

## DEVELOPMENT REVIEW APPLICATION

**For Office Use Only**

STAFF CONTACT <b>Jennifer Arnold</b>	PROJECT NO(S). <b>AP-20-03</b>	PRE-APPLICATION NO.
NON-REFUNDABLE FEE(S) <b>\$400</b>	REFUNDABLE DEPOSIT(S)	TOTAL <b>\$400</b>

**Type of Review** (Please check all that apply):

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Annexation (ANX)                      | <input type="checkbox"/> Historic Review                                  | <input type="checkbox"/> Subdivision (SUB)                               |
| <input checked="" type="checkbox"/> Appeal and Review (AP)     | <input type="checkbox"/> Legislative Plan or Change                       | <input type="checkbox"/> Temporary Uses                                  |
| <input type="checkbox"/> Conditional Use (CUP)                 | <input type="checkbox"/> Lot Line Adjustment (LLA)                        | <input type="checkbox"/> Time Extension                                  |
| <input type="checkbox"/> Design Review (DR)                    | <input type="checkbox"/> Minor Partition (MIP) (Preliminary Plat or Plan) | <input type="checkbox"/> Variance (VAR)                                  |
| <input type="checkbox"/> Easement Vacation                     | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures           | <input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP) |
| <input type="checkbox"/> Extraterritorial Ext. of Utilities    | <input type="checkbox"/> Planned Unit Development (PUD)                   | <input type="checkbox"/> Water Resource Area Protection/Wetland (WAP)    |
| <input type="checkbox"/> Final Plat or Plan (FP)               | <input type="checkbox"/> Pre-Application Conference (PA)                  | <input type="checkbox"/> Willamette & Tualatin River Greenway (WRG)      |
| <input type="checkbox"/> Flood Management Area                 | <input type="checkbox"/> Street Vacation                                  | <input type="checkbox"/> Zone Change                                     |
| <input type="checkbox"/> Hillside Protection & Erosion Control |   |  |

Home Occupation, Pre-Application, Sidewalk Use, Sign Review Permit, and Temporary Sign Permit applications require different or additional application forms, available on the City website or at City Hall.

<b>Site Location/Address:</b> 18000 Upper Midhill Drive West Linn, OR 97068 SUB-15-03/AP-17-01	<b>Assessor's Map No.:</b> <hr/> <b>Tax Lot(s):</b> <hr/> <b>Total Land Area:</b>
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**Brief Description of Proposal:**

My wife and I are parties with standing who wish to appeal the decision to approve of MISC-20-04. Our specific grounds for appeal and supporting materials are included in this application.

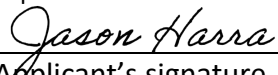

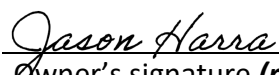
<b>Applicant Name:</b> Jason & Jessica Harra <small>(please print)</small> Address: 17701 Hillside Drive City State Zip: West Linn, OR 97068	Phone: 503-420-1052 , 503-889-6184 Email: jharra@gmail.com jessica.harra@gmail.com
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<b>Owner Name</b> (required): Jason & Jessica Harra <small>(please print)</small> Address: 17701 Hillside Drive City State Zip: West Linn, OR 97068	Phone: 503-420-1052 , 503-889-6184 Email: jharra@gmail.com jessica.harra@gmail.com
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<b>Consultant Name:</b> <small>(please print)</small> Address: City State Zip:	Phone: Email:
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1. All application fees are non-refundable (excluding deposit). **Any overruns to deposit will result in additional billing.**
2. The owner/applicant or their representative should be present at all public hearings.
3. A decision may be reversed on appeal. No permit will be in effect until the appeal period has expired.
4. **One complete hard-copy set of application materials must be submitted with this application.**  
**One complete digital set of application materials must also be submitted electronically in PDF format.**  
**If large sets of plans are required in application please submit one set.**

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application. Acceptance of this application does not infer a complete submittal. All amendments to the Community Development Code and to other regulations adopted after the application is approved shall be enforced where applicable. Approved applications and subsequent development is not vested under the provisions in place at the time of the initial application.

 Applicant's signature	 L.Schroder 9/8/20	9/4/2020 Date	 Owner's signature (required)	9/4/2020 Date
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September 7<sup>th</sup>, 2020

Jason & Jessica Harra

17701 Hillside Dr

West Linn, OR 97068

The City 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 extension.

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 can exercise its discretion. Once the City determines the scope of the approval criteria, the City can then decide whether to accept or reject new evidence. It is reasonable for the City to give the public the benefit of the doubt in regard to the scope of the testimony and this appeal statement because they are unrepresented by counsel. In order to do so, the City must make specific findings regarding the scope of the hearing, whether new evidence is being accepted, and what testimony to accept or reject. The following comments and suggested findings will assist the City 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 is identified, the admissibility of testimony can be analyzed.

We understand and appreciate the feelings of the developer, City Staff, and perhaps City Attorney. However, the comments in the City Staff Report, the Applicant's presentation and subsequent proposed the written and oral testimony, oversimplified a difficult analysis. Determining whether to accept testimony requires the City 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 Jason & Jessica Harra and other participants should be accepted in the record.

#### Issues

1. The applicant and certain planning commissioners took or were advised to take an improperly narrow view of the scope for approval criteria granted them under CDC.
  1. Including but not limited to 99.325 (A)
    - i. Our position is that 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.
    - ii. There have been several matters of material significance and within the scope of consideration that were not considered, these are matters which include but are not limited to the following:
      1. MATERIAL misrepresentations
        - a. Attempted construction activity without approval.

- b. The applicants letter Traffic study was not stamped by an engineer and should be regarded as good as worthwhile as any other analysis done by a common person.
  - 2. MATERIAL errors
    - a. The public cannot argue against evidence that was never provided to us; emails between City Staff and Applicant, traffic study source data, etc.
  - 3. MATERIAL Omissions
    - a. Traffic study analysis without accounting for other approved projects. No evidence of this at all, simply a "1%". The developer has argued this mattered was settled but not shown the data to back up that new traffic was accounted for.
  - 4. MATERIAL Changes of Facts
    - a. The property was identified to contain a wetland AFTER application was approved.
    - b. Traffic has changed since the application has been approved.
    - c. The plan has changed.
    - d. Pandemic.
- iii. The applicant has not modified the approved plans to conform with A(1) and A(2).
  - 2. There have been s matters of procedural error in regards to the extension under 99.325(E)
  - 3. There are not adequate public facilities are available, particularly transportation facilities to meet the demand of the project.
- 2. Matters of public record. There appear to be emails exchanged between the City and the applicant which were not shared with the public, these matters were discussed at length during the Aug 19<sup>th</sup> meeting whereby counsel. The content of these communication is a matter of public concern and should be preserved in the record.

## CONCLUSION

The applicant has not submitted an application that can meet the criteria for approval because the material in the record does not support a finding that adequate public facilities are available, particularly transportation facilities, and the impacts to sewer facilities after design changes to paved surface area. The applicant threatens to proceed with another, more dense application that still must have adequate public facilities. The applicant argues that if either this application or the more dense application are denied its property may be subject to a taking. However, 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 and could be approved, thus still providing economic value in the property - a result that avoids a taking.