impact analysis (TIA). Also, based on the latest trip generation information available, the proposed development is expected to have less of an impact on the transportation system than documented in the January 2016 TIA.

Traffic Volumes

Traffic volumes along Willamette Drive near Arbor Drive have remained relatively flat over the last several years. ODOT's transportation volume tables provide average annual daily traffic (AADT) volumes for points along all state highways, including Willamette Drive. Chart 1 displays the three most recent years of data available (2016-2018) at a point located approximately 0.03 miles north of Arbor Drive. As shown, AADT along Willamette Drive was the same in 2018 as it was in 2017 and lower than it was in 2016. Therefore, there have been no material changes in traffic volumes along Willamette Drive near Arbor Drive since approval of the development application.

Chart 1: AADT – Willamette Drive (2016-2018)



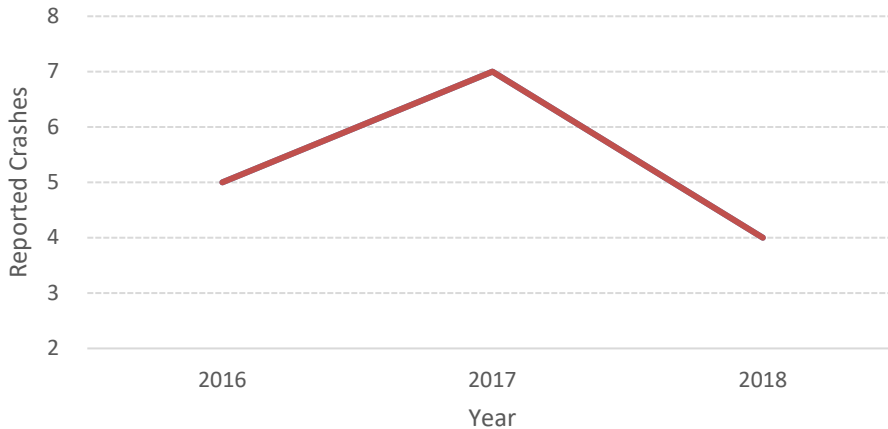
Travel Patterns

There have been no changes in the transportation facilities or services provided within the site vicinity over the last several years. Therefore, there have been no material changes in travel patterns along Willamette Drive near Arbor Drive since approval of the development application.

Crash History

The total number of reported crashes at the Willamette Drive/Arbor Drive intersection have remained relatively flat over the last several years. ODOT maintains a database of reported crash for all state highways and local roadways, including Willamette Drive and Arbor Drive. Chart 2 displays the three most recent years of crash data available (2016-2018) for the Willamette Drive/Arbor Drive intersection. As shown, the total number of crashes was lower in 2018 than it was in 2017 and in 2016. It should also be noted that of the 16 crashes reported at the intersection over the three-year period, none of the crashes resulted in a fatality or serious injury. Therefore, there have been no material changes in crash history at the Willamette Drive/Arbor Drive intersection based on the available crash data.

Chart 2: Crash History – Willamette Drive/Arbor Drive Intersection (2016-2018)



Trip Generation

The January 2016 TIA includes a trip generation estimate for the proposed development that was developed based on information provided in the 9th Edition of Trip Generation manual. The 10th Edition of Trip Generation is now available, and the information shows that the daily trip rate as well as the weekday AM and PM peak hour trip rates for single-family residential homes has gone down based on the latest ITE published rates. If the study was done today, the trip generation estimate would show a reduction of five weekday AM peak hour trips and four weekday PM peak hour trips; therefore, the proposed development is expected to have less of an impact on the transportation system during peak hours than documented in the January 2016 TIA.

We trust this letter provides you with sufficient information on potential changes in traffic conditions within the study area. Please contact with any questions or comments.

Sincerely,
KITTELSON & ASSOCIATES, INC.

Matt Bell
Senior Planner

Anthony Yi, P.E.
Senior Principal Engineer

From: [banditblake Blake](#)
To: [Arnold, Jennifer](#)
Subject: FILE NO. MISC-20-04 / 18000 Upper Midhill Dr
Date: Wednesday, July 15, 2020 11:59:06 AM

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Dear City of West Linn,

As a member of the Robinwood neighborhood for 18 years now, I would like to strongly recommend that the city deny this request on the following grounds.

This project would unnecessarily impair the pedestrian, bicycle, and vehicle safety. Based upon the timeframe, the two-year extension would have a significant impact on our neighborhood. Please see the following photos that were taken over the past two months due to the construction/remodel of ONE single small home. It has impaired the intersection of Arbor and Upper Midhill Drive and limited ease of movement for all pedestrians, cyclists, vehicles, and pets. Please see the attached documents.

Furthermore, the proposed project would create many issues with drainage to the neighboring houses due to the nature of the proposed land being developed.

I would encourage you to consider working with the City of Lake Oswego to classify this area as a protected greenway, watershed and wooded natural resource as is part of the City plan.

Thank you for your consideration.

Anne Beltman

Please let me know if the pictures do not attach properly as I tried to compress them to fit in this email.

Thank you.

water, sewage, and storm drainage service

A two year extension of approval for this development will further increase congestion in the streets and further decrease street safety;

The proposed left turn lane at hwy 43 and Abor eliminates the bicycle lane at the guard railing north of the intersection and renders the bus stop non ADA compliant. This is in direct contradiction to 85.010 Section B3
85.010 Section B4

“To protect natural resource areas such as drainageways, Willamette and Tualatin River greenways, creeks, habitat areas, and wooded areas as required by other provisions of this code or by the layout of streets and graded areas so as to minimize their disturbance.” This development will eliminate a wooded natural resource area which is a habitat for deer, pollinators, owls and other birds of prey, and many other animals. In addition, this land is a watershed. All of this is in direct contradiction to 85.010 B4

I further recommend the city of West Linn (perhaps jointly with Lake Oswego) relieve the developer of this asset and add the land to the city’s parks and recreation inventory based upon the following:

Upper Midhill Dr. does not meet the minimum width for local roads (CDC 85.200 A3).

This developer, and any future developer, cannot widen Upper Midhill Dr. and add the required sidewalks without the city declaring eminent domain and forcing residents to give up a portion of their property.

The intersection of 43 and Arbor is classified by ODOT as a “level F”, a failing intersection. ODOT’s comprehensive plan for highway 43 will not address this intersection as the nearby traffic lights at Marylbrook Dr and 43, and Marylhurst Dr and 43, satisfy ODOT’s requirements. Even with ODOT approval it is not economically viable for a developer to widen 43 between Marylbrook Dr. and Marylhurst Dr.

The West Linn Community Development Code, zoning of 18000 Upper Midhill Dr, and the inability to execute required street improvement to 43 and Upper Midhill Dr. create a situation of inverse condemnation for the owner of 18000 Upper Midhill Dr. as the property cannot be feasibly developed for the permitted uses.

Arbor and Upper Midhill.zip
Sent from [Mail](#) for Windows 10

From: [banditblake Blake](#)
To: [Arnold, Jennifer](#)
Subject: FILE NO. MISC-20-04 / 18000 Upper Midhill Dr
Date: Wednesday, July 15, 2020 12:05:25 PM

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To the City of West Linn,

It appears that the photos I tried to attach did not come through as I was rushing to meet the noon deadline. I hope you will allow these photos to be included in my argument. I will have to send them in 3 different documents as they do not fit in one.

Also, I apologize, as it appears that some of my notes were included at the bottom of the letter and were not deleted.







From: [banditblake Blake](#)
To: [Arnold, Jennifer](#)
Subject: FILE NO. MISC-20-04 / 18000 Upper Midhill Dr, PHOTOS part 2
Date: Wednesday, July 15, 2020 12:06:26 PM

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From: [banditblake Blake](#)
To: [Arnold, Jennifer](#)
Subject: FILE NO. MISC-20-04 / 18000 Upper Midhill Dr, PHOTOS part 3 showing oil and added damage to Upper Midhill Drive
Date: Wednesday, July 15, 2020 12:09:00 PM

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